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Presidential Documents

Title 3—

The President

Proclamation 10426 of July 25, 2022

Anniversary of the Americans With Disabilities Act, 2022

By the President of the United States of America

A Proclamation

On July 26, 1990, with the signing into law of the Americans with Disabilities Act (ADA), our Nation created the world's first comprehensive declaration of equality for people with disabilities. Since that time, this landmark legislation has been a driving force in moving America closer to the promise of equal opportunity, full participation, independent living, and economic self-sufficiency for the 61 million individuals with disabilities in our country. The ADA prohibits disability discrimination by State and local governments; provides standards for access to places of public accommodation; protects people with disabilities from discrimination in the workplace; and ensures equal access to health care, social services, transportation, and telecommunications. But even more than that, it enshrines the idea—central to the spirit of our Nation—that all of us are deserving of equal dignity, respect, and opportunity.

I was enormously proud to co-sponsor the ADA when I served in the United States Senate, and over the past 32 years, I have seen firsthand how it has improved the lives of countless Americans. Because of the ADA, generations of people with disabilities have grown up with the assurance that they are accorded the same rights and chances as their non-disabled peers—and our communities, our economy, and our country are all stronger as a result.

Despite the progress we have made through the years, our work is far from over. Many individuals still face barriers to inclusion and equitable access in our society. That is why advancing equity and equal opportunity for people with disabilities has been a priority of mine since taking office. My Administration has made sure that the Department of Justice has the resources it needs to vigorously enforce the Supreme Court's decision in *Olmstead* v. *L.C.* We are working to expand access to the integrated, long-term services and supports that make it possible for disabled individuals to live and thrive in their communities, including significant funding from the Bipartisan Infrastructure Law to improve accessibility for people with disabilities. We are connecting disabled Americans to affordable accessible housing. My Administration is also working to expand opportunities for employment for people with disabilities and providing resources so that employers can make their workplaces more inclusive.

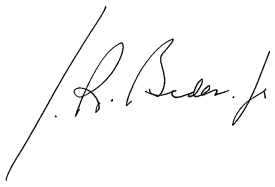
I also remain committed to ensuring that all children and educators have the resources they need to thrive in the classroom. That is why the American Rescue Plan provided $3 billion for disabled students to receive equitable, high-quality, and inclusive services. My Administration has also developed guidance to help children with disabilities who were disproportionately impacted by remote learning return to school safely.

As my Administration continues its work to address the COVID–19 pandemic, we recognize the long-standing health disparities and systemic discrimination faced by the disabled community. The pandemic has had an especially significant impact on the lives and independence of Americans with disabilities and has also been the cause of disability for many individuals.

As we celebrate the legacy of the ADA, let us take this opportunity to reflect on the progress we have made and renew our commitment to achieving the ADA's full promise of advancing disability equity, dignity, access, and inclusion.

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 26, 2022, the Anniversary of the Americans with Disabilities Act. I encourage Americans to celebrate the 32nd year of this defining moment in Civil Rights law and the essential contributions of individuals with disabilities for our Nation.

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



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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11, 25, and 95

[NRC–2020–0133]

RIN 3150–AK49

Access Authorization Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to update the access authorization fees charged to NRC licensees for work performed under the Material Access Authorization Program and the Information Access Authority Program. The change in fees is due to an increase in the review time for each application for access authorization. This final rule is prompted by a recent audit of fees performed by an external certified public accounting and financial management services firm and ensures that the NRC continues to recover the full costs of processing access authorization requests from NRC licensees. The final rule also makes two administrative changes to revise definitions to include new naming conventions for background investigation case types and to specify the electronic process for completing security forms.

DATES: The final rule is effective October 1, 2022.

ADDRESSES: Please refer to Docket ID NRC–2020–0133 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0133. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov*. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
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- *NRC's PDR:* You may examine and purchase copies of public documents by appointment at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Emily Robbins, Office of Administration, telephone: 301–415–7000, email: *Emily.Robbins@nrc.gov* or Vanessa Cox, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–8342, email: *Vanessa.Cox@nrc.gov*. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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I. Background

Certain individuals employed by NRC licensees or their contractors require access to special nuclear material (plutonium, uranium-233, and uranium enriched in the isotopes uranium-233 or uranium-235), restricted data, or national security information. These individuals obtain an access authorization from the NRC. When a licensee requests access authorization for an employee or a contractor, the NRC initiates an investigation of the individual seeking access authorization. Based on the results of that investigation, the NRC determines whether permitting that individual to have access to special nuclear material, restricted data, or national security information would create a security risk.

The Defense Counterintelligence and Security Agency (DCSA) conducts the access authorization background investigations for the NRC and sets the rates charged for these investigations. The combined cost of the DCSA background investigation and related NRC processing activities (NRC processing fee) is recovered from the licensee through an access authorization fee assessed by the NRC. The NRC publishes the fee schedule for special nuclear material access authorization in § 11.15(e) of title 10 of the *Code of Federal Regulations* (10 CFR) and the corresponding fee schedule for restricted data and national security information access authorization in appendix A to 10 CFR part 25. Both schedules are based on rates charged by DCSA for conducting the access authorization background investigations (DCSA investigation billing rates).

On December 28, 2021 (86 FR 73631), the NRC published in the **Federal Register** a direct final rule that would have amended parts 11, 25, and 95 of 10 CFR to update these access authorization fees charged to NRC licensees for work performed under the Material Access Authorization Program (MAAP) and the Information Access Authority Program (IAAP). The direct final rule also would have made two administrative changes to revise definitions to include new naming conventions for background investigation case types and to specify the electronic process for completing security forms. The direct final rule was to become effective on March 14, 2022.

The NRC concurrently published a companion proposed rule on December 28, 2021 (86 FR 73685). In the proposed rule, the NRC stated that if any

significant adverse comments were received, then the NRC would withdraw the direct final rule by publishing a notice in the **Federal Register**. In that event, the direct final rule would not take effect.

The NRC received one comment submission (ADAMS Accession No. ML22025A233) on the proposed rule that accompanied the direct final rule. The comment was submitted by the Nuclear Energy Institute (NEI), a private organization, and is available at www.regulations.gov by searching on Docket ID NRC–2020–0133. The NRC determined the comment to be a significant adverse comment as defined in Section II, Rulemaking Procedure, of the direct final rule because the comment raised an issue serious enough to warrant a substantive response to clarify or complete the record; therefore, the NRC withdrew the direct final rule (87 FR 12853; March 8, 2022).

As stated in the December 28, 2021, proposed rule, the NRC is addressing the comment in this final rule.

II. Discussion

Updated Access Authorization Fees

This final rule amends 10 CFR parts 11, 25, and 95, along with appendix A to 10 CFR part 25. Public Law 115–439, the Nuclear Energy Innovation and Modernization Act (42 U.S.C. 2215), requires the NRC to recover through fees the full cost incurred in providing a service or thing of value. A September 2019 NRC audit of actual in-house costs incurred in processing licensee applications for access authorization showed an increase in the NRC's review time for each application. The audit also showed that the NRC was not recovering its full-cost fees for the time spent processing the increased number of complex applications. Despite a 2016 biennial review indicating increasing costs, the NRC had not adjusted its fees since 2012. Therefore, the NRC is revising the processing fee charged to licensees for work performed under the MAAP and the IAAP from 55.8 percent of the DCSA investigation billing rates to 90.2 percent.

In addition, all requests for reciprocity will be charged a flat fee rate of $95.00. Previously, the NRC did not charge a fee for reciprocity requests because certain applications from individuals with current Federal access authorizations were processed expeditiously and at a reduced cost. This flat fee will be aligned with the level of effort that has recently been expended by DCSA to process reciprocity requests and accounts for inflation as well as recovery of the appropriate cost for conducting this work. In cases where reciprocity is not acceptable and it is necessary to perform a background investigation, the NRC will charge the appropriate fee based on the DCSA investigation billing rate.

Licensees calculate the NRC access authorization fee for an application by referencing the current DCSA investigation billing rates schedule for background investigation services. Reimbursable billing rates for personnel background investigations are published by DCSA in a Federal Investigations Notice (FIN). The current DCSA investigation billing rates are published on the DCSA website and are available at *https://www.dcsa.mil/mc/pv/gov_hr_security/billing_rates/*. The NRC's licensees can also obtain the current DCSA investigation billing rates schedule by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email at *Licensee_Access_Authorization_Fee.Resource@nrc.gov*.

The fee-calculation formula is designed to recover the NRC's actual in-house processing costs for each application received from a licensee. The NRC's access authorization fee is determined using the following formula: the DCSA investigation billing rates on the day the NRC receives the application + the NRC processing fee = the NRC material access authorization fee. The provisions in this final rule set the NRC processing fee; the processing fee is determined by multiplying the DCSA investigation billing rate on the day the NRC receives the application by 90.2 percent (*i.e.,* DCSA rate × 90.2 percent).

As noted previously, the DCSA investigation billing rates are pulled directly from the current DCSA fee schedule for investigations. The tables in revised § 11.15(e)(3) and appendix A to 10 CFR part 25 cross-reference each type of NRC access authorization request to the appropriate investigation service listed in the DCSA's investigation billing rates schedule. For example, a licensee seeking a special nuclear material ''NRC–U'' access authorization requiring a Tier 5 (T5) investigation is directed by the table in § 11.15(e)(3) to calculate the NRC processing fee based on the DCSA investigation billing rates for a ''standard'' T5 investigation. According to the current DCSA investigation billing rates schedule (FIN 20–04, ''FY 2021 and FY 2022 Investigations Reimbursable Billing Rates,'' June 30, 2020), the DCSA charges $5,465 for a ''standard'' T5 investigation. The table instructs the licensee to calculate the NRC's application processing fee by multiplying $5,465 by 90.2 percent, which equals $4,929.43. The licensee then rounds the NRC's processing fee to the nearest dollar, or $4,929, and adds that amount to the DCSA investigation billing rate of $5,465 to determine the total NRC access authorization fee: $10,394.

The following table illustrates the calculation process for access authorization fees requiring a standard T5 investigation:

Current DCSA investigation billing rate for standard T5	Plus NRC application processing fee					Equals total NRC access authorization fee for NRC–U application
	DCSA rate	×	NRC fee 90.2%	=	(rounded to nearest $)	
$5,465	$5,465	×	90.2%	=	$4,929,43 (rounded to $4,929)	= $10,394

Licensees applying for restricted data or national security information access authorization follow a similar procedure. The table in appendix A to 10 CFR part 25 cross-references each type of ''Q'' or ''L'' access authorization to the corresponding DCSA investigation type. The DCSA investigation billing rate for the type of investigation referenced is determined by consulting the current DCSA investigation billing rates schedule. This rate is then used in the formula to calculate the correct NRC access authorization fee for the type of application submitted. Copies of the current NRC access authorization fees can be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email to *Licensee_Access_Authorization_Fee.Resource@nrc.gov*. Changes to the NRC's access authorization fees that result from a modification to the DCSA's billing rate will apply to access authorization requests received on or after the

effective date of the modification to the DCSA's investigation billing rates schedule.

Administrative Changes

In FIN Number 16–02, dated October 6, 2015, and FIN Number 16–07, dated September 26, 2016 (*https://www.dcsa.mil/Portals/91/Documents/pv/GovHRSec/FINs/FY16/fin-16-07.pdf*), the Office of Personnel Management (OPM) implemented the Federal Investigative Standards (FIS) according to the phased Federal Investigative Standards Implementation Plan issued by the Suitability and Security Executive Agents and the Performance Accountability Council. In accordance with the plan, the Access National Agency Check with Inquiries was renamed to Tier 3 (T3) and the National Agency Check with Law and Credit was renamed to Tier 3 reinvestigation (T3R). The T3 investigation is required for positions designated as non-critical sensitive and/or requiring eligibility for ''L'' or ''R'' access or access to Confidential or Secret information. The T3R is the reinvestigation product for the same positions. The Single Scope Background Investigation was renamed to Tier 5 (T5) and the Single Scope Background Investigation-Periodic Reinvestigation was renamed to Tier 5R (T5R). The T5 investigation is required for positions designated as critical sensitive, special sensitive, and/or requiring eligibility for ''Q'' or ''U'' access or access to Top Secret or Sensitive Compartmented Information. The T5R is the reinvestigation product required for the same positions. This final rule revises the definitions in 10 CFR parts 11, 25, and 95 to include the new naming conventions for background investigations case types. The definitions for the NRC ''R'' and NRC ''U'' special nuclear material access authorizations include the renamed investigation types Tier 3 and Tier 5, respectively. Also, the definitions for NRC ''L'' and NRC ''Q'' access authorizations include the renamed investigation types Tier 3 and Tier 5, respectively.

In 2005, the OPM implemented the Electronic Questionnaires for Investigative Processing (e-QIP) system, which allows applicants to electronically enter, update, and release their personal investigative data over a secure internet connection to an employing agency for review and approval. The e-QIP system is a web-based automated system that facilitates the processing of standard investigative forms used when conducting background investigations for Federal security, suitability, fitness, and credentialing purposes. The NRC allows applicants to complete their security form, which is the Standard Form 86 (SF–86), Questionnaire for National Security Positions, electronically through the e-QIP system to minimize errors and expedite processing. This final rule updates 10 CFR parts 11 and 25 to clarify that the NRC uses the e-QIP system for applicants to provide their personal investigative data.

III. Opportunities for Public Participation

On December 28, 2021, the NRC concurrently published in the **Federal Register** a companion rule with a direct final rule to amend the access authorization fees charged to NRC licensees for work performed under the MAAP and the IAAP. The public comment period closed on January 27, 2022.

IV. Public Comment Analysis

The NRC received one significant adverse comment submission from NEI in response to the companion proposed rule that was concurrently published with the direct final rule; the NRC did not receive any other comment submissions. This section provides the NRC's responses to the comments submitted by NEI.

NEI Comment: The direct final rule lacks transparency because it does not provide sufficient information on the 2019 audit or why the NRC found an increase in fees from 55.8 percent to 90.2 percent necessary and, therefore, it fails to provide a meaningful opportunity for public comment.

NRC Response: In the companion proposed rule, the NRC provided sufficient information to inform the public of the proposed change to the regulations and the agency's reasoning supporting that change. As explained in the direct final rule and companion proposed rule published on December 28, 2021, the NRC conducted a biennial review of fees in 2016. This review of fees for the MAAP and IAAP used a cost analysis technique and methodology based on legislative and regulatory requirements, along with information and costs collected from the NRC's financial management systems. The audit showed that the NRC was not recovering its full-cost fees for the time spent processing the increased number of complex applications. The NEI seeks access to the audit report to confirm the agency's reasoning, but the NRC biennial review of fees reports, and subsequent memoranda, contain Official Use Only—Sensitive Internal Information and, as such, are not publicly available.

The NRC has processes to help ensure the accuracy of its internal financial analyses. Specifically, the NRC retains an independent audit firm to conduct biennial reviews of the fees charged by the NRC's IAAP and MAAP about the processing of IAAP and MAAP applications. The NRC approves the methodology used and evaluates the results of each review.

A September 2019 NRC audit of actual in-house costs incurred in processing licensee applications for access authorization also showed an increase in the NRC's review time for each application. This audit was performed by an external certified public accounting and financial management services firm. The audit also showed that the NRC was not recovering its full-cost fees for the time spent processing the increased number of complex applications; despite a 2016 biennial review indicating increasing costs, the NRC had not adjusted its fees since 2012. The increase in processing fees from 55.8 percent of the DCSA billing rates to 90.2 percent ensures that the NRC continues to recover the full costs of processing access authorization requests from NRC licensees.

No change to the final rule was made as a result of this comment.

NEI Comment: The direct final rule does not adequately explain why NRC processing of background investigation applications has become more complex.

NRC Response: The NRC disagrees with this comment. As discussed in response to the previous comment, the direct final rule and companion proposed rule explained that NRC audits revealed increasing costs for processing access authorizations, which the NRC is required to recover regardless of the reason for the increase. Moreover, the direct final rule and companion proposed rule refer to the FIS that were jointly issued in 2012 by Security and Suitability Executive Agents and the Performance Accountability Council. The FIS are the result of a critical security clearance reform initiative that established new Federal investigative criteria to conduct background investigations. These background investigations are used to determine eligibility for logical and physical access, suitability for U.S. Government (USG) employment, eligibility for access to classified information or to hold a sensitive position, and fitness to perform work for or on behalf of the USG as a contractor employee.

The revised Federal investigative criteria required expansion of

investigative inquiries/sources and developed potentially disqualifying information in a greater percentage of cases, resulting in longer turnaround times and increased efforts by the NRC.

No change to the final rule was made as a result of this comment.

NEI Comment: The proposed implementation schedule is unreasonable.

NRC Response: The NRC is statutorily required to recover most of its budget authority through fees assessed to applicants for an NRC license and to holders of NRC licenses. The NRC is required by law to recover its costs and to provide at least 30-days' notice prior to changing or introducing new fees. Once the NRC was notified through the 2019 audit results that it was not fully recovering the costs for work performed under the MAAP and the IAAP, the NRC developed a plan to implement the rate adjustment. The implementation plan included publishing a direct final rule and a companion proposed rule to notify the licensee community and stakeholders of changes in the access authorization fees. The direct final rule was to become effective on March 14, 2022, 75 days after publication on December 28, 2021.

The NRC has taken this comment into consideration and is making this final rule effective on October 1, 2022, so that the new access authorization fees become effective at the beginning of fiscal year 2023. The beginning of each fiscal year is generally when licensees and stakeholders are notified of any changes in the access authorization fee rates.

NEI Comment: The direct final rule incorrectly states that ''despite a 2016 biennial review indicating increasing costs, the NRC had not adjusted its fees since 2012.'' For example, as demonstrated in the Q clearance data table, while the NRC's ''markup'' rate remained at 55.8 percent, the NRC access authorization fee has been steadily adjusted upward since 2012 due to increases in the DCSA investigation billing rates.

NRC Response: The NRC disagrees with this comment. The upward trend in cost that the commenter noted is due to DCSA adjustments and not the NRC processing fee rate. The NRC processing fee percentage has not been adjusted since 2012 (but the DCSA cost has increased).

No change to the final rule was made as a result of this comment.

V. Section-by-Section Analysis

The following paragraphs describe the specific changes in this final rule.

Section 11.7 Definitions

This final rule revises the definitions in § 11.7 for *NRC-''R'' special nuclear material access authorization* and *NRC–''U'' special nuclear material access authorization* to include the new naming conventions for background investigations case types.

Section 11.8 Information Collection Requirements: OMB Approval

This final rule revises § 11.8 to add a new paragraph (c) to clarify that the information collections for the electronic form ''Electronic Questionnaire for Investigations Processing (e-QIP), Standard Form 86 (SF–86)—Questionnaire for National Security Positions'' are approved under OMB control number 3206–0005.

Section 11.15 Application for Special Nuclear Material Access Authorization

This final rule revises paragraphs (b)(1) and (c)(1)(ii) to specify the electronic form of the SF–86.

This final rule revises paragraph (e)(1) to change the NRC processing fee charged to licensees for work performed under the MAAP from 55.8 percent of the DCSA investigation billing rates to 90.2 percent.

This final rule revises paragraph (e)(3) to (1) change the NRC processing fee charged to licensees for work performed under the MAAP from 55.8 percent of the DCSA investigation billing rates to 90.2 percent, (2) indicate that MAAP requests for reciprocity will be charged at a flat fee rate of $95.00, and (3) include the new naming conventions for background investigations case types.

This final rule revises paragraph (e)(4) to clarify that certain applications from individuals with current Federal access authorizations may be processed expeditiously and at a reduced cost.

This final rule revises paragraph (f)(1) to include the new naming conventions for background investigations case types.

Section 11.16 Cancellation of Request for Special Nuclear Material Access Authorization

This final rule revises § 11.16 to include the new naming conventions for background investigations case types.

Section 25.5 Definitions

This final rule revises the definitions for ''*L*'' *access authorization* and ''*Q*'' *access authorization* to include the new naming conventions for background investigations case types.

Section 25.8 Information Collection Requirements: OMB Approval

This final rule revises paragraph (c)(2) to clarify that the information collections for the electronic form ''Electronic Questionnaire for Investigations Processing (e-QIP), SF–86—Questionnaire for National Security Positions'' are approved under OMB control number 3206–0005.

Section 25.17 Approval for Processing Applicants for Access Authorization

This final rule revises paragraph (d)(1)(i) to specify the electronic form of the SF–86.

This final rule revises paragraph (f)(1) to change the NRC processing fee charged to licensees for work performed under the IAAP from 55.8 percent of the DCSA investigation billing rates to 90.2 percent.

This final rule revises paragraph (f)(3) to indicate that IAAP requests for reciprocity will be charged a flat fee rate of $95.00.

Appendix A to 10 CFR Part 25—Fees for NRC Access Authorization

This final rule revises the table in appendix A to 10 CFR part 25 to include the new naming conventions for background investigations case types and to change the NRC processing fee charged to licensees for work performed under the IAAP from 55.8 percent of the DCSA investigation billing rates to 90.2 percent.

Section 95.5 Definitions

This final rule revises the definitions for *NRC ''L'' access authorization* and *NRC ''Q'' access authorization* to include the new naming conventions for background investigations case types.

VI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule amending 10 CFR parts 11, 25, and 95 does not have a significant economic impact on a substantial number of small entities. This final rule applies to those licensees who use, process, store, transport, or deliver to a carrier for transport, formula quantities of special nuclear material (as defined in 10 CFR part 73) or generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR part 95). Two licensees, both fuel cycle facilities, are currently required to comply with 10 CFR part 11. Seventy-eight licensees and other organizations, mostly power reactors and fuel cycle facilities, are currently required to comply with 10 CFR part 25. None of these licensees are ''small entities'' as defined in the

Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810). This final rule also applies to contractors of those licensees required to comply with this final rule who use, process, store, transport, or deliver to a carrier for transport, formula quantities of special nuclear material (as defined in 10 CFR part 73) or generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR part 95). Some of these contractors may be ''small entities'' as defined in the Regulatory Flexibility Act or the NRC's size standards. However, some of these contractors are reimbursed through the contract for the cost of securing access authorization. There are not a substantial number of unreimbursed ''small entity'' contractors who apply for access authorization, nor is the NRC aware of any significant impact on these unreimbursed ''small entity'' contractors.

VII. Regulatory Analysis

A regulatory analysis has not been prepared for this final rule. The Nuclear Energy Innovation and Modernization Act (42 U.S.C. 2215) requires the NRC to recover through fees the full cost incurred in providing a service or thing of value. This final rule ensures that the NRC recovers the full cost of application processing from licensees submitting access authorization requests, as is required by statute (42 U.S.C. 2214(b)). The formula method for calculating these fees continues to provide an efficient and effective mechanism for updating the NRC access authorization fees in response to changes in the underlying DCSA investigation billing rates schedule for required personnel background investigations. These amendments will neither impose new safety requirements nor relax existing ones and, therefore, do not call for the sort of safety/cost analysis described in the NRC's regulatory analysis guidelines in NUREG/BR–0058, Revision 4, ''Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,'' dated September 2004 (ADAMS Accession No. ML042820192).

VIII. Backfitting and Issue Finality

The NRC has determined that the backfit rule does not apply to this final rule and that a backfit analysis is not required. Collection of fees to recover the NRC's costs is required by statute (42 U.S.C. 2214(b)). Therefore, changes to rules designating the amount to be collected are not subject to the backfitting provisions or issue finality provisions in 10 CFR chapter I.

IX. Cumulative Effects of Regulation

The NRC did not receive any feedback on the potential for cumulative effects of regulation.

X. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

XI. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described in § 51.22(c)(1) that is categorically excluded from environmental review. Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this final rule.

XII. Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), Approval Numbers 3150–0046 and 3150–0062.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XIII. Congressional Review Act

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801–808), the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

XIV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC will revise the formula for calculating the NRC's access authorization fee charged to licensees for work performed under MAAP and IAAP from 55.8 percent of the DCSA investigation billing rate for an investigation of a given type to 90.2 percent. In addition, MAAP requests for reciprocity will be charged a flat fee rate of $95.00. This action does not constitute the establishment of a standard that contains generally applicable requirements.

List of Subjects

10 CFR Part 11

Hazardous materials transportation, Investigations, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Criminal penalties, Penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 11, 25, and 95:

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

■ 1. The authority citation for part 11 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 223 (42 U.S.C. 2201, 2273); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.

Section 11.15(e) also issued under 31 U.S.C. 9701; 42 U.S.C. 2214.

■ 2. In § 11.7, revise the definitions for *NRC–''R'' special nuclear material access authorization* and *NRC-''U'' special nuclear material access authorization* to read as follows:

§ 11.7 Definitions.

* * * * *

NRC–''R'' special nuclear material access authorization means an administrative determination based upon a Tier 3 background investigation that an individual in the course of employment is eligible to work at a job falling within the criterion of § 11.11(a)(2).

NRC–''U'' special nuclear material access authorization means an administrative determination based upon a Tier 5 background investigation that an individual in the course of employment is eligible to work at a job falling within the criterion of § 11.11(a)(1) or § 11.13.

* * * * *

■ 3. § In 11.8, add paragraph (c) to read as follows:

§ 11.8 Information collection requirements: OMB approval.

* * * * *

(c) In § 11.15, the Standard Form 86 (SF–86), ''Electronic Questionnaire for Investigations Processing (e-QIP), SF–86—Questionnaire for National Security Positions,'' is approved under control number 3206–0005.

■ 4. In § 11.15, revise paragraphs (b)(1), (c)(1)(ii), (e)(1), (3), and (4), and (f)(1) to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(b) * * *

(1) Electronic Questionnaire for Investigations Processing (e-QIP), SF–86—Questionnaire for National Security Positions;

* * * * *

(c)(1) * * *

(ii) The Electronic Questionnaire for Investigations Processing (e-QIP), SF–86—Questionnaire for National Security Positions

* * * * *

(e) * * *

(1) Each application for a special nuclear material access authorization, renewal, or change in level must be accompanied by a remittance, payable to the U.S. Nuclear Regulatory Commission, which is equal to the NRC material access authorization fee. This fee must be determined using the following formula: the DCSA investigation billing rates on the day of NRC receipt of the application + the NRC processing fee = the NRC material access authorization fee. The NRC processing fee is determined by multiplying the DCSA investigation billing rate on the day of NRC receipt of the application by 90.2 percent (*i.e.,* DCSA rate × 90.2 percent).

* * * * *

(3) The NRC's Material Access Authorization Program (MAAP) is considered reimbursable work representing services provided to an organization for which the NRC is entitled payment. The NRC is authorized to receive and retain fees from licensees for services performed. The NRC's Office of the Chief Financial Officer periodically reviews the fees charged for MAAP and makes recommendations on revising those charges to reflect costs incurred by the NRC in providing those services. The reviews are performed using cost analysis techniques to determine the direct and indirect costs. Based on this review, all MAAP requests for reciprocity will be charged a flat fee rate of $95.00 as referenced in paragraph (e)(4)(i) of this section. This flat fee would be aligned with the level of effort that has recently been expended by DCSA to process reciprocity requests, and accounts for inflation as well as recovery of the appropriate cost for conducting this work. Copies of the current NRC material access authorization fee may be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email to: Licensee_Access_Authorization_

Any change in the NRC's access authorization fees will be applicable to each access authorization request received on or after the effective date of the DCSA's most recently published investigation billing rates schedule.

(4) Certain applications from individuals having current Federal access authorizations may be processed expeditiously and at a reduced cost because the Commission, at its discretion, may decide to accept the certification of access authorizations and investigative data from other Federal Government agencies that grant personnel access authorizations.

(i) Applications for reciprocity will be processed at the NRC flat fee rate of $95 per request as referenced in the following table:

The NRC application fee for an access authorization of type . . .	NRC fee rate
(A) NRC–R based on certification of comparable investigation [1]	$95
(B) NRC–U based on certification of comparable investigation [2]	95

[1] If the NRC determines, based on its review of available data, that a Tier 3 investigation is necessary, the appropriate NRC–R fee will be assessed as shown in paragraph (e)(4)(ii) of this section before the conduct of the investigation.

[2] If the NRC determines, based on its review of available data, that a Tier 5 investigation is necessary, the appropriate NRC–U fee will be assessed as shown in paragraph (e)(4)(ii) of this section before the conduct of the investigation.

(ii) Applicants shall, in cases where reciprocity is not acceptable and it is necessary to perform a background investigation, be charged the appropriate fee referenced in the following table. Applicants shall calculate the access authorization fee according to the stated formula (*i.e.,* DCSA rate × 90.2 percent).

The NRC application fee for an access authorization of type . . .	Is the sum of the current DCSA investigation billing rate charged for an investigation of type . . .	Plus the NRC's processing fee (rounded to the nearest dollar), which is equal to the DCSA investigation billing rate for the type of investigation referenced multiplied by . . . (%)
(A) NRC–R initial [1]	Tier 3 (T3) (Standard Service)	90.2
(B) NRC–R renewal [1]	Tier 3 Reinvestigation (T3R) (Standard Service)	90.2
(C) NRC–U initial	Tier 5 (T5) (Standard Service)	90.2
(D) NRC–U initial	Tier 5 (T5) (Priority Handling)	90.2
(E) NRC–U renewal [1]	Tier 5 Reinvestigation (T5R) (Standard Service)	90.2

The NRC application fee for an access authorization of type . . .	Is the sum of the current DCSA investigation billing rate charged for an investigation of type . . .	Plus the NRC's processing fee (rounded to the nearest dollar), which is equal to the DCSA investigation billing rate for the type of investigation referenced multiplied by . . . (%)
(F) NRC–U renewal [1]	Tier 5 Reinvestigation (T5R) (Priority Handling)	90.2

[1] If the NRC determines, based on its review of available data, that a Tier 5 investigation is necessary, the appropriate NRC–U fee will be assessed before the conduct of the investigation.

(f)(1) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE–Q access authorization or an equivalent Federal security clearance granted by another Federal agency (''Top Secret'') based on a comparable T5 background investigation may be permitted, in accordance with § 11.11, the same level of unescorted access that an NRC–U special nuclear material access authorization would afford.

* * * * *

§ 11.16 [Amended]

■ 5. In § 11.16, fourth sentence, remove the designation ''single scope'' and add in its place the designation ''Tier 5''.

PART 25—ACCESS AUTHORIZATION

■ 6. The authority citation for part 25 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note; E.O. 10865, 25 FR 1583, as amended, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391.

Section 25.17(f) and Appendix A also issued under 31 U.S.C. 9701; 42 U.S.C. 2214.

■ 7. In § 25.5, revise the definitions for ''*L*'' *access authorization* and ''*Q*'' *access authorization* to read as follows:

§ 25.5 Definitions.

* * * * *

''*L*'' *access authorization* means an access authorization granted by the Commission that is normally based on a Tier 3 (T3) investigation conducted by the Defense Counterintelligence and Security Agency (DCSA).

* * * * *

''*Q*'' *access authorization* means an access authorization granted by the Commission normally based on a Tier 5 (T5) investigation conducted by the Defense Counterintelligence and Security Agency, the Federal Bureau of Investigation, or other U.S. Government agency that conducts personnel security investigations.

* * * * *

■ 8. In § 25.8, revise paragraph (c)(2) to read as follows:

§ 25.8 Information collection requirements: OMB approval.

* * * * *

(c) * * *

(2) In §§ 25.17(c), 25.21(c), 25.27(b), 25.29, and 25.31, the ''Electronic Questionnaire for Investigations Processing (e-QIP), SF–86—Questionnaire for National Security Positions'' is approved under control number 3206–0005.

* * * * *

■ 9. In § 25.17, revise paragraphs (d)(1)(i) and (f)(1), (3), and (4) to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

* * * * *

(d)(1) * * *

(i) Electronic Questionnaire for Investigations Processing (e-QIP), SF–86 Questionnaire for National Security Positions;

* * * * *

(f) * * *

(1) Each application for access authorization, renewal, or change in level must be accompanied by a remittance, payable to the U.S. Nuclear Regulatory Commission, which is equal to the NRC access authorization fee. This fee must be determined using the following formula: the DCSA investigation billing rates on the day the NRC receives the application + the NRC processing fee = the NRC access authorization fee. The NRC processing fee is determined by multiplying the DCSA investigation billing rate on the day the NRC receives the application by 90.2 percent (*i.e.,* DCSA rate × 90.2 percent).

* * * * *

(3) The NRC's Information Access Authority Program (IAAP) is considered reimbursable work representing services provided to an organization for which the NRC is entitled payment. The NRC is authorized to receive and retain fees from licensees for services performed. The NRC's Office of the Chief Financial Officer periodically reviews the fees charged for IAAP and makes recommendations on revising those charges to reflect costs incurred by the NRC in providing those services. The reviews are performed using cost analysis techniques to determine the direct and indirect costs. Based on this review, the IAAP fees are adjusted to reflect the current cost for the program. IAAP requests for reciprocity will be charged a flat fee rate of $95.00 as referenced in paragraph (f)(4) of this section. This flat fee is aligned with the level of effort that has been expended by DCSA to process reciprocity requests, and accounts for inflation as well as recovery of the appropriate cost for conducting the investigations. Copies of the current NRC access authorization fee may be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email at: Licensee_Access_Authorization_*Fee.Resource@nrc.gov*. Any change in the NRC's access authorization fee will be applicable to each access authorization request received on or after the effective date of the DCSA's most recently published investigation billing rates schedule.

(4) Certain applications from individuals having current Federal access authorizations may be processed more expeditiously and at less cost because the Commission, at its discretion, may decide to accept the certification of access authorization and investigative data from other Federal Government agencies that grant personnel access authorizations.

(i) Applications for reciprocity will be processed at the NRC flat fee rate of $95 per request, as referenced in the following table:

The NRC application fee for an access authorization of type . . .	NRC fee rate
(A) NRC–L based on certification of comparable investigation [1]	$95
(B) NRC–Q based on certification of comparable investigation [2]	95

[1] If the NRC determines, based on its review of available data, that a Tier 3 investigation is necessary, the appropriate NRC–L fee will be assessed as shown in appendix A to this part before the conduct of the investigation.
[2] If the NRC determines, based on its review of available data, that a Tier 5 investigation is necessary, the appropriate NRC–Q fee will be assessed as shown in appendix A to this part before the conduct of the investigation.

(ii) Applicants shall, in cases where reciprocity is not acceptable and it is necessary to perform a background investigation, be charged the appropriate fee referenced in appendix A to this part. Applicants shall calculate the access authorization fee according to the stated formula (*i.e.,* DCSA rate × 90.2 percent).

■ 10. Revise appendix A to part 25 to read as follows:

Appendix A to Part 25—Fees for NRC Access Authorization

The NRC application fee for an access authorization of type . . .	Is the sum of the current DCSA investigation billing rate charged for an investigation of type . . .	Plus the NRC's processing fee (rounded to the nearest dollar), which is equal to the investigation billing rate for the type of investigation referenced multiplied by . . . (%)
Initial "L" access authorization [1]	Tier 3 (T3) (Standard Service)	90.2
Reinstatement of "L" access authorization [2]	No fee assessed for most applications.	
Renewal of "L" access authorization [1]	Tier 3 Reinvestigation (T3R) (Standard Service)	90.2
Initial "Q" access authorization	Tier 5 (T5) (Standard Service)	90.2
Initial "Q" access authorization	T5 (Priority Handling)	90.2
Reinstatement of "Q" access authorization [2]	No fee assessed for most applications.	
Renewal of "Q" access authorization [1]	Tier 5 Reinvestigation (T5R) (Standard Service)	90.2
Renewal of "Q" access authorization [1]	Tier 5 Reinvestigation (T5R) (Priority Handling)	90.2

[1] If the NRC determines, based on its review of available data, that a Tier 5 investigation is necessary, the appropriate fee for an Initial "Q" access authorization will be assessed before the conduct of investigation.
[2] Full fee will only be charged if an investigation is required.

PART 95—FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

■ 11. The authority citation for part 95 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note; E.O. 10865, as amended, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298.

■ 12. In § 95.5, revise the definitions for *NRC ''L'' access authorization* and *NRC ''Q'' access authorization* to read as follows:

§ 95.5 Definitions.

* * * * *

NRC ''L'' access authorization means an access authorization granted by the Commission that is normally based on a Tier 3 (T3) investigation or a Tier 3 reinvestigation (T3R) conducted by the Defense Counterintelligence and Security Agency.

NRC ''Q'' access authorization means an access authorization granted by the Commission normally based on a Tier 5 (T5) investigation conducted by the Defense Counterintelligence and Security Agency, the Federal Bureau of Investigation, or other U.S. Government agency that conducts personnel security investigations.

* * * * *

Dated: July 15, 2022.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2022–16144 Filed 7–27–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2022–0049]

3150–AK76

List of Approved Spent Fuel Storage Casks: NAC International NAC–UMS Universal Storage System, Certificate of Compliance No. 1015, Amendment No. 9

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of August 29, 2022, for the direct final rule that was published in the **Federal Register** on June 14, 2022. This direct final rule amends the NAC International NAC–UMS Universal Storage System listing in the ''List of approved spent fuel storage casks'' to include Amendment No. 9 of Certificate of Compliance No. 1015. In addition, this rulemaking makes editorial corrections to Amendment No. 8.

DATES: The effective date of August 29, 2022, for the direct final rule published June 14, 2022 (87 FR 35858), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2022–0049 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0049. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For

technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The amendment to the certificate of compliance, changes to the technical specifications, and safety evaluation report can be viewed in ADAMS under Accession No. ML22202A020.

• *NRC's PDR:* You may examine and purchase copies of public documents by appointment at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Vanessa Cox, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–8342, email: *Vanessa.Cox@nrc.gov.*

SUPPLEMENTARY INFORMATION: On June 14, 2022 (87 FR 35858), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to revise the NAC International NAC–UMS Universal Storage System listing in the ''List of approved spent fuel storage casks'' to include Amendment No. 9 of Certificate of Compliance No. 1015. Amendment No. 9 revises the technical specifications to correct the effective thermal properties for pressurized-water reactor fuel assemblies used in the certification basis ANSYS thermal models and update some modeling assumptions. In addition, this rulemaking makes editorial corrections to Amendment No. 8. In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on August 29, 2022. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated: July 25, 2022.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–16216 Filed 7–27–22; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0883; Project Identifier MCAI–2021–01179–T; Amendment 39–22128; AD 2022–15–08]

RIN 2120–AA64

Airworthiness Directives; Various Transport Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–20–03, which applied to various transport airplanes. AD 2019–20–03 required modification of certain universal serial bus (USB) receptacles located in the flight deck. Since the FAA issued AD 2019–20–03, it has been determined that additional airplanes are affected by the unsafe condition. This AD continues to require the modification and expands the applicability, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 12, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 12, 2022.

The FAA must receive comments on this AD by September 12, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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–2022–0883.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0883; 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 AD, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0883; Project Identifier MCAI–2021–01179–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule 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 final rule.

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 AD 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 AD, 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 AD. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2019–20–03, Amendment 39–19756 (84 FR 55036, October 15, 2019) (AD 2019–20–03), which applied to various transport airplanes. AD 2019–20–03 required modification of certain USB receptacles located in the flight deck. The FAA issued AD 2019–20–03 to address smoke and fumes in the flight deck, which could result in excessive flightcrew workload and injury to flight deck occupants.

Actions Since AD 2019–20–03 Was Issued

Since the FAA issued AD 2019–20–03, the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0234, dated October 28, 2021 (EASA AD 2021–0234) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for various transport airplanes. EASA AD 2021–0234 superseded EASA AD 2018–0259R1, dated February 7, 2019. FAA AD 2019–20–03 corresponded to EASA AD 2018–0259R1. EASA AD 2021–0234 retained the requirements of EASA AD 2018–0259R1 and expanded the applicability. You may examine the MCAI in the AD docket on the internet at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0883.

This AD was prompted by reports of smoke and fumes in the flight deck. The FAA is issuing this AD to address smoke and fumes in the flight deck, which could result in excessive flightcrew workload and injury to flight deck occupants. See the MCAI for additional background information.

Although this AD expands the applicability, none of the newly added airplanes are on the U.S. Register.

Explanation of Retained Requirements

Although this AD does not explicitly restate the requirements of AD 2019–20–03, this AD retains all of the requirements of AD 2019–20–03. Those requirements are referenced in EASA AD 2021–0234, which, in turn, is referenced in paragraph (g) of this AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0234 specifies procedures for modification of certain USB receptacles located in the flight deck.

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.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2021–0234 described previously, except for any differences identified as exceptions in the regulatory text of this AD. This AD also prohibits the installation of affected parts.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2021–0234 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2021–0234 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0234 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0234. Service information required by EASA AD 2021–0234 for compliance will be available at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0883 after this AD is published.

FAA's Justification and Determination of the Effective Date

None of the airplanes added to the applicability of this AD are currently on the U.S. Register. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the forgoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 14 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions in AD 2019–20–03	3 work-hours × $85 per hour = $255	$0	$255	$3,470

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2019–20–03, Amendment 39–19756 (84 FR 55036, October 15, 2019); and

■ b. Adding the following new AD:

2022–15–08 Transport Category Airplanes: Amendment 39–22128; Docket No. FAA–2022–0883; Project Identifier MCAI–2021–01179–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 12, 2022.

(b) Affected ADs

This AD replaces AD 2019–20–03, Amendment 39–19756 (84 FR 55036, October 15, 2019) (AD 2019–20–03).

(c) Applicability

This AD applies to the airplanes identified in EASA AD 2021–0234, dated October 28, 2021 (EASA AD 2021–0234), certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 46, Information systems.

(e) Unsafe Condition

This AD was prompted by reports of smoke and fumes in the flight deck. The FAA is issuing this AD to address smoke and fumes in the flight deck, which could result in excessive flightcrew workload and injury to flight deck occupants.

(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 2021–0234.

(h) Exceptions to EASA AD 2021–0234

(1) Where EASA AD 2021–0234 refers to the effective date of December 14, 2018 (the effective date of the original issue of EASA AD 2018–0259) this AD requires using November 19, 2019 (the effective date of AD 2019–20–03).

(2) Where EASA AD 2021–0234 refers to its effective date, this AD requires using the effective date of this AD.

(3) The ''Remarks'' section of EASA AD 2021–0234 does not apply to this AD.

(i) Parts Installation Prohibition

After modification of an airplane as required by paragraph (g) of this AD, no person may install an affected part on any airplane.

(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/ATTN:* Program Manager, Continuing Operational Safety, FAA. 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 Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0234, dated October 28, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0234, 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. This material may be found in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0883.

(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 15, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–16083 Filed 7–27–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0390; Project Identifier MCAI–2021–00968–T; Amendment 39–22082; AD 2022–12–10]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 7X airplanes. This AD was prompted by a report of a weak point identified in the Falcon 7X 'EASy' avionics architecture, which, coupled with theoretical generic input/output (I/O) card failure, could lead to misleading data on display units. This AD requires revising the existing airplane flight manual (AFM) to provide emergency procedures for inconsistent or unreliable flight data and emergency and abnormal operations procedures for the GEN I/O internal module failure, and revising the operator's existing FAA-approved minimum equipment list (MEL) items for the multi-function probe heating, air data, and inertial reference systems, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also requires revising the existing AFM to incorporate additional information in the emergency procedures. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 1, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 1, 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–2022–0390.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0390; 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: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *Tom.Rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0197, dated August 23, 2021 (EASA AD 2021–0197) (also referred to as the MCAI), to correct an unsafe condition for all Dassault Aviation Model FALCON 7X airplanes. The FAA notes that Model FALCON 7X airplanes with Dassault modification M1000 incorporated are commonly referred to as ''Model FALCON 8X'' as a marketing designation.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Dassault Aviation Model FALCON 7X airplanes. The NPRM published in the **Federal Register** on April 5, 2022 (87 FR 19653). The NPRM was prompted by a report of a weak point identified in the Falcon 7X 'EASy' avionics architecture, which, coupled with theoretical generic I/O card failure, could lead to misleading data on display units. The NPRM proposed to require revising the existing AFM to provide emergency procedures for inconsistent or unreliable flight data and emergency and abnormal operations procedures for the GEN I/O internal module failure, and revising the operator's existing FAA-approved MEL items for the multi-function probe heating, air data, and inertial reference systems, as specified in EASA AD 2021–0197. The NPRM also proposed to require revising the existing AFM to incorporate additional information in the emergency procedures.

The FAA is issuing this AD to address misleading data on display units, which could reduce safety margins and lead to increased pilot workload, and consequent reduced controllability of the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Change to the Applicability

The FAA has revised paragraph (c) of this AD to exclude airplanes having Dassault modification M2091 embodied in production from the applicability because those airplanes are not affected by the identified unsafe condition. Modification M2091 upgrades the airplane avionics to the ''EASY III—4th CERT'' standard that improves the Falcon 7X EASy avionics architecture. This change to the applicability corresponds to EASA AD 2022–0145, dated July 12, 2022 (EASA AD 2022–0145), which supersedes EASA AD 2021–0197. EASA AD 2022–0145 also requires an additional modification for certain airplanes. The FAA is considering further rulemaking to mandate the new modification specified in EASA AD 2022–0145.

The FAA has also added Note 1 to paragraph (c) of this AD to explain that Model FALCON 7X airplanes with

Dassault modification M1000 incorporated are commonly referred to as ''Model FALCON 8X'' as a marketing designation.

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed with the changes described previously. 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

EASA AD 2021–0197 specifies procedures for revising the existing AFM to provide emergency procedures for inconsistent or unreliable flight data and emergency and abnormal operations procedures for the GEN I/O internal module failure, revising the operator's existing MEL for the air data and inertial reference systems, and revising the operating suitability manual. 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. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD affects 121 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
2 work-hours × $85 per hour = $170	$0	$170	$20,570

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:

2022–12–10 Dassault Aviation: Amendment 39–22082; Docket No FAA–2022–0390; Project Identifier MCAI–2021–00968–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 1, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Dassault Aviation Model FALCON 7X airplanes, certificated in any category, except airplanes having Dassault modification M2091 embodied in production.

Note 1 to paragraph (c): Model FALCON 7X airplanes with Dassault modification M1000 incorporated are commonly referred to as ''Model FALCON 8X'' as a marketing designation.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a report of a weak point identified in the Falcon 7X 'EASy' avionics architecture, which, coupled with theoretical generic input/output (I/O) card failure, could lead to misleading data on display units. The FAA is issuing this AD to address this condition, which could reduce safety margins and lead to increased pilot workload, and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0197, dated August 23, 2021 (EASA AD 2021–0197).

(h) Exceptions to EASA AD 2021–0197

(1) Where EASA AD 2021–0197 refers to its effective date, this AD requires using the effective date of this AD.

(2) Whereas EASA AD 2021–0197 requires operators to ''inform all flight crews, and, thereafter, ensure that each pilot has performed the training and operate the aeroplane accordingly,'' this AD does not require those actions.

(3) Where paragraph (3) of EASA AD 2021–0197 specifies to ''implement the instructions of the MMEL–CP,'' this AD requires revising the operator's existing FAA-approved minimum equipment list (MEL) to incorporate that information (''the MMEL–CP'' as specified in EASA AD 2021–0197).

(4) Paragraph (4) of EASA AD 2021–0197 does not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2021–0197 does not apply to this AD.

(i) Airplane Flight Manual (AFM) Revision

Within 2 months after the effective date of this AD, revise the applicable existing AFM to incorporate the information specified in figure 1 to paragraph (i) of this AD after sub-sub-section 2–200–70, Emergency Procedures, ADS with IRS miscompare, of sub-section 2–200, Emergency Procedures, of Section 2—Emergency Procedures.

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Figure 1 to paragraph (i) – *Training Areas of Special Emphasis for pilot (TASEp) Tp-118-EZII Info for AFM*

TASEp Tp-118-EZII Information

1) Potentially unreliable information exists on the iPFD and/or HUD
2) Aircraft must be flown by reference to SFD
3) Aircraft trajectory must be monitored on the iNAV
4) The iNAV may have misleading/confusing representations
5) Before using iNAV for aircraft trajectory monitoring, LH pilot side is to be selected
6) Pilot side selection has impacts on task sharing between Pilot Flying and Pilot Monitoring
7) Presence of both ADS and IRS CAS messages requires that newly developed single emergency procedure must be performed instead of performing separate ADS and IRS emergency procedures
8) There may be a time delay of up to 10 secs between the ADS and IRS MISCOMPARE messages during critical phases of flight
9) The special single emergency procedure is not available on ECL (paper checklist from AFM or CODDE2 is required)
10) Crew workload in this failure situation will be high

BILLING CODE 4910–13–C

(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 EASA; or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *Tom.Rodriguez@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) European Union Aviation Safety Agency (EASA) AD 2021–0197, dated August 23, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0197, 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 21, 2022.

Christina Underwood,

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

[FR Doc. 2022–16061 Filed 7–27–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0333]

RIN 1625–AA87

Security Zone; Lower Mississippi River, Mile Marker 94 to 97 Above Head of Passes, New Orleans, LA

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent security zone for all navigable waters of the Lower Mississippi River (LMR) from mile marker (MM) 94 to MM 97, Above Head of Passes (AHP), New Orleans, LA. This security zone is necessary to expedite the establishment and enforcement of the security zones to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature. This rulemaking prohibits entry of vessels or persons from entering the security zone unless specifically authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative. This security zone will be enforced only as necessary by the COTP through a notice of enforcement published in the **Federal Register** and announced through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

DATES: This rule is effective August 29, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0333 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander William A. Stewart, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2246, email *William.A.Stewart@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AHP Above Head of Passes
CFR Code of Federal Regulations
COTP Captain of the Port New Orleans
DHS Department of Homeland Security
FR Federal Register
LMR Lower Mississippi River
MM Mile Marker
NPRM Notice of Proposed Rulemaking
NOE Notice of Enforcement
§ Section
TFR Temporary Final Rule
U.S.C. United States Code

II. Background Information and Regulatory History

During the preceding several years, the COTP has published multiple temporary final rules (TFRs) to implement heightened security measures to protect waterfront facilities, visiting dignitaries, large volumes of festival participants, and/or vessels from destruction, loss, or injury from sabotage, subversive acts, or other malicious or potential terrorist acts within the LMR from MM 94 to MM 97, AHP, New Orleans, LA. The COTP expects that events requiring heightened protection will increase as New Orleans continues to hold popular annual events, like Mardi Gras and French Quarter Fest, as well as remains a top destination for events of national significance, such as sporting events and Navy Fleet Week.

The Coast Guard is establishing a permanent security zone for all navigable waters of the LMR from MM 94 to MM 97, AHP, New Orleans, LA to expedite the establishment and enforcement of the security zones. The enforcement of security zones within this area of the LMR is usually limited in duration, lasting a few hours to a few days for each waterway closure, creating minimal impact to vessel traffic. Moreover, this rule allows vessels to seek permission to enter the security zone from the COTP or a designated representative. The Coast Guard is issuing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). Therefore, on May 7, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Lower Mississippi River, Mile Marker 94 to 97 Above Head of Passes, New Orleans, LA'' (87 FR 34607). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to establishing this permanent security zone. During the comment period that ended July 7, 2022, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that a permanent security zone, which can be enforced as necessary, will better allow the COTP to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature. This rule prohibits entry of vessels or persons from entering the security zone unless specifically authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published May 7, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a permanent security zone for all navigable waters of the Lower Mississippi River (LMR) from mile marker (MM) 94 to MM 97, Above Head of Passes (AHP), New Orleans, LA. This rule is necessary to expedite the establishment and enforcement of the security zones to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature. This rule prohibits entry of vessels or persons from entering the security zone unless specifically authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative. This rule will be enforced only as necessary by the COTP through a notice of enforcement published in the **Federal Register** and announced through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the security zone. While this zone will be permanent, it will only be enforced on an as needed basis where the COTP will limit the enforcement to areas specified in the notice of enforcement published in the **Federal Register**. Moreover, the Coast Guard will inform the public of the enforcement area and period of this security zone through Vessel Traffic Services, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate, and the rule would allow vessels to seek permission to enter the security zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a security zone to protect the public in a designated area of the Mississippi River near New Orleans, LA for a limited number of days. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.846 to read as follows:

§ 165.846 Security Zone; Lower Mississippi River, Mile Marker 94 to 97 Above Head of Passes, New Orleans, LA.

(a) *Location.* The following area is a security zone: All navigable waters of Lower Mississippi River from mile marker (MM) 94 (29°57′32″ N, 90°03′05″ W) to MM 97 (29°55′19″ N, 90°04′00″ W), NAD83 datum, Above Head of Passes in New Orleans, LA.

(b) *Enforcement period.* The security zone established by this section will be enforced only upon notice of the Captain of the Port New Orleans (COTP). In accordance with subpart A of this part, for each enforcement of the security zone established under this section, the COTP will publish a notice of enforcement in the **Federal Register** as early as is practicable. In addition, the COTP will also inform the public of the enforcement area and times of this section as indicated in paragraph (d) of this section.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, no person or vessel may enter the security zone described in paragraph (a) of this section unless authorized by the COTP or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector New Orleans; to include a Federal, State, and/or local officer designated by or assisting the Captain of the Port New Orleans (COTP) in the enforcement of the security zone.

(2) To seek permission to enter, contact the COTP or a designated representative by telephone at (504) 365–2545 or VHF–FM Channel 16 or 67. Those in the security zone must transit at their slowest speed and comply with all lawful orders or directions given to them by the COTP or a designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement period of this security zone through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: July 21, 2022.

K.K. Denning,

Captain, U.S. Coast Guard, Captain of the Port New Orleans.

[FR Doc. 2022–16215 Filed 7–27–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–HQ–OW–2020–0595; FRL 8378–04–OW]

State of Michigan Underground Injection Control (UIC) Class II Program; Primacy Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing a final rule approving Michigan's Class II Underground Injection Control (UIC) Program for primacy. EPA has determined that the State's program is consistent with the provisions of the Safe Drinking Water Act (SDWA) to prevent underground injection activities that endanger underground sources of drinking water (USDWs). EPA's approval allows Michigan to implement and enforce the State's regulations for Class II UIC wells, which cover oil and gas related injection well activities. EPA will remain the permitting authority for all other UIC well classes in Michigan and the sole permitting authority for all UIC well classes in Indian country within the State. EPA will also oversee Michigan's administration of the State's UIC Class II program as authorized under SDWA.

DATES: This final rule is effective on August 29, 2022. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on August 29, 2022. For judicial purposes, this final rule is promulgated as of August 29, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2020–0595. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kyle Carey, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2322; fax number: (202) 564–3754; email address: *carey.kyle@epa.gov,* or Anna Miller, UIC Section, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604; telephone number: (312) 886–7060; email address: *miller.anna@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. UIC Program Primacy

EPA may grant primary authority and enforcement responsibility or ''primacy'' for implementing the UIC program to states, territories, and federally recognized tribes—hereafter referred to as applicants that apply under SDWA. Primacy programs are established under SDWA Sections 1422 and 1425. To obtain primacy under

SDWA Section 1422, Applicants must meet EPA's regulatory requirements for UIC programs. SDWA Section 1425 provides an alternative option for obtaining primacy for the Class II UIC program, which covers oil and gas related injection well activities. SDWA Section 1425 requires the applicant to demonstrate that its Class II UIC program is effective in preventing underground injection that endangers USDWs.

An applicant seeking UIC program primacy under SDWA Section 1425 must demonstrate to EPA that it has an ''effective'' Class II program to prevent the endangerment of USDWs, including jurisdiction over underground injection and provisions for the necessary administrative, civil, and criminal enforcement penalty remedies under SDWA. EPA conducts a thorough technical and legal review of the primacy application. The application and EPA's review include these elements: The applicant's UIC statutes and regulations; documents describing the public participation process; a request from the applicant's governor or authorized representative for primacy under SDWA; the program description; an attorney general's or authorized representative's statement of enforcement authority; and a memorandum of agreement (MOA) between EPA and the applicant, describing the administration, implementation, and enforcement of the applicant's UIC program.

B. Class II Wells Under the UIC Program

Class II wells are used only to inject fluids associated with oil and natural gas production. Class II fluids are typically injected thousands of feet below the surface into rock formations isolated from USDWs. Class II wells fall into one of three categories: disposal wells, which inject fluids brought to the surface during oil and gas extraction; enhanced recovery wells, which inject fluids into oil-bearing formations to recover residual oil and, in limited applications, natural gas; [1] and hydrocarbon storage wells, which inject liquid hydrocarbons into underground formations (such as salt caverns) where they are stored, generally, as part of the U.S. Strategic Petroleum Reserve.

C. Final Rule

In this final rule, EPA is approving Michigan's application because it meets or exceeds all applicable requirements for approval under SDWA Section 1425 and the agency has determined that the State can administer a Class II UIC program in a manner consistent with the terms and purposes of SDWA and all applicable regulations to protect USDWs. With EPA's approval, Michigan will implement and enforce a State Class II UIC regulatory program that is effective in preventing the endangerment of USDWs. EPA will remain the permitting authority for all other UIC well classes in Michigan and the sole permitting authority for all UIC well classes in Indian country within the State. EPA will also oversee Michigan's administration of the State's UIC Class II program as authorized under SDWA.

II. Entities Affected by This Action

REGULATED ENTITIES

Category	Examples of potentially regulated entities	North American industry classification system
Industry	Private owners and operators of Class II injection wells located within the State (Enhanced Recovery, Produced Fluid Disposal, and Hydrocarbon Storage).	211111 & 213111.

This table is intended to be a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

III. Legal Authorities

Michigan applied to EPA under SDWA Section 1425 for primacy for all Class II injection wells within the State, except those in Indian country. EPA is approving Michigan's UIC program primacy application for such Class II injection wells located within the State by rule, as required under SDWA, to prevent injection activities that endanger USDWs. Accordingly, EPA codifies Michigan's Class II UIC program in the *Code of Federal Regulations* (CFR) at 40 CFR part 147, under the authority of SDWA Section 1425, 42 U.S.C. 300h–4.

IV. EPA's Review of State UIC Program Requirements

EPA thoroughly reviewed Michigan's Class II primacy application to determine whether the State's program constitutes an ''effective'' program to prevent the endangerment of USDWs, in accordance with SDWA Section 1425. EPA has provided guidance with respect to factors that EPA may consider in reviewing a Class II UIC program for effectiveness. Guidance for State Submissions Under Section 1425 of the Safe Drinking Water Act (SDWA)—Ground Water Program Guidance #19—provides instructions on how states may apply for primacy approval under SDWA Section 1425, the process for approval or disapproval, and criteria that EPA may consider in approving or disapproving an application.

EPA has determined that Michigan's Class II UIC program is effective at preventing the endangerment of USDWs, and is accordingly, approving the State's program. EPA will oversee Michigan's administration of the Class II UIC program. As part of EPA's oversight responsibility, EPA will require Michigan to submit semi-annual reports of non-compliance and annual UIC performance reports. The MOA between EPA and Michigan, signed by the Regional Administrator on October 13, 2020, makes available to EPA any information obtained or used by Michigan's Class II UIC program, without restriction. EPA continues to administer the UIC program for all other injection well classes in the State and for all wells in Indian country.

V. Michigan's Application for Class II UIC Primacy

A. Background

The UIC program in Michigan has thus far been directly implemented by EPA for all well classes since the initiation of the program under SDWA (in 1984). EPA Region 5 has conducted

[1] Class II wells include hydraulic fracturing operations related to oil and gas production only where diesel fuels are used in the injection fluid. See SDWA Section 1421(d)(1)(B)(ii).

all application review, permitting, and oversight of injection well activities within the State. Region 5 and EPA Headquarters worked closely with Michigan to develop a Class II UIC regulatory structure and primacy application package that demonstrates a state program that is effective in preventing the endangerment of USDWs, as required under SDWA Section 1425.

B. Public Participation Activities Conducted by the State of Michigan

On February 15, 2018, the State published a notification in the *Michigan Register* announcing its UIC Class II regulations and requesting comment. Michigan accepted public comment through March 16, 2018, and held a public hearing on the State's regulations and its intent to apply for primacy on February 28, 2018. Both oral and written comments received for the hearing were generally supportive of the State pursuing primacy for the Class II UIC program.

C. Notice of Completion and Public Participation Activities Conducted by EPA

On April 15, 2020, EPA published a notice of Michigan's complete application in the **Federal Register** (80 FR 69629) and posted a similar announcement on EPA's Region 5 website. The notice established a 60-day public comment period and a public hearing on May 27, 2020. The May 27, 2020 public hearing was held virtually due to restrictions on meetings imposed by Michigan related to COVID–19 and to protect public health.

On March 9, 2020, EPA sent a written invitation to interested tribes, requesting a consultation regarding the agency's review of Michigan's request for program approval, in accordance with *EPA Policy for Consultation and Coordination with Indian Tribes* (May 4, 2011). EPA held a telephone consultation conference call with interested tribes on April 14, 2020. EPA received a total of 40 public comments in the electronic docket, by paper mail, and during the virtual hearing, most of which supported Michigan's application. In particular, two tribes submitted requests to be consulted when EPA is considering a permit approval for a well adjacent to Indian country and within ceded territory. EPA communicated the concerns raised in these comments via email to the Michigan Department of Environment, Great Lakes, and Energy (EGLE or the Department) on July 23, 2020. In response, EGLE sent a letter (dated August 6, 2020), in which the Department committed to consult and coordinate with tribes regarding permit applications for wells adjacent to Indian country (defined in accordance with 18 U.S.C. 1151) and within the ceded territory where tribes hold off-reservation treaty rights.

Detailed documents covering the comments submitted to EPA through the public comment process and the tribal consultation, as well as the agency's responses and steps taken, can be viewed in the docket for this final rule (Docket ID No. EPA–HQ–OW–2020–0595). See the preceding **ADDRESSES** section of this preamble for information on accessing the docket.

VI. Proposed Rule and Public Comments

A. Background

On March 19, 2021, EPA published in the **Federal Register** a direct final rule approving Michigan's UIC Class II application for primacy (86 FR 14846) and requesting public comments during a 30-day comment period. Simultaneously with the direct final rule, EPA published a proposed rule to approve Michigan's UIC Class II application for primacy (86 FR 14858). EPA stated in that direct final rule that if the agency received adverse comments by April 19, 2021, the agency would publish a timely withdrawal of the direct final rule in the **Federal Register**, informing the public that the direct final rule would not take effect and that the agency would consider and address all public comments in any subsequent final rule based on the proposed rule. EPA received adverse comments on that direct final rule and subsequently issued a withdrawal notification on June 17, 2021 (86 FR 32221), before the effective date of the direct final rule.

B. Public Comments

In total, EPA received input from 87 individual commenters. Most comments were submitted by individual citizens opposed to granting Michigan primacy for the Class II UIC program. Commenters raised concerns about underground injection, the State's application for primacy, EPA's review and rulemaking process, and a need for an additional public hearing to be held by EPA to gather further input on the agency action.

Each of the comments and EPA's responses can be viewed in the docket (ID No. EPA–HQ–OW–2020–0595) as part of the final rule. See the preceding **ADDRESSES** section of this preamble for information on accessing the docket.

C. EPA's Response

EPA's response to comments provides details on its regulations, guidance, processes, and actions relative to the concerns raised during the 30-day public comment period.[2] In summary, EPA performed a thorough review of all application elements and worked closely with Michigan prior to its application submittal to ensure the State's program met the standard of effectiveness established under SDWA Section 1425, including Michigan's rules governing public participation. Furthermore, EPA provided sufficient advance notice of its intent to approve Michigan's primacy application, along with the agency's request for public comment, in the **Federal Register** (85 FR 14858, March 19, 2021), on the agency's website, and in three State newspapers. The State also provided such notice on its website. These notifications meet the requirements of the Federal regulations at 40 CFR part 25. Details of the State-Federal partnership between EPA and Michigan are explicitly listed in the MOA, which is included in the rulemaking docket. Among the topics included in the MOA are EPA's compliance monitoring, information sharing, enforcement, and oversight of the Michigan Class II UIC program.

After considering public comments, EPA is issuing this final rule approving primacy to Michigan for the Class II UIC program. EPA's detailed response to comments document is included in this action's docket (ID No. EPA–HQ–OW–2020–0595). See the preceding **ADDRESSES** section of this preamble for information on accessing the docket.

VII. Incorporation by Reference

In this action, EPA is approving Michigan's Class II UIC program, whereby the State will assume primacy for regulating Class II injection wells in the State, except within Indian country. Michigan's statutes and supporting documentation are publicly available in EPA's Docket No. EPA–HQ–OW–2020–0595. This action amends 40 CFR part 147 and incorporates by reference the EPA-approved State program. EPA will continue to administer the UIC program for all other well classes in Michigan and all well classes within Indian country.

The provisions of Michigan's statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators of UIC

[2] Additional information about EPA's primacy process can be found in Section I.A of this preamble or on EPA's website at: *www.epa.gov/uic/primary-enforcement-authority-underground-injection-control-program.*

Class II wells are incorporated by reference into 40 CFR 147.1150 by this rule. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, will be enforceable by EPA pursuant to SDWA Section 1423 and 40 CFR 147.1(e).

To better serve the public, EPA is reformatting the codification of ''EPA-Approved State of Michigan Safe Drinking Water Act § 1425 Underground Injection Control (UIC) Program Statutes and Regulations for Class II wells.'' Instead of codifying the Michigan statutes and regulations as separate paragraphs, EPA is now incorporating by reference a compilation that contains EPA-approved Michigan statutes and regulations for Class II wells. This compilation is incorporated by reference into 40 CFR 147.1150 and is available at *www.regulations.gov* in the docket for this rule. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and in hard copy at the EPA Headquarters in Washington, DC, and EPA Region 5 office in Chicago, Illinois (see the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). A complete list of the Michigan statutes and regulations contained in the compilation, titled ''EPA-Approved State of Michigan Safe Drinking Water Act § 1425 Underground Injection Control (UIC) Program Statutes and Regulations for Class II Wells,'' dated November 24, 2020, is codified as Table 1 to paragraph (a) in that section, 40 CFR 147.1150.

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) because OMB has determined that the approval of primacy for the UIC program is not a significant regulatory action.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. EPA determined that there is no need for an Information Collection Request under the PRA because this final rule does not impose any new Federal reporting or recordkeeping requirements. Reporting or recordkeeping requirements will be based on Michigan's UIC regulations, and Michigan is not subject to the PRA. However, OMB has previously approved the information collection activities contained in the existing UIC regulations and for SDWA Section 1425, under the provisions of the PRA, 44 U.S.C. 3501 *et seq.,* and has assigned OMB control number 2040–0042.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities if the rule has no net burden on the small entities subject to the rule. This action would not impose any new requirements on small entities. It simply approves and codifies Michigan's Class II UIC program, which meets the same standard under SDWA Section 1425 as is required for EPA's regulations governing its direct implementation of a Class II UIC well program, both of which must ensure effective programs to prevent underground injection that endangers USDWs. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. EPA's approval of Michigan's primacy application will not constitute a Federal mandate because there is no requirement that a state establish a UIC regulatory program and because the program is a state rather than a Federal program.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 and as explained in section I.C of this preamble. Nevertheless, EPA engaged the interested public during a public hearing and specifically conducted a consultation with federally recognized tribes to obtain unique perspectives to inform EPA's approval of Michigan's UIC Class II Program within the State, except on Indian lands, as described in section V.C of this preamble. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it approves a state action as explained in section I.C of this preamble.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA has determined that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or a safety standard. This action is providing Michigan with primacy under SDWA Section 1425 for a Class II UIC program, pursuant to which Michigan will be implementing a program that is effective in preventing the endangerment of USDWs. As a part of EPA's primacy review, the agency engaged the interested public during a public hearing and conducted a consultation with federally recognized tribes to obtain unique perspectives to

inform the agency's approval of Michigan's UIC Class II Program within the State, except in Indian country, as described in section V.C of this preamble.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Michael S. Regan,
Administrator.

For the reasons set out in the preamble, EPA amends 40 CFR part 147 as follows:

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

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

Authority: 42 U.S.C. 300f *et seq.;* and 42 U.S.C. 6901 *et seq.*

Subpart X—Michigan

■ 2. Add § 147.1150 to read as follows:

§ 147.1150 State-administered program—Class II wells.

The UIC program for Class II injection wells in the State of Michigan, except for those in Indian country, is the program administered by the Michigan Department of Environment, Great Lakes, and Energy, approved by EPA pursuant to the Safe Drinking Water Act (SDWA) section 1425. The effective date of this program is August 29, 2022. Table 1 to paragraph (a) of this section is the table of contents of the Michigan State statutes and regulations incorporated as follows by reference. This program consists of the following elements, as submitted to the EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State's statutes and regulations approved by EPA for inclusion in ''EPA-Approved State of Michigan Safe Drinking Water Act § 1425 Underground Injection Control (UIC) Program Statutes and Regulations for Class II wells,'' dated November 24, 2020, and listed in Table 1 to this paragraph (a), are hereby incorporated by reference and made a part of the applicable UIC program under SDWA for the State of Michigan. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the Michigan regulations and statutes that are incorporated by reference may be inspected at the U.S. Environmental Protection Agency, Water Docket, EPA Docket Center (EPA/DC), EPA WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004; the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604; or the Michigan Department of Environment, Great Lakes, and Energy, Oil, Gas, and Minerals Division, Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48909; telephone number (517) 284–6823. If you wish to obtain materials from the EPA Headquarters in Washington DC, please call the Water Docket at (202) 566–2426 or from the EPA Regional Office, please call (312) 353–2147. You may also inspect the materials 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.*

TABLE 1 TO PARAGRAPH (a)—EPA-APPROVED STATE OF MICHIGAN SDWA SECTION 1425 UNDERGROUND INJECTION CONTROL PROGRAM STATUTES AND REGULATIONS FOR WELL CLASS II

State citation	Title/subject	State effective date	EPA approval date
Natural Resources and Environmental Protection Act, Act 451 of 1994, Part 615 (Supervisor of Wells), Michigan Compiled Laws (MCL) Sections 324.61501—324.61527.	Supervisor of Wells	Effective September 10, 2004.	July 28, 2022, [INSERT **Federal Register** CITATION]
Natural Resources and Environmental Protection Act, Act 451 of 1994, Part 13 (Permits), MCL Sections 324.1301–324.1317.	Permits	Effective March 29, 2019	July 28, 2022, [INSERT **Federal Register** CITATION]
Natural Resources and Environmental Protection Act, Act 451 of 1994, Part 616 (Orphan Well Fund), MCL Sections 324.61601–324.61607.	Orphan Well Fund	Effective May 24, 1995	July 28, 2022, [INSERT **Federal Register** CITATION]
Natural Resources and Environmental Protection Act, Act 451 of 1994, Part 17 (Michigan Environmental Protection Act), MCL Sections 324.1701–324.1706.	Michigan Environmental Protection Act.	Effective March 30, 1995	July 28, 2022, [INSERT **Federal Register** CITATION]
Administrative Procedures Act, Act 306 of 1969, MCL Sections 24.201–24.328.	Administrative Procedures Act.	Effective June 29, 2018	July 28, 2022, [INSERT **Federal Register** CITATION]
Revised Judicature Act of 1961, Act 236 of 1961, MCL Section 600.631.	Revised Judicature Act	Effective April 1, 1974	July 28, 2022, [INSERT **Federal Register** CITATION]
Michigan Department of Environmental Quality Part 615 (Oil and Gas Operations) Administrative Rules, Michigan Administrative Code (MAC) as follows: R 324.101 to 324.199, R 324.201 to 324.208, R 324.210 to 324.216, R 324.401 to 324.422, R 324.501 to 324.504, R 324.507, R 324.508, R 324.510, R 324.511, R 324.701 to 324.705, R 324.801 to 324.808, R 324.810 to 324.816, R 324.901 to 324.904, R 324.1001 to 324.1013, R 324.1015, R 324.1101 to 324.1130, R 324.1201 to 324.1212, R 324.1301, and R 324.1401 to 324.1406.	Oil and Gas Operations (administrative rules).	Effective 2019	July 28, 2022, [INSERT **Federal Register** CITATION]

TABLE 1 TO PARAGRAPH (a)—EPA-APPROVED STATE OF MICHIGAN SDWA SECTION 1425 UNDERGROUND INJECTION CONTROL PROGRAM STATUTES AND REGULATIONS FOR WELL CLASS II—Continued

State citation	Title/subject	State effective date	EPA approval date
Michigan Department of Licensing and Regulatory Affairs (Contested Case Procedures for Department of Environmental Quality) Administrative Rules, MAC, R 324.73 and R 324.74.	General Provisions (administrative rules).	Effective 2003	July 28, 2022, [INSERT **Federal Register** CITATION]
Michigan Department of Licensing and Regulatory Affairs (Contested Case Procedures for Department of Environmental Quality) Administrative Rules, MAC, R 324.81.	Declaratory Rulings (administrative rules).	Effective 2003	July 28, 2022, [INSERT **Federal Register** CITATION]

(b) *Memorandum of Agreement (MOA).* The MOA between EPA Region 5 and the State of Michigan Department of Environment, Great Lakes, and Energy signed by the EPA Regional Administrator on October 13, 2020.

(c) *Statements of Legal Authority.* ''Underground Injection Control Program, Attorney General's Statement,'' signed by the Chief of the Environment, Natural Resources, and Agriculture Division of the Michigan Department of Attorney General on September 1, 2020.

(d) *Program Description.* The Program Description submitted as part of Michigan's application, and any other materials submitted as part of this application or as a supplement thereto.

■ 3. Amend § 147.1151 by revising the section heading and the first sentence of paragraph (a) to read as follows:

§ 147.1151 EPA-administered program—Class I, III, IV, V, and VI wells and Indian country.

(a) * * * The UIC program for Class I, III, IV, V and VI wells and all wells in Indian country in the State of Michigan is administered by the EPA. * * *

* * * * *

■ 4. Revise §§ 147.1153, 147.1154, and 147.1155 to read as follows:

§ 147.1153 Existing Class II disposal wells authorized by rule in Indian country.

The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3)(i) or (ii) of this chapter as applicable; or

(b) A value for well head pressure calculated by using the following formula:

$$Pm = (0.800 - 0.433\ Sg)d$$

Where:

Pm = injection pressure at the well head in pounds per square inch.
Sg = specific gravity of injected fluid (unitless).
d = injection depth in feet.

§ 147.1154 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule in Indian country.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii)(A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A, of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressures greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirements of § 144.28(f)(3)(ii)(A) and (B) of this chapter. The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A, of this chapter.

(2) Prior to such time as the Regional Administrator establishes field rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii) of this chapter; and

(ii) Submit data acceptable to the Regional Administrator, which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within one year following the effective date of this program.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22 of this chapter, the owner or operator shall comply with paragraphs (b)(1) through (4) of this section, when required by the Regional Administrator:

(1) Protect underground sources of drinking water (USDWs) by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement-off a zone.

(4) The Regional Administrator may specify other requirements in addition to or in lieu of the requirements set forth in paragraphs (b)(1) through (3) of this section, as needed to protect USDWs.

§ 147.1155 Requirements for all EPA-administered wells.

(a) *Area of review.* Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review for Class II wells shall be a fixed radius as described in § 146.6(b) of this chapter.

(b) *Tubing and packer.* The owner or operator of an injection well injecting salt water for disposal shall inject through tubing and packer. The owner of an existing well must comply with

this requirement within one year of the effective date of this program.

[FR Doc. 2022–16017 Filed 7–27–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1036 and 1037

[EPA–HQ–OAR–2019–0307; FRL–7423.1–01–OAR]

RIN 2060–AV21

Improvements for Heavy-Duty Engine and Vehicle Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule includes corrections, clarifications, additional flexibilities, and adjustment factors to improve the Greenhouse gas Emissions Model (GEM) compliance tool for heavy-duty vehicles while more closely matching the outputs produced by the original GEM version 3.0 that was used to establish the CO_2 standards for Model Years 2021 and later in the 2016 Heavy-duty Phase 2 final rule. Given the nature of this rule, there will be neither significant environmental impacts nor significant economic impacts.

DATES: This final rule is effective on August 29, 2022. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of August 29, 2022.

ADDRESSES:

Docket: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0307. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at Air and Radiation Docket and Information Center, EPA Docket Center, EPA/DC, EPA WJC West Building, 1301 Constitution Ave. NW, Room 3334, Washington, DC. Certain material, such as copyrighted material, is not placed on the internet and will be publicly available only at the EPA Docket Center. For further information on EPA Docket Center services and the current status, please visit us online at *www.epa.gov/dockets.*

Public participation: Docket: All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form through the EPA Docket Center at the location listed in the **ADDRESSES** section of this document.

FOR FURTHER INFORMATION CONTACT: Amy Kopin, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4173; email address: *kopin.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. Greenhouse Gas Emissions Model (GEM) Background
III. GEM 4.0
IV. Updates to Test Procedures
V. Statutory Authority and Executive Order Reviews

I. General Information

Does this action apply to me?

This action relates to companies that manufacture or sell new heavy-duty engines and vehicles as defined under EPA's CAA regulations.[1] Regulated categories and entities include the following:

NAICS codes [a]	NAICS titles
333618, 336111, 336112, 336120, 336211, 336999.	Other Engine Equipment Manufacturing, Automobile Manufacturing, Light Truck and Utility Vehicle Manufacturing, Heavy Duty Truck Manufacturing, Motor Vehicle Body Manufacturing, All Other Transportation Equipment Manufacturing.

[a] North American Industry Classification System (NAICS).

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

What action is the Agency taking?

This action amends the procedures for demonstrating compliance with the CO_2 emission standards for heavy-duty highway engines and vehicles with several corrections, clarifications, and additional flexibilities.

EPA published a proposed rule on May 12, 2020 (85 FR 28153) (''Technical Amendments proposed rule''). EPA issued a corresponding final rulemaking (''Technical Amendments final rule'') relating to most revisions in the Technical Amendments proposed rule (86 FR 34308, June 29, 2021). Additionally, for the amendments in this final action, EPA published a supplemental notice of proposed rulemaking (''Technical Amendments supplemental proposed rule'') with additional amendments for certain aspects of the modeling parameters used for certifying vehicles (86 FR 34189, June 29, 2021).

What are the incremental costs and benefits of this action?

This action is limited in scope and does not have significant economic or environmental impacts. EPA has therefore not estimated the potential costs or benefits of this final rule.

II. Greenhouse Gas Emissions Model (GEM) Background

The Greenhouse gas Emissions Model (GEM) is a computer application that estimates the greenhouse gas (GHG) emissions and fuel efficiency performance of specific aspects of heavy-duty vehicles. GEM uses several vehicle-specific inputs, such as engine fuel maps, aerodynamic drag coefficients, and vehicle weight ratings, to simulate vehicle and engine operation and model the amount of CO_2 emitted over multiple duty cycles for tractors and vocational vehicles. The resulting CO_2 values over these cycles are weighted by GEM to provide a Default FEL CO_2 Emissions value. GEM version 3.0 was used to set standards in the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles Phase 2 (''Phase 2'') rulemaking (81 FR 73478). For purposes of determining compliance, Default FEL CO_2 Emissions

[1] ''Heavy-duty engine'' and ''heavy-duty vehicle'' are defined in 40 CFR 1037.801.

from GEM are compared to the applicable Phase 2 vehicle standard.

In the Technical Amendments proposed rule, we proposed several amendments to GEM 3.0, including corrections, clarifications, and additional flexibilities in a revised version of the model, GEM 3.5 (85 FR 28145). EPA also requested comment on whether any differences in GEM output values resulting from changes to the model would impact the effective stringency of the program and, if so, whether EPA should revise the GEM model itself or address such impacts via regulations (see 85 FR 28145). Comments received in response to the Technical Amendments proposed rule supported most of the proposed updates to GEM and requested additional revisions to further improve the model.[2] The California Air Resources Board (CARB) provided comment stating the importance of GEM results being consistent with the 2016 Phase 2 final rule program standards to avoid affecting program stringency. CARB recommended that EPA revise GEM in order to ensure stringency is maintained.[3]

After considering the comments received, EPA applied further changes to GEM 3.5 and released in October of 2020 a new development version of GEM, GEM 3.7, to the public for download and review by stakeholders to evaluate and assess the performance of this revised model. GEM 3.7 incorporated some corrections and improvements relative to the proposed version GEM 3.5, as noted in the corresponding memorandum in the rulemaking docket (October 23, 2020 memorandum).[4]

While evaluating GEM 3.7, we found differences in the output values for some tractor and vocational vehicles compared to the output values from GEM 3.0 (the version used to set the Phase 2 CO_2 standards). To understand the differences between GEM 3.0 and GEM 3.7, we replicated the process used in 2016 to determine the numerical level of the Phase 2 standards. Without an adjustment to the resulting GEM output value, these differences in GEM output values when compared to the Phase 2 final rule could be considered an effective change in stringency. In light of GEM 3.7 output differences and considering CARB's comment, we identified adjustment factors in the October 23, 2020 docket memorandum that could be applied to the unrounded GEM 3.7 output values to better ensure effective stringency of the standards is maintained.[5] The Truck and Engine Manufacturers Association (EMA) requested additional time for its members to review the potential updates to the model in GEM 3.7 and evaluate the impact of the adjustment factors made available.[6]

In the Technical Amendments final rule, EPA finalized a revised version of GEM (GEM 3.5.1) that included the changes proposed in GEM version 3.5 as well as changes that corrected three errors in the GEM 3.5 code and did not include any adjustment factors. GEM 3.5.1 included the following updates to GEM 3.5:

- Corrected duty cycle weighting factors for vocational vehicles in the Heavy Heavy-Duty Multipurpose subcategory.
- Corrected an idle map error when the cycle average engine fuel mapping procedure is used for all three drive cycles.
- Corrected a functional error that unnecessarily required manufacturers to include transmission power loss data when using the option to enter a unique (instead of default) k-factor for the torque converter.

In the Technical Amendments supplemental proposed rule, EPA proposed to revise GEM through additional changes in an updated version of GEM (GEM 3.8 which was identical to GEM 3.7, except that GEM 3.8 included changes to the GEM HIL model). This rule also proposed to revise GEM's test procedures to include adjustment factors and to improve the GEM compliance tool for heavy-duty vehicles while more closely matching the outputs produced by the original GEM version 3.0 that was used to establish the CO_2 standards for Model Years 2021 and later in the 2016 Heavy-duty Phase 2 final rule. The Technical Amendments supplemental proposed rule also proposed that GEM 3.5.1 would be limited to use for model year (''MY'') 2021 only, except where MY 2021 data could be used for carryover requests for certificates of conformity for MY 2022 and future years for qualifying vehicles under § 1036.235(d) (but in such circumstances EPA proposed that manufacturers would still be required to use GEM 3.8 for end-of-year reporting for MY 2022 and future years).[7]

After considering the comments received in response to our Technical Amendments supplemental proposed rule, EPA applied further potential changes to GEM 3.8 and released a new development version of GEM, GEM 3.9, in December 2021. EPA also updated the adjustment factors released with the GEM 3.8 version to accommodate the changes made in the development of GEM 3.9. GEM 3.9 also included an updated method of creating these adjustment factors using unrounded GEM results instead of using the rounded GEM results as was done with GEM 3.8. GEM 3.9 was released to the public for download and review by stakeholders to evaluate and assess the performance of this revised model. GEM 3.9 incorporated corrections and improvements relative to GEM 3.8, as noted in the corresponding memorandum in the rulemaking docket.[8] Table 1 summarizes the history of the different versions of GEM.

TABLE 1—HISTORY OF GEM RELEASES

Version	History
GEM 3.0	Original official version finalized in the 2016 Phase 2 final rule.
GEM 3.5	Unofficial version proposed in the Technical Amendments proposed rule.
GEM 3.5.1	Version finalized in the Technical Amendments final rule.

[2] See ''Improvements for Heavy-Duty Engine and Vehicle Test Procedures, and other Technical Amendments Response to Comments'', Publication Number: EPA–420–R–20–026, December 2020. Chapter 2 of the Response to Comments provides additional details on the amendments, clarifications requested by commenters, and our responses to most of the comments to the NPRM.

[3] California Air Resources Board, Docket number EPA–HQ–OAR–2019–0207–0030.

[4] Nelson, Brian. Memorandum to Docket EPA–HQ–OAR–2019–0307. ''Development version of GEM and adjustment factors''. October 23, 2020. Docket number EPA–HQ–OAR–2019–0307–0083. Also available online: *https://www3.epa.gov/otaq/gem-p2v3.7-release-memo-2020-10-23.pdf.*

[5] *Id.*

[6] Charmley, Bill. Memorandum to Docket EPA–HQ–OAR–2019–0307. ''EPA discussions with the Truck and Engine Manufacturers Association, and with the California Air Resources Board, regarding Highway Heavy-Duty Technical Amendments.'' December 14, 2020. Docket Number EPA–HQ–OAR–2019–0307–0092.

[7] See 86 FR 34192.

[8] Nelson, Brian. Memorandum to Docket EPA–HQ–OAR–2019–0307. ''Development version of GEM3.9 and adjustment factors''. December 20, 2021. Docket Number EPA–HQ–OAR–2019–0307–0092. Available online: *https://www.epa.gov/system/files/documents/2021-12/gem-v3.9-adjust-factors-memo-2021-12-20-.pdf.*

TABLE 1—HISTORY OF GEM RELEASES—Continued

Version	History
GEM 3.7	Unofficial version released between the Technical Amendments proposed and final rules.
GEM 3.8	Unofficial version proposed in the Technical Amendments supplemental proposed rule.
GEM 3.8 HIL	Version finalized in the Technical Amendments final rule for powertrain testing defined in 40 CFR 1037.550.
GEM 3.9	Unofficial version released after the Technical Amendments supplemental proposed rule.

III. GEM 4.0

A. Updates to GEM

This final rule further revises GEM and includes GEM adjustment factors within the model. Applying the adjustment factors within GEM will help reduce potential process errors.

We are adopting GEM version 4.0.[9] [10] This updated version of the model allows additional compliance flexibilities and improves the vehicle simulation by incorporating the following improvements relative to GEM 3.5.1:

1. Changed limits on engine input to allow small negative torque inputs.
2. Corrected how GEM adjusts the idle fueling of the transient cycle by using the same idle duration time both for subtracting the idle fuel rate from the transient cycle average engine fuel map and for adding back in the simulated idle fuel rate.
3. Added an option for vocational vehicles to input a value for neutral coasting in GEM and amend the related test procedure in 40 CFR 1037.520(j)(1).
4. Corrected manual and automated manual transmissions to perform clutched upshifts for Heavy Heavy-Duty Vehicles (HDV).
5. Allow input files from previous versions of GEM.
6. Changed GEM to not merge drive idle fuel map with default steady-state fuel map.
7. Corrected errors with the default fuel maps that are used for Custom Chassis vehicles.
8. Changed the regression model that is used for interpolating the cycle average fuel maps for the cruise cycles to improve the accuracy and representativeness of the regression model.[11]
9. Changed GEM to account for the emissions performance of stop-start automatic and engine shutdown systems (AESS) technologies when the powertrain test procedure is used to create the fuel map input file.
10. Applies mass of CO_2 to gallons of fuel conversion factor by combustion type instead of fuel type.
11. Includes a change to the carbon mass fraction for E85 to the value in Table 1 of 40 CFR 1036.530.
12. Includes a 5% tolerance for declared idle target speed vs idle fuel map test points.
13. Changed how GEM models powertrain accessory work for 55/65 mph cruise cycles and idle cycles.[12]
    a. *55/65 mph cruise cycles:* GEM uses the slope from the fuel-versus-work regression of the cruise cycle average fuel map to account for emissions from accessory work
    b. *Idle cycles:* GEM uses the slope from the fuel-versus-work regression of the transient cycle average fuel map to account for emissions from accessory work
14. Changed GEM output label ''FEL CO_2 Emissions'' to ''Default FEL CO_2 Emissions'' and ''FEL Consumption'' to ''Default FEL Consumption''.
15. Changed units of GEM tire rolling resistance input from ''kg/t'' to ''N/kN''.
16. Updated GEM hardware in the loop (HIL) to better reflect operation during transmission shifting.

To ensure that these changes we are finalizing into GEM 4.0 do not change the effective stringency of the Phase 2 CO_2 standards, we are adopting adjustment factors in GEM 4.0. In GEM 4.0, EPA has updated the adjustment factors released with the GEM 3.8 version to accommodate the changes made in the development of GEM 4.0 and the updated method of creating these factors using unrounded GEM results (versus using the rounded GEM results as was done with GEM 3.8). The revised adjustment factors are included below and are a function of regulatory subcategory and the vehicle model year (*i.e.,* MY 2021–2023; MY 2024–2026; and MY 2027 and later).[13] One exception is tractors with automatic transmission. For tractors with automatic transmissions, GEM 4.0 includes an adjustment factor of zero.[14] In GEM 4.0, the adjustment factors in Table 2 are applied to the composite GEM result within the program itself using the following equation.

$$e_{CO2_{Corrected}} = \frac{e_{CO2}}{1 + AF}$$

Where:

e_{CO2} = unrounded composite CO_2 emissions from GEM.

AF = the applicable adjustment factor from Table 1.

TABLE 2—GEM 4.0 ADJUSTMENT FACTORS

Regulatory subcategory	Adjustment factor		
	MY 2021–2023 vehicle	MY 2024–2026 vehicle	MY 2027-and-later vehicle
Class 7 Day Cab Low Roof	−0.0107	−0.0094	−0.0097
Class 7 Day Cab Mid Roof	−0.0105	−0.0091	−0.0091
Class 7 Day Cab High Roof	−0.0090	−0.0094	−0.0093
Class 8 Day Cab Low Roof	−0.0062	−0.0074	−0.0069
Class 8 Sleeper Cab Low Roof	−0.0010	−0.0013	−0.0010

[9] Greenhouse gas Emissions Model (GEM) Phase 2, Version 4.0, January 2022. A working version of this software is also available for download at *https://www.epa.gov/regulations-emissions-vehicles-and-engines/greenhouse-gas-emissions-model-gem-medium-and-heavy-duty.*

[10] The changes summarized in the following listed items 13,14, 15, and 16 are changes that were made to GEM version 4.0 relative to GEM version 3.9.

[11] Sanchez, James. Memorandum to Docket: EPA–HQ–OAR–2019–0307. GEM Regression Model for Cycle-Average Cruise Cycles. March 11, 2022.

[12] Sanchez, James. Memorandum to Docket: EPA–HQ–OAR–2019–0307. Modeling of Powertrain Accessory Work in GEM. March 11, 2022.

[13] Table 2 summarizes the adjustment factors included in GEM 4.0. Section III of the preamble discusses for which model years GEM 4.0 applies.

[14] Chapter 1.6 of the Response to Comments provides additional details on why GEM 4.0 includes an adjustment factor of zero for tractors with automatic transmissions.

TABLE 2—GEM 4.0 ADJUSTMENT FACTORS—Continued

Regulatory subcategory	Adjustment factor		
	MY 2021–2023 vehicle	MY 2024–2026 vehicle	MY 2027-and-later vehicle
Class 8 Day Cab Mid Roof	−0.0064	−0.0070	−0.0065
Class 8 Sleeper Cab Mid Roof	−0.0010	−0.0011	−0.0010
Class 8 Day Cab High Roof	−0.0061	−0.0071	−0.0067
Class 8 Sleeper Cab High Roof	−0.0011	−0.0010	−0.0009
Class 8 Heavy Haul	−0.0068	−0.0067	−0.0070
Multi-Purpose Light HDV Compression-ignition	−0.0006		
Regional Light HDV Compression-ignition	0.0005		
Urban Light HDV Compression-ignition	0.0000		
Multi-Purpose Medium HDV Compression-ignition	−0.0030		
Regional Medium HDV Compression-ignition	0.0008		
Urban Medium HDV Compression-ignition	−0.0036		
Multi-Purpose Heavy HDV Compression-ignition	0.0097		
Regional Heavy HDV Compression-ignition	0.0006		
Urban Heavy HDV Compression-ignition	0.0132		
Multi-Purpose Light HDV Spark-ignition	0.0001		
Regional Light HDV Spark-ignition	0.0008		
Urban Light HDV Spark-ignition	0.0011		
Multi-Purpose Medium HDV Spark-ignition	0.0015		
Regional Medium HDV Spark-ignition	0.0005		
Urban Medium HDV Spark-ignition	0.0028		
School bus	−0.0031		−0.0030
Motor home	0.0001		0.0001
Coach bus	0.0018		0.0019
Other bus	0.0132		0.0135
Refuse hauler	0.0124		0.0126
Concrete mixer	0.0124		0.0125
Mixed-use vehicle	0.0124		0.0125
Emergency vehicle	0.0122		0.0124

B. Allowable Versions of GEM for Certification and Compliance

We are incorporating by reference into the regulations the revised version of the model, GEM 4.0. GEM 4.0 is adopted upon the effective date of this final rule to demonstrate compliance with the Phase 2 standards under 40 CFR 1037.520, including end-of-year reporting. Due to the timing of this final rule, we are applying the requirement to use GEM version 4.0 starting with MY 2024. EPA is also finalizing provisions to allow for an orderly transition to the updated GEM version. For MY 2022 through 2023, manufacturers may also use GEM 3.0 or GEM 3.5.1 under interim provision § 1037.150(bb) to demonstrate compliance with the Phase 2 standards. Manufacturers may use different versions of GEM for different families within each model year before MY 2024. Manufacturers may also change versions of GEM for MY 2022 and 2023 vehicle families between the initial application for certification and submission of the final report after the end of the model year; however, manufacturers would need to document any changes in the GEM version for MY 2022 and 2023 vehicle families by submitting a running change as an amendment to the application for certification under § 1036.225. We also note that, once a manufacturer amends an application for certification to rely on GEM 4.0 or submits a new application that relies on GEM 4.0 under interim provision § 1037.150(bb), the manufacturer may not revert back to an earlier version of GEM for that vehicle family.

Changing to a different version of GEM for MY 2021 is a special case. Manufacturers have certified all their MY 2021 families using either GEM 3.0 or GEM 3.5.1. However, the model year has already ended. The flexibility to use a different official version of GEM, including GEM 4.0, therefore applies only for the end-of-year report that is due in September 2022. We are also adopting this flexibility only for vehicle families certified to the standards for custom chassis in § 1037.105(h). We are providing this flexibility for vehicle families meeting standards for custom chassis because we determined that there was an unintended increase in effective stringency for those vehicles in GEM 3.5.1. Manufacturers don't need the flexibility to change GEM versions for other families because they did not have this unexpected impact in GEM 3.5.1 and they have already closed out their model year. Finally, manufacturers must document any change in the version of GEM for end-of-year reporting in the submission of those end-of-year reports.

The requirement to start using GEM 4.0 also applies starting with MY 2024 for manufacturers generating fuel maps using either engine testing or powertrain testing. Powertrain fuel mapping procedures are including in the Hardware-in-Loop (HIL) model that is part of GEM. Under interim provision 40 CFR 1036.150(r), manufacturers may certify in MY 2021 through 2023 with fuel maps generated using GEM 3.0, GEM 3.5.1, GEM HIL 3.8, or GEM 4.0. Manufacturers may continue to certify in MY 2024 and later using fuel maps generated using earlier GEM versions in cases where the manufacturer qualifies for carryover certification. If we conduct or direct the manufacturer to do confirmatory testing, selective enforcement audits, or in-use testing of a set of engine or powertrain fuel maps, we will use or direct the manufacturer to use the same version of GEM that the manufacturer used to create those fuel maps. We intend to review the manufacturer's use of this carryover allowance going forward; we may consider in a future rulemaking whether

there is a continued need for manufacturers to use fuel maps generated using these transitional versions of GEM.

IV. Updates to Test Procedures

We are finalizing revisions to the regulatory text in 40 CFR parts 1036 and 1037 to clarify or make changes to the test procedures used to create inputs for GEM.

We are finalizing changes to 40 CFR 1036.503(b)(4) to address the handling and use of automatic stop-start systems and automatic engine shutdown systems when performing powertrain fuel map testing under 40 CFR 1037.550. Finalization of the Phase 2 technical amendments left it unclear with respect to how these systems and accessory loads were handled by GEM for powertrain testing. The revisions require that any engine stop-start and automatic shutdown systems be disabled prior to performing powertrain testing, as the effects of these systems will be handled by GEM, when GEM is used to determine the emissions of the vehicle. We are also clarifying the accessory load that should be used by primary intended service class during the powertrain test for hybrid engines so that hybrid engines are tested with the same accessory loads that are used for conventional engines. The power representing the accessory load added for Light HDV, Medium HDV, and Heavy HDV is 1.5, 2.5, and 3.5 kW, respectively.

In GEM 3.5.1, finalized in the Technical Amendments final rule, we included updates to handle point deletion in GEM but did not update our regulation, which required the prior approach of manual removal of such points. Consistent with this prior change to having GEM handle point deletion (now in GEM 4.0), we are now removing that requirement in 40 CFR 1036.535(d)(3), for steady-state fuel maps used for cycle-average fuel mapping of the highway cruise cycles, that requires manual removal of the points from the default map that are below 115% of the maximum speed and 115% of the maximum torque of the boundaries of the points measured in 40 CFR 1036.535(d)(1). See Section 1.7 of the Response to Comments document for further discussion.

We are finalizing changes to GEM inputs determined in 40 CFR 1036.540(e) for cycle-average fuel maps for the cruise cycles. This revision changes the cruise cycle fuel map outputs from N/V (powertrain rotational speed divided by vehicle speed in revolutions per meter as defined specifically in 40 CFR part 1036), fuel mass consumption, and work to average engine speed, average engine torque, fuel mass consumption, and work. We are also adding a new vehicle configuration output matrix for cruise cycles to denote the differences that now exist for the testing outputs needed for GEM for transient and cruise cycles. These changes align the test procedure with changes to the regression model in GEM that is used for interpolating the cycle average fuel maps for the cruise cycles. The change in the regression model aligns the GEM results when the cycle-average method is used for the cruise cycles with the GEM results when the standard engine fuel mapping procedure is used (40 CFR 1036.503(b)(1)).

We are finalizing changes in 40 CFR 1037.510 to correct the example problem that solves for $e_{CO2comp.}$ The value for $\bar{v}_{moving}$ was correctly listed as 38.41 mi/hr in the example; however, the value entered into the example problem of 41.93 mi/hr was in error. The change updates the example problem to the correct value.

We are finalizing changes in 40 CFR 1037.520(j)(1) to allow the input value of 1.5 in GEM o vocational vehicles that include intelligent controls (predictive cruise control). This change recognizes the CO_2 benefit of this technology in GEM for vocational vehicles, which was previously only allowed for tractors.

We are finalizing an amendment in 40 CFR 1037.550(a)(8) to clarify that accessory loads should not be included in powertrain testing when conducting a powertrain test to generate inputs to GEM if torque is measured at the axle input shaft or wheel hubs. We are also finalizing changes to 40 CFR 1037.550(f) to clarify for hybrid engines that GEM must be configured with the applicable accessory load as specified in 40 CFR 1036.503. We are also finalizing a change at 40 CFR 1037.550(o)(4) to note that the regulatory section is now applicable only to the transient cycle specified in appendix A of 40 CFR part 1037. We are also finalizing a new 40 CFR 1037.550(o)(6) to require calculating the average powertrain output speed and the average powertrain output torque for the cruise cycles. The changes to the calculations in 40 CFR 1037.550(o)(6) are necessary to address the changes in GEM inputs required for cycle-average fuel maps for cruise cycles. We are also adding a new vehicle configuration output matrix for cruise cycles to denote the differences that now exist for the testing outputs needed for GEM for transient and cruise cycles. As discussed in Section III of the preamble, we are changing the regression model used for interpolating the cycle-average fuel maps for the cruise cycles to improve the accuracy and representativeness of the regression model.

V. Statutory Authority and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0287. This rule clarifies procedures without affecting information collection requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities if the rule has no net burden on the small entities subject to the rule. This action is designed to make various corrections and adjustments to compliance provisions; as a result, we anticipate no costs associated with this rule. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any Tribal, state, or local governments. Requirements for the private sector do not exceed $100 million in any one year.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. This rule will be implemented at the Federal level and affects engine and vehicle manufacturers. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. There are no environmental health or safety risks created by this action that could present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, we have concluded that this action is not likely to have any adverse energy effects because the regulatory changes are limited to certification procedures for meeting the Phase 2 GHG standards.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs agencies to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action involves technical standards.

With one exception, the standards included in the regulatory text as incorporated by reference in 40 CFR part 1037 were all previously approved for incorporation by reference (IBR) and no change is included in this action. In accordance with the requirements of 1 CFR 51.5, we are incorporating by reference new versions of the GEM. EPA is publishing new versions of the GEM, which we use for certifying heavy-duty highway vehicles to the Phase 2 greenhouse gas emission standards in 40 CFR part 1037. We are also restoring a version of GEM that we withdrew in a different rulemaking. The model calculates GHG emission rates for heavy-duty highway vehicles based on input values defined by the manufacturer. GEM Version 4.0 applies broadly for Phase 2 vehicles. GEM Version 3.0 and GEM Version 3.5.1 apply optionally for model years 2021 through 2023 to facilitate compliance during a transition period. The different versions of GEM are referenced in § 1037.520. The model is available from EPA as noted in the amended regulations at 40 CFR 1037.810.[15]

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). Due to the small environmental impact, this regulatory action will not have a disproportionate adverse effect on minority populations, low-income populations, or indigenous peoples.

K. Congressional Review Act (CRA)

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

L. Judicial Review

Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 26, 2022. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. CAA section 307(d)(7)(B) also provides a mechanism for EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, William Jefferson Clinton Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with an electronic copy to the person listed in **FOR FURTHER INFORMATION CONTACT**, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20004. Note that under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects

40 CFR Part 1036

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Greenhouse gases, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 1037

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Warranties.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, we are amending title 40, chapter I of the Code of Federal Regulations as set forth below.

[15] GEM is most easily available at *www.epa.gov/regulations-emissions-vehicles-and-engines/greenhouse-gas-emissions-model-gem-medium-and-heavy-duty.*

PART 1036—CONTROL OF EMISSIONS FROM NEW AND IN-USE HEAVY-DUTY HIGHWAY ENGINES

■ 1. The authority citation for part 1036 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Amend § 1036.150 by adding paragraph (r) to read as follows:

§ 1036.150 Interim provisions.

* * * * *

(r) *Fuel maps for the transition to updated GEM.* (1) You may use fuel maps from model year 2023 and earlier engines for certifying model year 2024 and later engines using carryover provisions in § 1036.235(d).

(2) Compliance testing will be based on the GEM version you used to generate fuel maps for certification. For example, if you perform a selective enforcement audit with respect to fuel maps, use the same GEM version that you used to generate fuel maps for certification. Similarly, we will use the same GEM version that you used to generate fuel maps for certification if we perform confirmatory testing with one of your engine families.

■ 3. Amend § 1036.503 by revising paragraphs (b)(3) and (4) to read as follows:

§ 1036.503 Engine data and information for vehicle certification.

* * * * *

(b) * * *

(3) *Additional parameters.* Determine fuel consumption at idle as described in § 1036.535(c) and (d) and determine cycle-average engine fuel maps as described in 40 CFR 1037.550, including cycle-average engine fuel maps for highway cruise cycles. Set up the test to apply accessory load for all operation by primary intended service class as described in the following table:

TABLE 1 TO PARAGRAPH (b)(3) OF § 1036.503—ACCESSORY LOAD

Primary intended service class	Power representing accessory load (kW)
Light HDV	1.5
Medium HDV	2.5
Heavy HDV	3.5

(4) *Powertrain.* Generate powertrain fuel maps as described in 40 CFR 1037.550 instead of fuel mapping under § 1036.535 or § 1036.540. Note that the option in 40 CFR 1037.550(b)(2) is allowed only for hybrid engine testing. Disable automatic stop-start systems and automatic engine shutdown systems when conducting powertrain fuel map testing using 40 CFR 1037.550.

* * * * *

§ 1036.535 [Amended]

■ 4. Amend § 1036.535 by removing and reserving paragraph (d)(2).

■ 5. Amend § 1036.540 by revising paragraph (e) to read as follows:

§ 1036.540 Determining cycle-average engine fuel maps.

* * * * *

(e) *Determine GEM inputs.* Use the results of engine testing in paragraph (d) of this section to determine the GEM inputs for the transient duty cycle and optionally for each of the highway cruise cycles corresponding to each simulated vehicle configuration as follows:

(1) Your declared fuel mass consumption, $m_{\text{fuel[cycle]}}$. Using the calculated fuel mass consumption values described in paragraph (d) of this section, declare values using the method described in § 1036.535(g).

(2) We will determine $m_{\text{fuel[cycle]}}$ values using the method described in § 1036.535(h).

(3) For the transient cycle, calculate engine output speed per unit vehicle speed,

$$\left[\frac{\bar{f}_{\text{nengine}}}{\bar{v}_{\text{vehicle}}}\right]_{\text{[cycle]}},$$

by taking the average engine speed measured during the engine test while the vehicle is moving and dividing it by the average vehicle speed provided by GEM. Note that the engine cycle created by GEM has a flag to indicate when the vehicle is moving.

(4) The engine idle speed and torque, by taking the average engine speed and torque measured during the engine test while the vehicle is not moving. Note that the engine cycle created by GEM has a flag to indicate when the vehicle is moving.

(5) For the cruise cycles, calculate the average engine output speed, $\bar{f}_{\text{nengine}}$, and the average engine output torque (positive torque only), $\bar{T}_{\text{nengine}}$, while the vehicle is moving. Note that the engine cycle created by GEM has a flag to indicate when the vehicle is moving.

(6) Positive work determined according to 40 CFR part 1065, $W_{\text{[cycle]}}$, by using the engine speed and engine torque measured during the engine test while the vehicle is moving. Note that the engine cycle created by GEM has a flag to indicate when the vehicle is moving.

(7) The following tables illustrate the GEM data inputs corresponding to the different vehicle configurations for a given duty cycle:

(i) For the transient cycle:

Table 6 to paragraph (e)(7)(i) of § 1036.540—Generic example of an output matrix for transient cycle vehicle configurations

Parameter	Configuration								
	1	2	3	4	5	6	7	8	9
$m_{\text{fuel[cycle]}}$									
$\left[\frac{\bar{f}_{\text{nengine}}}{\bar{v}_{\text{vehicle}}}\right]_{\text{[cycle]}}$									
$W_{\text{[cycle]}}$									
$\bar{f}_{\text{nidle}}$									
$\bar{T}_{\text{idle}}$									

(ii) For the cruise cycles:

TABLE 7 TO PARAGRAPH (e)(7)(ii) OF § 1036.540—GENERIC EXAMPLE OF AN OUTPUT MATRIX FOR CRUISE CYCLE VEHICLE CONFIGURATIONS

Parameter	Configuration								
	1	2	3	4	5	6	7	8	9
$m_{fuel[cycle]}$.									
$\bar{f}_{nengine[cycle]}$.									
$\bar{T}_{engine[cycle]}$.									
$W_{[cycle]}$.									

PART 1037—CONTROL OF EMISSIONS FROM NEW HEAVY-DUTY MOTOR VEHICLES

■ 6. The authority citation for part 1037 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 7. Amend § 1037.150 by adding paragraph (bb) to read as follows:

§ 1037.150 Interim provisions.

* * * * *

(bb) *Transition to updated GEM.* (1) Vehicle manufacturers may demonstrate compliance with Phase 2 GHG standards in model years 2021 through 2023 using GEM Phase 2, Version 3.0, Version 3.5.1, or Version 4.0 (incorporated by reference in § 1037.810). Manufacturers may change to a different version of GEM for model years 2022 and 2023 for a given vehicle family after initially submitting an application for certification; such a change must be documented as an amendment under § 1037.225. Manufacturers may submit an end-of-year report for model year 2021 using any of the three regulatory versions of GEM, but only for demonstrating compliance with the custom-chassis standards in § 1037.105(h); such a change must be documented in the report submitted under § 1037.730. Once a manufacturer certifies a vehicle family based on GEM Version 4.0, it may not revert back to using GEM Phase 2, Version 3.0 or Version 3.5.1 for that vehicle family in any model year.

(2) Vehicle manufacturers may certify for model years 2021 through 2023 based on fuel maps from engines or powertrains that were created using GEM Phase 2, Version 3.0, Version 3.5.1, or Version 4.0 (incorporated by reference in § 1037.810). Vehicle manufacturers may alternatively certify in those years based on fuel maps from powertrains that were created using GEM Phase 2, Version 3.0, GEM HIL model 3.8, or GEM Phase 2, Version 4.0 (incorporated by reference in § 1037.810). Vehicle manufacturers may continue to certify vehicles in later model years using fuel maps generated with earlier versions of GEM for model year 2024 and later vehicle families that qualify for using carryover provisions in § 1037.235(d).

■ 8. Amend § 1037.510 by revising paragraph (b) to read as follows:

§ 1037.510 Duty-cycle exhaust testing.

* * * * *

(b) Calculate the official emission result from the following equation:

$$e_{CO2comp} = \frac{1}{PL \cdot \bar{v}_{moving} \cdot \left(1 - w_{drive\text{-}idle} - w_{parked\text{-}idle}\right)} \cdot \left(\begin{array}{l} \left(1 - w_{drive\text{-}idle} - w_{parked\text{-}idle}\right) \cdot \left(\frac{w_{transient} \cdot m_{transient}}{D_{transient}} + \frac{w_{55} \cdot m_{55}}{D_{55}} + \frac{w_{65} \cdot m_{65}}{D_{65}} \right) \cdot \bar{v}_{moving} \\ + w_{drive\text{-}idle} \cdot \bar{\dot{m}}_{drive\text{-}idle} + w_{parked\text{-}idle} \cdot \bar{\dot{m}}_{parked\text{-}idle} \end{array} \right)$$

Eq. 1037.510-1

Where:

$e_{CO2comp}$ = total composite mass of CO_2 emissions in g/ton-mile, rounded to the nearest whole number for vocational vehicles and to the first decimal place for tractors.

PL = the standard payload, in tons, as specified in § 1037.705.

$\bar{v}_{moving}$ = mean composite weighted driven vehicle speed, excluding idle operation, as shown in table 1 to this section for Phase 2 vocational vehicles. For other vehicles, let $\bar{v}_{moving} = 1$.

$w_{[cycle]}$ = weighting factor for the appropriate test cycle, as shown in table 1 to this section.

$m_{[cycle]}$ = CO_2 mass emissions over each test cycle (other than idle).

$D_{[cycle]}$ = the total driving distance for the indicated duty cycle. Use 2.842 miles for the transient cycle, and use 13.429 miles for both of the highway cruise cycles.

$\bar{\dot{m}}_{[cycle]\text{-}idle}$ = CO_2 emission rate at idle.

Example:

Class 7 vocational vehicle meeting the Phase 2 standards based on the Regional duty cycle.

PL = 5.6 tons
$\bar{v}_{moving}$ = 38.41 mi/hr
$w_{transient}$ = 20% = 0.20
$w_{drive\text{-}idle}$ = 0% = 0
$w_{parked\text{-}idle}$ = 25% = 0.25
w_{55} = 24% = 0.24
w_{65} = 56% = 0.56
$m_{transient}$ = 4083 g
m_{55} = 13834 g
m_{65} = 17018 g
$D_{transient}$ = 2.8449 miles
D_{55} = 13.429 miles
D_{65} = 13.429 miles
$\bar{\dot{m}}_{drive\text{-}idle}$ = 4188 g/hr
$\bar{\dot{m}}_{parked\text{-}idle}$ = 3709 g/hr

$$e_{CO2} = \frac{1}{5.6 \cdot 38.41 \cdot (1 - 0 - 0.25)} \cdot \left((1 - 0.0 - 0.25) \cdot \left(\frac{0.20 \cdot 4083}{2.8449} + \frac{0.24 \cdot 13834}{13.429} + \frac{0.56 \cdot 17018}{13.429} \right) \cdot 38.41 + 0.0 \cdot 4188 + 0.25 \cdot 3709 \right)$$

$$e_{CO2} = 228 \text{ g/ton-mile}$$

* * * * *

■ 9. Amend § 1037.520 by revising the introductory text and paragraph (j)(1) to read as follows:

§ 1037.520 Modeling CO_2 emissions to show compliance for vocational vehicles and tractors.

This section describes how to use the Greenhouse gas Emissions Model (GEM) (incorporated by reference in § 1037.810) to show compliance with the CO_2 standards of §§ 1037.105 and 1037.106 for vocational vehicles and tractors. Use GEM version 2.0.1 to demonstrate compliance with Phase 1 standards; use GEM Phase 2, Version 4.0 to demonstrate compliance with Phase 2 standards. Use good engineering judgment when demonstrating compliance using GEM. See § 1037.515 for calculation procedures for demonstrating compliance with trailer standards.

* * * * *

(j) * * *

(1) *Intelligent controls.* Enter 2 for tractors with predictive cruise control. This includes any cruise control system that incorporates satellite-based global-positioning data for controlling operator demand. For tractors without predictive cruise control and for all vocational vehicles, enter 1.5 if they have neutral coasting, unless good engineering judgment indicates that a lower percentage should apply.

* * * * *

■ 10. Amend § 1037.550 by:

■ a. Revising paragraph (a)(3) introductory text.

■ b. Adding and reserving paragraph (a)(7).

■ c. Adding paragraph (a)(8).

■ d. Revising paragraphs (f) introductory text and (o).

The additions and revisions read as follows:

§ 1037.550 Powertrain testing.

* * * * *

(a) * * *

(3) Powertrain testing depends on models to calculate certain parameters. You can use the detailed equations in this section to create your own models, or use the GEM HIL model contained within GEM Phase 2, Version 4.0 (incorporated by reference in § 1037.810) to simulate vehicle hardware elements as follows:

* * * * *

(7) [Reserved]

(8) Do not apply accessory loads when conducting a powertrain test to generate inputs to GEM if torque is measured at the axle input shaft or wheel hubs.

* * * * *

(f) *Driveline and vehicle model.* Use the GEM HIL model's driveline and vehicle submodels or the equations in this paragraph (f) to calculate the dynamometer speed setpoint, $f_{nref,dyno}$, based on the torque measurement location. For all powertrains, configure GEM with the accessory load set to zero. For hybrid engines, configure GEM with the applicable accessory load as specified in 40 CFR 1036.503. For all powertrains and hybrid engines, configure GEM with the tire slip model disabled.

* * * * *

(o) *Create GEM inputs.* Use the results of powertrain testing to determine GEM inputs for the different simulated vehicle configurations as follows:

(1) Correct the measured or calculated fuel masses, $m_{fuel[cycle],}$ and mean idle fuel mass flow rates, $\overline{\dot{m}}_{fuelidle}$, if applicable, for each test result to a mass-specific net energy content of a reference fuel as described in 40 CFR 1036.535(f), replacing $\overline{\dot{m}}_{fuel}$ with $m_{fuel[cycle]}$ where applicable in Eq. 1036.535–4.

(2) Declare fuel masses, $m_{fuel[cycle],}$ in g/cycle. In addition, declare mean fuel mass flow rate for each applicable idle duty cycle, $\overline{\dot{m}}_{fuelidle}$. These declared values may not be lower than any corresponding measured values determined in this section. If you use multiple measurement methods as allowed in 40 CFR 1036.540(d), follow 40 CFR 1036.535(g) regarding the use of direct and indirect fuel measurements and the carbon balance error verification. These declared values, which serve as emission standards, collectively represent the powertrain fuel map for certification.

(3) [Reserved]

(4) For the transient cycle specified in § 1037.510(a)(2)(i), calculate powertrain output speed per unit of vehicle speed,

$$\left[\frac{\bar{f}_{npowertrain}}{\bar{v}_{powertrain}}\right]_{[cycle]},$$

using one of the following methods:

(i) For testing with torque measurement at the axle input shaft:

$$\left[\frac{\bar{f}_{npowertrain}}{\bar{v}_{powertrain}}\right]_{[cycle]} = \frac{k_a}{2 \cdot \pi \cdot r_{[speed]}}$$

Eq. 1037.550-8

Example:

$k_a = 4.0$

$r_B = 0.399$ m

$$k_a = 4.0$$

$$r_B = 0.399 \text{ m}$$

$$\left[\frac{\bar{f}_{npowertrain}}{\bar{v}_{powertrain}}\right]_{transienttest4} = \frac{4.0}{2 \cdot 3.14 \cdot 0.399}$$

$$\left[\frac{\bar{f}_{npowertrain}}{\bar{v}_{powertrain}}\right]_{transienttest4} = 1.596 \text{ r/m}$$

(ii) For testing with torque measurement at the wheel hubs, use Eq. 1037.550–8 setting k_a equal to 1.

(iii) For testing with torque measurement at the engine's crankshaft:

$$\left[\frac{\bar{f}_{\text{npowertrain}}}{\bar{v}_{\text{powertrain}}}\right]_{[\text{cycle}]} = \frac{\bar{f}_{\text{nengine}}}{\bar{v}_{\text{ref}}}$$

Eq. 1037.550-9

Where:

$\bar{f}_{\text{nengine}}$ = average engine speed when vehicle speed is at or above 0.100 m/s.
$\bar{v}_{\text{ref}}$ = average simulated vehicle speed at or above 0.100 m/s.

Example:

$\bar{f}_{\text{nengine}}$ = 1870 r/min = 31.17 r/s
$\bar{v}_{\text{ref}}$ = 19.06 m/s

$$\left[\frac{\bar{f}_{\text{npowertrain}}}{\bar{v}_{\text{powertrain}}}\right]_{\text{transienttest4}} = \frac{31.17}{19.06}$$

$$\left[\frac{\bar{f}_{\text{npowertrain}}}{\bar{v}_{\text{powertrain}}}\right]_{\text{transienttest4}} = 1.635 \text{ r/m}$$

(5) Calculate engine idle speed, by taking the average engine speed measured during the transient cycle test while the vehicle speed is below 0.100 m/s. (*Note:* Use all the charge-sustaining test intervals when determining engine idle speed for plug-in hybrid engines and powertrains.)

(6) For the cruise cycles specified in § 1037.510(a)(2)(ii), calculate the average powertrain output speed, $\bar{f}_{\text{npowertrain}}$, and the average powertrain output torque (positive torque only), $\bar{T}_{\text{powertrain}}$, at vehicle speed at or above 0.100 m/s. (*Note:* Use all the charge-sustaining and charge-depleting test intervals when determining $\bar{f}_{\text{npowertrain}}$ and $\bar{T}_{\text{powertrain}}$ for plug-in hybrid engines and powertrains.)

(7) Calculate positive work, $W_{[\text{cycle}]}$, as the work over the duty cycle at the axle input shaft, wheel hubs, or the engine's crankshaft, as applicable, when vehicle speed is at or above 0.100 m/s.

(8) The following tables illustrate the GEM data inputs corresponding to the different vehicle configurations for a given duty cycle:

(i) For the transient cycle:

Table 2 to paragraph (o)(8)(i) of § 1037.550 – Generic example of output matrix for transient cycle vehicle configurations

Parameter	Configuration								
	1	2	3	4	5	6	7	8	9
$m_{\text{fuel[cycle]}}$									
$\left[\frac{\bar{f}_{\text{npowertrain}}}{\bar{v}_{\text{powertrain}}}\right]_{[\text{cycle}]}$									
$W_{[\text{cycle}]}$									
$\bar{f}_{\text{nidle}}$									

(ii) For the cruise cycles:

TABLE 3 TO PARAGRAPH (o)(8)(ii) OF § 1037.550—GENERIC EXAMPLE OF OUTPUT MATRIX FOR CRUISE CYCLE VEHICLE CONFIGURATIONS

Parameter	Configuration								
	1	2	3	4	5	6	7	8	9
$m_{\text{fuel[cycle]}}$. $\bar{f}_{\text{npowertrain[cycle]}}$. $\bar{T}_{\text{powertrain[cycle]}}$. $W_{[\text{cycle}]}$.									

■ 11. Amend § 1037.810 by revising paragraph (c) to read as follows:

§ 1037.810 Incorporation by reference.

* * * * *

(c) U.S. EPA, Office of Air and Radiation, 2565 Plymouth Road, Ann Arbor, MI 48105, *www.epa.gov.*

(1) Greenhouse gas Emissions Model (GEM), Version 2.0.1, September 2012 (''GEM version 2.0.1''), IBR approved for § 1037.520.

(2) Greenhouse gas Emissions Model (GEM) Phase 2, Version 3.0, July 2016 (''GEM Phase 2, Version 3.0''); IBR approved for § 1037.150(bb).

(3) Greenhouse gas Emissions Model (GEM) Phase 2, Version 3.5.1, November

2020 (''GEM Phase 2, Version 3.5.1''); IBR approved for § 1037.150(bb).

(4) Greenhouse gas Emissions Model (GEM) Phase 2, Version 4.0, April 2022 (''GEM Phase 2, Version 4.0''); IBR approved for §§ 1037.150(bb); 1037.520; 1037.550(a).

(5) GEM's MATLAB/Simulink Hardware-in-Loop model, Version 3.8, December 2020 (''GEM HIL model 3.8''); IBR approved for § 1037.150(bb).

Note 1 to paragraph (c): The computer code for these models is available as noted in paragraph (a) of this section. A working version of the software is also available for download at *www.epa.gov/regulations-emissions-vehicles-and-engines/greenhouse-gas-emissions-model-gem-medium-and-heavy-duty*.

* * * * *

[FR Doc. 2022–16031 Filed 7–27–22; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 87, No. 144
Thursday, July 28, 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 RESERVE SYSTEM

12 CFR Part 253

[Regulation ZZ; Docket No. R–1775]

RIN 7100–AG34

Regulation Implementing the Adjustable Interest Rate (LIBOR) Act

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is inviting comment on a proposed regulation that would implement the Adjustable Interest Rate (LIBOR) Act. The proposed rule would establish benchmark replacements for contracts governed by U.S. law that reference certain tenors of U.S. dollar LIBOR (the overnight and one-, three-, six-, and 12-month tenors) and that do not have terms that provide for the use of a clearly defined and practicable replacement benchmark rate following the first London banking day after June 30, 2023. The proposed rule also would provide additional definitions and clarifications consistent with the Adjustable Interest Rate (LIBOR) Act.

DATES: Comments must be submitted by August 29, 2022.

ADDRESSES: You may submit comments, identified by Docket No. R–1775, RIN 7100–AG34, by any of the following methods:

- *Agency website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C Street NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. during Federal business weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FOR FURTHER INFORMATION CONTACT: David Bowman, Senior Associate Director, 202–452–2334, Division of Monetary Affairs; Lucy Chang, Special Counsel, 202–475–6331, or Cody Gaffney, Attorney, 202–452–2674, both of the Legal Division; or Lesley Chao, Lead Financial Institution Policy Analyst, 202–974–7063, Division of Supervision and Regulation. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION:

I. Background

A. LIBOR

LIBOR, formerly known as the London Interbank Offered Rate, is an interest rate benchmark that was the dominant reference rate used in financial contracts in recent decades and remains in extensive use today, serving as the benchmark rate in more than $200 trillion worth of contracts worldwide.[1] While over-the-counter and exchange-traded derivatives account for the vast majority of this estimated exposure to LIBOR, LIBOR is also referenced in trillions of dollars' worth of business and consumer loans, bonds, securitizations, and nonfinancial corporate contracts.

LIBOR is intended to reflect the rate at which large banks can borrow wholesale funds on an unsecured basis. LIBOR is calculated based on submissions contributed by a panel of large, globally active banks (LIBOR panel banks). Until December 31, 2021, LIBOR's administrator calculated and published LIBOR each London business day for five currencies (USD, GBP, EUR, CHF, and JPY) and seven borrowing periods, known as tenors (overnight, one week, one month, two months, three months, six months, and twelve months).

Over the past decade, financial regulators have expressed growing concern regarding the structural vulnerabilities and robustness of LIBOR.[2] Following the financial crisis of 2007–2009, other forms of borrowing have largely replaced short-term unsecured wholesale borrowing as a source of funds for most banks, resulting in far fewer market transactions on which LIBOR panel banks can base their submissions. At the same time, weaknesses in the governance of LIBOR created the opportunity for LIBOR panel banks to manipulate LIBOR, and numerous high-profile examples of such manipulation were exposed.[3] Following these scandals, in 2013, the administration of LIBOR was transferred to a new administrator, ICE Benchmark Administration Limited (IBA), which is regulated by the U.K.'s Financial Conduct Authority (FCA).

Despite increased regulatory oversight and efforts to improve LIBOR, confidence in LIBOR continued to wane, and financial regulators and market participants began to search for alternative reference rates and develop plans for a transition away from LIBOR. In the United States, this effort has been led by the Alternative Reference Rates

[1] Adjustable Interest Rate (LIBOR) Act, Public Law 117–103, div. U, section 102(a)(1).

[2] *See, e.g.,* Financial Stability Oversight Council, *2013 Annual Report* at 137–42.

[3] *See, e.g.,* U.S. Dep't of Justice, *Barclays Bank PLC Admits Misconduct Related to Submissions for London Interbank Offered Rate and the Euro Interbank Offered Rate and Agrees to Pay $160 Million Penalty* (June 27, 2012), *https://www.justice.gov/opa/pr/barclays-bank-plc-admits-misconduct-related-submissions-london-interbank-offered-rate-and;* U.S. Dep't of Justice, *Rabobank Admits Wrongdoing in Libor Investigation, Agrees to Pay $325 Million Criminal Penalty* (Oct. 29, 2013), *https://www.justice.gov/opa/pr/rabobank-admits-wrongdoing-libor-investigation-agrees-pay-325-million-criminal-penalty;* U.S. Dep't of Justice, *Deutsche Bank's London Subsidiary Agrees to Plead Guilty in Connection with Long-Running Manipulation of LIBOR* (Apr. 23, 2015), *https://www.justice.gov/opa/pr/deutsche-banks-london-subsidiary-agrees-plead-guilty-connection-long-running-manipulation.*

Committee (ARRC), a group of private-sector firms convened jointly by the Board and the Federal Reserve Bank of New York (FRBNY) in 2014.[4] Among other work, the ARRC identified the Secured Overnight Financing Rate (SOFR) as its recommended replacement for USD LIBOR and developed a Paced Transition Plan to support the transition from USD LIBOR to SOFR.[5] SOFR is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities.[6] Similar groups were convened in other jurisdictions and identified comparable risk-free rates as recommended replacements for the other LIBOR currencies.

In July 2017, following the departure of some panel banks, the FCA announced that the remaining LIBOR panel banks had voluntarily agreed to sustain LIBOR through the end of 2021 to facilitate an orderly transition away from LIBOR.[7] On March 5, 2021, the FCA announced that, after December 31, 2021, IBA would cease publishing 24 currency and tenor pairs (known as settings). The discontinued LIBOR settings included one-week and two-month USD LIBOR, as well as all EUR and CHF LIBOR tenors and most GBP and JPY LIBOR tenors.[8] However, the FCA required IBA to continue publishing, on a temporary basis, certain GBP and JPY LIBOR tenors on a ''synthetic'' basis, stating that any such synthetic LIBOR settings ''will no longer be representative of the underlying market and economic reality the setting is intended to measure.'' [9]

To allow most legacy USD LIBOR contracts to mature without disruption, the FCA also announced that the panels for the remaining five tenors of USD LIBOR would continue through, but cease after, June 30, 2023. The FCA has signaled that it could consider whether to require IBA to continue publishing one-, three-, or six-month USD LIBOR on a synthetic basis for some period after June 30, 2023 (synthetic LIBOR).[10] As with synthetic GBP or JPY LIBOR settings, the FCA has announced that synthetic LIBOR, if published, would ''no longer be representative of the underlying market and economic reality the setting is intended to measure.'' [11]

In response to the planned cessation of USD LIBOR, U.S. financial regulators have encouraged market participants to transition away from USD LIBOR as a reference rate as soon as practicable. For example, in November 2020, the Office of the Comptroller of the Currency (OCC), the Board, and the Federal Deposit Insurance Corporation (FDIC) issued an interagency statement stating that banking organizations generally should not enter into new contracts referencing USD LIBOR after December 31, 2021.[12] The ARRC and other private industry groups also have worked to encourage an orderly transition away from USD LIBOR. For example, as discussed further below, the International Swaps and Derivatives Association (ISDA) has developed a contractual protocol by which parties to derivative transactions governed by ISDA documentation and other financial contracts can agree to incorporate more robust contractual fallback provisions that replace references to LIBOR with an alternative benchmark based on SOFR in the event that a given LIBOR rate ceases publication or is found by the FCA to no longer be representative.[13] The ARRC has developed guiding principles for similar fallback language for cash products such as business loans, securitizations, floating rating notes, and consumer products, including specific recommended language for certain cash products.[14] ISDA's IBOR protocol and the ARRC fallback language recommendations were both subject to numerous public consultations, and they have received widespread adoption subsequent to their release.[15]

B. Legacy Contracts and the Adjustable Interest Rate (LIBOR) Act

Notwithstanding governmental and private-sector efforts to encourage market participants to prepare for the cessation of USD LIBOR, there are a significant number of existing contracts that reference USD LIBOR, will not mature by June 30, 2023, and cannot be easily amended. Of particular concern are so-called ''tough legacy contracts,'' which are contracts that reference USD LIBOR and will not mature by June 30, 2023, but which lack adequate fallback provisions providing for a clearly defined or practicable replacement benchmark following the cessation of USD LIBOR. To address these tough legacy contracts, multiple states adopted legislation, initially proposed by the ARRC, to provide a statutory remedy for financial contracts governed by the laws of the enacting states that reference USD LIBOR, will not mature until after USD LIBOR ceases or becomes nonrepresentative, and have no effective

[4] *See* ARRC, *About, https://www.newyorkfed.org/arrc/about* (last visited July 7, 2022).

[5] ARRC, *The ARRC Selects a Broad Repo Rate as its Preferred Alternative Reference Rate* (June 22, 2017), *https://www.newyorkfed.org/medialibrary/microsites/arrc/files/2017/ARRC-press-release-Jun-22-2017.pdf;* ARRC, *Second Report* (Mar. 2018) at 17, *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-Second-report.*

[6] SOFR is published daily by the FRBNY in cooperation with the U.S. Department of the Treasury's Office of Financial Research. *See* Fed. Res. Bk. of New York, *Secured Overnight Financing Rate Data, https://www.newyorkfed.org/markets/reference-rates/sofr* (last visited July 7, 2022). SOFR is calculated as a volume-weighted median of transaction-level tri-party repurchase agreement (repo) data collected from the Bank of New York Mellon, as well as general collateral financing repo transaction data and data on bilateral Treasury repo transactions cleared through the Fixed Income Clearing Corporation's delivery-versus-payment service, which are obtained from the U.S. Department of the Treasury's Office of Financial Research. *Id.*

[7] *See* Andrew Bailey, Chief Executive, FCA, *The Future of LIBOR* (July 27, 2017), *https://www.fca.org.uk/news/speeches/the-future-of-libor.*

[8] *See* FCA, *FCA Announcement on Future Cessation and Loss of Representativeness of the LIBOR Benchmarks* (Mar. 5, 2021), *https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf.*

[9] *Id.*

[10] *See* FCA, *Further Arrangements for the Orderly Wind-down of LIBOR at End-2021* (Sept. 29, 2021), *https://www.fca.org.uk/news/press-releases/further-arrangements-orderly-wind-down-libor-end-2021* (''The decisions to require publication of some sterling and Japanese yen LIBOR settings on a synthetic basis are not determinative of any future decisions in respect of US dollar LIBOR from end-June 2023.'').

[11] *See* FCA, *FCA Announcement on Future Cessation and Loss of Representativeness of the LIBOR Benchmarks* (Mar. 5, 2021), *https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf.*

[12] *See* Board, FDIC, OCC, *Statement on LIBOR Transition* (Nov. 30, 2020), *https://www.federalreserve.gov/supervisionreg/srletters/SR2027a1.pdf.*

[13] ISDA, ISDA 2020 IBOR Fallbacks Protocol, *https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/.*

[14] *See, e.g.,* ARRC, *ARRC Guiding Principles for More Robust LIBOR Fallback Contract Language in Cash Products* (July 9, 2018), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-principles-July2018;* ARRC, *Summary of ARRC's LIBOR Fallback Language* (Nov. 15, 2019), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/LIBOR_Fallback_Language_Summary;* ARRC, *ARRC Recommendations Regarding More Robust Fallback Language for New Issuance of LIBOR Securitizations* (May 31, 2019), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/Securitization_Fallback_Language.pdf;* ARRC, *ARRC Recommendations Regarding More Robust LIBOR Fallback Contract Language for New Closed-End, Residential Adjustable Rate Mortgages* (Nov. 15, 2019), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/ARM_Fallback_Language.pdf.*

[15] *See, e.g.,* ISDA, *ISDA 2020 IBOR Fallbacks Protocol List of Adhering Parties* (May 27, 2022), *https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/adhering-parties.* The U.S. Department of Justice (DOJ) also reviewed ISDA's IBOR protocol, concluded that it is unlikely to harm competition, and stated that the DOJ would not challenge ISDA's IBOR protocol under federal antitrust laws. *See* DOJ, *Justice Department Issues Favorable Business Review Letter to ISDA for Proposed Amendments to Address Interest Rate Benchmarks* (Oct. 1, 2020), *https://www.justice.gov/opa/pr/justice-department-issues-favorable-business-review-letter-isda-proposed-amendments-address.*

means to replace USD LIBOR after it ceases or becomes nonrepresentative.[16] While these state laws provided a solution for a large number of tough legacy contracts, further legislative action was needed to address tough legacy contracts governed by the laws of other states.

Recognizing the need for a uniform, nationwide solution for replacing references to USD LIBOR in tough legacy contracts, on March 15, 2022, Congress enacted the Adjustable Interest Rate (LIBOR) Act (the ''Act'') as part of the Consolidated Appropriations Act, 2022.[17] Among other things, the Act lays out a set of default rules that apply to tough legacy contracts subject to U.S. law.

Section 104 is the main operative provision of the Act. Section 104 generally distinguishes between three categories of LIBOR contracts with different types of fallback provisions. For these purposes, the Act defines ''LIBOR contract'' broadly to include any obligation or asset that, by its terms, uses the overnight, one-month, three-month, six-month, or 12-month tenors of USD LIBOR as a benchmark.[18] Consistent with this definition, the proposed rule and the remainder of the discussion will focus on these stated tenors of USD LIBOR only. The Act defines ''fallback provisions'' to mean the terms in a LIBOR contract for determining a benchmark replacement, including any terms relating to the date on which the benchmark replacement becomes effective.[19]

The first category of LIBOR contracts encompasses contracts that contain fallback provisions identifying a specific benchmark replacement that is not based in any way on any of the Act's USD LIBOR values (except to account for the difference between LIBOR and the benchmark replacement) and that do not require any person (other than a benchmark administrator) [20] to conduct a poll, survey, or inquiries for quotes or information concerning interbank lending or deposit rates. These LIBOR contracts generally can be expected to transition to the contractually agreed-upon benchmark replacement as provided by their fallback provisions on or before the LIBOR replacement date—the first London banking day after June 30, 2023 (unless the Board determines that any LIBOR tenor will cease to be published or cease to be representative on a different date).[21]

The second category of LIBOR contracts encompasses contracts that contain no fallback provisions, as well as LIBOR contracts with fallback provisions that do not identify a determining person (as described below) and that only (i) identify a benchmark replacement that is based in any way on any of the Act's USD LIBOR values (except to account for the difference between LIBOR and the benchmark replacement) or (ii) require that a person (other than a benchmark administrator) conduct a poll, survey, or inquiries for quotes or information concerning interbank lending or deposit rates.[22] For this second category of LIBOR contracts, the Act provides that the benchmark replacement on the LIBOR replacement date will be the Board-selected benchmark replacement—that is, a benchmark replacement identified by the Board that is based on SOFR, including any tenor spread adjustments required under the Act.[23] Thus, any references to USD LIBOR in LIBOR contracts in this second category will, by operation of law, be replaced by the Board-selected benchmark replacement on the LIBOR replacement date.

For contracts that fall into this second category, the Act provides a series of statutory protections, enumerated in section 105 of the Act, for persons who use the Board-selected benchmark replacement, including that no person shall be subject to any claim or cause of action in law or equity or request for equitable relief, or have liability for damages, arising out of the use of the Board-selected benchmark replacement as a benchmark replacement.[24]

The third category of LIBOR contracts encompasses LIBOR contracts that contain fallback provisions authorizing a determining person to determine a benchmark replacement.[25] The application of the Act to LIBOR contracts in this third category depends on the determination, if any, made by the determining person. Where a determining person does not select a benchmark replacement by the LIBOR replacement date or the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract (whichever is earlier), the Act provides that the benchmark replacement for such LIBOR contract will be, by operation of law, the Board-selected benchmark replacement on and after the LIBOR replacement date.[26] Where a determining person selects the Board-selected benchmark replacement as the benchmark replacement, the Act provides that such selection shall be (i) irrevocable, (ii) made by the earlier of the LIBOR replacement date and the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract, and (iii) used in any determinations of the benchmark under or with respect to the LIBOR contract occurring on and after the LIBOR replacement date.[27]

Although the Act does not require a determining person to select the Board-selected benchmark replacement as the benchmark replacement for a LIBOR contract, the Act provides a series of statutory protections, enumerated in section 105 of the Act, for any determining person who does so, including that a determining person generally shall not be subject to any claim or cause of action in law or equity or request for equitable relief, or have

[16] *See, e.g.,* N.Y. Gen. Oblig. Law art. 18–C; Ala. Code tit. 5, ch. 28; 2022 Fla. Laws ch. 57 (to be codified at Fla. Stat. 687.15); S. Bill No. 2133, 112th Gen. Assemb., Reg. Sess. (Tenn. 2022) (to be codified at Tenn. Code Ann. 47–33–101 *et seq.*); S. 371, 122nd Gen. Assemb., Reg. Sess. (Ind. 2022) (to be codified at Ind. Code 38–10–2); Leg. Bill 707, 107th Leg., 2nd Sess. (Neb. 2022).

[17] Public Law 117–103, div. U.

[18] *See* Act section 103(16) (definition of ''LIBOR contract''); Act section 103(15) (definition of ''LIBOR''). The Act does not apply to contracts that use the one-week or two-month tenors of USD LIBOR as a benchmark. *Id.* The Act defines ''benchmark'' to mean an index of interest rates or dividend rates that is used, in whole or in part, as the basis of or as a reference for calculating or determining any valuation, payment, or other measurement. Act section 103(1).

[19] Act section 103(11). The Act defines ''benchmark replacement'' to mean a benchmark, or an interest rate or dividend rate (which may or may not be based in whole or in part on a prior setting of LIBOR), to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or with respect to a LIBOR contract. Act section 103(3).

[20] *See* Act section 104(b). The Act defines ''benchmark administrator'' to mean a person that publishes a benchmark for use by third parties. Act § 103(2).

[21] Act sections 104(f)(2), 103(17) (definition of ''LIBOR replacement date''). At this time, the Board does not expect to determine a LIBOR replacement date earlier than the first London banking day after June 30, 2023. As discussed in more detail below, the potential publication of synthetic LIBOR on and after the LIBOR replacement date may create ambiguity regarding the application of the LIBOR Act to a subset of these LIBOR contracts. The Board invites comment on whether to clarify this issue in the final rule.

[22] The Act deems these types of fallback provisions to be null and void by operation of law. Act section 104(b). To the extent a contract contains fallback provisions that specify these types of replacements would be applied ahead of another, separate benchmark replacement, then under the Act, these fallback provisions would be disregarded and the separate benchmark replacement would apply.

[23] Act section 104(a)–(b); *see also* Act section 103(6) (definition of ''Board-selected benchmark replacement'').

[24] Act section 105(a)–(b), (c)(1), (d).

[25] The Act defines ''determining person'' to mean, with respect to any LIBOR contract, any person with the authority, right, or obligation, including on a temporary basis (as identified by the LIBOR contract or by the governing law of the LIBOR contract, as appropriate) to determine a benchmark replacement. Act section 103(10).

[26] Act section 104(c)(3).

[27] Act section 104(c)(2).

liability for damages, arising out of the selection of the Board-selected benchmark replacement as a benchmark replacement.[28]

Where the Board-selected benchmark replacement becomes the benchmark replacement for a LIBOR contract (either by operation of law or via the selection of a determining person), the Act contemplates that certain conforming changes to a LIBOR contract may be necessary to facilitate the transition from USD LIBOR to the Board-selected benchmark replacement. These ''benchmark replacement conforming changes'' may arise in one of two ways. First, the Act authorizes the Board to determine benchmark replacement conforming changes that, in its discretion, would address one or more issues affecting the implementation, administration, and calculation of the Board-selected benchmark replacement in LIBOR contracts.[29] Second, for a LIBOR contract that is not a consumer loan, a calculating person may, in its reasonable judgment, determine that benchmark replacement conforming changes are otherwise necessary or appropriate to permit the implementation, administration, and calculation of the Board-selected benchmark replacement under or with respect to a LIBOR contract after giving due consideration to any benchmark replacement conforming changes determined by the Board.[30] For this purpose, the Act defines ''calculating person'' to mean, with respect to any LIBOR contract, any person, including the determining person, responsible for calculating or determining any valuation, payment, or other measurement based on a benchmark.[31]

Section 104 of the Act provides that all benchmark replacement conforming changes (whether determined by the Board or, if applicable, a calculating person) shall become an integral part of the LIBOR contract, and a calculating person shall not be required to obtain consent from any other person prior to the adoption of benchmark replacement conforming changes.[32] In addition, the determination, implementation, and performance of benchmark replacement conforming changes are generally subject to the statutory protections enumerated in section 105 of the Act, which are designed to ensure continuity of contract.[33] Finally, where a calculating person implements or (in the case of a LIBOR contract that is not a consumer loan) determines benchmark replacement conforming changes, the Act provides that the calculating person shall not be subject to any claim or cause of action in law or equity or request for equitable relief, or have liability for damages.[34]

The Act includes various other provisions beyond the main operative provisions in section 104 and the statutory protections enumerated in section 105.[35] Section 106 of the Act generally provides that a bank may use any benchmark (including a benchmark that is not SOFR) in any non-IBOR loan made before, on, or after the date of enactment of the Act that the bank determines to be appropriate, and that no Federal supervisory agency may take enforcement or supervisory action against the bank solely because that benchmark is not SOFR.[36] Sections 108 and 109 of the Act amend the Trust Indenture Act of 1939 (15 U.S.C. 77ppp(b)) and the Higher Education Act of 1965 (20 U.S.C. 1087–1(b)(2)(I)), respectively, to facilitate the transition from USD LIBOR.[37] Finally, section 107 of the Act expressly preempts any provision of State or local law relating to the selection or use of a benchmark replacement or related conforming changes, or expressly limiting the manner of calculating interest (including the compounding of interest) as that provision applies to the selection or use of a Board-selected benchmark replacement or benchmark replacement conforming changes.[38]

Section 110 of the Act directs the Board to promulgate regulations to carry out the Act not later than 180 days after enactment. Pursuant to this authority, the Board is proposing a new regulation to implement the Act.

II. Section-by-Section Analysis

A. Section 253.1 Authority, Purpose, and Scope

Proposed § 253.1 sets forth the authority for, purpose of, and scope of the proposed rule. Significantly, and consistent with the statute as described above, the proposal does not apply to (i) contracts that do not reference the overnight or one-, three-, six-, or 12-month tenors of LIBOR or (ii) LIBOR contracts that have terms providing for the use of a clearly defined and practicable replacement benchmark for LIBOR (including LIBOR contracts where the determining person selects a benchmark replacement other than the Board-selected benchmark replacement), except as provided for in proposed § 253.3(b), which is discussed further below.[39] The proposed rule also applies only to existing contracts governed by federal law or the law of any state. In addition, proposed § 253.1 states that the parties to a LIBOR contract may by written agreement specify that a LIBOR contract shall not be subject to the proposed rule.[40]

B. Section 253.2 Definitions

Proposed § 253.2 provides definitions for many of the terms used in the proposed rule. Most of the defined terms in proposed § 253.2 are substantially the same as the defined terms in the LIBOR Act. In addition, however, proposed § 253.2 includes definitions for the terms ''CME Term SOFR,'' ''covered contract,'' ''covered GSE contract,'' ''derivative transaction,'' ''ISDA protocol,'' and ''non-covered contract,'' each of which is discussed below in connection with their use in proposed § 253.3 or § 253.4, as applicable.

Additionally, proposed § 253.2 defines ''business day'' to mean any day except for (i) a Saturday, (ii) a Sunday, (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities, or (iv) a day on which the FRBNY, with advance notice, chooses not to publish its Treasury repo reference rates if participants in the Treasury repo market broadly expect to treat that day as a holiday. This definition of ''business day'' is relevant for purposes of proposed § 253.4, discussed below, and is consistent with the FRBNY's publication dates for SOFR.[41]

[28] Act section 105(c)(1); *see also* Act section 105(a)–(b), (d). This statutory safe harbor also applies to the use of the Board-selected benchmark replacement other than at the selection of a determining person.

[29] Act section 103(4)(A).

[30] Act section 103(4)(B). The Act defines ''consumer loan'' to mean a consumer credit transaction, which is defined by cross-reference to the Truth in Lending Act. Act section 103(9) (definition of ''consumer loan); section 103(8) (definitions of ''consumer'' and ''credit'').

[31] Act section 103(7).

[32] Act section 104(d).

[33] *See* Act section 105(a)–(b), (d).

[34] Act section 105(c)(1).

[35] The Board views these provisions, along with the statutory protections enumerated in section 105 of the Act, as self-executing.

[36] Act section 106.

[37] Act sections 108–09.

[38] Act section 107.

[39] Act section 104(f)(2)–(3).

[40] *See* Act section 104(f)(1).

[41] Fed. Res. Bk. of New York, *Additional Information about Reference Rates Administered by the New York Fed, https://www.newyorkfed.org/markets/reference-rates/additional-information-about-reference-rates#treasury_repo_details_on_publication_and_revisions* (last visited July 7, 2022) (where section entitled ''Details on Publication and Revisions for the Treasury Repo Reference Rates'' details publication days).

Finally, proposed § 253.2 defines ''state'' to mean any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands. This definition of ''state'' is relevant for purposes of the scope of the proposed rule, and the preemption provisions in proposed § 253.6. As stated in proposed § 253.1(c), the LIBOR Act and the proposed regulation apply to certain LIBOR contracts governed by federal law or the law of any state. Because Congress intended the LIBOR Act to apply on a nationwide basis,[42] the Board believes it is appropriate to define ''state'' expansively to include U.S. territories and possessions and the District of Columbia.

C. Section 253.3 Applicability

Proposed § 253.3 addresses the applicability of the regulation to LIBOR contracts. Specifically, for LIBOR contracts that do not provide for the use of a clearly defined or practicable replacement benchmark rate (referred to as ''covered contracts'' in the proposed rule), the applicable Board-selected benchmark replacement indicated in § 253.4 of the proposed rule shall be the benchmark replacement for the contract on and after the LIBOR replacement date.[43] Proposed § 253.3 also clarifies that, consistent with § 253.1 of the proposed rule, in general, the regulation does not affect LIBOR contracts that are not covered contracts, with one exception discussed further below.[44]

Covered contracts. The proposed rule defines ''covered contract'' to mean a LIBOR contract that has one of the following characteristics as of the LIBOR replacement date: (i) the LIBOR contract contains no fallback provisions; (ii) the LIBOR contract has fallback provisions that identify neither a specific benchmark replacement nor a determining person; or (iii) the LIBOR contract contains fallback provisions that identify a determining person, but the determining person has failed to select a benchmark replacement by the earlier of the LIBOR replacement date and the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract.[45] In evaluating whether a LIBOR contract has any of these characteristics on the LIBOR replacement date, the proposed regulation would mirror the statute and disregard any reference in any fallback provisions of the LIBOR contract to the following: (i) a benchmark replacement that is based in any way on any LIBOR value, except to account for the difference between LIBOR and the benchmark replacement; or (ii) a requirement that a person (other than a benchmark administrator) conduct a poll, survey, or inquiries for quotes or information concerning interbank lending or deposit rates.[46] The proposed rule further clarifies that a ''covered contract'' would not include any LIBOR contract that the parties have agreed in writing shall not be subject to the LIBOR Act.[47]

Under the proposed rule, ''covered contract'' would include, for example, a LIBOR contract that does not specify any benchmark replacement or identify a determining person who could select such a benchmark replacement. Pursuant to proposed § 253.3(a)(2)(i)(B), on the LIBOR replacement date, the LIBOR contract would be a covered contract.

Another example would be a LIBOR contract that specifies the last published LIBOR value as the benchmark replacement. Pursuant to proposed § 253.3(a)(2)(ii)(A), this benchmark replacement would be disregarded as of the LIBOR replacement date. As a result, on the LIBOR replacement date, the LIBOR contract would be a covered contract because it has no fallback provisions, as described in proposed § 253.3(a)(2)(i)(A).

Non-covered contracts. As defined in the proposed rule, a LIBOR contract would not be a covered contract if, after giving effect to proposed § 253.3(a)(2)(ii)(B) on the LIBOR replacement date, (i) the LIBOR contract has fallback provisions that identify a specific benchmark replacement, (ii) the LIBOR contract identifies a determining person that has selected a benchmark replacement, or (iii) the parties to the contract have agreed in writing that the contract shall not be subject to the LIBOR Act.[48] Consistent with the statute, the proposed regulation generally would not affect LIBOR contracts that are not covered contracts.[49]

However, the Board's proposed rule would clarify that a determining person may select the Board-selected benchmark replacement specified in § 253.4 of the proposed rule as the benchmark replacement for a LIBOR contract.[50] Consistent with the LIBOR Act, the proposed rule would indicate that any such selection by a determining person shall be (i) irrevocable; (ii) made by the earlier of the LIBOR replacement date and the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract; and (iii) used in any determinations of the benchmark under or with respect to the LIBOR contract occurring on and after the LIBOR replacement date.

Separately, the Board is aware of a potential ambiguity regarding the application of the LIBOR Act to a subset of non-covered contracts. Specifically, the Board is aware that some LIBOR contracts contain fallback provisions that (i) either identify a clear and practicable benchmark replacement or authorize a determining person to select a benchmark replacement, but (ii) are triggered only when LIBOR is unavailable. Significantly, the fallback provisions in these LIBOR contracts are not triggered expressly when LIBOR is available but nonrepresentative.

As mentioned previously, the Board understands it is possible that, on and after the LIBOR replacement date, IBA (or any successor administrator) may continue to publish a synthetic version of LIBOR that, although called ''LIBOR,'' has been expressly pronounced by the FCA as not representative of the underlying market and economic reality LIBOR had been intended to measure—namely, the rate at which banks may lend to, or borrow from, other banks or agents in the money markets.[51] If this occurs, the continued publication of synthetic LIBOR on and after the LIBOR replacement date arguably could give

[42] *See* Act section 102(b)(1).

[43] Section 253.3(a)(1) of the proposed rule.

[44] Section 253.3(b) of the proposed rule; *see also* Act section 104(f)(1)–(3).

[45] Section 253.3(a)(2)(i) of the proposed rule.

[46] Section 253.3(a)(2)(ii) of the proposed rule. Under the statute, any such references in any fallback provisions of the LIBOR contract would be disregarded as if not included in the fallback provisions of the contract and would be deemed null and void and without any force or effect. Act section 104(b).

[47] Section 253.3(a)(2)(iii) of the proposed rule; *see also* Act section 104(f)(1).

[48] Section 253.3(b)(1) of the proposed rule; *see also* Act section 104(a). Pursuant to the statute, any references in the fallback provisions of a LIBOR contract to any of the following would be disregarded and deemed null and void and without any force or effect: (i) a benchmark replacement that is based in any way on any LIBOR value, except to account for the difference between LIBOR and the benchmark replacement; or (ii) a requirement that a person (other than a benchmark administrator) conduct a poll, survey, or inquiries for quotes or information concerning interbank lending or deposit rates. Act section 104(b); *see also* § 253.3(a)(2)(ii) of the proposed rule.

[49] Section 253.3(b)(1) of the proposed rule; *see also* Act sections 102(b)(3) and 104(f).

[50] Section 253.3(b)(2) of the proposed rule.

[51] FCA, *FCA Announcement on Future Cessation and Loss of Representative of the LIBOR Benchmarks* par.7 (Mar. 5, 2021), *https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf;* FCA, *UK Benchmarks Regulation, https://www.fca.org.uk/markets/benchmarks/regulation* (last visited July 7, 2022) (describing regulation).

the impression that ''LIBOR'' remains available and, therefore, should continue to be used for LIBOR contracts with fallback provisions that lack an express nonrepresentativeness trigger, notwithstanding the fact that the LIBOR contract's fallback provisions may identify a clear and practicable benchmark replacement. In this scenario, because the LIBOR contract contains such fallback provisions, it would not be a covered contract for purposes of the proposed rule.[52] Yet, to the extent synthetic LIBOR continues to be published on or after the LIBOR replacement date, there may be confusion as to whether references to LIBOR in the contract should be replaced pursuant to that fallback provision, or whether synthetic LIBOR should apply.

In light of this potential ambiguity, the Board is considering whether, for clarity, the final rule should provide that, with respect to any LIBOR contract that is not a covered contract (other than a LIBOR contract where the parties have agreed in writing that the contract shall not be subject to the LIBOR Act), LIBOR shall be replaced with the benchmark replacement specified pursuant to the LIBOR contract on the earlier of (i) the date specified pursuant to the LIBOR contract or (ii) the LIBOR replacement date. Under such a rule, the benchmark replacement specified pursuant to a non-covered contract would become operative on or before the LIBOR replacement date (depending on the contract's terms), even in the event a nonrepresentative rate called ''LIBOR'' in the form of synthetic LIBOR continues to be published on and after the LIBOR replacement date. The Board believes that, for the reasons described below, such a clarification may promote the purposes of the LIBOR Act.

First, the findings and purpose of the LIBOR Act indicates that Congress sought to ''establish a clear and uniform process . . . for *replacing LIBOR* in existing contracts the terms of which do not provide for the use of a clearly defined or practicable replacement benchmark rate'' based on a finding that ''the cessation or nonrepresentativeness of LIBOR could result in disruptive litigation related to existing contracts that do not provide for the use of a clearly defined or practicable replacement benchmark rate.'' [53] In addition, Congress sought to ''allow existing contracts that reference LIBOR but provide for the use of a clearly defined and practicable replacement rate, to operate according to their terms.'' [54] Considering these findings, the Board believes that Congress intended that, in the event LIBOR ceases to be published *or becomes nonrepresentative* on the LIBOR replacement date, a LIBOR contract with a clear and practicable benchmark replacement would replace references to LIBOR in the contract with the specified benchmark replacement, even if synthetic LIBOR continues to be published on and after the LIBOR replacement date.

Second, in light of the fact that a non-covered contract would provide for use of a clear and practicable benchmark replacement, the Board believes a sensible and reasonable expectation of the parties at the time of the agreement would have been that, upon the nonrepresentativeness of LIBOR, this fallback provision would operate to replace LIBOR, rather than binding the parties to a synthetic LIBOR rate that may not have been anticipated to exist at the time of the agreement. As discussed, although synthetic LIBOR would be called ''LIBOR,'' it would be a fundamentally different rate that would not be representative of the underlying market and economic reality concerning the setting of rates at which banks may lend to, or borrow from, other banks or agents in the money markets.[55]

For these reasons, the Board seeks feedback on whether the final rule should provide generally that the benchmark replacement specified pursuant to a non-covered contract would replace references to LIBOR in that contract on the earlier of the date specified pursuant to the LIBOR contract or the LIBOR replacement date. If adopted, the provision would not, however, apply to a LIBOR contract that is a non-covered contract because the parties have agreed in writing that the contract shall not be subject to the LIBOR Act.[56] The Board believes such a provision could provide a useful clarification and also may promote the LIBOR Act's intention to preclude disruptive ligation related to existing contracts' references to LIBOR.[57] Alternatively, the Board could offer no particular interpretation or clarification concerning non-covered contracts that do not contain an express nonrepresentativeness or similar triggering provision should synthetic LIBOR be published on and after the LIBOR replacement date. This position may be reasonable since the particular situation is not expressly addressed by the LIBOR Act and non-covered contracts include a provision for a clear and practicable replacement rate that otherwise are generally are presumed to be unaffected by the Act. Therefore, it may be prudent for the final rule, like the proposed rule, to leave these contracts unaffected.

D. Section 253.4 Board-Selected Benchmark Replacements

Proposed § 253.4 identifies the Board-selected benchmark replacements for various types of covered contracts. The Board agrees with the ARRC's observation that different benchmark replacements may be appropriate for derivative transactions and other transactions (hereafter, ''cash transactions'').[58] Therefore, under the proposed rule, the Board would select different benchmark replacements for derivative transactions and for cash transactions. The Board also would select a separate benchmark replacement for certain contracts to which government-sponsored enterprises are a party (covered GSE contracts). Consistent with the LIBOR Act, all of the proposed replacements (i) would be based upon SOFR and (ii) would incorporate spread adjustments for each specified tenor of LIBOR.[59]

The spread adjustments specified in the Act are intended to address certain differences between SOFR and LIBOR, including the fact that LIBOR is unsecured and therefore includes an element of bank credit risk which may cause it to be higher than SOFR.[60] LIBOR also may include term premia and reflect supply and demand conditions in wholesale unsecured funding markets, each of which may cause LIBOR to be higher than SOFR.[61] The LIBOR Act prescribes static spread adjustments based on the tenor of LIBOR referenced in the contract (tenor spread adjustments)—specifically, 0.644

[52] Section 253.3(b) of the proposed rule; *see also* Act 104(f)(2).

[53] Act section 102(a)(3)–(b)(1).

[54] Act section 102(b)(3).

[55] Specifically, the Board understands that synthetic LIBOR also would be a SOFR-based rate and, therefore, would not be representative of the rates at which banks may lend to, or borrow from, other banks or agents in the money markets.

[56] In agreeing in writing that the contract shall not be subject to the Act, the Board anticipates that those parties have agreed upon a method in which to address LIBOR references in that contract.

[57] *See* Act section 102(b)(2); *see also* Act section 102(a)(3).

[58] ARRC, *ARRC Best Practice Recommendations Related to Scope of Use of the Term Rate* (May 4, 2022), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Scope_of_Use.pdf.*

[59] *See* § 253.4 of the proposed rule. *See also* Act sections 103 and 104.

[60] ARRC, *ARRC Consultation on Spread Adjustment Methodologies for Fallbacks in Cash Products Referencing USD LIBOR* 7 (Jan. 21, 2020), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Spread_Adjustment_Consultation.pdf.*

[61] *Id.*

basis points (bps) (0.00644 percent) for overnight LIBOR, 11.448 bps (0.11448 percent) for one-month LIBOR, 26.161 bps (0.26161 percent) for three-month LIBOR, 42.826 bps (0.42826 percent) for six-month LIBOR, and 71.513 bps (0.71513 percent) for 12-month LIBOR.[62]

1. Derivative Transactions

With respect to derivative transactions, the Board observes that many derivative market participants have adhered to the ISDA 2020 IBOR Fallbacks Protocol (ISDA protocol) to amend their existing derivative transaction contracts to incorporate fallback provisions that would replace references to USD LIBOR with a SOFR-based rate.[63] Specifically, the ISDA protocol replaces references to USD LIBOR in adhering parties' derivative transaction contracts with a rate equal to (i) SOFR, compounded in arrears for the appropriate tenor,[64] plus (ii) a stated spread adjustment based on the appropriate tenor (the ''Fallback Rate (SOFR)''). The stated spread adjustments of the ISDA protocol are identical to the tenor spread adjustments specified in the LIBOR Act.[65] As of July 6, 2022, over 15,200 entities have adhered to the ISDA protocol to amend their derivative transactions.[66]

The Board has reviewed the ISDA protocol and believes the rate specified in the ISDA protocol would be a reasonable, SOFR-based benchmark replacement for LIBOR for derivative transactions. Further, as derivatives markets already appear to reference SOFR compounded in arrears and there has been significant adherence to the ISDA protocol, the Board believes it would be sensible to avoid disruption to these markets' efforts to transition away from referencing LIBOR. Promoting use of a consistent approach to replace LIBOR references in derivative transactions should enhance financial stability. This approach also is consistent with the recommendations of the ARRC.[67] For these reasons, the proposed rule would select the Fallback Rate (SOFR) in the ISDA protocol as the Board-selected benchmark for derivative transactions. For purposes of the proposed rule, a ''derivative transaction'' is defined as ''a contract that would satisfy the criteria to be a 'Protocol Covered Document' under the ISDA protocol but for the fact that one or more parties to such contract is not an 'Adhering Party' as such term is used in the ISDA protocol, provided that, for purposes of this definition, 'Protocol Effective Date' as such term is used in the ISDA protocol means the LIBOR replacement date for the relevant covered contract.'' [68]

ISDA has selected Bloomberg Index Services Limited (Bloomberg) to calculate and publish the Fallback Rate (SOFR) referenced in its ISDA protocol.[69] Similar to how IBA requires a license for certain uses of LIBOR,[70] the use of the Fallback Rate (SOFR) is subject to certain licensing or other usage terms imposed by Bloomberg.[71] Under its present usage terms, Bloomberg waives usage fees for users with less than $5 billion of total assets and charges one annual license fee for use of its IBOR fallbacks data.[72]

2. Cash Transactions

a. Cash Transactions That Are Not Consumer Loans or Covered GSE Contracts

With respect to cash transactions that are not consumer loans or covered GSE contracts, consistent with the ARRC's recommendations,[73] the Board believes that references to overnight LIBOR should be replaced by SOFR plus the static spread adjustment in the LIBOR Act for overnight LIBOR (0.644 bps). With respect to such cash transactions that reference one-month, three-month, six-month, or 12-month LIBOR, the Board believes that a forward-looking term rate based on SOFR, including the applicable tenor spread adjustment specified in the LIBOR Act, would be an appropriate replacement. For these LIBOR contracts, the Board notes that, in July 2021, the ARRC formally recommended the forward-looking SOFR term rates administered by CME Group Benchmark Administration, Ltd. (CME Group).[74] These forward-looking SOFR term rates are calculated by first projecting a possible path of overnight rates that is consistent with the observable averages implied by SOFR-based derivative contracts and then creating averages over standard tenors of that projected path of overnight rates.[75]

[62] *See* Act section 103(20) (defining ''tenor spread adjustment''). These spread adjustments were based on a methodology originally advanced by ISDA that uses the historical median over a five-year lookback period calculating the difference between USD LIBOR and SOFR. ARRC, *ARRC Announces Further Details Regarding Its Recommendation of Spread Adjustments for Cash Products* (June 30, 2020), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Recommendation_Spread_Adjustments_Cash_Products_Press_Release.pdf.*

[63] ISDA, ISDA 2020 IBOR Fallbacks Protocol (Oct. 23, 2020), *https://assets.isda.org/media/3062e7b4/08268161-pdf.*

[64] For purposes of this calculation, SOFR generally is compounded in arrears over an accrual period corresponding to the tenor of the LIBOR referenced in the covered contract. That compounded rate is annualized, and the day count convention is adjusted to match that of LIBOR. Bloomberg Professional Services, *Fact Sheet: IBOR Fallbacks* (Dec. 13, 2021), *https://assets.bbhub.io/professional/sites/10/Factsheet-IBOR-Fallbacks_V4_Dec2021.pdf* (cited in response to FAQ 3 of ISDA's ''2020 IBOR Fallbacks Protocol (IBOR Fallbacks Protocol) FAQs''). *See also* Bloomberg Professional Services, *IBOR Fallback Rate Adjustments Rule Book* (Dec. 13, 2021), *https://assets.bbhub.io/professional/sites/10/IBOR-Fallback-Rate-Adjustments-Rule-Book_V3_Dec2021.pdf* (for complete discussion of the calculation).

[65] ISDA based its spread adjustments on a historical median over a five-year lookback period calculating the difference between USD LIBOR and SOFR. ARRC, *ARRC Announces Further Details Regarding Its Recommendation of Spread Adjustments for Cash Products* (June 30, 2020), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Recommendation_Spread_Adjustments_Cash_Products_Press_Release.pdf.*

[66] *See* ISDA, *ISDA 20202 IBOR Fallbacks Protocol—List of Adhering Parties, https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/adhering-parties* (last visited July 7, 2022).

[67] *See* ARRC, *ARRC Best Practice Recommendations Related to Scope of Use of the Term Rate* (May 4, 2022), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Scope_of_Use.pdf* (recommending against the use of CME Term SOFR for the vast majority of the derivatives markets because these markets already reference SOFR compounded in arrears).

[68] Section 253.2 of the proposed rule. ''Protocol Covered Documents'' include (i) master agreements incorporating certain ISDA definitions booklets (each a ''covered ISDA definitions booklet''), including the 2006 ISDA Definitions and the 2000 ISDA Definitions, as published by ISDA, and referencing LIBOR or another specified IBOR (each a ''covered master agreement''); (ii) confirmations that supplement, form part of and are subject to, or are otherwise governed by, a covered master agreement; and (iii) any ISDA credit support document, including the 1994 ISDA Credit Support Annex and the 2014 Standard Credit Support Annex, that incorporates a covered ISDA definition booklet and references LIBOR or another specified IBOR. ISDA, ISDA 2020 IBOR Fallbacks Protocol 14–16(Oct. 23, 2020), *https://assets.isda.org/media/3062e7b4/08268161-pdf.*

[69] ISDA, *Bloomberg Selected as Fallback Adjustment Vendor* (July 31, 2019), *https://www.isda.org/2019/07/31/bloomberg-selected-as-fallback-adjustment-vendor.*

[70] IBA, *About, https://www.theice.com/iba/about#licensing* (last visited July 7, 2022).

[71] *See* Bloomberg Prof'l Servs., *IBOR Fallback Usage Terms* (Sept. 27, 2021), *https://assets.bbhub.io/professional/sites/27/ISDA-IBOR-Fallbacks-Web-Terms1.pdf.*

[72] *Id.* The asset threshold of $5 billion applies to a user and its affiliates as one group and can be based on assets under management, the value of assets on its balance sheet, or another objective measure that Bloomberg may reasonably employ. *Id.*

[73] *See* ARRC, *ARRC Best Practice Recommendations Related to Scope of Use of the Term Rate* (May 4, 2022), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Scope_of_Use.pdf.*

[74] ARRC, *ARRC Formally Recommends Term SOFR* (July 29, 2021), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Press_Release_Term_SOFR.pdf.*

[75] In projecting the path of overnight rates, CME Group uses a combination of one-month and three-month SOFR futures contracts to ensure that as

The ARRC made its recommendation after considering, among other things: (i) the fact that CME Group's term rates were rooted in a robust and sustainable base of derivative transactions over time; (ii) the rates' limited scope of use that should support their stability over time; (iii) continued growth in overnight SOFR-linked derivatives volumes; (iv) visible progress to deepen SOFR derivative transactions' liquidity; and (v) visible growth in offerings of cash transactions linked to averages of SOFR.[76] For similar reasons, the Board believes that the forward-looking SOFR term rates administered by CME Group and published in one-, three-, six-, and 12-month tenors (together, ''CME Term SOFR'') generally would be an appropriate basis for a benchmark replacement for one-, three-, six-, and 12-month LIBOR, respectively. Therefore, for cash transactions that are not consumer loans or covered GSE contracts, the proposed rule would replace references to one-, three-, six-, and 12-month LIBOR with (i) the corresponding one-, three-, six-, or 12-month CME Term SOFR, plus (ii) the applicable tenor spread adjustment specified in the LIBOR Act.

CME Group calculates and publishes CME Term SOFR.[77] Similar to how IBA requires a license for certain uses of LIBOR,[78] the use of CME Term SOFR is subject to certain licensing or other usage terms imposed by CME Group.[79] Under its present usage terms, an end user seeking only to enter into a transaction does not need a license from CME Group.[80] In addition, CME Group has waived fees for users of CME Term SOFR for cash transactions through 2026.[81]

b. Cash Transactions That Are Consumer Loans

Under the LIBOR Act, any Board-selected benchmark replacement applicable to consumer loans shall, for the one-year period beginning on the LIBOR replacement date, incorporate an amount that modifies the otherwise-applicable tenor spread adjustment specified in the Act.[82] Specifically, section 104(e)(2) of the LIBOR Act requires that, during the one-year period, the Board-selected benchmark replacement for consumer loans incorporate an amount that transitions linearly for each business day during that period from (i) the difference between the Board-selected benchmark replacement and the corresponding LIBOR tenor determined as of the day immediately before the LIBOR replacement date to (ii) the applicable tenor spread adjustment specified in the LIBOR Act (the transition tenor spread adjustment).[83] This transition tenor spread adjustment is intended to prevent consumer borrowers from experiencing significant, unexpected shifts in borrowing rates on and immediately following the LIBOR replacement date.

The Board believes that a forward-looking term rate based on SOFR would be an appropriate benchmark replacement for consumer loans. Accordingly, for consumer loans during the one-year period beginning on the LIBOR replacement date, the proposed rule would replace one-, three-, six-, and 12-month LIBOR with (i) the corresponding one-, three-, six-, or 12-month CME Term SOFR, plus (ii) the transition tenor spread adjustment.

Refinitiv Limited has stated it will publish and provide rates for consumer loans that sum (i) CME Term SOFR and (ii) the transition tenor spread adjustment (for the one-year period beginning on the LIBOR replacement date) or the tenor spread adjustment specified in the LIBOR Act (after that one-year period), consistent with the proposed rule and the recommendations of the ARRC.[84] Refinitiv identifies these rates as ''USD IBOR Cash Fallbacks'' for ''Consumer'' products. For clarity, and particularly because calculation of the transition tenor spread adjustment applicable to consumer loans during the one-year period beginning on the LIBOR replacement rate may be complex, the proposed rule indicates that these rates from Refinitiv would be deemed equal to the rates in the proposed rule.[85] Use of these ''USD IBOR Cash Fallbacks'' for ''Consumer'' products may be subject to certain licensing or other usage terms imposed by Refinitiv Limited.

c. Cash Transactions That Are Covered GSE Contracts

Under the proposed rule, a ''covered GSE contract'' would be ''a covered contract for which a GSE is identified as a party in the transaction documents and that is (i) a commercial or multifamily mortgage loan, (ii) a commercial or multifamily mortgage-backed security, (iii) a collateralized mortgage obligation, (iv) a credit risk transfer transaction, or (v) a Federal Home Loan Bank advance.'' [86]

many data points as possible are used to calculate the term structure. CME Grp., *CME Term SOFR Reference Rates Benchmark Methodology* (May 9, 2022), *https://www.cmegroup.com/market-data/files/cme-term-sofr-reference-rates-benchmark-methodology.pdf.*

[76] ARRC, *ARRC Formally Recommends Term SOFR* (July 29, 2021), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Press_Release_Term_SOFR.pdf. See also* ARRC, *ARRC Announces Key Principles for a Forward-Looking SOFR Term Rate* (Apr. 20, 2021), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/20210420-arrc-press-release-term-rate;* ARRC, *ARRC Identifies Market Indicators to Support a Recommendation of a Forward-Looking SOFR Term Rate* (May 6, 2021), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/20210506-term-rate-indicators-press-release.*

[77] CME Grp., *CME Term SOFR Rates, https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html* (last visited July 7, 2022).

[78] IBA, *About, https://www.theice.com/iba/about#licensing* (last visited July 7, 2022).

[79] *See* CME Grp., *CME Data Terms of Use, https://www.cmegroup.com/trading/market-data-explanation-disclaimer.html* (last visited July 7, 2022); CME Grp., *CME Term SOFR Reference Rates—Frequently Asked Questions,* FAQ 8–10 (Apr. 19, 2022), *https://www.cmegroup.com/articles/faqs/cme-term-sofr-reference-rates.html.*

[80] CME Group defines an ''end user'' as an individual or entity that is a counterparty or guarantor to the applicable cash transaction or derivative transaction with the licensee of CME Term SOFR. CME Grp., *CME Term SOFR Reference Rates—Frequently Asked Questions,* FAQ 10 (Apr. 19, 2022), *https://www.cmegroup.com/articles/faqs/cme-term-sofr-reference-rates.html.*

[81] CME Grp., *CME Group Benchmark Fee List* (Dec. 2021), *https://www.cmegroup.com/files/download/benchmark-data-fee-list.pdf.*

[82] Act section 104(e)(2). *See* § 253.2 of the proposed rule for the definition of ''consumer loan.''

[83] *Id.*

[84] The ARRC selected Refinitiv Limited to publish its recommended spread adjustments and spread-adjusted rates for cash products. ARRC, *ARRC Announces Refinitiv as Publisher of its Spread Adjustment Rates for Cash Products* (Mar. 17, 2021), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/20210317-press-release-Spread-Adjustment-Vendor-Refinitiv.pdf.* With respect to the transition tenor spread adjustment, Refinitiv has stated it will incorporate a two-week lookback period for SOFR (from June 19, 2023, through June 30, 2023) in determining the difference between the Board-selected benchmark replacement and the corresponding LIBOR tenor as of the day before the LIBOR replacement date. Refinitiv Benchmark Servs. (UK) Ltd., *USD IBOR Institutional Cash Fallbacks Benchmark, USD IBOR Consumer Cash Fallbacks (1 Week, 2 Months) Benchmark, USD IBOR Consumer Cash Fallbacks (1, 3, 6 Months) Prototype Methodology* 11 (Jan. 3, 2022), *https://www.refinitiv.com/content/dam/marketing/en_us/documents/methodology/refinitiv-usd-ibor-cash-fallbacks-methodology.pdf.* The Board believes this method of determining the difference between the Board-selected benchmark replacement and the corresponding LIBOR tenor as of June 30, 2023, is consistent with the provision in the Act.

[85] *See* § 253.4(b)(2)(iii) of the proposed rule. Refinitiv also has stated it will publish ''USD IBOR Cash Fallbacks'' for ''Institutional'' products. These rates are expected to be consistent with the proposed rule's benchmark replacement for cash transactions that are not consumer loans. The Board observes that parties to cash transactions that are not consumer loans should be able to compute easily the proposed benchmark replacement rate and, if needed, verify that any vendor's reported rate (including that of Refinitiv) is consistent with that proposed replacement rate such that no provision similar to § 253.4(b)(2)(iii) is needed for these transactions.

[86] *See* § 253.2 of the proposed rule. A GSE, or government-sponsored enterprise, would be defined

Continued

As with other cash transactions that are not consumer loans, the Board believes that references to overnight LIBOR in covered GSE contracts should be replaced by SOFR plus the static spread adjustment in the LIBOR Act for overnight LIBOR. However, with respect to covered GSE contracts referencing one-month, three-month, six-month, or 12-month LIBOR, the Board notes that, since 2020, the Federal Housing Finance Agency has worked with its supervised GSEs—the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks—generally to replace USD LIBOR with the 30-calendar-day compounded average of SOFR (30-day Average SOFR), as published by the FRBNY,[87] in their newly issued multifamily loans and other structured products that are covered GSE contracts.[88] To enhance liquidity for both these newly issued and legacy LIBOR-based products, the Board's proposed rule would select as the benchmark replacement for covered GSE contracts (i) 30-day Average SOFR plus (ii) the applicable tenor spread adjustment specified in the LIBOR Act. The Board invites comment as to whether selecting the same SOFR-based replacement for LIBOR for legacy covered GSE contracts as those used for similar, recently issued contracts would promote greater liquidity for legacy and newly issued covered GSE contracts.

3. Determination Date for the Benchmark Replacement

As discussed, under the proposed rule, references to ''LIBOR'' in LIBOR contracts generally would be replaced with the proposed Board-selected benchmark replacement, without any modification of other contractual provisions.[89] For clarity, the proposed rule indicates that selection and use of the Board-selected benchmark replacement would not affect the dates on which the contractual rates are determined.[90] For example, if a covered contract that is a cash transaction originally indicated that a three-month LIBOR rate would be determined on March 31, June 30, September 30, and December 31 of each year, then, following the LIBOR replacement date, the corresponding Board-selected benchmark replacement rate (three-month CME Term SOFR) also would be determined on March 31, June 30, September 30, and December 31 of each year. Similarly, if a covered contract that is a cash transaction originally indicated that a 12-month LIBOR rate would be determined using the value as of a prior date (*e.g.,* 45 days prior to the payment date), then following the LIBOR replacement date, the corresponding Board-selected benchmark replacement rate (12-month CME Term SOFR) also would be determined using that benchmark replacement's value as of the specified prior date. To the extent that the specified prior date precedes the LIBOR replacement date, the benchmark originally specified in the contract—here, 12-month LIBOR—would be used, consistent with the covered contract's terms. However, once the parties would look to a benchmark value as of a date on or after the LIBOR replacement date under the covered contract's terms, the corresponding Board-selected benchmark replacement—here, 12-month CME Term SOFR—would be used.

E. Section 253.5 Benchmark Replacement Conforming Changes

The LIBOR Act authorizes the Board to require any additional technical, administrative, or operational changes, alterations, or modifications to LIBOR contracts based on a determination such changes, alterations, or modifications would address one or more issues affecting the implementation, administration, and calculation of the Board-selected benchmark replacement in LIBOR contracts (conforming changes).[91] At this time, the Board does not believe any additional conforming changes would be needed for successful implementation of the Board-selected benchmark replacements indicated in § 253.4 of the proposed rule. However, the Board reserves the authority, in its discretion, to require any additional conforming changes, by regulation or order.[92]

For clarity, the proposed rule also indicates that, with respect to a LIBOR contract that is not a consumer loan, a calculating person may make any additional technical, administrative, or operational changes, alterations or modifications that, in that person's reasonable judgment, would be necessary or appropriate to permit the implementation, administration, and calculation of the Board-selected benchmark replacement under or with respect to a LIBOR contract after giving due consideration to any changes, alterations, or modifications otherwise required by the Board under the proposed rule.[93] This proposed language mirrors sections 103(4)(B) and 104(d) of the LIBOR Act.

F. Section 253.6 Preemption

As noted, section 107 of the LIBOR Act expressly preempts any provision of state or local law relating to the selection or use of a benchmark replacement or related conforming changes, or expressly limiting the manner of calculating interest (including the compounding of interest) as that provision applies to the selection or use of a Board-selected benchmark replacement or benchmark replacement conforming changes.[94] For clarity, § 253.6 of the proposed rule references and repeats the statutory language concerning preemption of such state or local law, statute, rule, regulation, or standard by a final rule issued by the Board pursuant to the LIBOR Act.

G. Effective Date

The Board proposes that the proposed rule, if finalized, will become effective on the first day of the next calendar quarter that begins 30 days after publication of the final rule in the **Federal Register**. The Board notes that the LIBOR Act directs the Board to promulgate regulations not later than

as an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government. *Id.*

[87] Fed. Res. Bk. of NY, *Additional Information about Reference Rates Administered by the New York Fed, https://www.newyorkfed.org/markets/reference-rates/additional-information-about-reference-rates#sofr_ai_calculation_methodology* (last visited July 7, 2022) (detailing the calculation methodology for the SOFR averages and index).

[88] Under the proposed rule, ''covered GSE contract'' would be defined to be a contract for which a GSE is identified as a party in the transaction documents that is (i) a commercial or multifamily mortgage loan, (ii) a commercial or multifamily mortgage-backed security, (iii) a collateralized mortgage obligation, (iv) a credit risk transfer transaction, or (v) a Federal Home Loan Bank advance. Section 253.2 of the proposed rule. ''Government-sponsored enterprise (GSE)'' is defined consistent with the Board's capital rule, 12 CFR 217.2, to mean an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government. Section 253.2 of the proposed rule.

[89] For example, if a LIBOR contract indicated that interest due on borrowings for periods between published LIBOR tenors should be calculated by interpolation, the proposed rule would not affect the parties' ability to use interpolation except that the corresponding Board-selected benchmark replacement values should be used in place of the LIBOR values for the interpolation. Similarly, if the LIBOR contract provided that interest should be on a fixed rate for some specified period and on a floating interest rate based on LIBOR only after that specified period for the remaining maturity of the loan, then the proposed rule only would replace the LIBOR reference with the relevant Board-selected benchmark replacement and would not affect the fixed-rate period or other terms of the contract.

[90] Section 253.4(d) of the proposed rule.

[91] Act section 104(e).

[92] *Id.*

[93] Section 253.5(a)(2) of the proposed rule.

[94] Act section 107.

180 days after the date of enactment.[95] As a result, the effective date of the final rule would be well in advance of the LIBOR replacement date.

III. Request for Comment

The Board invites comment on all aspects of the proposed rule. In addition, the Board invites comment on the following specific questions related to the proposed rule:

- What, if any, alternative SOFR-based benchmark replacements should the Board consider for derivative transactions instead of Fallback Rate (SOFR) as defined in the ISDA protocol (*e.g.,* a type of SOFR average)? What, if any, alternative SOFR-based benchmark replacements should the Board consider for covered GSE contracts instead of 30-day Average SOFR, such as SOFR term rates? What, if any, alternative SOFR-based benchmark replacements should the Board consider for other cash transactions instead of CME Term SOFR, such as a type of SOFR average or SOFR term rates that may be offered by a provider other than CME? Why would those alternatives be better choices than those indicated in the proposed rule? Should the Board identify a single Board-selected benchmark replacement for all covered contracts?
- Are there any categories of covered contracts for which the Board should consider an alternative SOFR-based Board-selected benchmark replacement? What aspects of the nature, circumstances, or characteristics (*e.g.,* issuer type, lender type, borrower type, structure, use) of those contracts warrant consideration of a different SOFR-based benchmark replacement?
- What, if any, additional clarifications should the Board consider regarding the Board-selected benchmark replacements? Why would those clarifications be helpful?
- What, if any, additional clarifications should the Board consider regarding the definition of ''covered contract''? For example, should the Board clarify that § 253.3(a)(2)(ii)(B) of the proposed regulation—which generally nullifies any references in the fallback provisions of a LIBOR contract to a requirement that a person (other than a benchmark administrator) conduct a poll, survey, or inquiries for quotes or information concerning interbank lending or deposit rates—applies to a contract that requires a person to poll for ''Eurodollar'' deposit rates? What, if any, additional clarifications should the Board consider regarding other defined terms in the proposed rule?
- Is the proposed provision concerning the application of the proposed rule to non-covered contracts sufficiently clear? What, if any, additional clarifications should the Board consider with respect to non-covered contracts? For example, should the final rule address the ambiguity discussed above regarding LIBOR contracts with fallback provisions that lack an express nonrepresentativeness trigger, perhaps by indicating that those contracts' fallback provisions would be triggered on the LIBOR replacement date? [96]
- What, if any, additional clarifications, should the Board consider regarding selections of benchmark replacements by determining persons, including their ability to select a replacement on or before the LIBOR replacement date? For example, should the Board consider requiring a determining person to provide notice to one or more parties concerning the selection and, if so, what specific notification requirements would be appropriate and why? What, if any, potential litigation or other risks could result from such a notification requirement, and how might the Board address those risks?
- What, if any, benchmark replacement conforming changes should the Board consider (*e.g.,* clarification regarding calculation of any contractual rate cap or floor in light of the Act's specified tenor adjustments, application of any contractual lookback period or other term related to determination of the precise applicable benchmark replacement rate)? Should those conforming changes apply to all covered contracts or just one or more categories of covered contracts?
- Should the Board incorporate into the regulation the statutory protections in section 105 of the Act? If so, should the Board make any clarifications related to these statutory protections?

IV. Regulatory Analyses

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency to consider the impact of its proposed rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the **Federal Register**. An IRFA must contain (i) a description of the reasons why action by the agency is being considered; (ii) a succinct statement of the objectives of, and legal basis for, the proposed rule; (iii) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (iv) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (v) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap with, or conflict with the proposed rule; and (vi) a description of any significant alternatives to the proposed rule that accomplish its stated objectives.

The Board is providing an IRFA with respect to the proposed rule. The Board invites comment on all aspects of this IRFA.

a. Reasons Action Is Being Considered

The Board is issuing the proposed rule to implement its statutory mandate in the LIBOR Act. Specifically, section 110 of the Act directs the Board to promulgate regulations to carry out the Act not later than 180 days after enactment. In general, the proposed rule would codify into regulation the rules that are laid out in the Act; under the Act, as described below, the Board's discretion is limited to a few key areas, such as the selection of Board-selected benchmark replacements based on SOFR.

b. Objectives of the Proposed Rule

Congress enacted the LIBOR Act to provide a uniform, nationwide solution for replacing references to LIBOR in tough legacy contracts—contracts governed by U.S. law that reference USD LIBOR and that will not mature until after USD LIBOR ceases or becomes nonrepresentative, but have no effective means to replace LIBOR after it ceases or becomes nonrepresentative. The statute directs the Board to select one or more benchmark replacements based on SOFR that will replace LIBOR by operation of law following the LIBOR replacement date. In this way, the Act and the Board's implementing regulation should preclude disruptive litigation related to tough legacy contracts.

[95] One hundred eighty days after the date of enactment, March 15, 2022, is September 11, 2022.

[96] *See* discussion concerning non-covered contracts in section II.C.

c. Description and Estimate of the Number of Small Entities

The proposed rule would primarily apply to the parties to covered contracts, as defined in § 253.3(a)(2) of the proposal.[97] Parties to covered contracts may include firms of any size and in any industry and are not limited to Board-regulated institutions or even firms engaged in financial activities. In general, covered contracts would include (i) LIBOR contracts that contain no fallback provisions, (ii) LIBOR contracts that contain inadequate fallback provisions (defined as LIBOR contracts with fallback provisions that identify neither a specific benchmark replacement nor a determining person), or (iii) LIBOR contracts for which a determining person has failed to select a benchmark replacement by the earlier of the LIBOR replacement date or the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract. Covered contracts would not include any LIBOR contract that the parties have agreed in writing shall not be subject to the LIBOR Act. Covered contracts also would not include LIBOR contracts where a determining person selects the Board-selected benchmark replacement by the earlier of the LIBOR replacement date and the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract. The proposed definition of ''covered contract'' is derived from and designed to match the scope of contracts designated in section 104(a)–(c) of the Act.

The Board does not believe that it is feasible to provide an estimate of the number of small entities to which the proposed rule will apply.[98] Although estimates exist of the total outstanding exposure to USD LIBOR across all firms and transactions,[99] the Board is not aware of any method of determining what share of this outstanding exposure is attributable to covered contracts, or of determining the identity, industry, or size of the parties to those covered contracts, and the Board is not aware of any other data sources sufficient to provide an estimate of the number of smaller firms to which the proposed rule would apply.

d. Estimating Compliance Requirements

The proposed rule would not impose any reporting or recordkeeping requirements on the parties to covered or non-covered contracts. With respect to broader compliance requirements, the proposed rule would not require the parties to covered contracts to take any affirmative steps (such as amending their contracts).[100] Rather, the proposed rule would codify requirements under section 104 of the Act that modify the terms of covered contracts by operation of law by replacing references to LIBOR with the applicable Board-selected benchmark replacement (*i.e.,* Fallback Rate (SOFR) as defined in the ISDA protocol, 30-day Average SOFR, or CME Term SOFR), as defined in § 253.2 and § 253.4 of the proposal. As a result of this modification, parties to covered contracts may need to alter how they perform their contractual obligations. For example, in the case of a bilateral loan agreement that is a covered contract, the proposal would, as required by the Act, replace references to LIBOR with the applicable Board-selected benchmark replacement on and after the LIBOR replacement date. As a result, after that date, amounts due under such loan agreement would need to be determined by reference to the Board-selected benchmark replacement, rather than LIBOR, and those amounts due likely would not be identical. For this reason, the Board expects that the proposal could have a potentially significant economic impact on parties to covered contracts. However, the Act requires the Board to identify one or more Board-selected benchmark replacements based on SOFR, and the Board has proposed benchmark replacements that were recommended by the ARRC and ISDA after wide consultation and that are consistent with market practices. The Board does not believe that selecting alternative SOFR-based benchmark replacements (other than those proposed in § 253.4 of the proposal) would materially reduce the potential economic impact of the proposal.

e. Duplicative, Overlapping, and Conflicting Rules

The Board is not aware of any federal rules that may duplicate, overlap with, or conflict with the proposed rule.

f. Significant Alternatives Considered

Although section 110 of the LIBOR Act directs the Board to promulgate regulations to carry out the Act, the Board's discretion under the Act is limited to (i) selecting SOFR-based benchmark replacements and adjusting them to include the statutorily prescribed tenor spread adjustment (and, if applicable, transition tenor spread adjustment), (ii) determining any benchmark replacement conforming changes, and (iii) determining the LIBOR replacement date (in the event that any LIBOR tenor ceases or becomes nonrepresentative prior to the planned LIBOR cessation date).[101] Given its limited discretion, the Board was unable to consider alternatives to the proposed rule that would be significantly different from the statutory scheme of the LIBOR Act.

As discussed, the Board has considered and invites comment on possible alternative SOFR-based benchmark replacements. The Board also invites comment on whether it should consider any benchmark replacement conforming changes.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid Office of Management and Budget (OMB) control number. The Board reviewed the proposed rule under the authority delegated to the Board by the OMB and determined that it contains no collections of information under the

[97] The proposed rule also would apply to determining persons and calculating persons in respect of covered contracts, who may not themselves be parties to the covered contract. In addition, § 253.3(b)(2) of the proposed rule would apply to non-covered contracts.

[98] The Board generally uses the industry-specific size standards adopted by the Small Business Administration (SBA) for purposes of estimating the number of small entities to which a proposed rule would apply. *See* 13 CFR 121.210. Consistent with the SBA's General Principles of Affiliation, the Board would include the assets of all domestic and foreign affiliates toward the applicable size threshold when determining whether to classify a particular entity as a small entity. *See* 13 CFR 121.103. The Board has considered the SBA standards and expects that a potentially substantial number of small entities, across many industries, likely would be affected by the proposed rule. However, for the reasons discussed above, the Board does not believe it has sufficient data to provide a reasonable estimate of the precise number of small entities to which the proposed rule would apply.

[99] As of the end of 2020, for example, the outstanding gross notional value of all financial products referencing U.S. dollar (USD) LIBOR was estimated to be $223 trillion. *See* ARRC, *Progress Report: The Transition for U.S. Dollar LIBOR* (Mar. 2021) at 3, *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/USD-LIBOR-transition-progress-report-mar-21.pdf.*

[100] Similarly, the proposed rule would not require a determining person in respect of a covered contract to select a particular benchmark replacement (or select any benchmark replacement at all) and would not require a calculating person in respect of a covered contract to make any or a particular benchmark replacement conforming change.

[101] At this time, the Board does not propose to determine any benchmark replacement conforming changes and does not propose to determine that any LIBOR tenor will cease or become nonrepresentative prior to the first London banking day after June 30, 2023.

PRA.[102] Accordingly, there is no paperwork burden associated with the rule.

C. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner and invites comment on the use of plain language and whether any part of the proposed rule could be more clearly stated.

List of Subjects in 12 CFR Part 253

Banks and banking, Interest rates

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System proposes to add new part 253 to 12 CFR chapter II, as follows:

PART 253—REGULATIONS IMPLEMENTING THE ADJUSTABLE INTEREST RATE (LIBOR) ACT (REGULATION ZZ)

■ 1. Add part 253 to read as follows:

PART 253—REGULATIONS IMPLEMENTING THE ADJUSTABLE INTEREST RATE (LIBOR) ACT (REGULATION ZZ)

Sec.

253.1 Authority, Purpose, and Scope.
253.2 Definitions.
253.3 Applicability.
253.4 Board-selected Benchmark Replacements.
253.5 Benchmark Replacement Conforming Changes.
253.6 Preemption.

Authority: Pub. L. 117–103, div. U.

§ 253.1 Authority, Purpose, and Scope.

(a) *Authority.* The Board of Governors of the Federal Reserve System (Board) has issued this part (Regulation ZZ) under the authority of Public Law 117–103, division U (the ''Adjustable Interest Rate (LIBOR) Act'').

(b) *Purpose.* The purposes of the Adjustable Interest Rate (LIBOR) Act are to establish a clear and uniform process, on a nationwide basis, for replacing the overnight and one-, three-, six-, and 12-month tenors of U.S. dollar LIBOR in existing contracts that do not provide for the use of a clearly defined or practicable replacement benchmark rate; to preclude litigation related to such existing contracts; to allow existing contracts that reference LIBOR but provide for the use of a clearly defined and practicable replacement rate to operate according to their terms; and to address LIBOR references in Federal law.[1] This regulation implements the statute by defining terms used in the statute and establishing Board-selected benchmark replacements for LIBOR contracts.

(c) *Scope.* As described in § 253.3(a), the Adjustable Interest Rate (LIBOR) Act and this regulation apply by their terms to existing contracts governed by federal law or the law of any state that reference the overnight and one-, three-, six-, and 12-month tenors of U.S. dollar LIBOR and do not have terms that provide for the use of a clearly defined and practicable replacement benchmark rate following the LIBOR replacement date, unless the parties to that contract agree in writing that the contract is not subject to the Adjustable Interest Rate (LIBOR) Act. Except as provided in § 253.3(b)(2), this regulation does not apply to or affect existing or prospective contracts that do not reference the overnight or one-, three-, six-, or 12-month tenors of U.S. dollar LIBOR or have terms providing for the use of a clearly defined and practicable replacement benchmark for LIBOR (either directly or through selection by a determining person), even if that rate differs from the otherwise applicable Board-selected benchmark replacement.

§ 253.2 Definitions.

30-day Average SOFR means the 30-calendar-day compounded average of SOFR, as published by the Federal Reserve Bank of New York or any successor administrator.

Benchmark means an index of interest rates or dividend rates that is used, in whole or in part, as the basis of or as a reference for calculating or determining any valuation, payment, or other measurement.

Benchmark administrator means a person that publishes a benchmark for use by third parties.

Benchmark replacement means a benchmark, or an interest rate or dividend rate (which may or may not be based in whole or in part on a prior setting of LIBOR) to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or with respect to a LIBOR contract.

Benchmark replacement conforming change means any technical, administrative, or operational change, alteration, or modification that (i) the Board determines, in its discretion, would address one or more issues affecting the implementation, administration, and calculation of the Board-selected benchmark replacement in LIBOR contracts; or (ii) solely with respect to a LIBOR contract that is not a consumer loan, in the reasonable judgment of a calculating person, are otherwise necessary or appropriate to permit the implementation, administration, and calculation of the Board-selected benchmark replacement under or with respect to a LIBOR contract after giving due consideration to any benchmark replacement conforming changes determined by the Board under item (i) of this definition.

Board-selected benchmark replacement means the benchmark replacements identified in § 253.4 of this part.

Business day means any day except for (i) a Saturday, (ii) a Sunday, (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities, or (iv) a day on which the Federal Reserve Bank of New York, with advance notice, chooses not to publish its Treasury repurchase agreement reference rates if participants in the Treasury repurchase agreement market broadly expect to treat that day as a holiday.

Calculating person means, with respect to any LIBOR contract, any person, including the determining person, responsible for calculating or determining any valuation, payment, or other measurement based on a benchmark.

CME Term SOFR means the CME Term SOFR Reference Rates published for one-, three-, six-, and 12-month tenors as administered by CME Group Benchmark Administration, Ltd. (or any successor administrator thereof).

Consumer has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

Consumer loan means a consumer credit transaction.

Covered contract is defined in § 253.3(a) of this part.

Covered GSE contract means a covered contract for which a GSE is identified as a party in the transaction documents and that is (i) a commercial or multifamily mortgage loan, (ii) a commercial or multifamily mortgage-backed security, (iii) a collateralized mortgage obligation, (iv) a credit risk

[102] *See* 44 U.S.C. 3502(3).

[1] The Act does not affect the ability of parties to use any appropriate benchmark rate in new contracts.

transfer transaction, or (v) a Federal Home Loan Bank advance.

Credit has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

Derivative transaction means a contract that would satisfy the criteria to be a ''Protocol Covered Document'' under the ISDA protocol but for the fact that one or more parties to such contract is not an ''Adhering Party'' as such term is used in the ISDA protocol, provided that, for purposes of this definition, ''Protocol Effective Date'' as such term is used in the ISDA protocol means the LIBOR replacement date for the relevant covered contract.

Determining person means, with respect to any LIBOR contract, any person with the authority, right, or obligation, including on a temporary basis (as identified by the LIBOR contract or by the governing law of the LIBOR contract, as appropriate) to determine a benchmark replacement.

Fallback provisions means terms in a LIBOR contract for determining a benchmark replacement, including any terms relating to the date on which the benchmark replacement becomes effective.

Government-sponsored enterprise (GSE) means an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

ISDA protocol means the ISDA 2020 IBOR Fallbacks Protocol published by the International Swaps and Derivatives Association, Inc., on October 23, 2020, and minor or technical amendments thereto.

LIBOR (i) means the overnight and one-, three-, six-, and 12-month tenors of U.S. dollar LIBOR (formerly known as the London interbank offered rate) as administered by ICE Benchmark Administration Limited (or any predecessor or successor administrator thereof) and (ii) does not include the one-week or two-month tenors of U.S. dollar LIBOR.

LIBOR contract means any contract, agreement, indenture, organizational document, guarantee, mortgage, deed of trust, lease, security (whether representing debt or equity, including any interest in a corporation, a partnership, or a limited liability company), instrument, or other obligation or asset that, by its terms, uses LIBOR as a benchmark.

LIBOR replacement date means the first London banking day after June 30, 2023, unless the Board determines that any LIBOR tenor will cease to be published or cease to be representative on a different date.

Non-covered contract is a LIBOR contract that is not a covered contract.

Security has the same meaning as in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)).

SOFR means the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York or any successor administrator.

State means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

§ 253.3 Applicability.

(a) *Covered contracts.*

(1) *General requirement.* On and after the LIBOR replacement date, the applicable Board-selected benchmark replacement shall be the benchmark replacement for a covered contract.

(2) *Definition.* (i) For purposes of this part, a covered contract means a LIBOR contract with one of the following characteristics as of the LIBOR replacement date, after giving effect to paragraph (a)(2)(ii) of this section:

(A) The LIBOR contract contains no fallback provisions;

(B) The LIBOR contract contains fallback provisions that identify neither—

(*1*) A specific benchmark replacement; nor

(*2*) A determining person; or

(C) The LIBOR contract contains fallback provisions that identify a determining person, but the determining person has failed to select a benchmark replacement by the earlier of the LIBOR replacement date and the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract.

(ii) For purposes of this part, on the LIBOR replacement date, any reference in any fallback provisions of a LIBOR contract to the following shall be disregarded as if not included in the fallback provisions of such LIBOR contract and shall be deemed null and void and without any force or effect:

(A) A benchmark replacement that is based in any way on any LIBOR value, except to account for the difference between LIBOR and the benchmark replacement; or

(B) A requirement that a person (other than a benchmark administrator) conduct a poll, survey, or inquiries for quotes or information concerning interbank lending or deposit rates.

(iii) Notwithstanding paragraphs (a)(2)(i) through (ii) of this section, the term ''covered contract'' does not include any LIBOR contract that the parties have agreed in writing shall not be subject to the Adjustable Interest Rate (LIBOR) Act.

(b) *Non-covered contracts.*

(1) *In general.* This regulation does not affect LIBOR contracts that are not covered contracts.

(2) *Selection of Board-selected benchmark replacement by determining person.* Notwithstanding paragraph (b)(1) of this section, a determining person may select the Board-selected benchmark replacement specified in § 253.4 of this rule as the benchmark replacement for a LIBOR contract. Any such selection shall be—

(i) Irrevocable;

(ii) Made by the earlier of the LIBOR replacement date and the latest date for selecting a benchmark replacement according to the terms of the LIBOR contract; and

(iii) Used in any determinations of the benchmark under or with respect to the LIBOR contract occurring on and after the LIBOR replacement date.

§ 253.4 Board-selected Benchmark Replacements.

(a) *Derivative transactions.* On the LIBOR replacement date, a covered contract that is a derivative transaction shall use the benchmark replacement identified as the ''Fallback Rate (SOFR)'' in the ISDA protocol. For clarity, the reference to ''spread relating to U.S. dollar LIBOR'' in the definition of ''Fallback Rate (SOFR)'' in the ISDA protocol is equal to the applicable tenor spread adjustment identified in paragraph (c) of this section.

(b) *All other transactions.* On the LIBOR replacement date, a covered contract that is not a derivative transaction shall use the following benchmark replacements:

(1) For a covered contract that is not a consumer loan or a covered GSE contract—

(i) In place of overnight LIBOR, the benchmark replacement shall be SOFR plus the tenor spread adjustment identified in paragraph (c)(1) of this section; and

(ii) In place of one-, three-, six-, or 12-month tenors of LIBOR, the benchmark replacement shall be the corresponding one-, three-, six-, or 12-month CME Term SOFR plus the applicable tenor spread adjustment identified in paragraph (c) of this section.

(2) For a covered contract that is a consumer loan—

(i) During the one-year period beginning on the LIBOR replacement date:

(A) In place of overnight LIBOR, the benchmark replacement shall be SOFR

plus an amount that transitions linearly for each business day during that period from:

(*1*) The difference between SOFR and overnight LIBOR determined as of the day immediately before the LIBOR replacement date; to

(*2*) The tenor spread adjustment identified in paragraph (c)(1) of this section; or

(B) In place of the one-, three-, six-, or 12-month tenors of LIBOR, the benchmark replacement shall be the corresponding one-, three-, six-, or 12-month CME Term SOFR plus an amount that transitions linearly for each business day during that period from:

(*1*) The difference between the relevant CME Term SOFR and the relevant LIBOR tenor determined as of the day immediately before the LIBOR replacement date; to

(*2*) The applicable tenor spread adjustment identified in paragraph (c) of this section.

(ii) On the date one year after the LIBOR replacement date and thereafter:

(A) In place of overnight LIBOR, the benchmark replacement shall be SOFR plus the tenor spread adjustment identified in paragraph (c)(1) of this section; and

(B) In place of one-, three-, six-, or 12-month tenors of LIBOR, the benchmark replacement shall be the corresponding one-, three-, six-, or 12-month CME Term SOFR plus the applicable tenor spread adjustment identified in paragraph (c) of this section.

(iii) The rates published or provided by Refinitiv Limited as ''USD IBOR Cash Fallbacks'' for ''Consumer'' products shall be deemed equal to the rates identified in paragraphs (b)(2)(i) and (ii) of this section.

(3) For a covered contract that is a covered GSE contract—

(i) In place of overnight LIBOR, the benchmark replacement shall be SOFR plus the tenor spread adjustment identified in paragraph (c)(1) of this section; and

(ii) In place of one-, three-, six-, or 12-month tenors of LIBOR, the benchmark replacement shall be the 30-day Average SOFR plus the applicable tenor spread adjustment identified in paragraph (c) of this section.

(c) *Tenor spread adjustments.* The following tenor spread adjustments shall be included as part of the Board-selected benchmark replacements as indicated in paragraphs (a) and (b) of this section:

(1) 0.00644 percent for overnight LIBOR;

(2) 0.11448 percent for one-month LIBOR;

(3) 0.26161 percent for three-month LIBOR;

(4) 0.42826 percent for six-month LIBOR; and

(5) 0.71513 percent for 12-month LIBOR.

(d) *Date for determining Board-selected benchmark replacement.* For purposes of this part, any Board-selected benchmark replacement shall be determined as of the day that, under the covered contract, would have been used to determine the LIBOR-based rate that is being replaced or, if the Board-selected benchmark replacement is not published on the day indicated in the covered contract, the most recently available publication should be used.

§ 253.5 Benchmark Replacement Conforming Changes.

(a) *Benchmark replacement conforming changes.*

(1) The Board may, in its discretion, by regulation or order, require any additional technical, administrative, or operational changes, alterations, or modifications in LIBOR contracts based on a determination that such changes, alterations, or modifications would address one or more issues affecting the implementation, administration, and calculation of a Board-selected benchmark replacement in LIBOR contracts.

(2) Solely with respect to a LIBOR contract that is not a consumer loan, a calculating person may make any additional technical, administrative, or operational changes, alterations or modifications that, in that person's reasonable judgment, would be necessary or appropriate to permit the implementation, administration, and calculation of the Board-selected benchmark replacement under or with respect to a LIBOR contract after giving due consideration to any changes, alterations, or modifications otherwise required by the Board in this part or pursuant to paragraph (a)(1) of this section.

§ 253.6 Preemption.

(a) Pursuant to section 107 of the Adjustable Interest Rate (LIBOR) Act, this part supersedes any provision of any state or local law, statute, rule, regulation, or standard—

(1) Relating to the selection or use of a benchmark replacement or related conforming changes; or

(2) Expressly limiting the manner of calculating interest, including the compounding of interest, as that provision applies to the selection or use of a Board-selected benchmark replacement or benchmark replacement conforming changes.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2022–15658 Filed 7–27–22; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 609

RIN 3052–AD53

Cyber Risk Management

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, our, or Agency) proposes to rescind and revise our regulations to reflect developments in cyber risk and continuously evolving business practices concerning electronic business (E-business) and to rename the regulations ''Cyber Risk Management''.

DATES: Comments on this proposed rule must be submitted on or before September 26, 2022.

ADDRESSES: We offer a variety of methods for you to submit comments. For accuracy and efficiency, commenters are encouraged to submit comments by email or through the FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we do not accept comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA website: https://www.fca.gov.* Click inside the ''I want to . . .'' field near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.
- *Mail:* Autumn R. Agans, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or on our website at *https://www.fca.gov.* Once you are in the website, click inside the ''I want to . . .'' field near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments.

We will show your comments as submitted, but for technical reasons we may omit some items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FOR FURTHER INFORMATION CONTACT:
Technical information: Dr. Ira D. Marshall, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4056.

Legal information: Jane Virga, Assistant General Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objectives

Our objectives in this proposed rule are to:

- Delete references to the requirements of ''Electronic Signatures in Global and National Commerce Act'' (E–SIGN) (Pub. L. 106–229), which became effective October 1, 2000. E–SIGN governs transactions relating to the conduct of business, consumer, or commercial affairs between two or more persons. We also propose to delete references to the Federal Reserve Board (FRB) regulations at 12 CFR parts 202, 213, and 226 (Regulations B, Z, and M). These laws apply to the Farm Credit System (System) regardless of citation in part 609. Thus, we believe that these references are no longer necessary.
- Revise part 609 to codify existing expectations and ensure the relevance and adequacy of risk management practices, corporate governance, and internal control systems for conducting business in an electronic environment.

II. Background

The regulations at 12 CFR part 609 were enacted in 2002. The FCA's information technology-related regulations primarily focus on E-commerce terminology and the concept of conducting business in an E-commerce environment. Since then, there have been significant growth, changes, and advancements in information technology (IT) and the System's use of technology to conduct business. For example, in the year 2000, just half of Americans had broadband access at home. Today, that number sits at more than 90%. As more individuals access and utilize information technology and online services to conduct their business, the System has responded accordingly. It is the responsibility of the FCA, as the System's regulator and examiner, to see that the System's use of information technology is consistent with operating in a safe and sound manner.

To that end, we propose to revise the current E-commerce regulations at part 609 to codify existing expectations concerning risk management practices, corporate governance, and internal control systems for conducting business in an electronic environment. These expectations have been and are continually communicated to System institutions through the FCA's role as examiner of the System. By codifying expectations through these proposed regulations, we ensure each System institution fully understands the responsibility to operate under a comprehensive cyber risk framework. This proposed rule gives stakeholders an opportunity to comment on these important expectations.

Information security refers to the policies, procedures, and technologies used to protect information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction to provide confidentiality, integrity, and availability of information and data, no matter its form. Cyber security is the process of protecting information assets and data by preventing, detecting, and responding to cyber-attacks. Cyber risk is any risk associated with financial loss, disruption, or damage to the reputation of an organization due to the failure or unauthorized or erroneous use of its information systems. The policies, procedures, and internal controls implemented to manage cyber risk should incorporate information security and cyber security concepts and sound business practices. Appropriate governance and controls over cyber risk can help guide future decision-making about how to mitigate risk while focusing on an institution's strategic goals and objectives.

A. Recissions

We propose to rescind §§ 609.910, 609.915, 609.920, 609.925, 609.940, and 609.950. The rescissions will delete all references to E–SIGN and FRB Regulations B, Z, and M. E–SIGN and the FRB regulations do not establish independent requirements of System institutions. Furthermore, we believe the reminder of the applicability of E–SIGN and the FRB regulations is no longer necessary. The substantive content of § 609.940 (Internal systems and controls) has been absorbed by the proposed revisions of § 609.930 below.

B. Revisions

We also propose to revise §§ 609.905, 609.930, and 609.935. We do not propose any changes to § 609.945 (Records retention). We also propose to revise the name of part 609 to ''Cyber Risk Management'' and rename the sections, consistent with the proposed revisions. These revisions will codify FCA's expectations for System institutions when considering and documenting cyber risk policies and procedures, commensurate with the size and complexity of each individual association.

Most notably, we propose to revise part 609 to require an institution to implement a board-approved cyber risk plan that helps an institution manage the risk by:

1. Assessing institution risk and identifying potential points of vulnerability;
2. Establishing a risk management program for the institution's identified risks;
3. Considering privacy and legal compliance issues surrounding cyber risk;
4. Developing an incident response plan;
5. Developing a cyber risk training program;
6. Setting policies for managing third-party relationships;
7. Maintaining robust internal controls; and
8. Establishing institution board reporting requirements.

FCA seeks to maintain maximum flexibility for System institutions, including the Federal Agricultural Mortgage Corporation (FAMC), given our understanding that there are varying degrees of size and complexity across the System. Institutions must strive to maintain industry standards. We note our Office of Examination frequently consults the Federal Financial Institutions Examination Council (FFIEC) guidance when examining for safety and soundness as it relates to institutions' cyber risk. We believe implementing appropriate risk management strategies means System institutions will demonstrate effective cyber risk governance and continuously monitor and manage their cyber risk within the risk appetite and tolerance approved by their boards of directors.

Comments are sought on all the provisions in the regulation.

List of Subjects in 12 CFR Part 609

Agriculture, Banks, Banking, Computer technology, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, FCA proposes to revise part 609 of title 12 of the Code of Federal Regulations to read as follows:

PART 609—CYBER RISK MANAGEMENT

Subpart A—General Rules

Sec.
609.905 In general.

Subpart B—Standards for Boards and Management

Sec.
609.930 Cyber risk management.
609.935 Business planning.
609.945 Records retention.

Authority: Section 5.9 of the Farm Credit Act (12 U.S.C. 2243).

PART 609—CYBER RISK MANAGEMENT

Subpart A—General Rules

§ 609.905 In general.

Farm Credit System (System) institutions must engage in appropriate risk management practices to ensure safety and soundness of their operations. A System institution's board and management must maintain effective policies, procedures, and controls to mitigate cyber risks. This includes establishing an appropriate vulnerability management program to monitor cyber threats, mitigate any known vulnerabilities, and establish appropriate reporting mechanisms to the institution's board and the Farm Credit Administration (FCA).

Subpart B—Standards for Boards and Management

§ 609.930 Cyber risk management.

(a) *Cyber risk management program.* Each System institution must implement a comprehensive, written cyber risk management program consistent with the size and complexity of the institution's operations. The program must ensure the security and confidentiality of current, former, and potential customer and employee information, protect against reasonably anticipated cyber threats or hazards to the security or integrity of such information, and protect against unauthorized access to or use of such information.

(b) *Role of the board and management.* Each year, the board of directors of each System institution or an appropriate committee of the board must:

(1) Approve a written cyber risk program. The program must be consistent with industry standards to ensure the institution's safety and soundness and compliance with law and regulations;

(2) Oversee the development, implementation, and maintenance of the institution's cyber risk program; and

(3) Assign roles and responsibilities and determine necessary expertise for the institution's board, management, and employees.

(c) *Cyber risk program.* Each institution's cyber risk program must, at a minimum:

(1) Include an annual risk assessment of the internal and external factors likely to affect the institution. The risk assessment, at a minimum, must:

(i) Identify and assess internal and external factors that could result in unauthorized disclosure, misuse, alteration, or destruction of current, former, and potential customer and employee information or information systems; and

(ii) Assess the sufficiency of policies, procedures, internal controls, and other practices in place to mitigate risks.

(2) Identify systems and software vulnerabilities, prioritize the vulnerabilities and the affected systems in order of risk, and perform timely remediation. The particular security measures an institution adopts will depend upon the risks presented by the size of the institution and the nature, scope, and complexity of the institution's operations and activities.

(3) Maintain an incident response plan that contains procedures the institution must implement when it suspects or detects unauthorized access to current, former, or potential customer, employee, or other sensitive or confidential information. At a minimum, an institution's incident response plan must contain procedures for:

(i) Assessing the nature and scope of an incident, and identifying what information systems and types of information have been accessed or misused;

(ii) Acting to contain the incident while preserving records and other evidence;

(iii) Resuming business activities during intrusion response;

(iv) Notifying the institution's board of directors when the institution learns of an incident involving unauthorized access to or use of sensitive or confidential customer and/or employee information;

(v) Notifying FCA as soon as possible or no later than 36 hours after the institution determines that an incident has occurred; and

(vi) Notifying former, current, or potential customers and employees and known visitors to your website of an incident, when warranted, and in accordance with State and Federal laws.

(4) Describe the plan to train employees, vendors, contractors, and the institution board to implement the institution's cyber risk program.

(5) Include policies for vendor management and oversight. Each institution, at a minimum, must:

(i) Exercise appropriate due diligence in selecting vendors;

(ii) Require its vendors, by contract, to implement appropriate measures designed to meet the objectives of the institution's cyber risk program; and

(iii) Monitor its vendors to ensure they have satisfied agreed upon expectations and deliverables. Monitoring must include reviewing audits, summaries of test results, or other equivalent evaluations of its vendors.

(6) Maintain robust internal controls by regularly testing the key controls, systems, and procedures of the cyber risk management program.

(i) The frequency and nature of such tests are to be determined by the institution's risk assessment.

(ii) Tests must be conducted or reviewed by independent third parties or staff independent of those who develop or maintain the cyber risk management program.

(iii) Internal systems and controls must provide reasonable assurances that System institutions will prevent, detect, and remediate material deficiencies on a timely basis.

(d) *Privacy.* Institutions must consider privacy and other legal compliance issues, including but not limited to, the privacy and security of System institution information; current, former, and potential borrower information; and employee information, as well as compliance with statutory requirements for the use of electronic media.

(e) *Board reporting requirements.* Each institution must report quarterly to its board or an appropriate committee of the board. The report must contain material matters and metrics related to the institution's cyber risk management program, including specific risks and threats.

§ 609.935 Business planning.

The annually approved business plan required under subpart J of part 618 of this chapter, and § 652.60 of this chapter for the Federal Agricultural Mortgage Corporation, must include a technology plan that, at a minimum:

(a) Describes the institution's intended technology goals, performance measures, and objectives;

(b) Details the technology budget;

(c) Identifies and assesses the business risk of proposed technology changes and assesses the adequacy of the institution's cyber risk program;

(d) Describes how the institution's technology and security support the

current and planned business operations; and

(e) Reviews internal and external technology factors likely to affect the institution during the planning period.

§ 609.945 Records retention.

Records stored electronically must be accurate, accessible, and reproducible for later reference.

Dated: July 19, 2022.

Ashley Waldron,

Secretary, Farm Credit Administration.

[FR Doc. 2022–15747 Filed 7–27–22; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0979; Project Identifier MCAI–2022–00171–T]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2019–25–16, which applies to certain Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and –200LL airplanes. AD 2019–25–16 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2019–25–16, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require the actions in AD 2019–25–16 and require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations and incorporate certain structural modifications, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 12, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For ANAC material that will be incorporated by reference (IBR) in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* internet *www.anac.gov.br/en/.* You may find this material on the ANAC website at *https://sistemas.anac.gov.br/certificacao/DA/DAE.asp.* For Embraer service information identified in this proposed AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* internet *www.flyembraer.com.* 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. The ANAC AD is also available in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0979.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0979; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Krista Greer, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3221; email *krista.greer@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–2022–0979; Project Identifier MCAI–2022–00171–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Krista Greer, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3221; email *krista.greer@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2019–25–16, Amendment 39–21015 (85 FR 453, January 6, 2020) (AD 2019–25–16), which applies to certain Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and 200 LL airplanes. AD 2019–25–16 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations; and adds airplanes to the applicability. The FAA issued AD 2019–25–16 to address fatigue cracking of various principal structural elements (PSEs); such cracking could result in reduced structural integrity of the airplane and to prevent safety significant latent failures; such failures, in combination with one or more other specified failures or events, could result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems. Furthermore, the FAA issued AD 2019–25–16 to address potential ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions; such failures, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Actions Since AD 2019–25–16 Was Issued

Since the FAA issued AD 2019–25–16, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2022–02–01, effective February 9, 2022 (ANAC AD 2022–02–01) (also referred to as the MCAI), to correct an unsafe condition for all Embraer S.A. Model ERJ 170–100 STD, ERJ 170–100 LR, ERJ 170–100 SU, ERJ 170–100 SE, ERJ 170–200 STD, ERJ 170–200 LR, ERJ 170–200 SU, and ERJ 170–200 LL airplanes. ANAC AD 2022–02–01 supersedes ANAC AD 2019–05–1, effective May 2, 2019; corrected July 1, 2019 (ANAC AD 2019–05–01), which corresponds to FAA AD 2019–25–16.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address fatigue cracking of various PSEs; such cracking could result in reduced structural integrity of the airplane and to address safety significant latent failures; such failures, in combination with one or more other specified failures or events, could result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems. Furthermore, the FAA is also proposing this AD to address potential ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions; such failures, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. See the MCAI for additional background information.

Other Relevant Rulemaking

ANAC has also issued ANAC AD 2022–05–02, effective May 13, 2022 (ANAC AD 2022–05–02), which corresponds to FAA AD 2022–11–51, Amendment 39–22074 (87 FR 33623, June 3, 2022) (AD 2022–11–51). AD 2022–11–51 applies to certain Embraer S.A. Model ERJ 170–200 STD, ERJ 170–200 LR, ERJ 170–200 SU, and ERJ 170–200 LL airplanes. AD 2022–11–51 requires a detailed inspection for cracks of affected wing tip connections, corrective actions if necessary, and revision of the existing maintenance or inspection program. Incorporating maintenance review board report (MRBR) task number 57–30–002–0002, ''Enhanced Wingtip to Wing Spar Attachments—Internal'' is part of the requirements of paragraph (g) of AD 2022–11–51 and paragraph (h)(6) of AD 2022–11–51 includes exceptions for that task. The FAA issued AD 2022–11–51 to address cracks that could develop on the wing tip connection area that can affect its structural integrity to the point of an in-flight detachment, which, even if sufficient controllability of the airplane is maintained for the safe continuation of the flight, could result in the detached part damaging other airplane parts and affecting controllability, as well as damaging property and injuring persons on the ground.

Since all airplanes affected by AD 2022–11–51 already incorporated MRBR task number 57–30–002–0002, this proposed AD does not require incorporating MRBR task number 57–30–002–0002 as part of the revision of the existing maintenance or inspection program required by paragraph (i) of this proposed AD.

Related Service Information Under 1 CFR Part 51

ANAC AD 2022–02–01 describes new or more restrictive airworthiness limitations for airplane structures and the incorporation of certain structural modifications (*i.e.,* reinforcement of left-hand (LH) and right-hand (LH) wing spar II lower; and reinforcement of the wing lower skin chordwise splices of LH and RH wing) before the defined structural modifications points (SMP).

This AD also requires Appendix A—Airworthiness Limitations of EMBRAER 170/175 Maintenance Review Board Report (MRBR), MRB–1621, Revision 14, dated September 27, 2018; and Embraer Temporary Revision (TR) 14–1, dated November 13, 2018, to Part 4-Life-Limited Items, of Appendix A of EMBRAER 170/175 Maintenance Review Board Report (MRBR), MRB–1621, Revision 14, dated September 27, 2018; which the Director of the Federal Register approved for incorporation by reference as of February 10, 2020 (85 FR 453).

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.

Differences Between This Proposed AD and the MCAI

ANAC AD 2022–02–01 supersedes ANAC AD 2019–05–01; however ANAC AD 2022–02–01 does not retain any requirements from ANAC AD 2019–05–01. ANAC AD 2022–02–01 only requires airworthiness limitations that are in Part 2 of the referenced MRBR. This proposed AD would retain the airworthiness limitations for Parts 1, 3, and 4 of the MRBR.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would retain the requirements of AD 2019–25–16. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in ANAC AD 2022–02–01 described previously, as proposed for incorporation by reference. Any differences with ANAC AD 2022–02–01 are identified as exceptions in the regulatory text of this AD except as

discussed under ''Differences Between this Proposed AD and the MCAI.''

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

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate ANAC AD 2022–02–01 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with ANAC AD 2022–02–01 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by ANAC AD 2022–02–01 for compliance will be available at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0979 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

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

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

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

Costs of Compliance

The FAA estimates that this proposed AD affects 662 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–25–16 to be $7,650 (90 work-hours × $85 per work-hour).

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

The FAA estimates the total cost per operator for the new proposed revision to the existing maintenance or inspection program to be $7,650 (90 work-hours × $85 per work-hour).

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
New proposed actions	196 work-hours × $85 per hour = $16,660	$98,860	$115,520	$76,474,240

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

According to the manufacturer, some or all of the costs of this proposed 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.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive (AD) 2019–25–16, Amendment 39–21015 (85 FR 453, January 6, 2020); and
■ b. Adding the following new AD:

Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.): Docket No. FAA–2022–0979; Project Identifier MCAI–2022–00171–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 12, 2022.

(b) Affected ADs

This AD replaces AD 2019–25–16, Amendment 39–21015 (85 FR 453, January 6, 2020) (AD 2019–25–16).

(c) Applicability

This AD applies to all Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and –200 LL airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks; 27, Flight controls; 28, Fuel; 52, Doors; 53, Fuselage; 54, Nacelles/pylons; 55, Stabilizers; 57, Wings; 71, Powerplant; and 78, Exhaust.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking of various principal structural elements (PSEs); such cracking could result in reduced structural integrity of the airplane. The FAA is also issuing this AD to address safety significant latent failures; such failures, in combination with one or more other specified failures or events, could result in a hazardous or catastrophic failure condition of avionics, hydraulic systems, fire detection systems, fuel systems, or other critical systems. Furthermore, the FAA is issuing this AD to address potential ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions; such failures, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

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

This paragraph restates the requirements of paragraph (i) of AD 2019–25–16, with no changes. For Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and –200LL airplanes; manufacturer serial numbers 17000002, 17000004 through 17000013 inclusive, and 17000015 through 17000761 inclusive: Within 90 days after February 10, 2022 (the effective date of AD 2019–25–16), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Part 1-Certification Maintenance Requirements, Part 2-Airworthiness Limitation Inspections (ALI)-Structures, Part 3-Fuel System Limitation Items, and Part 4-Life Limited Items; and EMBRAER Temporary Revision (TR) 14–1, dated November 13, 2018, to part 4-Life Limited Items; of Appendix A of the EMBRAER 170/175 MRBR, MRB–1621, Revision 14, dated September 27, 2018 (EMBRAER 170/175 MRB–1621, Revision 14). The initial compliance time for doing the tasks is at the later of the times specified in paragraphs (g)(1) and (2) of this AD.

(1) Within the applicable times specified in EMBRAER 170/175 MRB–1621, Revision 14. For the purposes of this AD, the initial compliance times (identified as ''Threshold'' or ''T'' in EMBRAER 170/175 MRB–1621, Revision 14) are expressed in ''total flight cycles'' or ''total flight hours,'' as applicable.

(2) Within 90 days or 600 flight cycles after February 10, 2022 (the effective date of AD 2019–25–16), whichever occurs later.

(h) Retained Restrictions on Alternative Actions, Intervals, and CDCCLs, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2019–25–16, with no changes. Except as required by paragraph (i) of this AD: After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (l)(1) of this AD.

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

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2022–02–01, effective February 9, 2022 (ANAC AD 2022–02–01). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements for Part 2—Airworthiness Limitation Inspections (ALI)-Structures specified in paragraph (g) of this AD only.

(j) Exceptions to ANAC AD 2022–02–01

(1) Where ANAC AD 2022–02–01 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Alternative method of compliance (AMOC)'' section of ANAC AD 2022–02–01 does not apply to this AD.

(3) Where paragraph (b)(1) of ANAC AD 2022–02–01 specifies incorporating all airworthiness limitations in Part 2 of the service information specified in paragraph (b)(1) of ANAC AD 2022–02–01, for this AD, do not incorporate the threshold and interval for maintenance review board report (MRBR) task number 57–30–002–0002, ''Enhanced Wingtip to Wing Spar Attachments—Internal.''

Note 1 to paragraph (j)(3): AD 2022–11–51 requires, among other actions, incorporating alternate thresholds and intervals for MRBR task number 57–30–002–0002. The airplanes affected by MRBR task number 57–30–002–0002 are identified in paragraph (c) of AD 2022–11–51.

(k) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs are allowed unless they are approved as specified in paragraph (f) of ANAC AD 2022–02–01.

(l) Additional FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (m)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(ii) AMOCs approved previously for AD 2019–25–16 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(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.

(3) *Required for Compliance (RC):* Except as required by paragraph (l)(2) of this AD, if any service information referenced in AD

2022–02–01 contains steps in the Accomplishment Instructions or figures that are labeled as RC, the instructions in RC steps, including subparagraphs under an RC step and any figures identified in an RC step, must be done to comply with this AD; any steps including substeps under those steps, that are not identified as RC are recommended. The instructions in steps, including substeps under those steps, 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 instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep.

(m) Related Information

(1) For ANAC AD 2022–02–01, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* 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.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0979.

(2) 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 206–231–3221; email *krista.greer@faa.gov.*

(3) For Embraer service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* internet *www.flyembraer.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on July 21, 2022.

Christina Underwood,

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

[FR Doc. 2022–16098 Filed 7–27–22; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 22–239; FCC 22–55; FR ID 98231]

Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on referencing a new publication for use in determining a television station's designated market area (DMA) for satellite and cable carriage under the Commission's regulations. The current rules require television broadcasters, cable operators, and satellite carriers to determine DMA for carriage election and other purposes by reference to the Nielsen Station Index Directory (Annual Station Index) in combination with the United States Television Household Estimates (Household Estimates), or a successor publication. Nielsen Media Research no longer publishes the Annual Station Index and has replaced it with a monthly Local TV Station Information Report (Local TV Report), which is now the only publication necessary to determine a station's DMA. The Household Estimates publication is no longer in use. First, the Commission seeks comment on whether we should revise our rules to identify the Local TV Report as the successor publication to the Annual Station Index to be used to determine a station's DMA. Second, because the Local TV Report is published monthly rather than yearly as the Annual Station Index, we seek comment on which Local TV Report should be used for carriage election.

DATES: Comments are due on or before August 29, 2022; reply comments are due on or before September 26, 2022.

ADDRESSES: You may submit comments, identified by MB Docket No. 22–239, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.[1]

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Kenneth Lewis, *Kenneth.lewis@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2622. Direct press inquiries to Janice Wise at (202) 418–8165.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), MB Docket No. 22–239, adopted on July 14, 2022 and released July 14, 2022. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at *https://www.fcc.gov/ecfs.* (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

I. Introduction

1. In this Notice of Proposed Rulemaking, we seek comment on referencing Nielsen's Local TV Station Information Report (Local TV Report) for use in determining a television station's designated market area (DMA)

[1] FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788 (OMD 2020). *See https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

for satellite and cable carriage under the Commission's regulations. The Nielsen Company has notified the Commission that its Nielsen Media Research division will no longer publish the annual Nielsen Station Index Directory (Annual Station Index), which has been used in combination with the Nielsen Station Index and United States Television Household Estimates (Household Estimates), to determine a station's DMA for local television stations seeking carriage. Nielsen has stated that the information contained in the Annual Station Index is now in the Local TV Report, which is published monthly. Thus, the Local TV Report is now the only publication necessary to determine a station's DMA. The Household Estimates publication is no longer in use. In the discussion below, we tentatively conclude that we should revise our rules to identify the Local TV Report as the successor publication to be used to determine a station's DMA. However, the Local TV Report excludes low-power and Class A Class A stations that fail to meet its de minimis audience threshold, but Nielsen is able to generate upon request for subscribers a report that contains all low-power and Class A stations. Although DMA determinations are not relevant for low-power and Class A station carriage, we ask whether a Nielsen generated report containing all low-power and Class A station upon request of subscribers is sufficient, or whether there other publications that could publicly provide this information?

II. Background

2. Pursuant to the Act, and the implementing rules adopted by the Commission, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within their market. Similarly, section 338 of the Act requires satellite carriers to carry on request all local television broadcast stations' signals in local markets in which the satellite carrier carries at least one local television broadcast signal pursuant to the statutory copyright license. A station's market for cable and satellite carriage is its DMA, as defined by The Nielsen Company's Annual Station Index and Household Estimates ''or any successor publications.'' The implementing regulations also specify which edition of the Annual Station Index is to be used for each election cycle (specifically, the one published the year prior to the election).

3. The Nielsen Company informed the Commission in a letter that the Annual Station Index would no longer be published and that it would be replaced with the Local TV Report that generally contains the same information as the Annual Station Index and is simply published monthly rather than annually. However, Nielsen also stated that one noted difference between the Annual Station Index and the Local TV Report is that the latter includes low-power and Class A television stations only if they reach a de minimis average audience size threshold. Nielsen also informed the Commission that the Household Estimates publication is no longer in use.

III. Discussion

4. As an initial matter, we seek comment on whether the rule should be amended to reference the Local TV Report as the successor to the Annual Station Index and Household Estimates for purposes of determining DMA for carriage elections. We also seek comment on whether the October Local TV Report published two years prior to each triennial carriage election should be used to allow for an apples-to-apples comparison with the data from the Annual Station Index. Or, alternatively, should we consider a Local TV Report that is published closer in time to each triennial carriage election?

5. As previously noted above, the Local TV Report includes low-power and Class A television stations only if they meet a certain de minimis average audience size threshold. As also noted, DMA is not relevant for low-power and Class A carriage. Nevertheless, the omission of all low-power and Class A stations from the Local TV Report is a change from the Annual Station Index. However, Nielsen has stated that it still gathers this information for all television stations and can generate a report upon request for subscribers that would include all low-power and Class A stations other than those already identified in the Local TV Report.[2] We seek comment on whether Nielsen's generation of a report at the request of subscribers is sufficient? If obtaining any necessary information from Nielsen in this manner is not sufficient, are there other publications that could publicly provide this information? We also seek comment on any other differences between Nielsen's Station Index Directory and Local TV Report that we should take into account as we update these rules?

6. We further seek comment on whether there any other rules that we should consider updating in light of Nielsen's publication changes? Although we note that the Commission's carriage election rules discussed herein appear to be the only Commission rules that expressly reference the Annual Station Index and Household Estimates, changing how we determine DMA in this context will impact other statutory and rule provisions relating to carriage.[3] We tentatively conclude that the publication or publications ultimately selected in this proceeding will also be used to define ''local market'' as contemplated in these other statutory provisions and rules. We seek comment on this tentative conclusion.

IV. Procedural Matters

A. Initial RFA Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[4] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the Notice of Proposed Rulemaking (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided on the first page of the *NPRM.* The Commission will send a copy of this entire *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[5] In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.[6]

1. Need for, and Objectives of, the Proposed Rule Changes.

8. In this Notice of Proposed Rulemaking (*NPRM*), we seek comment on adoption of a new publication for use in determining a television station's designated market area (DMA) for satellite and cable carriage under the Commission's regulations. The Nielsen Company has notified the Commission that its Nielsen Media Research division will no longer publish an annual Station Index Directory (Annual Station Index). Under our rules, this publication has

[2] Nielsen Letter at 2 and Nielsen Letter Addenda.

[3] *See, e.g.,* 47 U.S.C. 325(b)(7)(E) (retransmission consent); 47 U.S.C. 339(d)(1) (carriage of distant signals by satellite carriers); 47 U.S.C. 340(i)(1) (significantly viewed); 47 CFR 76.54(e) (significantly viewed); 47 CFR 76.65(b)(3)(i) (retransmission consent); 47 CFR 73.683(f) (field strength contours). These statutory and rule provisions incorporate or reference the definition of ''local market'' in either the carriage election rules (*see infra* Appendix A) or 17 U.S.C. 122(j) (*see supra* note 2).

[4] 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[5] 5 U.S.C. 603(a).

[6] *Id.*

been used, along with the Nielsen Station Index United States Television Household Estimates (Household Estimates), to determine a station's DMA for local television stations seeking carriage on satellite and cable systems.[7] The Annual Station Index has been replaced with a monthly Local TV Station Information Report (Local TV Report), which contains all the information necessary to determine a television station's DMA.[8] We tentatively conclude that we should amend our rules to eliminate reference to the Annual Station Index and the Household Estimates and instead determine DMA assignments for carriage purposes by reference to the Local TV Report, and seek comment on this tentative conclusion. We also seek comment on whether we should direct parties to refer to the Local TV Report published in the October two years prior to each triennial carriage election, or one published in a different month or year or closer to the time period of the election. We seek to amend our rules to replace the Annual Station Index and the Household Estimates with a ''successor publication'' that is consistent with the Act and our rules and that provides similarly useful information for parties engaged in the retransmission consent-mandatory carriage election cycle.

2. Legal Basis

9. The proposed action is authorized pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 303, 325, 335, 338, 339, 340, 403, 534.

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

10. The RFA directs agencies to provide a description of and the number of small entities that may be affected by the proposed rules, if adopted.[9] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [10] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[11] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[12] The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.[13] Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services.[14] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[15] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[16]

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[17] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[18] Of this number, 2,964 firms operated with fewer than 250 employees.[19] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.[20] Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.[21] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide.[22] Based on industry data, there are about 420 cable companies in the U.S.[23] Of these, only five have more than 400,000 subscribers.[24] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[25] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[26] Of these, about 639 have more than 15,000 subscribers.[27] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

14. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,''

[7] Letter from Michael Nilsson, Harris, Wiltshire & Grannis LLP, Counsel to the Nielsen Company, to Evan Baranoff, Attorney Advisor, Media Bureau, Policy Division, Federal Communications Commission (Dec. 15, 2021) (Nielsen Letter).

[8] *Id.*

[9] 5 U.S.C. 603(b)(3).

[10] *Id.* § 601(6).

[11] *Id.* § 601(3) (incorporating the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' *Id.* § 601(3).

[12] 15 U.S.C. 632(a)(1). Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[13] *See* U.S. Census Bureau, *2017 NAICS Definition, ''517311 Wired Telecommunications Carriers,'' https://www.census.gov/naics/?input=517311&year=2017&details=517311.*

[14] *Id.*

[15] *Id.*

[16] Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

[17] *See* 13 CFR 121.201, NAICS Code 517311.

[18] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, *https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[19] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[20] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021),

*https://docs.fcc.gov/pubId.lic/*attachments/DOC–379181A1.pdf.

[21] *Id.*

[22] 47 CFR 76.901(d).

[23] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[24] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[25] 47 CFR 76.901(c).

[26] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[27] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [28] For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice.[29] Based on industry data, only four cable system operators have more than 677,000 subscribers.[30] Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[31] Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

15. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.[32] Transmission facilities may be based on a single technology or combination of technologies.[33] Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services.[34] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[35]

16. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[36] U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.[37] Of this number, 2,964 firms operated with fewer than 250 employees.[38] Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service—DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.[39] DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

17. *Open Video Services.* The open video system (OVS) framework was established in 1996 and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. OVS operators provide subscription services and therefore fall within the SBA small business size standard for the cable services industry, which is ''Wired Telecommunications Carriers.'' [40] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[41] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[42] Of this total, 2,964 firms operated with fewer than 250 employees.[43] Thus, under the SBA size standard the majority of firms in this industry can be considered small. Additionally, we note that the Commission has certified some OVS operators who are now providing service and broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information for the entities authorized to provide OVS however, the Commission believes some of the OVS operators may qualify as small entities.

18. *Wireless Cable Systems—Broadband Radio Service and Educational Broadband Service.* Wireless cable systems use the Broadband Radio Service (BRS) [44] and

[28] 47 U.S.C. 543(m)(2).

[29] *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* Public Notice, 16 FCC Rcd 2225 (CSB 2001) (*2001 Subscriber Count PN*). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to be approximately 48.6 million. *See Communications Marketplace Report,* GN Docket No. 20–60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (*2020 Communications Marketplace Report*). However, because the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN,* the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. *See* 47 CFR 76.901(e)(1).

[30] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[31] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. *See* 47 CFR 76.910(b).

[32] *See* U.S. Census Bureau, *2017 NAICS Definition, ''517311 Wired Telecommunications Carriers,'' https://www.census.gov/naics/?input=517311&year=2017&details=517311.*

[33] *Id.*

[34] *See id.* Included in this industry are: broadband internet service providers (*e.g.,* cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

[35] *Id.*

[36] *See* 13 CFR 121.201, NAICS Code 517311.

[37] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, *https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[38] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[39] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report,* Table III.A.5, 32 FCC Rcd 568, 595 (Jan. 17, 2017).

[40] *See* U.S. Census Bureau, *2017 NAICS Definition, ''517311 Wired Telecommunications Carriers,'' https://www.census.gov/naics/?input=517311&year=2017&details=517311.*

[41] *See* 13 CFR 121.201, NAICS Code 517311.

[42] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, *https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[43] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[44] BRS was previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS). *See Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

Educational Broadband Service (EBS) [45] to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[46] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[47] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.[48] The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.[49] Auction 86 concluded in 2009 with the sale of 61 licenses.[50] Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

19. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined in paragraph 6, *supra.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[51] Census data for 2017 shows that there were 3,054 firms that operated that year. Of this total, 2,964 operated with fewer than 250 employees.[52] Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census data, the Commission's internal records indicate that as of August 2021, there are 2,451 active EBS licenses.[53] The Commission estimates that of these 2,451 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.[54]

20. *Incumbent Local Exchange Carriers (ILECs) and Small Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers [55] is the closest industry with a SBA small business size standard.[56] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[57] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[58] Of this number, 2,964 firms operated with fewer than 250 employees.[59] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.[60] Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.[61] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

21. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.[62] Wired Telecommunications Carriers [63] is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired

[45] EBS was previously referred to as the Instructional Television Fixed Service (ITFS). *See id.*

[46] 47 CFR 27.1213(a).

[47] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1,500 or fewer employees.

[48] *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86,* Public Notice, 24 FCC Rcd 8277 (2009).

[49] *Id.* at 8296.

[50] *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period,* Public Notice, 24 FCC Rcd 13572 (2009).

[51] 13 CFR 121.201, NAICS Code 517311.

[52] United States Census Bureau, *Selected Sectors: Employment Size of Firms for the U.S. 2017,* TableID EC1700SIZEEMPFIRM (2017), *https://data.census.gov/cedsci/table?q=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM* (last visited Aug. 9, 2021).

[53] FCC, *Universal Licensing System, https://wireless2.fcc.gov/UlsApp/UlsSearch/results.jsp (under* ''*Advanced License Search*'' *option, select* ''*ED—Educational Broadband Service,*'' ''*Active*'' *and* ''*Regular*'' *License, and* ''*Exclude Leases*'' *to see search results).*

[54] The term ''small entity'' within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6).

[55] *See* U.S. Census Bureau, *2017 NAICS Definition,* ''*517311 Wired Telecommunications Carriers,*'' *https://www.census.gov/naics/?input=517311&year=2017&details=517311.*

[56] *See* 13 CFR 121.201, NAICS Code 517311.

[57] *Id.*

[58] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, *https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[59] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[60] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), *https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.*

[61] *Id.*

[62] Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[63] *See* U.S. Census Bureau, *2017 NAICS Definition,* ''*517311 Wired Telecommunications Carriers,*'' *https://www.census.gov/naics/?input=517311&year=2017&details=517311.*

Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[64] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[65] Of this number, 2,964 firms operated with fewer than 250 employees.[66] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.[67] Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.[68] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

22. *Television Broadcasting.* This industry is comprised of ''establishments primarily engaged in broadcasting images together with sound.'' [69] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[70] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small.[71] 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.[72] Of that number, 657 firms had revenue of less than $25,000,000.[73] Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

23. The Commission estimates that as of March 2022, there were 1,373 licensed commercial television stations.[74] Of this total, 1,280 stations (or 93.2%) had revenues of $41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 2022, there were 384 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,840 LPTV stations and 3,231 TV translator stations.[75] The Commission however does not compile, and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

24. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations [76] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

25. There are also 386 Class A stations.[77] Given the nature of these services, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard. In addition, there are 1,985 LPTV stations and 3,306 TV translator stations.[78] Given the nature of these services as secondary and in some cases purely a ''fill-in'' service, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

26. The *NPRM* proposes adoption of an amendment to our rules that codifies the fact that Nielsen Media Research no longer publishes the Annual Station Index and has replaced it with the Local TV Report. Parties will be required to reference this commercial publication to determine DMA assignments for stations involved in the carriage election process.

5. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

27. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[79]

28. These proposals would not impose a negative economic impact on any small entities because they impose no additional obligations on any entities. Commission regulations currently require that the Annual Station Index and Household Estimates ''or its successor publication'' be used for the purpose of determining a local

[64] *See* 13 CFR 121.201, NAICS Code 517311.

[65] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, *https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[66] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[67] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), *https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf.*

[68] *Id.*

[69] *See* U.S. Census Bureau, *2017 NAICS Definition, ''515120 Television Broadcasting,'' https://www.census.gov/naics/?input=515120&year=2017&details=515120.*

[70] *Id.*

[71] *See* 13 CFR 121.201, NAICS Code 515120.

[72] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515120,*https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.*

[73] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.*

[74] Broadcast Station Totals as of March 31, 2022, Public Notice, DA 22–365 (rel. April 5, 2022) (*March 2022 Broadcast Station Totals PN*), *https://www.fcc.gov/document/broadcast-station-totals-march-31-2022.*

[75] *Id.*

[76] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[77] *Supra* note 60 (discussing broadcast station totals as of March 31, 2021).

[78] *Id.*

[79] 5 U.S.C. 603(c).

broadcast station's DMA. Given that the Annual Station Index will no longer be published by Nielsen, this proceeding will simply identify the ''successor publication'' parties are already required to consult. Nielsen has stated that the relevant information in the Local TV Report is the same as that previously contained in the Annual Station Index, so the process of accessing the information should not be any more burdensome. The proposed rules therefore will not result in any substantive change in the existing requirements for small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

29. None.

V. Initial Paperwork Reduction Act Analysis

30. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[80] In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.[81]

A. Ex Parte Rules—Permit-But-Disclose

31. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[82] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Filing Requirements-Comments and Replies

32. Pursuant to §§ 1.415 and 1.419 of the Commission's rules,[83] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[84]

VI. Ordering Clauses

33. *It is ordered*, pursuant to the authority found in the Communications Act of 1934, As amended, 47 U.S.C. 151, 152, 154, 303, 325, 335, 338, 339, 340, 403, 534, this Notice of Proposed Rulemaking *is hereby adopted* and *notice is hereby given* of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

34. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television, Communications, Equal employment opportunity, internet, Reporting and recordkeeping requirements, Satellite, and Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Section 76.55 is amended by revising and redesignating paragraph (e)(2) introductory text as paragraph (e)(2)(i) and paragraph (e)(2)(i) as paragraph (e)(2)(ii) to read as follows:

§ 76.55 Definitions applicable to the must-carry rules.

* * * * *

(e) * * *

(2) A commercial broadcast station's market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its Nielsen Local TV Station Information Report or any successor publications.

(i) The applicable DMA list for the 2023 election pursuant to § 76.64(f) will be the DMA assignments specified in the Nielsen October 2021 Local TV Station Information Report, and so forth using the publications for the October two years prior to each triennial election pursuant to § 76.64(f).

(ii) [Removed and Reserved]

* * * * *

■ 3 . Section 76.66 is amended by revising paragraphs (e)(2) and (3) to read as follows:

§ 76.66 Satellite broadcast signal carriage.

* * * * *

(e) * * *

(2) A designated market area is the market area, as determined by Nielsen Media Research and published in the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates, the October 2021 Nielsen Local TV Station Information Report, or any successor publication. In the case of areas outside of any designated market area, any census area, borough, or other area in the State of Alaska that is outside of a designated market area, as

[80] The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[81] The Small Business Paperwork Relief Act of 2002 (SBPRA), Public Law 107–198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.). *See* 44 U.S.C. 3506(c)(4).

[82] 47 CFR 1.1200 *et seq.*

[83] 47 CFR 1.415, 1419.

[84] *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska.

(3) A satellite carrier shall use the October 2021 Nielsen Local TV Station Information Report for the retransmission consent-mandatory carriage election cycle commencing on January 1, 2024 and ending on December 31, 2027. The October 2024 Nielsen Local TV Station Information Report shall be used for the retransmission consent-mandatory carriage election cycle commencing January 1, 2028 and ending December 31, 2030, and so forth using the publications for the October two years prior to each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999–2000 Nielsen Station Index Directory or any subsequent issue of that publication, or the Local TV Station Information Report commencing with October 2021, and every three years thereafter (*i.e.,* October 2024, October 2027, etc.). A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in an area in the State of Alaska that is outside of a designated market, as described in paragraph (e)(2) of this section.

* * * * *

[FR Doc. 2022–16248 Filed 7–27–22; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 87, No. 144
Thursday, July 28, 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 COMMERCE

International Trade Administration

Rescission of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based upon the timely withdrawal of all review requests, the Department of Commerce (Commerce) is rescinding the administrative reviews covering the periods of review and the antidumping duty (AD) and countervailing duty (CVD) orders identified in the table below.

DATES: Applicable July 28, 2022.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Based upon timely requests for review, Commerce initiated administrative reviews of certain companies for the periods of review and the AD and CVD orders listed in the table below, pursuant to 19 CFR 351.221(c)(1)(i).[1] All requests for these reviews have been timely withdrawn.[2]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw their review requests within 90 days of the date of publication of the notice of initiation for the requested review. All parties withdrew their requests for the reviews listed in the table below within the 90-day deadline. No other parties requested administrative reviews of these AD/CVD orders for the periods noted in the table. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding, in their entirety, the administrative reviews listed in the table below.

	Period of review
AD Proceedings	
Germany: Forged Steel Fluid End Blocks, A–428–847	7/23/2020–12/31/2021
Italy: Stainless Steel Butt-Weld Pipe Fittings, A–475–828	2/1/2021–1/31/2022
Malaysia: Stainless Steel Butt-Weld Pipe Fittings, A–557–809	2/1/2021–1/31/2022
Republic of Korea: Forged Steel Fittings, A–580–904	5/28/2020–11/30/2021
The People's Republic of China:	
Truck and Bus Tires, A–570–040	2/1/2021–1/31/2022
Twist Ties, A–570–131	12/10/2020–3/31/2022
CVD Proceedings	
Argentina: Biodiesel, C–357–821	1/1/2021–12/31/2021
Germany: Forged Steel Fluid End Blocks, C–428–848	5/26/2020–12/31/2021
Indonesia: Biodiesel, C–560–848	1/1/2021–12/31/2021
The People's Republic of China:	
Carbon and Alloy Steel Threaded Rod, C–570–105[3]	1/1/2021–12/31/2021
Twist Ties, C–570–132[4]	12/1/2020–12/31/2021
Vertical Shaft Engines Between 225CC and 999CC and Parts Thereof, C–570–120	6/19/20–12/31/2021

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 6487 (February 4, 2022); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 13252 (March 9, 2022); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 21619 (April 12, 2022); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 29280 (May 13, 2022); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 35165 (June 9, 2022).

[2] The letters withdrawing the review requests may be found in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.*

[3] In the initiation notice that published on June 9, 2022 (87 FR 35165), the case name was incorrectly listed as alloy and certain carbon steel threaded rod. The correct case name is listed in this notice.

[4] In the initiation notice that published on June 9, 2022 (87 FR 35165), the period of review was incorrectly listed as 12/10/2020–3/31/2022.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping and/or countervailing duties on all appropriate entries during the periods of review noted above for each of the listed administrative reviews at rates equal to the cash deposit of estimated antidumping or countervailing duties, as applicable, required at the time of entry, or withdrawal of merchandise from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this recission notice in the **Federal Register** for rescinded administrative reviews of AD/CVD orders on countries other than Canada and Mexico. For rescinded administrative reviews of AD/CVD orders on Canada or Mexico, Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of this recission notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of merchandise subject to AD orders of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in these segments of these proceedings. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 22, 2022.

Scot Fullerton,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–16210 Filed 7–27–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NIST Generic Clearance for Program Evaluation Data Collections

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 5, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.

Title: NIST Generic Clearance for Program Evaluation Data Collections.

OMB Control Number: 0693–0033.

Form Number(s): None.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 40,000.

Average Hours per Response: Varied dependent upon the individual data collection. Response time could be 2 minutes for a response card or 1 hour for a more structured collection instrument. The overall average response time is expected to be 30 minutes.

Burden Hours: 20,000.

Needs and Uses: In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a non-regulatory agency of the Department of Commerce, proposes to conduct a number of surveys—both quantitative and qualitative—designed to evaluate our current programs from a customer's perspective. NIST proposes to perform program evaluation data collections by means of, but not limited to, focus groups, reply cards that accompany product distributions, and Web-based surveys and dialogue boxes that offer customers the opportunity to express their views on the programs they are asked to evaluate. NIST will limit its inquiries to data collections that solicit strictly voluntary opinions and will not collect information that is required or regulated. Steps will be taken to assure anonymity of respondents in each activity covered under this request.

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; Federal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0693–0033.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–16198 Filed 7–27–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Malcolm Baldrige National Quality Award and Examiner Applications

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance

with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 19, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.

Title: Malcolm Baldrige National Quality Award and Examiner Applications.

OMB Control Number: 0693–0006.

Form Number(s): None.

Type of Request: Regular submission, revision of a current information collection.

Number of Respondents: 580 (30 Applications for MBNQA and 550 Applicants for the Board of Examiners).

Average Hours per Response: 30 minutes for MBNQA eligibility form, 74 hours for MBNQA application, and 30 minutes for examiner applications.

Burden Hours: 2,510 (MBNQA = 15 hours for eligibility form, 2,220 hours for application, Board of Examiners = 275 hours).

Needs and Uses: Collection needed to obtain information to conduct the MBNQA (Pub. L. 100–107, Malcolm Baldrige National Quality Improvement Act of 1987).

Affected Public: Business, health care, education, or other for-profit organizations; health care, education, and other nonprofit organizations; and individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0693–0006.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–16202 Filed 7–27–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC159]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting via webinar of its Snapper Grouper Recreational Permitting and Reporting Technical Advisory Panel (AP) to discuss reporting and permitting alternatives for the private recreational snapper grouper fishery.

DATES: The AP meeting will be held on Thursday, August 18, 2022, from 1 p.m. until 4 p.m.

ADDRESSES: The meeting will be held via webinar. Webinar registration is required. Details are included in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Meeting information, including the webinar registration link, online public comment form, agenda, and briefing book materials will be posted on the Council's website at: *https://safmc.net/workgroups/.* Comments become part of the Administrative Record of the meeting and will automatically be posted to the website and available for Council consideration.

At this meeting the Advisory Panel will review the final recommendations from the Council's Private Recreational Reporting Working Group and the Mid-Atlantic Fishery Management Council's recreational tilefish permitting and reporting program.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: July 25, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–16226 Filed 7–27–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC200]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 77 HMS Hammerhead Sharks Assessment Webinar III.

SUMMARY: The SEDAR 77 assessment of the Atlantic stock of hammerhead sharks will consist of a stock identification (ID) process, data webinars/workshop, a series of assessment webinars, and a review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 77 HMS Hammerhead Sharks Assessment Webinar III has been scheduled for Monday, August 15, 2022, from 12 p.m. until 3 p.m., Eastern Time. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to

members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at *Kathleen.Howington@safmc.net.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 77 HMS Hammerhead Shark Assessment Webinar III are as follows: discuss any leftover data issues that were not cleared up during the data process, answer any questions that the analysts have, and introduce/discuss model development and model setup.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: July 25, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–16228 Filed 7–27–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC184]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Salmon Technical Team (STT) and Model Evaluation Workgroup (MEW) will hold a joint meeting in preparation for the September 2022 Pacific Council meeting. The meeting is open to the public.

DATES: The online meeting will be held on Wednesday, August 17, 2022, from 9 a.m. until 3 p.m., Pacific Time, or until business in completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, Staff Officer, Pacific Council; telephone: (503) 820–2410.

SUPPLEMENTARY INFORMATION: In preparation for the September 2022 Pacific Council meeting, the STT will continue to investigate the accuracy of and consider potential improvements to recent preseason effort projections produced by the Klamath Ocean Harvest Model during the preseason management process. The STT and MEW will continue the discussion on the work required and timeline necessary to investigate the potential for improvements to forecasts of ocean exploitation rates for Southern Oregon/Northern California Coast coho salmon and also discuss the candidate topics adopted in April for the 2022 salmon methodology review.

Discussions may include additional topics as time allows, including but not limited to administrative and ecosystem matters on the Pacific Council's September 2022 meeting, and various salmon related topics of pertinence.

Although non-emergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: July 25, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–16227 Filed 7–27–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC212]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public hybrid meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a four-day meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ). The meeting is open to the public offering both in-person and virtual options for participation.

DATES: The meeting will convene Monday, August 22 through Thursday, August 25, 2022, from 8 a.m. to 5 p.m., CDT, each day.

ADDRESSES: The meeting will take place at the Omni Corpus Christ hotel, located at 900 North Shoreline Boulevard, Corpus Christi, TX 78401. Please note, in-person meeting attendees will be expected to follow any current COVID–19 safety protocols as determined by the Council, hotel and the City of Corpus Christi, if any. Such precautions may include masks, room capacity restrictions, and/or social distancing. If you prefer to ''listen in'', you may access the log-on information by visiting our website at *www.gulfcouncil.org.*

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Monday, August 22, 2022; 8 a.m.–5 p.m., CDT

The meeting will begin with the Induction of Council Members. Following, the Administrative/Budget Committee will review and discuss the Final 2022 Funded Budget and Activities, and proposed Modifications to the Council's Statement of Organization Practices and Procedures (SOPPS).

The *Coral* Committee will review the Florida Keys National Marine Sanctuary Propose Rule and receive a presentation from Florida Fish and Wildlife Conservation Commission (FWC) on Florida Keys Sanctuary Proposed Rule.

The Outreach and Education (O&E) Technical Committee will review the Communication Plan to Promote Return of Shrimp Fleet Effort Data and summary recommendations from the O&E Technical Committee meeting.

The Data Collection Committee will review the Abbreviated Framework Action to Modify For-Hire Trip Declaration Requirements. Draft Options Joint Amendment to Require Electronic Reporting for Commercial Logbooks.

The *Reef Fish* Committee will convene to review *Reef Fish* Landings and Individual Fishing Quota (IFQ) Landings, and review of the Gulf and South Atlantic Scientific and Statistical Committees (SSC) Review and Recommendations for Southeastern U.S. Yellowtail Snapper.

Tuesday, August 23, 2022; 8 a.m.–5 p.m., CDT

The Reef Fish Committee will reconvene and receive an update on National Marine Fisheries Service (NMFS') Agency Priorities and Draft Equity and Environmental Justice Strategy Remarks. The Committee will review State-specific Private Angling *Red Snapper* Landings and *Reef Fish* Directed Effort, Public Hearing Draft Amendment 54: Modifications to the *Greater Amberjack* Catch Limits and Sector Allocations, and other Rebuilding Plan Modifications.

The Committee will review and discuss final action item Modification of Catch Limits for Gulf of Mexico *Red Snapper,* receive a presentation on Framework Action for *Vermilion Snapper* Recreational Bag Limit and *Gray Triggerfish* Commercial Trip Limit and Recreational Closed Seasons; and, SSC recommendations from the July 2022 SSC meeting.

The Committee will review draft options for Amendment 56: Modifications to the *Gag Grouper* Catch Limits, Sector Allocations, Fishing Seasons and other Rebuilding Plan Measures; receive a presentation on Scientific and Statistical Committee (SSC) Review of Alternative SEDAR 72 Base Model using Florida's State *Reef Fish* Survey and SSC Recommendations; and, review and discuss Individual Fishing Quota (IFQ) Focus Group Meeting Report.

Immediately following the Reef Fish Committee Highly Migratory Species Staff will be available for a Question and Answer Session.

Wednesday, August 24, 2022; 8 a.m.–5 p.m., CDT

The Migratory Species Committee will receive a presentation on Migratory Species Shark Assessments and Management Strategies.

The Sustainable Fisheries Committee will receive a presentation on NOAA's Climate Regional Action Plan and draft a comment letter, draft a comment letter on NOAA's Equity and Environmental Justice Strategy, review the SSC Recommendations on Acceptable Biological Catch (ABC) Control Rule; and, receive a presentation on Mechanisms and Options for Automating Catch Advise from Interim Analysis.

The Committee will have an overview of Research Set-Asides (RSA) Timeline, Composition, and Draft Objectives and discuss the Florida Pompano Petition for Federal Rulemaking.

Approximately 11:15 a.m., CDT, the Council will reconvene with a Call to Order, Announcements and Introductions, Adoption of Agenda and Approval of Minutes.

The Council will receive an update from Bureau of Ocean Energy Management (BEOM) on Wind Energy Development in the Gulf of Mexico and a presentation from the Western Central Atlantic Fishery Commission (WECAFC) updates on *Flying Fish-Dolphinfish* Working Group Efforts.

The Council will hold public testimony from 1:30 p.m. to 5 p.m., CDT on Final Action Item Modification of Catch Limits for Gulf of Mexico *Red Snapper,* Draft Comment Letter on NOAA's Climate Regional Action Plan and Draft Comment Letter on NOAA's Equity and Environmental Justice Strategy; and open testimony on other fishery issues or concerns. Public comment may begin earlier than 1:30 p.m. CDT, but will not conclude before that time. Persons wishing to give public testimony in-person must register at the registration kiosk in the meeting room. Persons wishing to give public testimony virtually must sign up via the link on the Council website. Registration for virtual testimony is open at the start of the meeting, Monday, August 22nd at 8 a.m., CDT and closes one hour before public testimony begins on Wednesday, August 24th (12:30 p.m., CDT).

Thursday, August 25, 2022; 8 a.m.–5 p.m., CDT

The Council will receive Committee reports from Administrative/Budget, *Coral,* Data Collection, Migratory Species, Outreach and Education, *Reef Fish* and Sustainable Fisheries Management Committees. The Council will receive updates from the following supporting agencies: South Atlantic Fishery Management Council; Texas Law Enforcement Efforts; NOAA Office of Law Enforcement (OLE); Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; and Department of State.

The Council will discuss any Other Business items; and, hold an Election for 2022–23 Chair and Vice-Chair.

—Meeting Adjourns

The meeting will be a hybrid meeting; both in-person and virtual participation available. You may register for the webinar to listen-in only by visiting *ww.gulfcouncil.org* and click on the Council meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, (813) 348–1630, at least 15 days prior to the meeting date.

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

Dated: July 25, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–16230 Filed 7–27–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID: 0648–XC202]

Council Coordination Committee Meeting

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

ACTION: Notice of a public meeting; information regarding the agenda.

SUMMARY: The National Marine Fisheries Service, Office of Sustainable Fisheries will host a closed session of the Council Coordination Committee (CCC), consisting of the Regional Fishery Management Council (Council) chairs, vice chairs, and executive directors on August 16, 2022. The intent of this virtual meeting is to discuss internal administrative matters regarding policies for preventing harassment of Council staff and all other Council process participants. The harassment prevention policies and related outcomes from this discussion will be shared in public sessions of future CCC meetings.

DATES: The meeting will begin at 4 p.m. Eastern Daylight Time (EDT) on Tuesday, August 16, adjourning at 5:30 p.m. EDT.

ADDRESSES: The meeting will be held online via WebEx for invited Council participants.

FOR FURTHER INFORMATION CONTACT: Morgan Corey by email at *Morgan.Corey@noaa.gov* or at (301) 427–8500.

SUPPLEMENTARY INFORMATION: The 2007 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act established the CCC. The CCC consists of the chairs, vice chairs, and executive directors of each of the eight Regional Fishery Management Councils, or their respective proxies. As consistent with MSA Section 302(i)(3) and codified at 50 CFR 600.135(c), the CCC may hold closed sessions for limited purposes, including to discuss internal administrative and employment matters. A closed session is required for this meeting to discuss topics that may be sensitive regarding prohibited harassment and related employment and personnel matters.

Special Accommodations

N/A. This session is closed to the public to discuss internal administrative matters.

Dated: July 25, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–16240 Filed 7–27–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC208]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability; of a proposed evaluation and pending determination for public comment.

SUMMARY: Notice is hereby given that NMFS has received a plan for a hatchery program rearing and releasing Chinook salmon in the Dungeness River basin. The plan describes the hatchery program operated by Washington Department of Fish and Wildlife (WDFW) in collaboration with Jamestown S'Klallam as a tribal co-manager. This document serves to notify the public of the availability and opportunity to comment on a Proposed Evaluation and Determination Documents (PEPD) on the proposed hatchery program.

DATES: Comments must be received at the appropriate address (see **ADDRESSES**) no later than 5 p.m. Pacific time on August 29, 2022. Comments received after this date may not be considered.

ADDRESSES: Comments may be submitted by email. The mailbox address for providing email comments is: *Hatcheries.Public.Comment@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on Dungeness River hatchery programs. The document available for public comment are available on the internet at *https://www.fisheries.noaa.gov/action/dungeness-hatcheries-plans.*

FOR FURTHER INFORMATION CONTACT: Morgan Robinson at (253) 307–2670 or by email at *morgan.robinson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

- Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally and artificially propagated;

• Puget Sound Steelhead (*O. mykiss*): threatened, naturally and artificially propagated;

Background

The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The ESA prohibits the take of endangered salmonids and, pursuant to ESA section 4(d), ESA regulations can be extended to prohibit the take of threatened salmonids. However, NMFS may make exceptions to the take prohibitions for hatchery programs that are approved by NMFS under the limits on the prohibitions outlined in 50 CFR 223.203(b). The operators, WDFW collaborating with tribal co-manager Jamestown S'Klallam Tribe, have submitted an HGMP to NMFS pursuant to NMFS' limit six of the 4(d) Rule of the ESA for hatchery activities in the Dungeness River basin, Washington.

This hatchery program is designed to contribute to the survival and recovery of Dungeness River spring Chinook salmon. This hatchery programs is intended to contribute to fulfilling federal tribal trust responsibilities and treaty rights guaranteed through treaties and affirmed in *U.S.* v. *Washington (1974)* by enhancing future fishing opportunities for Chinook salmon. Included in this hatchery plan is research and monitoring activities to study the effect of this programs on the recovery of Puget Sound Chinook salmon and steelhead.

Authority: 16 U.S.C. 1531 *et seq.;* 16 U.S.C. 742a *et seq.*

Dated: July 25, 2022.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–16239 Filed 7–27–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC211]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (NPFMC) will host the Seventh National Meeting of the Scientific Coordination Subcommittee of the Council Coordination Committee (SCS7). The meeting theme is ''Adapting Fisheries Management to a Changing Ecosystem.'' The agenda for the SCS7 is available at *https://meetings.npfmc.org/Meeting/Details/2945.*

DATES: The SCS7 will begin on Monday, August 15, 2022, through Wednesday, August 17, 2022, from 9 a.m. to 5 p.m. Alaska Time.

ADDRESSES:

Meeting address: The meeting will be held at the Harrigan Centennial Hall, Sitka, AK 99835, or listen to the meeting online through the link at *https://meetings.npfmc.org/Meeting/Details/2945.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for listening to the meeting are given under Connection Information, below.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; telephone: (907) 271–2809, email: *diana.evans@noaa.gov.* For technical support, please contact our Council administrative staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Monday, August 15, 2022, Through Wednesday, August 17, 2022

The SSC7 agenda will include the following:

(1) Keynote 1: Including ecosystem information in assessments and management advice
(2) Case Study 1: The collapse of snow crab: what happened and what now?
(3) Case Study 2: Using climate data to improve sablefish assessment model projections
(4) Case Study 3: Poor recruitment of reef fishes in the southeast U.S. Atlantic: preliminary findings and implications for management
(5) Keynote 2: Using ecosystem information in the stock assessment and advice process
(6) Case Study 4: Inclusion of ecosystem information in U.S. fish stock assessments: progress toward ecosystem-based fisheries management?
(7) Case Study 5: Using nonstationary stock assessment models to diagnose meaningful ecosystem indicators
(8) Case Study 6: Accounting for red tide mortality in stock assessments and catch projections
(9) Case Study 7: Integrating ecosystem and climate influences on dynamics of New England stocks into stock assessment
(10) Keynote 3: Multiple interacting species and the management challenges they pose
(11) Case Study 8: Multivariate approaches for Ecosystem-Based Fisheries management (EBFM) implementation in the U.S. Caribbean
(12) Case Study 9: Development of harvest control rules for Atlantic herring: an application of Management Strategy Evaluation (MSE) to account for herring's role in the ecosystem
(13) Case Study 10: Does ignoring predation mortality lead to an inability to achieve management goals in Alaska?
(14) Keynote 4: Perspectives on ways complex ecosystem projections can be applied in real-world fisheries management cases
(15) Case Study 11: Blueline tilefish negations between the Mid and South Atlantic Council SSCs
(16) Case Study 12: Toward dynamic harvest allocation rules for shifting species: a case study of three stocks in the Northeast U.S.
(17) Summary of key findings

The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2945* prior to the meeting, along with meeting materials.

The purpose of the SCS7 meeting is for participants to discuss various aspects of addressing Ecosystem-Based Fishery Management (EBFM), including ecosystem indicators, multi-species modeling and addressing distributional shifts in managed stocks. to better inform management decision-making by the eight Regional Fishery Management Councils and NMFS. No management actions will be decided by the participants attending the SCS7 meeting. The participants' role will be the development of findings, which will be captured in proceedings of the meeting. These proceedings will be provided to the Council Coordination Committee and posted on the U.S. Regional Fishery Management Councils' website.

Connection Information

You can listen-only to the meeting online using a computer, tablet, or smart phone, or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2945.* Only the audio portion and presentations displayed on the screen at the SCS7 meeting will be broadcast. The audio portions are listen-only; you will be unable to speak to the meeting participants via the broadcast. For technical support please contact our

administrative staff, email: *npfmc.admin@noaa.gov.*

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

Dated: July 25, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–16229 Filed 7–27–22; 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 29, 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. 3038–0061, 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: Owen Kopon, Associate Director, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5360.

SUPPLEMENTARY INFORMATION:

Title: Regulation 16.02 Daily Trade and Supporting Data Reports (OMB Control No. 3038–0061). This is a request for an extension of a currently approved information collection.

Abstract: Commission Rule 16.02 requires Reporting Markets to report transaction-level trade data and related order information for each executed transaction. The Commission uses the transaction-level trade data and related order information to discharge its regulatory responsibilities, including the responsibilities to prevent market manipulations and commodity price distortions and ensure the financial integrity of its jurisdictional markets.

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. On May 23, 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 31217 (''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: 20.

Estimated Average Burden Hours Per Respondent: 500 hours.

Estimated Total Annual Burden Hours: 10,000 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 25, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–16177 Filed 7–27–22; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0028]

Notice of Availability and Request for Comment: Revision to the Voluntary Standard for Bassinets and Cradles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The U.S. Consumer Product Safety Commission's (Commission or CPSC) mandatory rule, Safety Standard for Bassinets and Cradles, incorporates by reference ASTM F2194–13, Standard Consumer Safety Specification for Bassinets and Cradles, with modifications. ASTM revised F2194–13 several times between 2013 and 2022, but did not notify the Commission of those revisions. ASTM has again revised the voluntary standard for bassinets and cradles, publishing ASTM F2194–22$^{\varepsilon 1}$, and the Commission has received notice of this revision. CPSC seeks comment on whether ASTM F2194–22$^{\varepsilon 1}$ improves the safety of the consumer product covered by the standard.

DATES: Comments must be received by August 11, 2022.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2010–0028, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/hand delivery/courier/confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Division of the Secretariat, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2010–0028, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Celestine T. Kish, Project Manager, Directorate for Engineering, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2547; email: *ckish@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Commission to adopt mandatory standards for durable infant or toddler products. 15 U.S.C. 2056a(b)(1). Mandatory standards must be ''substantially the same as'' voluntary standards, or may be ''more stringent'' than voluntary standards, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the products. *Id.* Mandatory standards may be based, in whole or in part, on a voluntary standard.

Pursuant to section 104(b)(4)(B) of the CPSIA, if a voluntary standards organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under CPSIA section 104, it must notify the Commission. The revised voluntary standard then shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or a later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission responds to the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard, and therefore, the Commission is retaining its existing mandatory consumer product safety standard. 15 U.S.C. 2056a(b)(4)(B).

Under this authority, in 2013 the Commission issued a mandatory safety rule for bassinets and cradles. The rulemaking created 16 CFR part 1218, which incorporated by reference ASTM F2194–13, Standard Consumer Safety Specification for Bassinets and Cradles, with modifications to make the standard more stringent. 78 FR 63019 (Oct. 23, 2013). The mandatory standard included performance requirements and test methods, as well as requirements for warning labels and instructions, to address hazards to children. Since promulgation of the final rule, ASTM has published several revisions to ASTM F2194–13: 2013a, 2016, 2016,$^{\varepsilon 1}$ and 2022, but ASTM did not notify CPSC of these updates.

In June 2022, ASTM published a revised version of the voluntary standard for bassinets and cradles, and made editorial revisions in July 2022. On July 18, 2022, ASTM notified the Commission that it had approved and published a revised version of the voluntary standard, ASTM F2194–22.$^{\varepsilon 1}$ CPSC staff is assessing the revised voluntary standard to determine, consistent with section 104(b)(4)(B) of the CPSIA, its effect on the safety of consumer products covered by the standard. The Commission invites public comment on that question to inform staff's assessment and any subsequent Commission consideration of the revisions in ASTM F2194–22.$^{\varepsilon 1}$

Read-only copies of redlines demonstrating revisions to ASTM F2194–13a, ASTM F2194–16, ASTM F2194–16,$^{\varepsilon 1}$, ASTM F2194–22, and ASTM F2194–22,$^{\varepsilon 1}$, are available for review on ASTM's website (*https://www.astm.org/CPSC.htm*), at no cost. Likewise, a read-only copy of the existing, incorporated standard, ASTM F2194–13, is available for viewing, at no cost, on the ASTM website at: *https://www.astm.org/READINGLIBRARY/.* Interested parties can also download copies of the standards by purchasing them from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: 610–832–9585; *https://www.astm.org.* Alternatively, interested parties may schedule an appointment to inspect copies of the standards at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

Comments must be received by August 11, 2022. Because of the short statutory time frame Congress established for the Commission to consider revised voluntary standards under section 104(b)(4) of the CPSIA, CPSC will not consider comments received after this date.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–16203 Filed 7–27–22; 8:45 am]

BILLING CODE 6355–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

Carbon Dioxide Capture, Utilization and Sequestration (CCUS) Federal Lands and Outer Continental Shelf Permitting Task Force

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Request for nominations.

SUMMARY: As required by the Utilizing Significant Emissions with Innovative Technologies (USE IT) Act, the Council on Environmental Quality (CEQ) is seeking member nominations from a diverse range of qualified candidates to serve on the ''Carbon Dioxide Capture, Utilization and Sequestration (CCUS) Federal Lands and Outer Continental Shelf Permitting Task Force'' (Federal and OCS Task Force). Vacancies are

[1] The Commission voted 5–0 to publish this notice.

anticipated to be filled by December 31, 2022.

DATES: CEQ must receive nominations by September 26, 2022.

ADDRESSES: You may submit nominations, identified by ''CEQ CCUS Federal Lands and OCS Permitting Task Force,'' by email to *ccus.taskforce@ceq.eop.gov.*

Instructions: All nominations must include a resume; a short biography providing an adequate description of the nominee's qualifications (including information that will enable CEQ to make a determination as to whether the nominee meets the membership requirements of the Federal and OCS Task Force); and contact information for the nominee. Interested candidates may self-nominate.

FOR FURTHER INFORMATION CONTACT: Deirdre F. Donahue, Senior Counsel, 730 Jackson Place NW, Washington, DC 20503, (202) 395–5750 or *ccus.taskforce@ceq.eop.gov.*

SUPPLEMENTARY INFORMATION: The USE IT Act, Div. S, sec. 102(d)(2)(D), Public Law 116–260, 134 Stat. 1182, directs the establishment of no less than two regionally based task forces to: (1) identify challenges and successes that permitting authorities, project developers, and operators face to permit CCUS projects in an efficient, orderly, and responsible manner; and (2) provide recommendations to improve the performance of the permitting process and regional coordination for the purpose of promoting the efficient, orderly, and responsible development of CCUS projects and carbon dioxide pipelines. The regulatory authorities and permitting frameworks differ on Federal lands and the Outer Continental Shelf, and non-Federal lands; therefore, one task force will address permitting and other challenges for CCUS projects on Federal lands and the Outer Continental Shelf, and the other task force will address permitting and other challenges for CCUS projects on non-Federal lands.

The purpose of this notice is to request nominations for membership on the Federal and OCS Task Force, one of the two task forces that will be established under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, and its implementing regulations at 41 CFR parts 101–6 and 102–3. A separate **Federal Register** notice seeking member nominations for the Carbon Dioxide Capture, Utilization and Sequestration (CCUS) Non-Federal Lands Permitting Task Force has been issued simultaneously with this notice.

Members will be selected by the Council on Environmental Quality (CEQ) Chair pursuant to the USE IT Act. As required by FACA, the Federal and OCS Task Force membership will be fairly balanced in terms of the points of view represented and the functions to be performed by the Federal Lands and OCS Task Force. Members of the Federal and OCS Task Force will serve without compensation. However, each member may be reimbursed for authorized travel and per diem expenses incurred while attending Federal and OCS Task Force meetings in accordance with Federal Travel Regulations. The Federal and OCS Task Force shall meet not less than twice each year. To the maximum extent practicable, all task forces established under this provision of the USE IT Act shall meet collectively not less than once each year.

Responsibilities of the Federal and OCS Task Force

As provided by the USE IT Act, the duties of the Federal and OCS Task Force will be to:

- Inventory existing or potential Federal and state approaches to facilitate reviews associated with the deployment of CCUS projects and carbon dioxide pipelines, including best practices that avoid duplicative reviews to the extent permitted by law; engage stakeholders early in the permitting process; and make the permitting process efficient, orderly, and responsible;
- Develop common models for state-level carbon dioxide pipeline regulation and oversight guidelines that can be shared with states in the geographical area covered by the Federal and OCS Task Force;
- Provide technical assistance to states in implementing regulatory requirements and models developed by the Federal and OCS Task Force;
- Inventory current or emerging activities that transform captured carbon dioxide into a product of commercial value, or as an input to products of commercial value;
- Identify any priority carbon dioxide pipelines needed to enable efficient, orderly, and responsible development of CCUS projects at increased scale;
- Identify gaps in the current Federal and state regulatory framework and in existing data for the deployment of CCUS projects and carbon dioxide pipelines;
- Identify Federal and state financing mechanisms available to project developers; and
- Develop recommendations for relevant Federal agencies on how to develop and research technologies that can capture carbon dioxide and would be able to be deployed within the region covered by the Federal and OCS Task Force including any projects that have received technical or financial assistance for research under section 103(g)(6) of the Clean Air Act (42 U.S.C. 7403(g)).

Vacancies To Fill

The Federal and OCS Task Force must include no less than one representative in each of the following categories as specified in the USE IT Act. Div. S, sec. 102(d)(2)(D)(ii)(II), Public Law 116–260, 134 Stat.1182. Nominations are sought to fill at least one position in each category:

- Any state that requests participation in the geographical area covered by the Federal and OCS Task Force;
- Developers or operators of CCUS projects or carbon dioxide pipelines;
- Nongovernmental membership organizations, the primary mission of which concerns protection of the environment;

The USE IT Act also requires one expert in each of the following fields:

- Health and environmental effects, including exposure evaluation; and
- Pipeline safety.

In addition, members may also include not less than one representative in each of the following categories at the request of a Tribal or local government:

- A local government in the geographical area covered by the Federal and OCS Task Force; and
- A Tribal government in the geographical area covered by the Federal and OCS Task Force.

To ensure that recommendations of the Federal and OCS Task Force have considered the needs of diverse groups served by the Federal Government, opportunities will be sought to increase diversity, equity, inclusion, and accessibility for the membership of the Federal and OCS Task Force. Please note that federally registered lobbyists serving in an ''individual capacity'' are ineligible for appointment or reappointment.

In selecting members, CEQ will consider technical expertise, coverage of broad stakeholder perspectives, diversity, and the duties of the Federal and OCS Task Force as outlined in the USE IT Act. CEQ will use the following criteria to evaluate nominees:

- Background and experiences that help members contribute to the diversity of perspectives on the Federal and OCS Task Force;
- Experience working for a state, Tribal, or local government on regulatory and permitting issues associated with CCUS projects and CO_2 pipelines;
- CCUS and pipeline project development experience, or expertise

and experience in closely related fields from a project developer, private sector perspective;

- Experience working for environmental nongovernmental organizations;
- Experience working on environmental justice issues at the national, state, or local level;
- Expertise in health and environmental effects of carbon dioxide, including exposure evaluation;
- Expertise in Federal and state financing mechanisms available to project developers;
- Expertise in the regulation, siting, and safety of carbon dioxide pipelines;
- Experience or expertise in emerging activities to transform CO_2 into a product of commercial value;
- Demonstrated experience working on environmental, public health, and climate change issues;
- Experience and/or responsibilities associated with Federal and state regulations and permitting requirements associated with CCUS projects and carbon dioxide pipelines, including but not limited to experience obtaining and/or issuing permits/rights of way/leases and knowledge regarding state legal requirements, processes, timeframes, costs, barriers, public engagement requirements, state environmental requirements as well as opportunities to improve/enhance all of the above;
- Executive management-level experience;
- Excellent interpersonal, oral and written communication and consensus-building skills; and
- Ability to volunteer time to attend meetings and to contribute to the duties assigned to the Federal and OCS Task Force.

Matthew Lee-Ashley,

Chief of Staff.

[FR Doc. 2022–16103 Filed 7–27–22; 8:45 am]

BILLING CODE 3325–F2–P

COUNCIL ON ENVIRONMENTAL QUALITY

Carbon Dioxide Capture, Utilization and Sequestration (CCUS) Non-Federal Lands Permitting Task Force

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Request for nominations.

SUMMARY: As required by the Utilizing Significant Emissions with Innovative Technologies (USE IT) Act, the Council on Environmental Quality (CEQ) is seeking member nominations from a diverse range of qualified candidates to serve on the ''Carbon Dioxide Capture, Utilization and Sequestration (CCUS) Non-Federal Lands Permitting Task Force'' (Non-Federal Task Force). Vacancies are anticipated to be filled by December 31, 2022.

DATES: CEQ must receive nominations by September 26, 2022.

ADDRESSES: You may submit nominations, identified by ''CEQ CCUS Non-Federal Lands Permitting Task Force,'' by email to *ccus.taskforce@ceq.eop.gov.*

Instructions: All nominations must include a resume; a short biography providing an adequate description of the nominee's qualifications (including information that will enable CEQ to make a determination as to whether the nominee meets the membership requirements of the Non-Federal Task Force); and contact information for the nominee. Interested candidates may self-nominate.

FOR FURTHER INFORMATION CONTACT: Deirdre F. Donahue, Senior Counsel, 730 Jackson Place NW, Washington, DC 20503, (202) 395–5750 or *ccus.taskforce@ceq.eop.gov.*

SUPPLEMENTARY INFORMATION: The USE IT Act, Div. S, sec. 102(d)(2)(D), Public Law 116–260, 134 Stat. 1182, directs the establishment of no less than two regionally based task forces to: (1) identify challenges and successes that permitting authorities, project developers, and operators face to permit CCUS projects in an efficient, orderly, and responsible manner; and (2) provide recommendations to improve the performance of the permitting process and regional coordination for the purpose of promoting the efficient, orderly, and responsible development of CCUS projects and carbon dioxide pipelines. The regulatory authorities and permitting frameworks differ on Federal lands and the Outer Continental Shelf, and non-Federal lands; therefore, one task force will address permitting and other challenges for CCUS projects on Federal lands and the Outer Continental Shelf, and the other task force will address permitting and other challenges for CCUS projects on non-Federal lands.

The purpose of this notice is to request nominations for membership on the Non-Federal Task Force, one of the two task forces that will be established under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, and its implementing regulations at 41 CFR parts 101–6 and 102–3. A separate **Federal Register** notice seeking member nominations for the Carbon Dioxide Capture, Utilization and Sequestration (CCUS) Federal Lands and Outer Continental Shelf Permitting Task Force has been issued simultaneously with this notice.

Members will be selected by the Council on Environmental Quality (CEQ) Chair pursuant to the USE IT Act. As required by FACA, the Non-Federal Task Force membership will be fairly balanced in terms of the points of view represented and the functions to be performed by the Non-Federal Task Force. Members of the Non-Federal Task Force will serve without compensation. However, each member may be reimbursed for authorized travel and per diem expenses incurred while attending Non-Federal Task Force meetings in accordance with Federal Travel Regulations. The Non-Federal Task Force shall meet not less than twice each year. To the maximum extent practicable, all task forces established under this provision of the USE IT Act shall meet collectively not less than once each year.

Responsibilities of the Non-Federal Task Force

As provided by the USE IT Act, the duties of the Non-Federal Task Force will be to:

- Inventory existing or potential Federal and state approaches to facilitate reviews associated with the deployment of CCUS projects and carbon dioxide pipelines, including best practices that avoid duplicative reviews to the extent permitted by law; engage stakeholders early in the permitting process; and make the permitting process efficient, orderly, and responsible;
- Develop common models for state-level carbon dioxide pipeline regulation and oversight guidelines that can be shared with states in the geographical area covered by the Non-Federal Task Force;
- Provide technical assistance to states in implementing regulatory requirements and models developed by the Non-Federal Task Force;
- Inventory current or emerging activities that transform captured carbon dioxide into a product of commercial value, or as an input to products of commercial value;
- Identify any priority carbon dioxide pipelines needed to enable efficient, orderly, and responsible development of CCUS projects at increased scale;
- Identify gaps in the current Federal and state regulatory framework and in existing data for the deployment of CCUS projects and carbon dioxide pipelines;
- Identify Federal and state financing mechanisms available to project developers; and

• Develop recommendations for relevant Federal agencies on how to develop and research technologies that can capture carbon dioxide and would be able to be deployed within the region covered by the Non-Federal Task Force including any projects that have received technical or financial assistance for research under section 103(g)(6) of the Clean Air Act (42 U.S.C. 7403(g)).

Vacancies to Fill

The Non-Federal Task Force must include no less than one representative in each of the following categories as specified in the USE IT Act. Div. S, sec. 102(d)(2)(D)(ii)(II), Public Law 116–260, 134 Stat.1182. Nominations are sought to fill at least one position in each category:

• Any state that requests participation in the geographical area covered by the Non-Federal Task Force;

• Developers or operators of CCUS projects or carbon dioxide pipelines;

• Nongovernmental membership organizations, the primary mission of which concerns protection of the environment;

The USE IT Act also requires one expert in each of the following fields:

• Health and environmental effects, including exposure evaluation; and

• Pipeline safety.

In addition, members may also include not less than one representative in each of the following categories at the request of a Tribal or local government:

• A local government in the geographical area covered by the Non-Federal Task Force; and

• A Tribal government in the geographical area covered by the Non-Federal Task Force.

To ensure that recommendations of the Non-Federal Task Force have considered the needs of diverse groups served by the Federal Government, opportunities will be sought to increase diversity, equity, inclusion, and accessibility for the membership of the Non-Federal Task Force. Please note that federally registered lobbyists serving in an ''individual capacity'' are ineligible for appointment or reappointment.

In selecting members, CEQ will consider technical expertise, coverage of broad stakeholder perspectives, diversity, and the duties of the Non-Federal Task Force as outlined in the USE IT Act. CEQ will use the following criteria to evaluate nominees:

• Background and experiences that help members contribute to the diversity of perspectives on the Non-Federal Task Force;

• Experience working for a state, Tribal, or local government on regulatory and permitting issues associated with CCUS projects and CO_2 pipelines;

• CCUS and pipeline project development experience, or expertise and experience in closely related fields from a project developer, private sector perspective;

• Experience working for environmental nongovernmental organizations;

• Experience working on environmental justice issues at the national, state, or local level;

• Expertise in health and environmental effects of carbon dioxide, including exposure evaluation;

• Expertise in Federal and state financing mechanisms available to project developers;

• Expertise in the regulation, siting, and safety of carbon dioxide pipelines;

• Experience or expertise in emerging activities to transform CO_2 into a product of commercial value;

• Demonstrated experience working on environmental, public health, and climate change issues;

• Experience and/or responsibilities associated with Federal and state regulations and permitting requirements associated with CCUS projects and carbon dioxide pipelines, including but not limited to experience obtaining and/or issuing permits/rights of way/leases and knowledge regarding state legal requirements, processes, timeframes, costs, barriers, public engagement requirements, state environmental requirements as well as opportunities to improve/enhance all of the above;

• Executive management-level experience;

• Excellent interpersonal, oral and written communication and consensus-building skills; and

• Ability to volunteer time to attend meetings and to contribute to the duties assigned to the Non-Federal Task Force.

Matthew Lee-Ashley,

Chief of Staff.

[FR Doc. 2022–16104 Filed 7–27–22; 8:45 am]

BILLING CODE 3225–F2–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0044]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Third Party Servicer Data Collection

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before August 29, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Third Party Servicer Data Collection.

OMB Control Number: 1845–0130.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: Private Sector; Individuals and Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 277.

Total Estimated Number of Annual Burden Hours: 191.

Abstract: The Department of Education (the Department) is seeking an revision of the OMB approval of a Third Party Servicer Data Form. This form collects information from third party servicers. This form is used to validate the information reported to the Department by higher education institutions about the third party servicers that administer one or more aspects of the administration of the Title IV, HEA programs on an institution's behalf. This form also collects additional information required for effective oversight of these entities. This is a request for the revision of information collection 1845–0130. The Department is transitioning the current Third-Party Servicer Data Inquiry form to an electronic webform that will be housed within the FSA Partner Connect system. While some existing questions have been revised and additional questions have been added to the webform, there has been no change to the supporting regulatory language.

Dated: July 25, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–16209 Filed 7–27–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–23–000]

Commission Information Collection Activity (Ferc–516a); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collections, FERC–516A (Standardization of Small Generator Interconnection Agreements and Procedures).

DATES: Comments on the collections of information are due September 26, 2022.

ADDRESSES: You may submit your comments (identified by Docket No. IC22–23–000) on FERC–516A by one of the following methods:

Electronic filing through *https://www.ferc.gov* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* or by telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–516A, Standardization of Small Generator Interconnection Agreements and Procedures.

OMB Control No.: 1902–0203.

Type of Request: Three-year extension of the FERC–516A information collection requirements with no changes to the current reporting requirements.[1]

Abstract: Sections 205 and 206 of the Federal Power Act (FPA) (16 U.S.C. 824d and 824e) require the Commission to ensure just and reasonable electric transmission rates and charges, and ensure that jurisdictional providers do not subject any person to any undue prejudice or disadvantage.

In furtherance of fulfilling these Commission responsibilities, the regulation at 18 CFR 35.28(f)(1) requires transmission providers to include the following information in their open-access transmission tariffs (OATTs): [2]

- Commission-approved, standard, *pro forma* interconnection procedures (*i.e.,* small generator interconnection procedures or SGIP); and
- A single, uniformly applicable interconnection agreement (*i.e.,* a small generator interconnection agreement or SGIA).

This information helps the Commission ensure that transmission providers consider and process interconnection requests by small generators consistently and in compliance with the FPA.

Type of Respondents: Jurisdictional transmission service providers.

Estimate of Annual Burden: [3] The Commission estimates the annual public reporting burden for the information collection as follows:

[1] At present, an information collection request involving FERC–516 and FERC–516A is pending in connection with the proposed rule in FERC Docket No. RM22–14–000. This request for renewal does not include the pending request regarding the proposed rule, and our intention is to prevent any conflict between this request for renewal and OMB's consideration of FERC–516A in connection with the proposed rule.

[2] The regulation at 35.28(c)(1) requires an OATT ''of general applicability'' for every public utility that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce. The OATT must be the *pro forma* tariff promulgated by the Commission, as amended from time to time, or such other tariff as may be approved by the Commission consistent with the principles set forth in Commission rulemaking proceedings promulgating and amending the *pro forma* tariff.

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, see 5 CFR 1320.3.

Requirements [4]	Number of respondents annually (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response [5] (4)	Total annual burden hours & total annual Cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1).
Maintenance of Documents—Transmission Providers.	46	1	46	1 hr.; $87.00	46 hrs.; $4,002	$87.00.
Filing of Agreements—Transmission Providers.	95	1	95	25 hrs.; $2,175.00	2,375 hrs.; $206,625	$2,175.00.
Pre-Application Report—Interconnection Customers [6].	800	1	800	1 hr.; $87.00	800 hrs.; $69,600	$87.00.
Pre-Application Report—Transmission Providers.	142	6	852	2.5 hrs.; $217.50	2,130 hrs.; $185,310	$1,305.
Supplemental Review—Interconnection Customers.	500	1	500	0.5 hr.; $43.50	250 hrs.; $21,750	$43.50.
Supplemental Review—Transmission Providers.	142	3.52	500 (rounded)	20 hrs.; $1,740.00	10,000 hrs.; $870,000	$6,126.76 (rounded).
Review of Required Upgrades—Interconnection Customers.	250	1	250	1 hr.; $87.00	250 hrs.; $21,750	$87.00.
Review of Required Upgrades—Transmission Providers.	142	1.76	250	2 hrs.; $174	500 hrs.; $43,500	$306.34 (rounded).
Totals			3,293		16,351 hrs.; $1,422,537..	

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–16185 Filed 7–27–22; 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: EC22–93–000.

Applicants: Lockhart Solar PV, LLC, Lockhart Solar PV II, LLC, Lockhart Transmission Holdings, LLC, Luz Solar Partners Ltd., VIII, Luz Solar Partners Ltd., IX.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Lockhart Solar PV, LLC, et al.

Filed Date: 7/21/22.

Accession Number: 20220721–5146.

Comment Date: 5 p.m. ET 8/11/22.

Docket Numbers: EC22–94–000.

Applicants: Midland Cogeneration Venture Limited Partnership, MCV Partners LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Midland Cogeneration Venture Limited Partnership and MCV Partners LLC.

Filed Date: 7/22/22.

Accession Number: 20220722–5031.

Comment Date: 5 p.m. ET 8/12/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–180–000.

Applicants: Lockhart Solar PV, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Lockhart Solar PV, LLC.

Filed Date: 7/22/22.

Accession Number: 20220722–5083.

Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: EG22–181–000.

Applicants: Lockhart Reserve, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Lockhart Reserve, LLC.

Filed Date: 7/22/22.

Accession Number: 20220722–5084.

Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: EG22–182–000.

Applicants: Lockhart Solar PV II, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Lockhart Solar PV II, LLC.

Filed Date: 7/22/22.

Accession Number: 20220722–5092.

Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: EG22–183–000.

Applicants: Lockhart Transmission Holdings, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Lockhart Transmission Holdings, LLC.

Filed Date: 7/22/22.

Accession Number: 20220722–5095.

Comment Date: 5 p.m. ET 8/12/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL22–75–000.

Applicants: Nebraska Public Power District.

Description: Request of the Nebraska Public Power District For Remedial Relief under Federal Power Act Section 309.

Filed Date: 6/29/22.

Accession Number: 20220629–5200.

Comment Date: 5 p.m. ET 8/12/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–1982–000.

Applicants: Great Prairie Wind, LLC.

Description: Amendment to May 27, 2022 Market-Based Rate Application by Great Prairie Wind, LLC.

Filed Date: 7/21/22.

[4] All requirements for transmission providers are mandatory. All requirements for interconnection customers are voluntary.

[5] Commission staff assumes that the average hourly cost (including wages and benefits) for the industry is comparable to the $87.00 average hourly cost in FY2021 (including wages and benefits) for Commission employees.

[6] We assume each request for a pre-application report corresponds with one Interconnection Customer.

Accession Number: 20220721–5149.
Comment Date: 5 p.m. ET 8/11/22.

Docket Numbers: ER22–2053–001.
Applicants: Public Service Company of Colorado.
Description: Tariff Amendment: 2022–07–22–PSCo–HLYCRS–Const Agrmt–Parachute–634–1.0.0 to be effective 6/9/2022.
Filed Date: 7/22/22.
Accession Number: 20220722–5114.
Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: ER22–2457–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–07–22_SA 2921 Ameren Illinois-Prairie Power 1st Rev T–TIA to be effective 7/22/2022.
Filed Date: 7/22/22.
Accession Number: 20220722–5012.
Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: ER22–2458–000.
Applicants: Southern California Edison Company.
Description: Tariff Amendment: Amended LGIA High 5 Solar—High Desert Power Project, LLC and HDSI, LLC, SA 229 to be effective 9/21/2022.
Filed Date: 7/22/22.
Accession Number: 20220722–5036.
Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: ER22–2459–000.
Applicants: Southern California Edison Company.
Description: Tariff Amendment: Crimson Second Amend LGIA & Terminate eTariff record to be effective 9/21/2022.
Filed Date: 7/22/22.
Accession Number: 20220722–5067.
Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: ER22–2460–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205 filing of proposed tariff revisions Demand Side Response for CESIL to be effective 11/1/2022.
Filed Date: 7/22/22.
Accession Number: 20220722–5077.
Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: ER22–2461–000.
Applicants: Lockhart Transmission Holdings, LLC.
Description: Baseline eTariff Filing: Facilities Use Agreements to be effective 9/19/2022.
Filed Date: 7/22/22.
Accession Number: 20220722–5085.
Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: ER22–2462–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Compliance filing: Alabama Power Company submits tariff filing per 35: Compliance Filing in Response to Show Cause Order to be effective 7/23/2022.
Filed Date: 7/22/22.
Accession Number: 20220722–5093.
Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: ER22–2464–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: Filing of Jurisdictional Agreements—Misc. Serv. Agreements and Rate Schedules to be effective 12/31/9998.
Filed Date: 7/22/22.
Accession Number: 20220722–5101.
Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: ER22–2465–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: Filing of Jurisdictional Agreements—Misc. Serv. Agreements and Rate Schedules to be effective 12/31/9998.
Filed Date: 7/22/22.
Accession Number: 20220722–5106.
Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: ER22–2466–000.
Applicants: Cube Yadkin Transmission LLC.
Description: Compliance filing: Order No. 881 Compliance Filing to be effective 7/12/2025.
Filed Date: 7/22/22.
Accession Number: 20220722–5115.
Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: ER22–2467–000.
Applicants: ISO New England Inc., Eversource Energy Service Company (as agent), New England Power Company, Vermont Electric Power Company, Inc.
Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: Amendments to HVDC Transmission Operating Agreement in Compliance with Order 881 to be effective 9/20/2022.
Filed Date: 7/22/22.
Accession Number: 20220722–5124.
Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: ER22–2468–000.
Applicants: ISO New England Inc., New England Power Company, Vermont Electric Power Company, Inc., Eversource Energy Service Company (as agent).
Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: Amendments to the Schedule 20A-Common—Attach M in Compliance with Order 881 to be effective 9/20/2022.
Filed Date: 7/22/22.
Accession Number: 20220722–5127.
Comment Date: 5 p.m. ET 8/12/22.

Docket Numbers: ER22–2469–000.
Applicants: Essential Power Newington, LLC.
Description: § 205(d) Rate Filing: IROL–CIP Rate Schedule Filing to be effective 9/21/2022.
Filed Date: 7/22/22.
Accession Number: 20220722–5130.
Comment Date: 5 p.m. ET 8/12/22.

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 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–16180 Filed 7–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP19–262–003.
Applicants: Hardy Storage Company, LLC.
Description: Compliance filing: Amended Stipulation and Settlement Compliance to be effective 8/1/2022.
Filed Date: 7/22/22.
Accession Number: 20220722–5006.
Comment Date: 5 p.m. ET 8/3/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

Filings Instituting Proceedings

Docket Numbers: PR22–55–000.
Applicants: New Mexico Gas Company, Inc.

Description: § 284.123(g) Rate Filing: Amended Statement of Operating Conditions to be effective 7/28/2020.
Filed Date: 7/21/22.
Accession Number: 20220721–5127.
Comment Date: 5 p.m. ET 8/11/22.
Protests Due: 5 p.m. ET 9/19/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–16179 Filed 7–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD22–8–000]

Scott and Kathy Siebe; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On July 12, 2022, as supplemented on July 20, 2022, Wallowa Resources Community Solutions, Inc., on behalf of Scott and Kathy Siebe, filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The Siebe Ranch Hydropower Project would have an installed capacity of 2 kilowatts (kW), and would be located along an irrigation pipeline in Enterprise, Wallowa County, Oregon.

Applicant Contact: Joe Basile, 401 NE 1st St., Suite A, Enterprise, OR 97828, 541–561–4426, *joe@wallowaresources.org.*

FERC Contact: Christopher Chaney, 202–502–6778, *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The project would consist of: (1) an approximately 10-foot by 12-foot powerhouse containing three Pelton units with a combined capacity of 2 kW, and (2) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 16,000 kilowatt-hours.

The project discharges water to Siebe Creek, a natural body of water. Because the discharge would not be withdrawn downstream by part of the same water supply system, the applicant requests waiver of the discharge requirement under 18 CFR 4.30(b)(30)(iv).

A qualifying conduit hydropower facility is one that is determined or deemed to meet all the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed Siebe Ranch Hydropower Project will not alter the primary purpose of the conduit, which is to transport water for irrigation. Therefore, based upon the above criteria, if the requested discharge requirement waiver is granted, Commission staff preliminarily determines that the operation of the project described above satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice. Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments 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

[1] 18 CFR 385.2001–2005 (2021).

(TTY). In lieu of electronic filing, you may send a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. A copy of all other filings in reference to this application 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.

Locations of Notice of Intent: 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 website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (*i.e.,* CD22–8) 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. Copies of the notice of intent can be obtained directly from the applicant. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: July 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–16181 Filed 7–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF22–7–000]

East Tennessee Natural Gas, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Ridgeline Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Ridgeline Expansion Project (Project) involving construction and operation of facilities by East Tennessee Natural Gas, LLC (East Tennessee) in Trousdale, Smith, Jackson, Putnam, Overton, Fentress, Morgan, and Roane Counties, Tennessee. The Commission will use this environmental document in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the Project. As part of the National Environmental Policy Act (NEPA) review process, the Commission considers concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on October 20, 2022. Comments may be submitted in written or oral form. Further details on how to submit comments are provided in the *Public Participation* section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend scoping meetings to provide verbal and/or written comments on the Project. A schedule of the scoping meeting dates, locations, and times will be issued in a separate notice at least two weeks prior to the date of the meetings.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written or oral comments during the preparation of the environmental document.

If you submitted comments on this Project to the Commission before the opening of this docket on May 20, 2022, you will need to file those comments in Docket No. PF22–7–000 to ensure they are considered.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this planned Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the links to Natural Gas Questions or Landowner Topics.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New

eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Project docket number (PF22–7–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to the methods listed above, we will also hold public scoping meetings and mail notices to our environmental mailing list identifying the date, time, and locations of these meetings later this year.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a scoping session.

Additionally, the Commission offers a free service called eSubscription, which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Planned Project

The Project is designed to deliver natural gas to the site of Tennessee Valley Authority's (TVA) Kingston Fossil Plant (Plant) if TVA chooses to replace coal-fired generation at its Plant with gas-fired generation at the same site. The Project would provide up to 300,000 dekatherms per day of new natural gas transportation capacity to the Plant, and 95,000 dekatherms of parking capability.

The Project would consist of the following facilities:

- Approximately 112 miles of new 30-inch-diameter pipeline extending from the discharge of the new electric-powered Hartsville Compressor Station, mostly in East Tennessee's existing right-of-way, in Trousdale County, Tennessee to a terminus near the beginning of the East Tennessee Harriman Lateral and traversing through Trousdale, Smith, Jackson, Putnam, Overton, Fentress, Morgan, and Roane Counties, Tennessee;
- Approximately 5 miles of new 30-inch-diameter header pipeline to connect to the suction of the new electric-powered Hartsville Compressor Station from a new meter and regulating (M&R) station mostly in East Tennessee's existing right-of-way in Trousdale County, Tennessee;
- Approximately 8 miles of new 24-inch-diameter pipeline partially paralleling East Tennessee's Harriman Lateral right-of-way to connect to the Kingston Plant in Roane County, Tennessee;
- The new Hartsville Compressor Station, including two new 6,000 horsepower electric-powered compressor units, in Trousdale County, Tennessee;
- A new 8-megawatt solar array adjacent to the Hartsville Compressor Station to partially power the station;
- A new M&R station to receive gas from Columbia Gulf Transmission, LLC in Trousdale County, Tennessee;
- A new M&R station to deliver gas to the Kingston Plant in Roane County, Tennessee;
- Modifications to the existing Texas Eastern Transmission, LP and Midwestern Gas Transmission Company M&R stations in Trousdale County, Tennessee; and
- Three new crossovers to connect the new 30-inch-pipeline to the existing Line 3100–1 at the existing Gainesboro Compressor Station, Clarkrange Compressor Station, and 22-inch Line 3100–1 at milepost 148.89.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the planned facilities would disturb about 1,600 acres of land for the aboveground facilities and the pipeline. Following construction, East Tennessee would maintain about 800 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 90 percent of the planned pipeline route parallels existing pipeline.

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room 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 TTY (202) 502–8659.

NEPA Process and the Environmental Document

Any environmental document issued by Commission staff will discuss impacts that could occur as a result of the construction and operation of the planned project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics and environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the planned project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Although no formal application has been filed, Commission staff have already initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff will contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the environmental document.

If a formal application is filed, Commission staff will then determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the environmental issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its determination on the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued once an application is filed, which will open an additional public comment period. Staff will then prepare a draft EIS that will be issued for public comment.

Commission staff will consider all timely comments received during the comment period on the draft EIS, and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number PF22–7–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Becoming an Intervenor

Once East Tennessee files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/resources/guides/how-to.asp.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: July 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–16184 Filed 7–27–22; 8:45 am]

BILLING CODE 6717–01–P

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.8.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–8–000]

Transmission Planning and Cost Management; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in this proceeding on April 21, 2022, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference regarding transmission planning and cost management for transmission facilities developed through local or regional transmission planning processes in the above-captioned proceeding on October 6, 2022, from approximately 9:00 a.m. to 5:00 p.m. Eastern Time.

The purpose of this conference is to explore measures to ensure sufficient transparency into and cost effectiveness of local and regional transmission planning decisions, including: (1) the role of cost management measures in ensuring the cost-effective identification of local transmission needs (*e.g.,* planning criteria) and solutions to address identified local transmission and regional reliability-related transmission needs; and (2) cost considerations and the processes through which transmission developers recover their costs to ensure just and reasonable transmission rates.

Additionally, this conference will also discuss potential approaches to providing enhanced cost management measures and greater transparency and oversight if needed to ensure just and reasonable transmission rates.

A preliminary agenda for this technical conference is attached. An additional supplemental notice will be issued prior to the technical conference with further details regarding the agenda and speakers for the technical conference. Speakers will be asked to provide pre-conference background materials and a written opening statement to facilitate the discussion during the technical conference, and those materials will be available as part of the public record in this docket.

The technical conference will be open to the public and there is no fee for attendance. Information will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The workshop will be transcribed and webcast. Transcripts will be available for a fee from Ace Reporting (202–347–3700). A link to the webcast of this event will be available in the Commission Calendar of Events at *www.ferc.gov.* The Capitol Connection provides technical support for the webcasts and offers the option of listening to the workshop via phone-bridge for a fee. For additional information, visit *www.CapitolConnection.org* or call (703) 993–3100.

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 technical conference, please contact John Riehl at *john.riehl@ferc.gov* or (202) 502–6026. For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: July 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–16182 Filed 7–27–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0693, FRL–10008–01–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; Identification of Non-Hazardous Secondary Materials That Are Solid Waste (Renewal), EPA ICR No. 2382.06, OMB Control No. 2050–0205

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), Identification of Non-Hazardous Secondary Materials that are Solid Waste (Renewal) (EPA ICR No. 2382.06, OMB Control No. 2050–0205) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described in **SUPPLEMENTARY INFORMATION**. This is a proposed extension of the ICR, which is currently approved through March 31, 2023. 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.

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

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0693, at *https://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, 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.*

FOR FURTHER INFORMATION CONTACT: Jesse Miller, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0562; *miller.jesse@epa.gov*@epa.gov.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov.* Materials can also be viewed at the Reading Room located at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays). The telephone number for the Docket Center is 202–566–1744.

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This ICR is a description of the information collection requirements for combustion units that use non-hazardous secondary materials (NHSM) that are solid wastes and combines and harmonizes prior regulatory

amendments into one ICR. This ICR also includes the burden associated with the 2016 amendments to the Final Rule (81 FR 6688, February 8, 2016), which added three materials to the list of categorical non-waste fuels: (1) construction and demolition (C&D) wood processed from construction and demolition debris according to best management practices; (2) paper recycling residuals (PRRs) generated from the recycling of recovered paper, paperboard and corrugated containers and combusted by paper recycling mills whose boilers are designed to burn solid fuel; and (3) creosote-treated railroad ties that are processed and combusted in units designed to burn both biomass and fuel oil as part of normal operations and not solely as part of start-up or shut-down operations. Finally, this ICR includes the burden associated with the 2018 amendments to the Final Rule (83 FR 5317, February 7, 2018), which added three types of other treated railroad ties (OTRTs) to the list of categorical non-waste fuels: (1) Creosote-borate treated railroad ties, and mixtures of creosote, borate and copper naphthenate treated railroad ties that are processed and combusted in units designed to burn both biomass and fuel oil; (2) Copper naphthenate treated railroad ties that are processed and then combusted in units designed to burn biomass, biomass and fuel oil or biomass and coal; and (3) Copper naphthenate-borate treated railroad ties that are processed and then combusted in units designed to burn biomass, biomass and fuel oil or biomass and coal.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are Business or other for-profit.

Respondent's obligation to respond: Required to obtain benefit (Sections 1004 and 2002 of RCRA).

Estimated number of respondents: 1,656.

Frequency of response: One-time.

Total estimated burden: 868 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $72,295 (per year), includes $1,539 in annualized capital or operation & maintenance costs.

Changes in Estimates: The burden hours are likely to be lower than the last renewal.

Dated: July 22, 2022.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2022–16161 Filed 7–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2004–0013; FRL–10089–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; EPA Program Information on Source Water Protection (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), EPA Program Information on Source Water Protection (EPA ICR Number 1816.08, OMB Control Number 2040–0197) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through July 31, 2022. Public comments were previously requested via the **Federal Register** on December 28, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given in the **SUPPLEMENTARY INFORMATION** section of this announcement, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before August 29, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2004–0013 to EPA online using *https://www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sherri Comerford, Drinking Water Protection Division, Prevention Branch, Office of Ground Water and Drinking Water (MC 4606M), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–4639; email address: *comerford.sherri@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA is collecting data from the states on their advancement toward substantial implementation of protection strategies for all community water systems (CWSs). EPA and states use this voluntary collection of data to track and understand the progress toward increasing the percentage of CWSs (and the populations they serve) where risk is minimized through source water protection. Source water protection data that states submit directly to the Source Water Protection Information System (SDWIS) is accessible to the public via EPA's website at: *https://www.epa.gov/ground-water-and-drinking-water/safe-drinking-water-information-system-sdwis-federal-reporting.* Availability of this information, together with source water and demographic indicators that are publicly available via EPA's Drinking Water Mapping Application to Protect Source Waters (DWMAPS) on EPA's website at: *https://www.epa.gov/sourcewaterprotection/drinking-water-mapping-application-protect-source-waters-dwmaps,* promote equity by empowering communities to include these considerations in their own analyses and outreach efforts.

Form Numbers: None.

Respondents/affected entities: 51.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 51 (total).

Frequency of response: Annual.

Total estimated burden: 288 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $17,074 (per year).

Changes in the estimates: EPA anticipates the annual totals for estimated burden and costs at 288 hours and $17,074, respectively. There is an expected decrease of hours in the total estimated respondent burden compared to what was identified in the ICR currently approved by OMB due to voluntary reporting that would decrease in frequency from quarterly to annual reporting. State databases are fully developed and tracking is routine, which EPA believes will result in efficiencies that would allow states to minimize hourly burden and cost.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–16190 Filed 7–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0602; FRL–10028–01–OCSPP]

Nominations to the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP); Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, and professional affiliations of persons recently nominated to serve on the Scientific Advisory Panel (SAP) established under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Agency, at this time, anticipates selecting new members to serve on the panel because of the upcoming expirations of membership terms. Current members of the SAP are eligible for reappointment during this period. Therefore, the appointments completed over the next year may include a mix of newly appointed and reappointed members. Public comments on the current nominations are invited, as these comments will be used to assist the Agency in selecting the new members for the FIFRA SAP.

DATES: Comments must be received on or before August 29, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2022–0602, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Steven M. Knott, MS, Designated Federal Officer (DFO) and Chief of the Peer Review and Ethics Branch, Mission Support Division (7602M), Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency; telephone number: (202) 564–0103; email address: *knott.steven@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Given other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through *regulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. Information properly marked as CBI will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets#tips.*

C. What action is the Agency taking?

This document identifies persons recently nominated to serve on the SAP, from which the Agency, at this time, anticipates selecting new members to serve on the panel because of the upcoming expirations of membership terms. Public comments on these current nominations are invited, as these comments will be used to assist the Agency in selecting the new members for the FIFRA SAP.

D. What is the Agency's authority for taking this action?

The Panel is a federal advisory committee, established in 1975 under FIFRA (7 U.S.C. 136 *et seq.*), that operates in accordance with requirements of the Federal Advisory Committee Act (FACA) (5 U.S.C. appendix 2). In accordance with FACA requirements, a Charter for the FIFRA SAP, dated October 17, 2020, provides for open meetings with opportunities for public participation.

II. Background

The FIFRA SAP serves as a scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide independent scientific advice, information, and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. The FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health (NIH) and the National Science Foundation (NSF). Members serve staggered terms of appointment, generally of three to six years duration. FIFRA established a Science Review Board (SRB) consisting of at least 60 scientists who are available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

As a scientific peer review mechanism, the FIFRA SAP provides comments, evaluations, and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendations to the Agency.

III. Nominees

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to provide expert comments on the impact of pesticides on human health and the environment. In accordance with FIFRA section 25(d)(1), the Administrator shall require nominees to the FIFRA SAP to furnish information concerning their

professional qualifications, including educational background, employment history, and scientific publications. No persons shall be ineligible to serve on the FIFRA SAP by reason of their membership on any other advisory committee to a federal department or agency, or their employment by a federal department or agency (except EPA). FIFRA further stipulates that the Agency publish the name, address, and professional affiliation of the nominees in the **Federal Register**.

B. Applicability of Existing Regulations

With respect to the requirements of FIFRA section 25(d) that the Administrator promulgate regulations regarding conflicts of interest, FIFRA SAP members are subject to the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, conflict of interest statutes in Title 18 of the United States Code, and related regulations. Each nominee selected by the Administrator, before being formally appointed, is required to submit a Confidential Financial Disclosure Form, which shall fully disclose, among other financial interests, the nominee's sources of research support, if any.

C. Process of Obtaining Nominees

In accordance with the provisions of FIFRA section 25(d), on March 24, 2022, EPA requested that the NIH and the NSF nominate scientists to fill vacancies occurring on the FIFRA SAP. The Agency requested nominations of experts in the fields of ecological and human health risk assessment with specific expertise in terrestrial ecotoxicology and environmental fate modeling; nano technologies (especially related to exposure and hazard assessments); and microbiology, including antimicrobial susceptibility of a broad range of microorganism types. The Agency noted that experts with specific experience in risk assessment, dose response analysis, computational toxicology (new approach methodologies and in vitro to in vivo extrapolation), allergenicity, population modeling, cheminformatics, bioinformatics, and genomics are preferred. NIH and NSF responded, providing the Agency with a total of 64 nominees. Of these nominees, 24 are interested and available to actively participate in FIFRA SAP meetings (see Unit III.D.). The following 40 individuals are not available to be considered further for membership at this time (numbered for convenience only):

1. *Lisa Cohen Alvarez, Ph.D.,* University of California-Berkeley, Berkeley, California.
2. *Pedro Alvarez, Ph.D.,* Rice University, Houston, Texas.
3. *Cesar Arias, MD, Ph.D.,* Houston Methodist Academic Institute, Houston, Texas.
4. *Alberto Ascherio, Ph.D.,* Harvard T.H. Chan School of Public Health, Boston, Massachusetts.
5. *Juliana Wardenburg Bubeck, MD, Ph.D.,* Washington University School of Medicine, St. Louis, Missouri.
6. *Jiu-Chiuan Chen, Ph.D.,* University of Southern California, Los Angeles, California.
7. *Weihsueh Chiu, Ph.D.,* Texas A&M University, College Station, Texas.
8. *Deborah Dean, MD, MPH,* University of California- San Francisco, San Francisco, California.
9. *Francesca Dominici, Ph.D.,* Harvard T.H. Chan School of Public Health, Boston, Massachusetts.
10. *Mary Dunlop, Ph.D.,* Boston University, Boston, Massachusetts.
11. *Ashlee Earl, Ph.D.,* Broad Institute, Cambridge, Massachusetts.
12. *Barbara Finlayson-Pitts, Ph.D.,* University of California-Irvine, Irvine, California.
13. *Anthony Flores, MD, MPH, Ph.D.,* The University of Texas Health Science Center, Houston, Texas.
14. *David Greenberg, MD, Ph.D.,* University of Texas Southwestern Medical Center, Dallas, Texas.
15. *Maria Hadjifrangiskou, Ph.D.,* Vanderbilt University Medical Center, Nashville, Tennessee.
16. *Mark Hahn, Ph.D.,* Woods Hole Oceanographic Institution, Woods Hole, Massachusetts.
17. *Pam Hall, Ph.D.,* University of New Mexico, Albuquerque, New Mexico.
18. *Mary Hausbeck, Ph.D.,* Michigan State University, East Lansing, Michigan.
19. *Christy Haynes, Ph.D.,* University of Minnesota, Minneapolis, Minnesota.
20. *Ron Hites, Ph.D.,* Indiana University, Bloomington, Indiana.
21. *Robert Hurt, Ph.D.,* Brown University, Providence, Rhode Island.
22. *Rebecca Klaper, Ph.D.,* University of Wisconsin, Milwaukee, Wisconsin.
23. *Gyanu Lamichhane, Ph.D.,* Johns Hopkins University, Baltimore, Maryland.
24. *Kim Lewis, Ph.D.,* Northeastern University, Boston, Massachusetts.
25. *Jose Ribot Lopez, Ph.D.,* University of Texas, San Antonio, Texas.
26. *Cole Matson, Ph.D.,* Baylor University, Waco, Texas.
27. *Gary W. Miller, Ph.D.,* Columbia University, New York, New York.
28. *Denise Monack, Ph.D.,* Stanford University, Stanford, California.
29. *Suzanne Noble, Ph.D.,* University of California- San Francisco, San Francisco, California.
30. *Kelli Palmer, Ph.D.,* University of Texas, Dallas, Texas.
31. *Lina Quesada-Ocampo, Ph.D.,* North Carolina State University, Raleigh, North Carolina.
32. *Gemma Reguera, Ph.D.,* Michigan State University, East Lansing, Michigan.
33. *David Reif, Ph.D.,* North Carolina State University, Raleigh, North Carolina.
34. *Elena Rustchenko, Ph.D.,* University of Rochester Medical Center, Rochester, New York.
35. *Noelle Selin, Ph.D.,* Massachusetts Institute of Technology, Cambridge, Massachusetts.
36. *Anna Selmecki, Ph.D.,* University of Minnesota, Minneapolis, Minnesota.
37. *Christine Smart, Ph.D.,* Cornell University, Ithaca, New York.
38. *Pedro Tarafa, Ph.D.,* University of Puerto Rico, Mayagüez, Puerto Rico.
39. *Katrina Waters,* Ph.D., Department of Energy, Pacific Northwest National Laboratory, Richland, Washington.
40. *David Weis, Ph.D.,* Emory University, Atlanta, Georgia.

D. Interested and Available Nominees

The following are the names, addresses, and professional affiliations of current nominees being considered for membership on the FIFRA SAP (numbered for convenience only). Selected biographical data for each nominee is available in the docket identified under **ADDRESSES** and through the FIFRA SAP website at *https://www.epa.gov/sap.* The Agency, at this time, anticipates selecting new members to fill upcoming vacancies occurring on the Panel.

1. *Erin S. Baker, Ph.D.,* North Carolina State University, Raleigh, North Carolina.
2. *Dana Boyd Barr, Ph.D.,* Emory University, Atlanta, Georgia.
3. *Scott M. Belcher, Ph.D.,* North Carolina State University, Raleigh, North Carolina.
4. *Jose Cerrato, Ph.D.,* University of New Mexico, Albuquerque, New Mexico.
5. *Deborah A. Cory-Slechta, Ph.D.,* University of Rochester Medical School, Rochester, New York.
6. *Christina Cuomo, Ph.D.,* Broad Institute, Cambridge, Massachusetts.
7. *Maurizio Del Poeta, MD,* Stony Brook University, Stony Brook, New York.
8. *Upal Ghosh, Ph.D.,* University of Maryland Baltimore County, Baltimore, Maryland.

9. *Claudia Gunsch, Ph.D.,* Duke University, Durham, North Carolina.
10. *Nishad Jayasundara, Ph.D.,* Duke University, Durham, North Carolina.
11. *Jakub Kostal, Ph.D.,* George Washington University, Washington, District of Columbia.
12. *Raina M. Maier, Ph.D.,* University of Arizona, Tucson, Arizona.
13. *Stefano Monti, Ph.D.,* Boston University, Boston, Massachusetts.
14. *Ingrid Padilla, Ph.D.,* University of Puerto Rico, Mayagüez, Puerto Rico.
15. *Beate R Ritz, MD, Ph.D.,* University of California Los Angeles, Los Angeles, California.
16. *Zeev Rosenzweig, Ph.D.,* University of Maryland Baltimore County, Baltimore, Maryland.
17. *Tara L Sabo-Attwood, Ph.D.,* University of Florida, Gainesville, Florida.
18. *Maria Reyes Sierra-Alvarez, Ph.D.,* University of Arizona, Tucson, Arizona.
19. *Elsie M. Sunderland, Ph.D.,* Harvard University, Cambridge, Massachusetts.
20. *Justin Teeguarden, Ph.D.,* Department of Energy, Pacific Northwest National Laboratory, Richland, Washington.
21. *Lisa Truong, Ph.D., MBA,* Oregon State University, Corvallis, Oregon.
22. *Paul Westerhoff, Ph.D.,* Arizona State University, Tempe, Arizona.
23. *Timothy R. Zacharewski, Ph.D.,* Michigan State University, East Lansing, Michigan.
24. *Hao Zhu, Ph.D.,* Rutgers University, Camden, New Jersey.

Authority: 7 U.S.C. 136 *et. seq.;* 21 U.S.C. 301 *et seq.;* 5 U.S.C. Appendix

Dated: July 22, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2022–16155 Filed 7–27–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0526; FR ID 98395]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 26, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0526.

Title: Section 69.123, Density Pricing Zone Plans, Expanded Interconnection with Local Telephone Company Facilities.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 13 respondents; 13 responses.

Estimated Time per Response: 48 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 154(j), 201–205, 303(r), and 403.

Total Annual Burden: 624 hours.

Total Annual Cost: $12,090.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No information of a confidential nature is being sought. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission requires Tier 1 local exchange carriers (LECs) to provide expanded opportunities for third party interconnection with their interstate special access facilities. The LECs are permitted to establish a number of rate zones within study areas in which expanded interconnection are operational. In a previous rulemaking, Fifth Report and Order, CC Docket No. 96–262, the Commission allowed price cap LECs to define the scope and number of zones within a study area. These LECs must file and obtain approval of their pricing plans which will be used by FCC staff to ensure that the rates are just, reasonable and nondiscriminatory.

Federal Communications Commission.

Marlene Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2022–16160 Filed 7–27–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1592]

Food Safety Modernization Act Third-Party Certification Program User Fee Rate for Fiscal Year 2023

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2023 annual fee rate for recognized accreditation bodies and accredited certification bodies, and the initial and renewal fee rate for accreditation bodies applying to be recognized in the third-party certification program that is authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). We are also announcing the fee rate for certification bodies that

are applying to be directly accredited by FDA.

DATES: This fee is effective on October 1, 2022, and will remain in effect through September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Donald Prater, Office of Food Policy and Response, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3202, Silver Spring, MD 20993, 301–348–3007.

SUPPLEMENTARY INFORMATION:

I. Background

Section 307 of FSMA (Pub. L. 111–353), Accreditation of Third-Party Auditors, amended the FD&C Act to create a new provision, section 808, under the same name. Section 808 of the FD&C Act (21 U.S.C. 384d) directs FDA to establish a program for accreditation of third-party certification bodies [1] conducting food safety audits and issuing food and facility certifications to eligible foreign entities (including registered foreign food facilities) that meet our applicable requirements. Under this provision, we established a system for FDA to recognize accreditation bodies to accredit certification bodies, except for limited circumstances in which we may directly accredit certification bodies to participate in the third-party certification program.

Section 808(c)(8) of the FD&C Act directs FDA to establish a reimbursement (user fee) program by which FDA assesses fees and requires reimbursement for the work FDA performs to establish and administer the third-party certification program under section 808 of the FD&C Act. The user fee program for the third-party certification program was established by a final rule entitled ''Amendments to Accreditation of Third-Party Certification Bodies To Conduct Food Safety Audits and To Issue Certifications To Provide for the User Fee Program'' (81 FR 90186, December 14, 2016).

The FSMA FY 2023 third-party certification program user fee rate announced in this notice is effective on October 1, 2022, and will remain in effect through September 30, 2023.

[1] For the reasons explained in the third-party certification final rule (80 FR 74570 at 74578–74579, November 27, 2015), and for consistency with the implementing regulations for the third-party certification program in 21 CFR parts 1, 11, and 16, this notice uses the term ''third-party certification body'' rather than the term ''third-party auditor'' used in section 808(a)(3) of the FD&C Act.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2023

FDA must estimate its costs for each activity in order to establish fee rates for FY 2023. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology, and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2023

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours (not including overtime or holiday hours) worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: payroll, non-payroll, and rent.

We have used an average of past year cost elements to predict the FY 2023 cost. The FY 2023 FDA-wide average cost for payroll (salaries and benefits) is $173,393; non-payroll (including equipment, supplies, information technology, general and administrative overhead) is $103,078; and rent (including cost allocation analysis and adjustments for other rent and rent-related costs) is $23,944 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, non-payroll, and rent, brings the FY 2023 average fully supported cost to $300,416 [2] per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for third-party certification user fees for FY 2023 prior to including travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2023 average fully supported cost of $300,416 per FTE by the average number of supported direct FDA work hours in FY 2021 (the last FY for which data are available). See table 1.

[2] Total includes rounding.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2021

Total number of hours in a paid staff year	2,080
Less:	
11 paid holidays	−88
20 days of annual leave	−160
10 days of sick leave	−80
12.5 days of training	−100
22 days of general administration	−176
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	1,160

Dividing the average fully supported FTE cost in FY 2023 ($300,416) by the total number of supported direct work hours available for assignment in FY 2021 (1,160) results in an average fully supported cost of $259 (rounded to the nearest dollar), excluding travel costs, per supported direct work hour in FY 2023.

B. Adjusting FY 2021 Travel Costs for Inflation To Estimate FY 2023 Travel Costs

To adjust the hourly rate for FY 2023, FDA must estimate the cost of inflation in each year for FY 2022 and FY 2023. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1))), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2022 inflation rate to be 2.2013 percent: this rate was published in the FY 2022 PDUFA user fee rates notice in the **Federal Register** (August 16, 2021, 86 FR 45732). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 2.2013 percent for FY 2022 and 1.6404 percent for FY 2023. FDA intends to use this inflation rate to make inflation adjustments for FY 2023; the derivation of this rate will be published in the **Federal Register** in the FY 2023 notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2022 and 2023 is 1.038778 (or 3.8778 percent) (calculated as 1 plus 2.2013 percent times 1 plus 1.6404 percent).

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $259 already takes into account inflation as the calculation above is based on FY 2023 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for third-party certification program fees for FY 2023 prior to including travel costs as applicable for the activity. For the purpose of estimating

the fee, we are using the travel cost rate for foreign travel because we anticipate that the vast majority of onsite assessments made by FDA under this program will require foreign travel. In FY 2020,[3] the Office of Regulatory Affairs (ORA) spent a total of $1,449,058 on 171 foreign inspection trips related to FDA's Center for Food Safety and Applied Nutrition and Center for Veterinary Medicine field activities programs, which averaged a total of $8,474 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $8,474 per trip by 120 hours per trip results in an additional cost of $71 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2020. To adjust $71 for inflationary increases in FY 2021, FY 2022, and FY 2023, FDA must multiply it by the same inflation factor mentioned previously in this document (1.038778 or 3.8778 percent) and the inflation factor for FY 2021[4] (1.013493), which results in an estimated cost of $75 (rounded to the nearest dollar) per paid hour in addition to $259 for a total of $334 per paid hour ($259 plus $75) for each direct hour of work requiring foreign inspection travel. FDA will use this rate in charging fees in FY 2023 when travel is required for the third-party certification program.

TABLE 2—FSMA FEE SCHEDULE FOR FY 2023

Fee category	Fee rates for FY 2023
Hourly rate without travel	$259
Hourly rate if travel is required	334

III. Fees for Accreditation Bodies and Certification Bodies in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

The third-party certification program assesses application fees and annual fees. In FY 2023, the only fees that could be collected by FDA under section 808(c)(8) of the FD&C Act are the initial application fee for accreditation bodies seeking recognition, the annual fee for recognized accreditation bodies, the annual fee for certification bodies accredited by a recognized accreditation body, the initial application fee for a certification body seeking direct accreditation from FDA, and the renewal application fee for recognized accreditation bodies. Table 3 provides an overview of the fees for FY 2023.

TABLE 3—FSMA THIRD-PARTY CERTIFICATION PROGRAM USER FEE SCHEDULE FOR FY 2023

Fee category	Fee rates for FY 2023
Initial Application Fee for Accreditation Body Seeking Recognition	$45,040
Annual Fee for Recognized Accreditation Body	2,088
Annual Fee for Accredited Certification Body	2,611
Initial Application Fee for a Certification Body Seeking Direct Accreditation from FDA	45,040
Renewal Application Fee for Recognized Accreditation Body	27,441

A. Application Fee for Accreditation Bodies Applying for Recognition in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

Section 1.705(a)(1) (21 CFR 1.705(a)(1)) establishes an application fee for accreditation bodies applying for initial recognition that represents the estimated average cost of the work FDA performs in reviewing and evaluating initial applications for recognition of accreditation bodies.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will continue to reconsider the estimated hours. Based on data we have acquired since starting the program, we estimate that it would take, on average, 80 person-hours to review an accreditation body's submitted application, 48 person-hours for an onsite performance evaluation of the applicant (including travel and other steps necessary for a fully supported FTE to complete an onsite assessment), and 32 person-hours to prepare a written report documenting the onsite assessment.

FDA employees review applications and prepare reports from their worksites, so we use the fully supported FTE hourly rate excluding travel, $259 per hour, to calculate the portion of the user fee attributable to those activities: $259 per hour multiplied by (80 hours (application review) plus 32 hours (written report)) equals $29,008. FDA employees will likely travel to foreign countries for the onsite performance evaluations because most accreditation bodies are anticipated to be located in foreign countries. For this portion of the fee, we use the fully supported FTE hourly rate for work requiring travel, $334 per hour, to calculate the portion of the user fee attributable to those activities: $334 per hour multiplied by 48 hours (*i.e.,* two fully supported FTEs per trip ((2 travel days multiplied by 8 hours) plus (1 day onsite multiplied by 8 hours))) equaling $16,032. The estimated average cost of the work FDA performs in total for reviewing an initial application for recognition for an accreditation body based on these figures would be $29,008 plus $16,032 equals $45,040. Therefore, the application fee for accreditation bodies applying for recognition in FY 2023 will be $45,040.

B. Annual Fee for Accreditation Bodies Participating in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

To calculate the annual fee for each recognized accreditation body, FDA takes the estimated average cost of work FDA performs to monitor performance of a single recognized accreditation body and annualizes that over the average term of recognition. At this time, we assume an average term of recognition of 5 years. We also assume that FDA will monitor 10 percent of recognized accreditation bodies onsite. As the program proceeds, we will adjust the term of recognition as appropriate. We estimate that for one performance evaluation of a recognized accreditation body, it would take, on average (taking into account that not all recognized accreditation bodies would be monitored onsite), 22 hours for FDA to conduct records review, 8 hours to prepare a report detailing the records review and onsite performance evaluation, and 8 hours of onsite performance evaluation. Using the fully supported FTE hourly rates in table 2, the estimated average cost of the work FDA performs to monitor performance of a single recognized accreditation body would be $7,770 ($259 per hour multiplied by (22 hours (records review) plus 8 hours (written report))) plus $2,672 ($334 per hour multiplied by 8 hours (onsite evaluation)), which is $10,442. Annualizing this amount over 5 years would lead to an annual fee for recognized accreditation bodies of $2,088 for FY 2023.

[3] FDA will be using FY 2020 numbers for the foreign inspection travel costs due to the limited number of inspections done in FY 2021 due to travel restrictions caused by the COVID–19 Pandemic.

[4] FDA previously determined the FY 2021 inflation rate to be 1.3493 percent; this rate was published in the FY 2021 PDUFA user fee rates notice in the **Federal Register** (August 3, 2020, 85 FR 46651).

C. Annual Fee for Certification Bodies Accredited by a Recognized Accreditation Body in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

To calculate the annual fee for a certification body accredited by a recognized accreditation body, FDA takes the estimated average cost of work FDA performs to monitor performance of a single certification body accredited by a recognized accreditation body and annualizes that over the average term of accreditation. At this time, we assume an average term of accreditation of 4 years. This fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. We estimate that FDA would conduct, on average, the same activities, for the same amount of time to monitor certification bodies accredited by a recognized accreditation body as we would to monitor an accreditation body recognized by FDA. Using the fully supported FTE hourly rates in table 2, the estimated average cost of the work FDA performs to monitor performance of a single accredited certification body would be $7,770 ($259 per hour multiplied by (22 hours (records review) plus 8 hours (written report))) plus $2,672 ($334 per hour multiplied by 8 hours (onsite evaluation)), which is $10,442. Annualizing this amount over 4 years would lead to an annual fee for accredited certification bodies of $2,611 for FY 2023.

D. Initial Application Fee for Certification Bodies Seeking Direct Accreditation From FDA in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

Section 1.705(a)(3) establishes an application fee for certification bodies applying for direct accreditation from FDA that represents the estimated average cost of the work FDA performs in reviewing and evaluating initial applications for direct accreditation of certification bodies.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 80 person-hours to review a certification body's submitted application, 48 person-hours for an onsite performance evaluation of the applicant (including travel and other steps necessary for a fully supported FTE to complete an onsite assessment), and 32 person-hours to prepare a written report documenting the onsite assessment.

FDA employees are likely to review applications and prepare reports from their worksites, so we use the fully supported FTE hourly rate excluding travel, $259 per hour, to calculate the portion of the user fee attributable to those activities: $259 per hour multiplied by (80 hours (application review) plus 32 hours (written report)) equals $29,008. FDA employees will likely travel to foreign countries for the onsite performance evaluations because most certification bodies are anticipated to be located in foreign countries. For this portion of the fee we use the fully supported FTE hourly rate for work requiring travel, $334 per hour, to calculate the portion of the user fee attributable to those activities: $334 per hour multiplied by 48 hours (*i.e.,* two fully supported FTEs for travel ((2 travel days of 8 hours each) plus (1 day onsite for 8 hours))) equaling $16,032. The estimated average cost of the work FDA performs in total for reviewing an initial application for direct accreditation of a certification body based on these figures would be $29,008 plus $16,032 equaling $45,040. Therefore, the application fee for certification bodies applying for direct accreditation from FDA in FY 2023 will be $45,040.

E. Renewal Fee for Accreditation Bodies Participating in the Third-Party Certification Program Under Section 808(c)(8) of the FD&C Act

Section 1.705(a)(2) establishes a renewal application fee for recognized accreditation bodies that represents the estimated average cost of the work FDA performs in reviewing and evaluating renewal applications for recognition of accreditation bodies.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 43 person-hours to review an accreditation body's submitted renewal application, 24 person-hours for an onsite performance evaluation of the applicant (including travel and other steps necessary for a fully supported FTE to complete an onsite assessment), and 32 person-hours to prepare a written report documenting the onsite assessment.

FDA employees are likely to review renewal applications and prepare reports from their worksites, so we use the fully supported FTE hourly rate excluding travel, $259 per hour, to calculate the portion of the user fee attributable to those activities: $259 per hour multiplied by (43 hours (application review) plus 32 hours (written report)) equaling $19,425. FDA employees will likely travel to foreign countries for the onsite performance evaluations because most certification bodies are anticipated to be located in foreign countries. For this portion of the fee we use the fully supported FTE hourly rate for work requiring travel, $334 per hour, to calculate the portion of the user fee attributable to those activities: $334 per hour multiplied by 24 hours (*i.e.,* fully supported FTE multiplied by travel ((2 travel days for 8 hours each) plus (1 day onsite for 8 hours))) equaling $8,016. The estimated average cost of the work FDA performs in total for reviewing a renewal application for recognition of an accreditation body based on these figures would be $19,425 plus $8,016 equals $27,441. Therefore, the renewal application fee for recognized accreditation bodies in FY 2023 will be $27,441.

IV. Estimated Fees for Accreditation Bodies and Certification Bodies in Other Fee Categories for FY 2023

Section 1.705(a) also establishes application fees for certification bodies applying for renewal of direct accreditation. Section 1.705(b) also establishes annual fees for certification bodies directly accredited by FDA.

Although we will not be collecting these other fees in FY 2023, for transparency and planning purposes, we have provided an estimate of what these fees would be for FY 2023 based on the fully supported FTE hourly rates for FY 2023 and estimates of the number of hours it would take FDA to perform relevant activities as outlined in the Final Regulatory Impact Analysis for the Third-Party Certification Regulation. Table 4 provides an overview of the estimated fees for other fee categories.

TABLE 4—ESTIMATED FEE RATES FOR OTHER FEE CATEGORIES UNDER THE FSMA THIRD-PARTY CERTIFICATION PROGRAM

Fee category	Estimated fee rates for FY 2023
Renewal application fee for directly accredited certification body	$27,441
Annual fee for certification body directly accredited by FDA	21,648

V. How must the fee be paid?

Accreditation bodies seeking initial recognition must submit the application fee with the application. For recognized accreditation bodies and accredited certification bodies, an invoice will be sent annually. Payment must be made within 30 days of the receipt invoice date. The payment must be made in U.S. currency from a U.S. bank by one of the following methods: wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using an electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal (*Pay.gov*) at *https://userfees.fda.gov/pay.* (Note: only full payments are accepted. No partial payments can be made online.) Once you have found your invoice, select ''Pay Now'' to be redirected to *Pay.gov*. Electronic payment options are based on the balance due. Payment by credit card is available only for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards. When paying by check, bank draft, or U.S. postal money order, please include the invoice number. Also write the FDA post office box number (P.O. Box 979108) on the enclosed check, bank draft, or money order. Mail the payment including the invoice number on the check stub to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000.

When paying by wire transfer, it is required that the invoice number is included; without the invoice number, the payment may not be applied. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. For international wire transfers, please inquire with the financial institutions prior to submitting the payment. Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, Swift No.: FRNYUS33.

To send a check by a courier such as Federal Express, the courier must deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: this address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.) The tax identification number of FDA is 53–0196965. (Note: invoice copies do not need to be submitted to FDA with the payments.)

VI. What are the consequences of not paying this fee?

The consequences of not paying these fees are outlined in 21 CFR 1.725. If FDA does not receive an application fee with an application for recognition, the application will be considered incomplete and FDA will not review the application. If a recognized accreditation body fails to submit its annual user fee within 30 days of the due date, we will suspend its recognition. If the recognized accreditation body fails to submit its annual user fee within 90 days of the due date, we will revoke its recognition. If an accredited certification body fails to pay its annual fee within 30 days of the due date, we will suspend its accreditation. If the accredited certification body fails to pay its annual fee within 90 days of the due date, we will withdraw its accreditation.

Dated: July 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16171 Filed 7–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1620]

Animal Generic Drug User Fee Rates and Payment Procedures for Fiscal Year 2023

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the fee rates and payment procedures for fiscal year (FY) 2023 generic new animal drug user fees. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Animal Generic Drug User Fee Amendments of 2018 (AGDUFA III), authorizes FDA to collect user fees for certain abbreviated applications for generic new animal drugs, for certain generic new animal drug products, and for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs. This notice establishes the fee rates for FY 2023.

DATES: The application fee rates are effective for all abbreviated applications for a generic new animal drug submitted on or after October 1, 2022, and will remain in effect through September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Visit FDA's website at *https://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/default.htm* or contact Lisa Kable, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–6888, *Lisa.Kable@fda.hhs.gov.* For general questions, you may also email FDA's Center for Veterinary Medicine (CVM) at: *cvmagdufa@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 741 of the FD&C Act (21 U.S.C. 379j–21) as amended by AGDUFA III, establishes three different types of user fees: (1) fees for certain types of abbreviated applications for generic new animal drugs; (2) annual fees for certain generic new animal drug products; and (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs (21 U.S.C. 379j–21(a)). When certain conditions are met, FDA will waive or reduce fees for generic new animal drugs intended solely to provide for a minor use or minor species indication (21 U.S.C. 379j–21(d)).

For FYs 2019 through 2023, the FD&C Act establishes the base revenue amount for each fiscal year (21 U.S.C. 379j–21(b)(1)). Base revenue amounts are subject to adjustment for inflation and workload (21 U.S.C. 379j–21(c)(2) and (3)). Beginning with FY 2021, the annual fee revenue amounts are also subject to adjustment to reduce workload-based increases by the amount of certain excess collections (21 U.S.C. 379j–21(c)(3)(B)). Fees for applications, products, and sponsors are to be established each year by FDA so that the percentages of the total revenue that are derived from each type of user fee will be as follows: (1) 25 percent shall be derived from fees for abbreviated applications for a generic new animal drug; (2) 37.5 percent shall be derived from fees for generic new animal drug products; and (3) 37.5 percent shall be derived from fees for generic new animal drug sponsors (21 U.S.C. 379j–

21(b)(2)). The target revenue amounts for each fee category for FY 2023, are as follows: for application fees, the target revenue amount is $7,325,750; for product fees, the target revenue amount is $10,988,625; and for sponsor fees, the target revenue amount is $10,988,625.

For FY 2023, the generic new animal drug user fee rates are: $494,983 for each abbreviated application for a generic new animal drug other than those subject to the criteria in section 512(d)(4) of the FD&C Act (21 U.S.C. 360b(d)(4)); $247,492 for each abbreviated application for a generic new animal drug subject to the criteria in section 512(d)(4) of the FD&C Act; $18,881 for each generic new animal drug product; $283,870 for each generic new animal drug sponsor paying 100 percent of the sponsor fee; $212,903 for each generic new animal drug sponsor paying 75 percent of the sponsor fee; and $141,935 for each generic new animal drug sponsor paying 50 percent of the sponsor fee. FDA will issue invoices for FY 2023 product and sponsor fees by December 31, 2022, and payment will be due by January 31, 2023. The application fee rates are effective for all abbreviated applications for a generic new animal drug submitted on or after October 1, 2022, and will remain in effect through September 30, 2023. Applications will not be accepted for review until FDA has received full payment of application fees and any other fees owed under the AGDUFA program.

II. Revenue Amount for FY 2023

A. Statutory Fee Revenue Amount

AGDUFA III, Title II of Public Law 115–234, specifies that the aggregate base fee revenue amount for FY 2023 for all generic new animal drug user fee categories is $18,336,340 (21 U.S.C. 379j–21(b)(1)).

B. Inflation Adjustment to Fee Revenue Amount

AGDUFA III specifies that the annual fee revenue amount is to be adjusted for inflation increases for FY 2020 and subsequent fiscal years, using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see 21 U.S.C. 379j–21(c)(2)). The component of the inflation adjustment for payroll costs shall be one plus the average annual percent change in the cost of all PC&B paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding fiscal years of available data, multiplied by the average proportion of PC&B costs to total FDA costs for the first 3 of the 4 preceding fiscal years of available data. The data on total PC&B paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees.

Table 1 summarizes the actual cost and FTE data for the specified fiscal years, provides the percent change from the previous fiscal year, and provides the average percent change over the first 3 of the 4 fiscal years preceding FY 2023. The 3-year average is 1.3918 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

	FY 2019	FY 2020	FY 2021	3-year average
Total PC&B	$2,620,052,000	$2,875,592,000	$3,039,513,000	.....
Total FTE	17144	17535	18501	.....
PC&B per FTE	$152,826	$163,992	$164,829	.....
Percent Change From Previous Year	−3.3120%	7.3063%	0.1811%	1.3918%

The statute specifies that this 1.3918 percent should be multiplied by the proportion of PC&B costs to total FDA costs. Table 2 shows the amount of PC&B and the total amount obligated by FDA for the same 3 FYs.

TABLE 2—PC&B AS A PERCENT OF TOTAL COSTS AT FDA

	FY 2019	FY 2020	FY 2021	3-year average
Total PC&B	$2,620,052,000	$2,875,592,000	$3,039,513,000	.....
Total Costs	$5,663,389,000	$6,039,321,000	$6,049,798,000	.....
PC&B Percent	46.2630%	47.6145%	50.2416%	48.0397%

The portion of the inflation adjustment relating to payroll costs is 1.3918 percent multiplied by 48.0397 percent, or 0.6686 percent.

The statute specifies that the portion of the inflation adjustment for non-payroll costs is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items less food and energy; annual index) for the first 3 of the preceding 4 years of available data multiplied by the average proportion of all costs other than PC&B costs to total FDA costs for the first 3 of the 4 preceding fiscal years. As a result of a geographical revision made by the Bureau of Labor Statistics in January 2018,[1] the ''Washington-Baltimore, DC-MD-VA-WV'' index was discontinued and replaced with two separate indices (*i.e.,* ''Washington-Arlington-Alexandria, DC-VA-MD-WV'' and ''Baltimore-Columbia-Towson, MD''). To continue applying a CPI that best reflects the geographic region in which FDA is headquartered and that provides the most current data available, FDA is using the Washington-Arlington-Alexandria index, less food and energy, in calculating the relevant adjustment factors for FY 2020 and subsequent years. Table 3 provides the summary data for the percent change in the specified CPI for the Washington-Arlington-Alexandria area. The data from the Bureau of Labor Statistics are shown in table 3.

[1] Available at: *https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm.*

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN WASHINGTON-ARLINGTON-ALEXANDRIA AREA CPI, LESS FOOD AND ENERGY

	FY 2019	FY 2020	FY 2021	3-Year average
Annual CPI	275.84	278.44	287.14	.....
Annual Percent Change	1.2580%	0.9411%	3.1271%	1.7754%

To calculate the inflation adjustment for non-payroll costs, we multiply 1.7754 percent by the proportion of all costs other than PC&B to total FDA costs. Since 48.0397 percent was obligated for PC&B as shown in table 2, 51.9603 percent is the portion of costs other than PC&B (100 percent minus 48.0397 percent equals 51.9603 percent). The portion of the inflation adjustment relating to non-payroll costs is 1.7754 percent times 51.9603 percent, or 0.9225 percent.

Next, we add the payroll component (0.6686 percent) to the non-payroll component (0.9225 percent), for an inflation adjustment of 1.5911 percent for FY 2023.

AGDUFA III provides for the inflation adjustment to be compounded each fiscal year after FY 2020 (see 21 U.S.C. 379j–21(c)(2)). The inflation adjustment for FY 2023 (1.5911 percent) is compounded by adding 1 and then multiplying by 1 plus the inflation adjustment factor for FY 2022 (5.7121 percent), as published in the **Federal Register** on July 23, 2021 (86 FR 39028), which equals 1.0739 (rounded) (1.0159 times 1.0571) for FY 2023. We then multiply the base revenue amount for FY 2023 ($18,336,340) by 1.073941, yielding an inflation adjusted amount of $19,692,147.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

The fee revenue amounts established in AGDUFA III for FY 2020 and subsequent fiscal years are also subject to adjustment to account for changes in FDA's review workload. A workload adjustment will be applied to the inflation adjusted fee revenue amount (21 U.S.C. 379j–21(c)(3)).

To determine whether a workload adjustment applies, FDA calculates the weighted average of the change in the total number of each of the four types of applications and submissions specified in the workload adjustment provision (abbreviated applications for generic new animal drugs, manufacturing supplemental abbreviated applications for generic new animal drugs, investigational generic new animal drug study submissions, and investigational generic new animal drug protocol submissions) received over the 5-year period that ended on September 30, 2018 (the base years), and the average number of each of these types of applications and submissions over the most recent 5-year period that ended May 31, 2022.

The results of these calculations are presented in the first two columns of table 4. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA generic new animal drug review workload was accounted for by each type of application or submission in the table during the most recent 5 years. Column 5 is the weighted percent change in each category of workload and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of the table the sum of the values in column 5 is calculated, reflecting a total change in workload of 77.5221 percent for FY 2023. This is the workload adjuster for FY 2023.

TABLE 4—WORKLOAD ADJUSTER CALCULATION

Application type	Column 1	Column 2	Column 3	Column 4	Column 5
	5-year average (base years)	Latest 5-year average	Percent change	Weighting factor	Weighted percent change
Abbreviated Application for a Generic New Animal Drug (ANADAs)	24.00	27.00	12.5000	0.15	1.8953
Manufacturing Supplements ANADAs	169.40	219.60	29.6340	0.24	7.2536
Generic Investigational Study Submissions	69.20	155.40	124.5665	0.46	57.2176
Generic Investigational Protocol Submissions	34.40	61.00	77.3256	0.14	11.1556
FY 2023 AGDUFA III Workload Adjuster	.....	.....	.....	.....	77.52221

The statutory revenue amount after the inflation adjustment ($19,692,147) must now be increased by 77.5221 percent to reflect the changes in review workload (workload adjustment), for a workload and inflation-adjusted amount of $34,957,913.

D. Reduction of Workload-Based Increase by Amount of Certain Excess Collections

Under section 741(c)(3)(B) of the FD&C Act, for FYs 2021 through 2023, if application of the workload adjustment increases the amount of fee revenues established for the fiscal year, as adjusted for inflation, the fee revenue increase will be reduced by the amount of any excess collections for the second preceding fiscal year, up to the amount of the fee revenue increase for workload. The workload and inflation-adjusted amount ($34,957,913) is subtracted by the inflation adjusted amount ($19,692,147) to get the workload adjustment amount ($15,265,766). Then the excess fees collected from FY 2021 as of May 31, 2022 ($5,655,218) are subtracted from the workload adjustment amount ($15,265,766) to get a reduced workload adjustment amount of $9,610,548. Next, the reduced workload adjustment amount ($9,610,548) is added to the inflation-adjusted revenue amount ($19,692,147), for a total fee revenue target of $29,303,000 (rounded to the nearest thousand dollars).

E. Final Year Adjustment

For FY 2023, FDA may, in addition to other adjustments under section 741(c) of the FD&C Act, further increase the fees, if such an adjustment is necessary, to provide for up to 3 months of

operating reserves of carryover user fees for the process for the review of generic animal drug applications for the first 3 months of FY 2024. If FDA has carryover balances for the process for the review of generic new animal drug applications in excess of 3 months of such operating reserves, then this adjustment will not be made (see 21 U.S.C. 379j–21(c)(4)). Since FDA currently has an excess of 3 months of such operating reserves, this adjustment will not be made for FY 2023.

F. FY 2023 Fee Revenue Amounts

AGDUFA III specifies that the revenue amount of $29,303,000 for FY 2023 is to be divided as follows: 25 percent, or a total of $7,325,750, is to come from application fees; 37.5 percent, or a total of $10,988,625, is to come from product fees; and 37.5 percent, or a total of $10,988,625, is to come from sponsor fees (21 U.S.C. 379j–21(b)).

III. Abbreviated Application Fee Calculations for FY 2023

A. Application Fee Revenues and Numbers of Fee-Paying Applications

Each person who submits an abbreviated application for a generic new animal drug shall be subject to an application fee, with limited exceptions (21 U.S.C. 379j–21(a)(1)). The term ''abbreviated application for a generic new animal drug'' means an abbreviated application for the approval of any generic new animal drug submitted under section 512(b)(2) of the FD&C Act (21 U.S.C. 379j–21(k)(1)). The application fees are to be set so that they will generate $7,325,750 in fee revenue for FY 2023.

To set fees for abbreviated applications for generic new animal drugs to realize $7,325,750, FDA must first make some assumptions about the number of fee-paying abbreviated applications it will receive during FY 2023.

The Agency knows the number of applications that have been submitted in previous years. That number fluctuates annually. In estimating the fee revenue to be generated by generic new animal drug applications in FY 2023, FDA is assuming that the number of applications for which fees will be paid in FY 2023 will equal the average number of applications over the 5 most recently completed fiscal years of the AGDUFA program (FY 2017–FY 2021).

Also, under AGDUFA III, an abbreviated application for an animal generic drug subject to the criteria in section 512(d)(4) of the FD&C Act and submitted on or after October 1, 2013, shall be subject to 50 percent of the fee applicable to all other abbreviated applications for a generic new animal drug (21 U.S.C. 379j–21(a)(1)(C)(ii)).

The average number of original submissions of abbreviated applications for generic new animal drugs over the 5 most recently completed fiscal years is 11.6 applications not subject to the criteria in section 512(d)(4) of the FD&C Act and 6.4 submissions subject to the criteria in section 512(d)(4). Each of the submissions described under section 512(d)(4) of the FD&C Act pays 50 percent of the fee paid by the other applications and will be counted as one half of a fee. Adding all of the applications not subject to the criteria in section 512(d)(4) of the FD&C Act and 50 percent of the number that are subject to such criteria results in a total of 14.80 anticipated full fees.

Based on the previous assumptions, FDA is estimating that it will receive a total of 14.80 fee-paying generic new animal drug applications in FY 2023 (11.6 original applications paying a full fee and 6.4 applications paying a half fee).

B. Application Fee Rates for FY 2023

FDA must set the fee rates for FY 2023 so that the estimated 14.80 abbreviated applications that pay the fee will generate a total of $7,325,750. To generate this amount, the fee for a generic new animal drug application will have to be $494,983 and for those applications that are subject to the criteria set forth in section 512(d)(4) of the FD&C Act, 50 percent of that amount, or $247,492.

IV. Generic New Animal Drug Product Fee Calculations for FY 2023

A. Product Fee Revenues and Numbers of Fee-Paying Products

The generic new animal drug product fee must be paid annually by the person named as the applicant in an abbreviated application or supplemental abbreviated application for a generic new animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360) and who had an abbreviated application or supplemental abbreviated application for a generic new animal drug product pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(a)(2)). The term ''generic new animal drug product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the National Drug Code, and for which an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug has been approved (21 U.S.C. 379j–21(k)(6)). The product fees are to be set so that they will generate $10,988,625 in fee revenue for FY 2023.

To set generic new animal drug product fees to realize $10,988,625, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2023. FDA gathered data on all generic new animal drug products that have been submitted for listing under section 510 of the FD&C Act and matched this to the list of all persons who had a generic new animal drug application or supplemental abbreviated application pending after September 1, 2008. As of May 2022, FDA estimates that there is a total of 588 products submitted for listing by persons who had an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug pending after September 1, 2008. Based on this, FDA believes that a total of 588 products will be subject to this fee in FY 2023.

In estimating the fee revenue to be generated by generic new animal drug product fees in FY 2023, FDA is estimating that 1 percent of the products invoiced, or 6 products, will qualify for a minor use/minor species fee waiver (see 21 U.S.C. 379j–21(d)). FDA has made this estimate at 1 percent this year, based on historical data over the past 5 completed fiscal years of the AGDUFA program.

Accordingly, the Agency estimates that a total of 582 (588 minus 6) products will be subject to product fees in FY 2023.

B. Product Fee Rates for FY 2023

FDA must set the fee rates for FY 2023 so that the estimated 582 products for which fees are paid will generate a total of $10,988,625. To generate this amount will require the fee for a generic new animal drug product, rounded to the nearest dollar, to be $18,881.

V. Generic New Animal Drug Sponsor Fee Calculations for FY 2023

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The generic new animal drug sponsor fee must be paid annually by each person who: (1) is named as the applicant in an abbreviated application for a generic new animal drug, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an

investigational submission for a generic new animal drug that has not been terminated or otherwise rendered inactive and (2) had an abbreviated application for a generic new animal drug, supplemental abbreviated application for a generic new animal drug, or investigational submission for a generic new animal drug pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(k)(7) and 379j–21(a)(3)). A generic new animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j–21(a)(3)(C)). Applicants with more than six approved abbreviated applications will pay 100 percent of the sponsor fee; applicants with more than one and fewer than seven approved abbreviated applications will pay 75 percent of the sponsor fee; and applicants with one or fewer approved abbreviated applications will pay 50 percent of the sponsor fee (see 21 U.S.C. 379j–21(a)(3)(C)). The sponsor fees are to be set so that they will generate $10,988,625 in fee revenue for FY 2023.

To set generic new animal drug sponsor fees to realize $10,988,625, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2023. FDA estimates that in FY 2023, 12 sponsors will pay 100 percent fees, 18 sponsors will pay 75 percent fees, and 28 sponsors will pay 50 percent fees. That results in the equivalent of 39.5 full sponsor fees (12 times 100 percent or 12, plus 18 times 75 percent or 13.5, plus 28 times 50 percent or 14).

FDA estimates that about 2 percent of all of these sponsors, or 0.79, may qualify for a minor use/minor species fee waiver (see 21 U.S.C. 379j–21(d)). FDA has made the estimate of the percentage of sponsors that will not pay fees at 2 percent this year, based on historical data over the past 5 completed FYs of the AGDUFA program.

Accordingly, the Agency estimates that the equivalent of 38.71 full sponsor fees (39.5 minus 0.79) are likely to be paid in FY 2023.

B. Sponsor Fee Rates for FY 2023

FDA must set the fee rates for FY 2023 so that the estimated equivalent of 38.71 full sponsor fees will generate a total of $10,988,625. To generate this amount will require the 100 percent fee for a generic new animal drug sponsor, rounded to the nearest dollar, to be $283,870. Accordingly, the fee for those paying 75 percent of the full sponsor fee will be $212,903, and the fee for those paying 50 percent of the full sponsor fee will be $141,935.

VI. Fee Schedule for FY 2023

The fee rates for FY 2023 are summarized in table 5.

TABLE 5—FY 2023 FEE RATES

Generic new animal drug user fee category	Fee rate for FY 2023
Abbreviated Application Fee for Generic New Animal Drug except those subject to the criteria in section 512(d)(4)	$494,983
Abbreviated Application Fee for Generic New Animal Drug subject to the criteria in section 512(d)(4)	247,492
Generic New Animal Drug Product Fee	18,881
100% Generic New Animal Drug Sponsor Fee [1]	283,870
75% Generic New Animal Drug Sponsor Fee [1]	212,903
50% Generic New Animal Drug Sponsor Fee [1]	141,935

[1] An animal drug sponsor is subject to only one such fee each fiscal year.

VII. Fee Waiver or Reduction; Exemption From Fees

The types of fee waivers and reductions that applied last fiscal year still exist for FY 2023. In AGDUFA III, a new exemption from fees was established as follows: Fees will not apply to any person who not later than September 30, 2023, submits to CVM a supplemental abbreviated application relating to a generic new animal drug approved under section 512 of the FD&C Act, solely to add the application number to the labeling of the drug in the manner specified in section 502(w)(3) of the FD&C Act (21 U.S.C. 352(w)(3)), if that person otherwise would be subject to user fees under AGDUFA based only on the submission of the supplemental abbreviated application (21 U.S.C. 379j–21(d)(2)).

VIII. Procedures for Paying FY 2023 Fees

A. Abbreviated Application Fees and Payment Instructions

The FY 2023 fee established in the new fee schedule must be paid for a generic new animal drug application subject to fees under AGDUFA III that is submitted on or after October 1, 2022. The payment must be made in U.S. currency from a U.S. bank by one of the following methods: wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* or the *Pay.gov* payment option is available to you after you submit a cover sheet. (Note: only full payments are accepted. No partial payments can be made online.) Once you find your invoice, select ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available only for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

When paying by check, bank draft, or U.S. postal money order, please write your application's unique Payment Identification Number (PIN), beginning with the letters ''AG'', on the upper right-hand corner of your completed Animal Generic Drug User Fee Cover Sheet. Also write FDA's post office box number (P.O. Box 979033) and PIN on the enclosed check, bank draft, or money order. Mail the payment and a copy of the completed Animal Generic Drug User Fee Cover Sheet to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. Note: In no case should the payment for the fee be submitted to FDA with the application.

When paying by wire transfer, the invoice number or PIN needs to be included. Without the invoice number or PIN, the payment may not be applied, and the invoice amount would be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. Use the following account information when sending a payment by wire

transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account Number: 75060099, U.S. Department of the Treasury routing/transit number: 021030004, SWIFT Number: FRNYUS33.

To send a check by a courier such as FedEx, the courier must deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.)

It is important that the fee arrives at the bank at least a day or two before the abbreviated application arrives at FDA's CVM. FDA records the official abbreviated application receipt date as the later of the following: the date the application was received by CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Department of the Treasury notifies FDA of payment. U.S. Bank and the U.S. Department of the Treasury are required to notify FDA within 1 working day, using the PIN described previously.

The tax identification number of FDA is 53–0196965.

B. Application Cover Sheet Procedures

Step One: Create a user account and password. Log onto the AGDUFA website at *https://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm137049.htm* and, under Application Submission Information, click on ''Create AGDUFA User Fee Cover Sheet.'' For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two: Create an Animal Generic Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Generic Drug User Fee Cover Sheet. One cover sheet is needed for each abbreviated application for a generic new animal drug. Once you are satisfied that the data on the cover sheet are accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA, and you will be able to print a copy of your cover sheet showing your unique PIN.

Step Three: Send the payment for your application as described in section VIII.A.

Step Four: Submit your application.

C. Product and Sponsor Fees

By December 31, 2022, FDA will issue invoices and payment instructions for product and sponsor fees for FY 2023 using this fee schedule. Payment will be due by January 31, 2023. FDA will issue invoices in November 2023 for any products and sponsors subject to fees for FY 2023 that qualify for fees after the December 2022 billing.

Dated: July 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

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BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1590]

Food Safety Modernization Act Voluntary Qualified Importer Program User Fee Rate for Fiscal Year 2023

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2023 annual fee rate for importers approved to participate in the Voluntary Qualified Importer Program that is authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA).

DATES: This fee is effective on August 1, 2022, and will remain in effect through September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Donald Prater, Office of Food Policy and Response, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3202, Silver Spring, MD 20993, 301–348–3007.

SUPPLEMENTARY INFORMATION:

I. Background

Section 302 of FSMA (Pub L. 111–353), Voluntary Qualified Importer Program (VQIP), amended the FD&C Act to create a new provision, section 806, under the same name. Section 806 of the FD&C Act (21 U.S.C. 384b) directs FDA to establish a program to provide for the expedited review and importation of food offered for importation by importers who have voluntarily agreed to participate in such program, and a process, consistent with section 808 of the FD&C Act (21 U.S.C. 384d), for the issuance of a facility certification to accompany a food offered for importation by importers participating in the VQIP.

Section 743 of the FD&C Act (21 U.S.C. 379j–31) authorizes FDA to assess and collect fees from each importer participating in VQIP to cover FDA's costs of administering the program. Each fiscal year, fees are to be established based on an estimate of 100 percent of the costs for the year. The fee rates must be published in a **Federal Register** notice not later than 60 days before the start of each FY (section 743(b)(1) of the FD&C Act). After FDA approves a VQIP application, the user fee must be paid before October 1, the start of the VQIP FY, to begin receiving benefits for that VQIP fiscal year.

The FY 2023 VQIP user fee will support benefits from October 1, 2022, through September 30, 2023.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2023

FDA is required to estimate 100 percent of its costs for each activity in order to establish fee rates for FY 2023. In each year, the costs of salary (or personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all of the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology (IT), and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2023

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours (not including overtime or holiday hours) worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: payroll, non-payroll, and rent.

We have used an average of past year cost elements to predict the FY 2023 cost. The FY 2023 FDA-wide average

cost for payroll (salaries and benefits) is $173,393; non-payroll (including equipment, supplies, IT, general and administrative overhead) is $103,078; and rent (including cost allocation analysis and adjustments for other rent and rent-related costs) is $23,944 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, non-payroll, and rent, brings the FY 2023 average fully supported cost to $300,416 [1] per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for VQIP fees for FY 2023 prior to including domestic or foreign travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2023 average fully supported cost of $300,416 per FTE by the average number of supported direct FDA work hours in FY 2021 (the last FY for which data are available). See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2021

Total number of hours in a paid staff year	2,080
Less:	
11 paid holidays	−88
20 days of annual leave	−160
10 days of sick leave	−80
12.5 days of training	−100
22 days of general administration	−176
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	1,160

Dividing the average fully supported FTE cost in FY 2023 ($300,416) by the total number of supported direct work hours available for assignment in FY 2021 (1,160) results in an average fully supported cost of $259 (rounded to the nearest dollar), excluding inspection travel costs, per supported direct work hour in FY 2023.

B. Adjusting FY 2021 Travel Costs for Inflation To Estimate FY 2023 Travel Costs

To adjust the hourly rate for FY 2023, FDA must estimate the cost of inflation in each year for FY 2022 and FY 2023. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2022 inflation rate to be 2.2013 percent; this rate was published in the FY 2022 PDUFA user fee rates notice in the **Federal Register** (August 16, 2021, 86 FR 45732). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 2.2013 percent for FY 2022 and 1.6404 percent for FY 2023. FDA intends to use these inflation rates to make inflation adjustments for FY 2023; the derivation of this rate will be published in the **Federal Register** in the FY 2023 notice for the PDUFA user fee rates. The compounded inflation rate for FYs 2022 and 2023 is 1.038778 (or 3.8778 percent) (calculated as 1 plus 2.2013 percent times 1 plus 1.6404 percent).

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $259 already takes into account inflation as the calculation above is based on FY 2023 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for VQIP fees for FY 2023 prior to including domestic or foreign travel costs as applicable for the activity. In FY 2021, FDA's Office of Regulatory Affairs (ORA) spent a total of $4,920,033 for domestic regulatory inspection travel costs and General Services Administration Vehicle costs related to FDA's Center for Food Safety and Applied Nutrition (CFSAN) and Center for Veterinary Medicine (CVM) field activities programs. The total ORA domestic travel costs spent is then divided by the 4,965 CFSAN and CVM domestic inspections, which averages a total of $991 per inspection. These inspections average 46.43 hours per inspection. Dividing $991 per inspection by 46.43 hours per inspection results in a total and an additional cost of $21 (rounded to the nearest dollar) per hour spent for domestic inspection travel costs in FY 2021. To adjust for the $21 per hour additional domestic cost inflation increases for FY 2022 and FY 2023, FDA must multiply the FY 2022 PDUFA inflation rate adjustor (1.022013) by the FY 2023 PDUFA inflation rate adjustor (1.038778) times the $21 additional domestic cost, which results in an estimated cost of $22 (rounded to the nearest dollar) per paid hour in addition to $259 for a total of $281 per paid hour ($259 plus $22) for each direct hour of work requiring domestic inspection travel. FDA will use these rates in charging fees in FY 2023 when domestic travel is required.

In FY 2020,[2] ORA spent a total of $1,449,058 on 171 foreign inspection trips related to FDA's CFSAN and CVM field activities programs, which averaged a total of $8,474 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $8,474 per trip by 120 hours per trip results in a total and an additional cost of $71 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2020. To adjust $71 for inflationary increases in FY 2021, FY 2022, and FY 2023, FDA must multiply it by the same inflation factors mentioned previously in this document (1.022013 and 1.038778) and the inflation factor for FY 2021 [3] (1.013493), which results in an estimated cost of $75 (rounded to the nearest dollar) per paid hour in addition to $259 for a total of $334 per paid hour ($259 plus $75) for each direct hour of work requiring foreign inspection travel. FDA will use these rates in charging fees in FY 2023 when foreign travel is required.

[1] Total includes rounding.

[2] We use FY 2020 numbers for the foreign inspection travel costs due to the limited number of inspections done in FY2021 due to travel restrictions caused by the COVID–19 Pandemic.

[3] FDA previously determined the FY 2021 inflation rate to be 1.3493 percent; this rate was published in the FY 2021 PDUFA user fee rates notice in the **Federal Register** (August 3, 2020, 85 FR 46651).

TABLE 2—FSMA FEE SCHEDULE FOR FY 2023

Fee category	Fee rates for FY 2023
Hourly rate without travel	$259
Hourly rate if domestic travel is required	281
Hourly rate if foreign travel is required	334

III. Fees for Importers Approved To Participate in the Voluntary Qualified Importer Program Under Section 743 of the FD&C Act

FDA assesses fees for VQIP annually. Table 3 provides an overview of the fees for FY 2023.

TABLE 3—FSMA VQIP USER FEE SCHEDULE FOR FY 2023

Fee category	Fee rates for FY 2023
VQIP User Fee	$12,962

Section 743 of the FD&C Act requires that each importer participating in VQIP pay a fee to cover FDA's costs of administering the program. This fee represents the estimated average cost of the work FDA performs in reviewing and evaluating a VQIP importer. At this time, FDA is not offering an adjusted fee for small businesses. As required by section 743(b)(2)(B)(iii) of the FD&C Act, FDA previously published a set of guidelines in consideration of the burden of the VQIP fee on small businesses and provided for a period of public comment on the guidelines (80 FR 32136, June 5, 2015). While we did receive some comments in response, they did not address the questions posed, *i.e.,* how a small business fee reduction should be structured, what percentage of fee reduction would be appropriate, or what alternative structures FDA might consider to indirectly reduce fees for small businesses by charging different fee amounts to different VQIP participants. We plan on monitoring costs and collecting data to determine if, in future fiscal years, we will provide for a small business fee reduction. Consistent with section 743(b)(2)(B)(iii) of the FD&C Act, we will adjust the fee schedule for small businesses only through notice and comment rulemaking.

The fee is based on the fully supported FTE hourly rates and estimates of the number of hours it would take FDA to perform relevant activities. These estimates represent FDA's current thinking, and as the program evolves, FDA will reconsider the estimated hours. We estimate that it would take, on average, 39 person-hours to review a new VQIP application (including communication provided through the VQIP Importer's Help Desk), 28 person-hours to review a returning VQIP application (including communication provided through the VQIP Importer's Help Desk), 16 person-hours for an onsite performance evaluation of a domestic VQIP importer (including travel and other steps necessary for a fully supported FTE to complete and document an onsite assessment), and 34 person-hours for an onsite performance evaluation of a foreign VQIP importer (including travel and other steps necessary for a fully supported FTE to complete and document an onsite assessment). Additional costs include maintenance and support costs of IT of administering benefits of the program. These costs are estimated to be $2,600 per VQIP importer.

Based on updated data, FDA anticipates that there may be up to four returning VQIP applicants and up to two new applicants this fiscal year. FDA employees are likely to review new VQIP applications from their worksites, so we use the fully supported FTE hourly rate excluding travel, $259 per hour, to calculate the portion of the user fee attributable to those activities: $259/hour multiplied by 39 hours equaling $10,101. FDA employees are likely to review returning VQIP applications from their worksites, so we use the fully supported FTE hourly rate excluding travel, $259 per hour, to calculate the portion of the user fee attributable to those activities: $259/hour multiplied by 28 hours equaling $7,252.

FDA employees will conduct a VQIP inspection to verify the eligibility criteria and full implementation of the food safety and food defense systems established in the Quality Assurance Program. A VQIP importer may be located inside or outside of the United States. However, this fiscal year, all VQIP importers will be located inside the United States. Three VQIP applicants may have an associated VQIP inspection.

FDA employees are likely to prepare for and report on the performance evaluation of a domestic VQIP importer at an FTE's worksite, so we use the fully supported FTE hourly rate excluding travel, $259 per hour, to calculate the portion of the user fee attributable to those activities: $259 per hour multiplied by 8 hours equaling $2,072. For the portion of the fee covering onsite evaluation of a domestic VQIP importer, we use the fully supported FTE hourly rate for work requiring domestic travel, $281 per hour, to calculate the portion of the user fee attributable to those activities: $281 per hour multiplied by 8 hours (*i.e.,* one fully supported FTE for 1 day onsite amounting to 8 hours) equaling $2,248. Therefore, the total cost of conducting the domestic performance evaluation of a VQIP importer is determined to be $2,072 plus $2,248 equaling $4,320.

Coordination of the onsite performance evaluation of a foreign VQIP importer is estimated to take place at an FTE's worksite, so we use the fully supported FTE hourly rate excluding travel, $259 per hour, to calculate the portion of the user fee attributable to those activities: $259 per hour multiplied by 10 hours equaling $2,590. For the portion of the fee covering onsite evaluation of a foreign VQIP importer, we use the fully supported FTE hourly rate for work requiring foreign travel, $334 per hour, to calculate the portion of the user fee attributable to those activities: $334 per hour multiplied by 24 hours (*i.e.,* one fully supported FTE for travel ((2 travel days for 8 hours each day) plus (1 day onsite for 8 hours))) equaling $8,016. Therefore, the total cost of conducting the foreign performance evaluation of a VQIP importer is determined to be $2,590 plus $8,016 equaling $10,606.

Therefore, the estimated average cost of the work FDA performs in total for approving an application for a VQIP importer in FY 2023 based on these figures would be $2,600 plus ($10,101 multiplied by one-third) plus ($7,252 multiplied by two-thirds) plus ($4,320 multiplied by one-half) equaling $12,962.

IV. How must the fee be paid?

An invoice will be sent to VQIP importers approved to participate in the program. Payment must be made prior to October 1, 2022, to be eligible for VQIP participation for the benefit year beginning October 1, 2022. FDA will not refund the VQIP user fee for any reason.

The payment must be made in U.S. currency from a U.S. bank by one of the following methods: wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using an electronic check (Automated Clearing House (ACH), also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (*Note:* only full payments are accepted. No partial payments can be made online.) Once you have found your invoice, select

''Pay Now'' to be redirected to *Pay.gov*. Electronic payment options are based on the balance due. Payment by credit card is available only for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards. When paying by check, bank draft, or U.S. postal money order, please include the invoice number. Also write the FDA post office box number (P.O. Box 979108) on the enclosed check, bank draft, or money order. Mail the payment including the invoice number on the check stub to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000.

When paying by wire transfer, it is required that the invoice number is included; without the invoice number the payment may not be applied. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full. For international wire transfers, please inquire with the financial institutions prior to submitting the payment. Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account No.: 75060099, Routing No.: 021030004, Swift No.: FRNYUS33.

To send a check by a courier such as Federal Express, the courier must deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This phone number is only for questions about courier delivery.) The tax identification number of FDA is 53–0196965. (Note: Invoice copies do not need to be submitted to FDA with the payments.)

V. What are the consequences of not paying this fee?

The consequences of not paying these fees are outlined in Section J of ''FDA's Voluntary Qualified Importer Program; Guidance for Industry'' document (available at *https://www.fda.gov/media/92196/download*). If the user fee is not paid before October 1, a VQIP importer will not be eligible to participate in VQIP. For the first year a VQIP application is approved, if the user fee is not paid before October 1, 2022, you are not eligible to participate in VQIP. If you subsequently pay the user fee, FDA will begin your benefits after we receive the full payment. The user fee may not be paid after December 31, 2022. For a subsequent year, if you do not pay the user fee before October 1, FDA will send a Notice of Intent to Revoke your participation in VQIP. If you do not pay the user fee within 30 days of the date of the Notice of Intent to Revoke, we will revoke your participation in VQIP.

Dated: July 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16175 Filed 7–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1591]

Food Safety Modernization Act Domestic and Foreign Facility Reinspection, Recall, and Importer Reinspection Fee Rates for Fiscal Year 2023

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the fiscal year (FY) 2023 fee rates for certain domestic and foreign facility reinspections, failures to comply with a recall order, and importer reinspections that are authorized by the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA).

DATES: These fees are effective on October 1, 2022, and will remain in effect through September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Jimmy Carlton, Office of Management, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–888–1556, *jimmy.carlton@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 107 of the FSMA (Pub. L. 111–353) added section 743 to the FD&C Act (21 U.S.C. 379j–31) to provide FDA with the authority to assess and collect fees from, in part: (1) the responsible party for each domestic facility and the U.S. agent for each foreign facility subject to a reinspection to cover reinspection-related costs; (2) the responsible party for a domestic facility and an importer who does not comply with a recall order to cover food [1] recall activities associated with such order; and (3) each importer subject to a reinspection to cover reinspection-related costs (sections 743(a)(1)(A), (B), and (D) of the FD&C Act). Section 743 of the FD&C Act directs FDA to establish fees for each of these activities based on an estimate of 100 percent of the costs of each activity for each year (sections 743(b)(2)(A)(i), (ii), and (iv)), and these fees must be made available solely to pay for the costs of each activity for which the fee was incurred (section 743(b)(3)). These fees are effective on October 1, 2022, and will remain in effect through September 30, 2023. Section 743(b)(2)(B)(iii) of the FD&C Act directs FDA to develop a proposed set of guidelines in consideration of the burden of fee amounts on small businesses. As a first step in developing these guidelines, FDA invited public comment on the potential impact of the fees authorized by section 743 of the FD&C Act on small businesses (76 FR 45818, August 1, 2011). The comment period for this request ended November 30, 2011. As stated in FDA's September 2011 ''Guidance for Industry: Implementation of the Fee Provisions of Section 107 of the FDA Food Safety Modernization Act,'' (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-implementation-fee-provisions-section-107-fda-food-safety-modernization-act*), because FDA recognizes that for small businesses the full cost recovery of FDA reinspection or recall oversight could impose severe economic hardship, FDA intends to consider reducing certain fees for those firms. FDA does not intend to issue invoices for reinspection or recall order fees until FDA publishes a guidance document outlining the process through which firms may request a reduction in fees.

In addition, as stated in the September 2011 Guidance, FDA is in the process of considering various issues associated with the assessment and collection of importer reinspection fees. The fee rates set forth in this notice will be used to determine any importer reinspection fees assessed in FY 2023.

II. Estimating the Average Cost of a Supported Direct FDA Work Hour for FY 2023

FDA is required to estimate 100 percent of its costs for each activity in order to establish fee rates for FY 2023. In each year, the costs of salary (or

[1] The term ''food'' for purposes of this document has the same meaning as such term in section 201(f) of the FD&C Act (21 U.S.C. 321(f)).

personnel compensation) and benefits for FDA employees account for between 50 and 60 percent of the funds available to, and used by, FDA. Almost all the remaining funds (operating funds) available to FDA are used to support FDA employees for paying rent, travel, utility, information technology (IT), and other operating costs.

A. Estimating the Full Cost per Direct Work Hour in FY 2023

Full-time Equivalent (FTE) reflects the total number of regular straight-time hours—not including overtime or holiday hours—worked by employees, divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, compensatory time off, and other approved leave categories are considered ''hours worked'' for purposes of defining FTE employment.

In general, the starting point for estimating the full cost per direct work hour is to estimate the cost of an FTE or paid staff year. Calculating an Agency-wide total cost per FTE requires three primary cost elements: payroll, nonpayroll, and rent.

We have used an average of past year cost elements to predict the FY 2023 cost. The FY 2023 FDA-wide average cost for payroll (salaries and benefits) is $173,393; nonpayroll (including equipment, supplies, IT, and general and administrative overhead) is $103,078; and rent, including cost allocation analysis and adjustments for other rent and rent-related costs, is $23,944 per paid staff year, excluding travel costs.

Summing the average cost of an FTE for payroll, nonpayroll, and rent, brings the FY 2023 average fully supported cost to $300,416 [2] per FTE, excluding travel costs. FDA will use this base unit fee in determining the hourly fee rate for reinspection and recall order fees for FY 2023 prior to including domestic or foreign travel costs as applicable for the activity.

To calculate an hourly rate, FDA must divide the FY 2023 average fully supported cost of $300,416 per FTE by the average number of supported direct FDA work hours in FY 2021 (the last fiscal year for which data are available). See table 1.

TABLE 1—SUPPORTED DIRECT FDA WORK HOURS IN A PAID STAFF YEAR IN FY 2021

Total number of hours in a paid staff year	2,080
Less:	
11 paid holidays	−88
20 days of annual leave	−160
10 days of sick leave	−80
12.5 days of training	−100
22 days of general administration	−176
26.5 days of travel	−212
2 hours of meetings per week	−104
Net Supported Direct FDA Work Hours Available for Assignments	1,160

[2] Total includes rounding.

Dividing the average fully supported FTE cost in FY 2023 ($300,416) by the total number of supported direct work hours available for assignment in FY 2023 (1,160) results in an average fully supported cost of $259 (rounded to the nearest dollar), excluding inspection travel costs, per supported direct work hour in FY 2023.

B. Adjusting FY 2021 Travel Costs for Inflation To Estimate FY 2023 Travel Costs

To adjust the hourly rate for FY 2023, FDA must estimate the cost of inflation in each year for FY 2022 and FY 2023. FDA uses the method prescribed for estimating inflationary costs under the Prescription Drug User Fee Act (PDUFA) provisions of the FD&C Act (section 736(c)(1) (21 U.S.C. 379h(c)(1)), the statutory method for inflation adjustment in the FD&C Act that FDA has used consistently. FDA previously determined the FY 2022 inflation rate to be 2.2013 percent; this rate was published in the FY 2022 PDUFA user fee rates notice in the **Federal Register** (August 16, 2021, 86 FR 45732). Utilizing the method set forth in section 736(c)(1) of the FD&C Act, FDA has calculated an inflation rate of 2.2013 percent for FY 2022 and 1.6404 percent for FY 2023, and FDA intends to use these inflation rates to make inflation adjustments for FY 2023 for several of its user fee programs; the derivation of this rate will be published in the **Federal Register** in the FY 2023 notice for the PDUFA user fee rates.

The average fully supported cost per supported direct FDA work hour, excluding travel costs, of $259 already takes into account inflation as the calculation above is based on FY 2023 predicted costs. FDA will use this base unit fee in determining the hourly fee rate for reinspection and recall order fees for FY 2023 prior to including domestic or foreign travel costs as applicable for the activity. In FY 2021, FDA's Office of Regulatory Affairs (ORA) spent a total of $4,920,033 for domestic regulatory inspection travel costs and General Services Administration Vehicle costs related to FDA's Center for Food Safety and Applied Nutrition (CFSAN) and Center for Veterinary Medicine (CVM) field activities programs. The total ORA domestic travel costs spent is then divided by the 4,965 CFSAN and CVM domestic inspections, which averages a total of $991 per inspection. These inspections average 46.43 hours per inspection. Dividing $991 per inspection by 46.43 hours per inspection results in a total and an additional cost of $21 (rounded to the nearest dollar) per hour spent for domestic inspection travel costs in FY 2021. To adjust for the $21 per hour additional domestic cost inflation increases for FY 2022 and FY 2023, FDA must multiply the FY 2022 PDUFA inflation rate adjustor (1.022013) times the FY 2023 PDUFA inflation rate adjustor (1.016404) times the $21 additional domestic cost, which results in an estimated cost of $22 (rounded to the nearest dollar) per paid hour in addition to $259 for a total of $281 per paid hour ($259 plus $22) for each direct hour of work requiring domestic inspection travel. FDA will use these rates in charging fees in FY 2023 when domestic travel is required.

In FY 2020,[3] ORA spent a total of $1,449,058 on 171 foreign inspection trips related to FDA's CFSAN and CVM field activities programs, which averaged a total of $8,474 per foreign inspection trip. These trips averaged 3 weeks (or 120 paid hours) per trip. Dividing $8,474 per trip by 120 hours per trip results in a total and an additional cost of $71 (rounded to the nearest dollar) per paid hour spent for foreign inspection travel costs in FY 2020. To adjust $71 for inflationary increases in FY 2021, FY 2022, and FY 2023, FDA must multiply it by the same inflation factors mentioned previously in this document (1.022013 and 1.016404) and the inflation factor for FY 2021 [4] (1.013493), which results in an estimated cost of $75 (rounded to the nearest dollar) per paid hour in addition to $259 for a total of $334 per paid hour ($259 plus $75) for each direct hour of work requiring foreign inspection travel. FDA will use these rates in charging fees in FY 2023 when foreign travel is required.

[3] We use FY 2020 numbers for the foreign inspection travel costs due to the limited number of inspections done in FY 2021 due to travel restrictions caused by the COVID–19 Pandemic.

[4] FDA previously determined the FY 2021 inflation rate to be 1.3493 percent; this rate was published in the FY 2021 PDUFA user fee rates notice in the **Federal Register** (August 3, 2020, 85 FR 46651).

TABLE 2—FSMA FEE SCHEDULE FOR FY 2023

Fee category	Fee rates for FY 2023
Hourly rate if domestic travel is required	$281
Hourly rate if foreign travel is required	334

III. Fees for Reinspections of Domestic or Foreign Facilities Under Section 743(a)(1)(A)

A. What will cause this fee to be assessed?

The fee will be assessed for a reinspection conducted under section 704 of the FD&C Act (21 U.S.C. 374) to determine whether corrective actions have been implemented and are effective and compliance has been achieved to the Secretary of Health and Human Services' (the Secretary) (and, by delegation, FDA's) satisfaction at a facility that manufactures, processes, packs, or holds food for consumption necessitated as a result of a previous inspection (also conducted under section 704) of this facility, which had a final classification of Official Action Indicated (OAI) conducted by or on behalf of FDA, when FDA determined the noncompliance was materially related to food safety requirements of the FD&C Act. FDA considers such noncompliance to include noncompliance with a statutory or regulatory requirement under section 402 of the FD&C Act (21 U.S.C. 342) and section 403(w) of the FD&C Act (21 U.S.C. 343(w)). However, FDA does not consider noncompliance that is materially related to a food safety requirement to include circumstances where the noncompliance is of a technical nature and not food safety related (*e.g.,* failure to comply with a food standard or incorrect font size on a food label). Determining when noncompliance, other than under sections 402 and 403(w) of the FD&C Act, is materially related to a food safety requirement of the FD&C Act may depend on the facts of a particular situation. FDA intends to issue guidance to provide additional information about the circumstances under which FDA would consider noncompliance to be materially related to a food safety requirement of the FD&C Act.

Under section 743(a)(1)(A) of the FD&C Act, FDA is directed to assess and collect fees from ''the responsible party for each domestic facility (as defined in section 415(b) (21 U.S.C. 350d(b))) and the U.S. agent for each foreign facility subject to a reinspection'' to cover reinspection-related costs.

Section 743(a)(2)(A)(i) of the FD&C Act defines the term ''reinspection'' with respect to domestic facilities as ''1 or more inspections conducted under section 704 subsequent to an inspection conducted under such provision which identified noncompliance materially related to a food safety requirement of th[e] Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction.''

The FD&C Act does not contain a definition of ''reinspection'' specific to foreign facilities. In order to give meaning to the language in section 743(a)(1)(A) of the FD&C Act to collect fees from the U.S. agent of a foreign facility subject to a reinspection, the Agency is using the following definition of ''reinspection'' for purposes of assessing and collecting fees under section 743(a)(1)(A), with respect to a foreign facility: ''1 or more inspections conducted by officers or employees duly designated by the Secretary subsequent to such an inspection which identified noncompliance materially related to a food safety requirement of the FD&C Act, specifically to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction.''

This definition allows FDA to fulfill the mandate to assess and collect fees from the U.S. agent of a foreign facility in the event that an inspection reveals noncompliance materially related to a food safety requirement of the FD&C Act, causing one or more subsequent inspections to determine whether compliance has been achieved to the Secretary's (and, by delegation, FDA's) satisfaction. By requiring the initial inspection to be conducted by officers or employees duly designated by the Secretary, the definition ensures that a foreign facility would be subject to fees only in the event that FDA, or an entity designated to act on its behalf, has made the requisite identification at an initial inspection of noncompliance materially related to a food safety requirement of the FD&C Act. The definition of ''reinspection-related costs'' in section 743(a)(2)(B) of the FD&C Act relates to both a domestic facility reinspection and a foreign facility reinspection, as described in section 743(a)(1)(A).

B. Who will be responsible for paying this fee?

The FD&C Act states that this fee is to be paid by the responsible party for each domestic facility (as defined in section 415(b) of the FD&C Act) and by the U.S. agent for each foreign facility (section 743(a)(1)(A) of the FD&C Act). This is the party to whom FDA will send the invoice for any fees that are assessed under this section.

C. How much will this fee be?

The fee is based on the number of direct hours spent on such reinspections, including time spent conducting the physical surveillance and/or compliance reinspection at the facility, or whatever components of such an inspection are deemed necessary, making preparations and arrangements for the reinspection, traveling to and from the facility, preparing any reports, analyzing any samples or examining any labels if required, and performing other activities as part of the OAI reinspection until the facility is again determined to be in compliance. The direct hours spent on each such reinspection will be billed at the appropriate hourly rate shown in table 2 of this document.

IV. Fees for Noncompliance With a Recall Order Under Section 743(a)(1)(B)

A. What will cause this fee to be assessed?

The fee will be assessed for not complying with a recall order under section 423(d) (21 U.S.C. 350l(d)) or section 412(f) of the FD&C Act (21 U.S.C. 350a(f)) to cover food recall activities associated with such order performed by the Secretary (and by delegation, FDA) (section 743(a)(1)(B) of the FD&C Act). Noncompliance may include the following: (1) not initiating a recall as ordered by FDA; (2) not conducting the recall in the manner specified by FDA in the recall order; or (3) not providing FDA with requested information regarding the recall, as ordered by FDA.

B. Who will be responsible for paying this fee?

Section 743(a)(1)(B) of the FD&C Act states that the fee is to be paid by the responsible party for a domestic facility (as defined in section 415(b) of the FD&C Act) and an importer who does not comply with a recall order under section 423 or under section 412(f) of the FD&C Act. In other words, the party paying the fee would be the party that received the recall order.

C. How much will this fee be?

The fee is based on the number of direct hours spent on taking action in response to the firm's failure to comply with a recall order. Types of activities could include conducting recall audit checks, reviewing periodic status reports, analyzing the status reports and the results of the audit checks, conducting inspections, traveling to and

from locations, and monitoring product disposition. The direct hours spent on each such recall will be billed at the appropriate hourly rate shown in table 2 of this document.

D. How must the fees be paid?

An invoice will be sent to the responsible party for paying the fee after FDA completes the work on which the invoice is based. Payment must be made within 30 days of the invoice date in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Detailed payment information will be included with the invoice when it is issued.

V. What are the consequences of not paying these fees?

Under section 743(e)(2) of the FD&C Act, any fee that is not paid within 30 days after it is due shall be treated as a claim of the U.S. Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

Dated: July 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16169 Filed 7–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–1253]

Laser-Assisted In Situ Keratomileusis Lasers—Patient Labeling Recommendations; Draft Guidance for Industry and Food and Drug Administration Staff; 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 the draft guidance entitled ''Laser-Assisted In Situ Keratomileusis (LASIK) Lasers—Patient Labeling Recommendations.'' This draft guidance recommends content and formatting for patient labeling information for LASIK devices. FDA is issuing this guidance to help ensure that physicians can share and patients can understand information on the benefits and risks of these devices. The recommendations are being made based on concerns that some patients are not receiving and/or understanding information regarding the benefits and risks of LASIK devices. This draft guidance is not final nor is it for implementation at this time.

DATES: Submit either electronic or written comments on the draft guidance by October 26, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–1253 for ''Laser-Assisted In Situ Keratomileusis (LASIK) Lasers—Patient Labeling Recommendations.'' 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)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Laser-Assisted In Situ Keratomileusis (LASIK) Lasers—Patient Labeling Recommendations'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-

addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Bradley Cunningham, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1414, Silver Spring, MD 20993–0002, 301–796–6484.

SUPPLEMENTARY INFORMATION:

I. Background

LASIK is currently one of the most commonly performed elective procedures in the world, as well as the most popular form of refractive surgery that patients choose to correct common vision problems such as nearsightedness, farsightedness, and astigmatism.[1] On April 25, 2008, FDA convened its Ophthalmic Devices Panel of the Medical Devices Advisory Committee to discuss recommendations for modifications to patient labeling of excimer lasers for LASIK as well as other LASIK-related activities. Since the LASIK Advisory Committee meeting, FDA has continued to gather new information pertaining to risks associated with LASIK. This draft guidance recommends content and formatting for patient labeling information for LASIK devices. FDA is issuing this guidance to help ensure that physicians can share and patients can understand information on the benefits and risks of these devices. The recommendations are being made based on concerns the Agency has received regarding patients not receiving and/or understanding key information regarding the benefits and risks of LASIK devices. These labeling recommendations are intended to enhance, but not replace, the physician-patient discussion of the benefits and risks of LASIK devices that uniquely pertain to individual patients.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Laser-Assisted In Situ Keratomileusis (LASIK) Lasers—Patient Labeling Recommendations.'' 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. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Laser-Assisted In Situ Keratomileusis (LASIK) Lasers—Patient Labeling Recommendations'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 16053 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new 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 the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR part	Topic	OMB Control No.
814, subparts A through E	Premarket approval	0910–0231
800, 801, and 809	Medical Device Labeling Regulations	0910–0485

Dated: July 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16166 Filed 7–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1601]

Outsourcing Facility Fee Rates for Fiscal Year 2023

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fiscal year (FY) 2023 rates for the establishment and reinspection fees related to entities that compound human drugs and elect to register as outsourcing facilities under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The FD&C Act authorizes FDA to assess and collect an annual establishment fee from outsourcing facilities, as well as a reinspection fee for each reinspection of an outsourcing facility. This document establishes the FY 2023 rates for the small business establishment fee ($5,941), the non-small business establishment fee ($18,661), and the reinspection fee ($17,823) for outsourcing facilities; provides information on how the fees for FY 2023 were determined; and describes the payment procedures outsourcing facilities should follow.

DATES: These fee rates are effective October 1, 2022, and will remain in effect through September 30, 2023.

ADDRESSES: Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61075, Beltsville, MD.

FOR FURTHER INFORMATION CONTACT: For more information on human drug compounding and outsourcing facility fees, visit FDA's website at: *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/default.htm.*

For questions relating to this notice, contact: Robert Marcarelli, User Fees Support Team at DUF-Budget, Food and Drug Administration, *OO-OFBAP-OFM-DUF-Budget@fda.hhs.gov,* 301–796–7223.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 503B of the FD&C Act (21 U.S.C. 353b), a human drug

[1] Vitale, S., Cotch, M.F., Sperduto, R., Ellwein L., ''Costs of Refractive Correction of Distance Vision Impairment in the United States, 1999–2002,'' *Ophthalmology,* vol. 113, pp. 2163–2170, 2006.

compounder can become an ''outsourcing facility.'' Outsourcing facilities, as defined in section 503B(d)(4), are facilities that meet all the conditions described in section 503B(a), including registering with FDA as an outsourcing facility and paying an annual establishment fee. If the conditions of section 503B are met, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from three sections of the FD&C Act: (1) section 502(f)(1) (21 U.S.C. 352(f)(1)) concerning the labeling of drugs with adequate directions for use; (2) section 505 (21 U.S.C. 355) concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs); and (3) section 582 (21 U.S.C. 360eee–1) concerning drug supply chain security requirements. Drugs compounded in outsourcing facilities are not exempt from the requirements of section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) concerning current good manufacturing practice requirements for drugs.

Section 744K of the FD&C Act (21 U.S.C. 379j-62) authorizes FDA to assess and collect the following fees associated with outsourcing facilities: (1) an annual establishment fee from each outsourcing facility and (2) a reinspection fee from each outsourcing facility subject to a reinspection (see section 744K(a)(1) of the FD&C Act). Under statutorily defined conditions, a qualified applicant may pay a reduced small business establishment fee (see section 744K(c)(4) of the FD&C Act).

FDA announced in the **Federal Register** of November 24, 2014 (79 FR 69856), the availability of a final guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act.'' The guidance provides additional information on the annual fees for outsourcing facilities and adjustments required by law, reinspection fees, how to submit payment, the effect of failure to pay fees, and how to qualify as a small business to obtain a reduction of the annual establishment fee. This guidance can be accessed on FDA's website at: *https://www.fda.gov/media/136683/download.*

II. Fees for FY 2023

A. Methodology for Calculating FY 2023 Adjustment Factors

1. Inflation Adjustment Factor

Section 744K(c)(2) of the FD&C Act specifies the annual inflation adjustment for outsourcing facility fees. The inflation adjustment has two components: one based on FDA's payroll costs and one based on FDA's non-payroll costs for the first 3 of the 4 previous fiscal years. The payroll component of the annual inflation adjustment is calculated by taking the average change in FDA's per-full time equivalent (FTE) personnel compensation and benefits (PC&B) in the first 3 of the 4 previous fiscal years (see section 744K(c)(2)(A)(ii) of the FD&C Act). FDA's total annual spending on PC&B is divided by the total number of FTEs per fiscal year to determine the average PC&B per FTE.

Table 1 summarizes the actual cost and FTE data for the specified fiscal years and provides the percent change from the previous fiscal year and the average percent change over the first 3 of the 4 fiscal years preceding FY 2023. The 3-year average is 1.3918 percent.

TABLE 1—FDA PC&BS EACH YEAR AND PERCENT CHANGE

	FY 2019	FY 2020	FY 2021	3-Year average
Total PC&B	$2,620,052,000	$2,875,592,000	$3,039,513,000	
Total FTE	$17,144	$17,535	$18,501	
PC&B per FTE	$152,826	$163,992	$164,289	
Percent Change From Prevous Year	−3.3120%	7.3063%	0.1811%	1.3918%

Section 744K(c)(2)(A)(ii) of the FD&C Act specifies that this 1.3918 percent should be multiplied by the proportion of PC&B to total costs of an average FDA FTE for the same 3 fiscal years.

TABLE 2—FDA PC&BS AS A PERCENT OF FDA TOTAL COSTS OF AN AVERAGE FTE

	FY 2019	FY 2020	FY 2021	3-Year average
Total PC&B	$2,620,052,000	$2,875,592,000	$3,039,513,000	
Total Costs	$5,663,389,000	$6,039,320,747	$6,105,480,000	
PC&B Percent	46.2630%	47.6145%	49.7834%	47.8870%

The payroll adjustment is 1.3918 percent multiplied by 47.8870 percent, or 0.6665 percent.

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that the portion of the inflation adjustment for non-payroll costs for FY 2023 is equal to the average annual percent change in the Consumer Price Index (CPI) for urban consumers (U.S. City Average; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data, multiplied by the proportion of all non-PC&B costs to total costs of an average FDA FTE for the same period.

Table 2 provides the summary data for the percent change in the specified CPI for U.S. cities. These data are published by the Bureau of Labor Statistics and can be found on its website: *https://data.bls.gov/cgi-bin/surveymost?cu. The data can be viewed* by checking the box marked ''U.S. city average, All items—CUUR0000SA0'' and then selecting ''Retrieve Data.''

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN U.S. CITY AVERAGE CPI

	2019	2020	2021	3-Year average
Annual CPI	255.66	258.81	270.97	.....
Annual Percent Change	1.8120%	1.2337%	4.6980%	2.5812%

Section 744K(c)(2)(A)(iii) of the FD&C Act specifies that this 2.5812 percent should be multiplied by the proportion of all non-PC&B costs to total costs of an average FTE for the same 3 fiscal years. The proportion of all non-PC&B costs to total costs of an average FDA FTE for FYs 2019 to 2021 is 52.1130 percent (100 percent minus 47.8870 percent equals 52.1130 percent). Therefore, the non-pay adjustment is 2.5812 percent times 52.1130 percent, or 1.3451 percent.

The PC&B component (0.6665 percent) is added to the non-PC&B component (1.3451 percent), for a total inflation adjustment of 2.0116 percent (rounded). Section 744K(c)(2)(A)(i) of the FD&C Act specifies that one is added to that figure, making the inflation adjustment 1.020116.

Section 744K(c)(2)(B) of the FD&C Act provides for this inflation adjustment to be compounded after FY 2015. This factor for FY 2023 (2.0116 percent) is compounded by adding one to it, and then multiplying it by one plus the inflation adjustment factor for FY 2022 (16.4796 percent), as published in the **Federal Register** on July 28, 2021 (86 FR 40588). The result of this multiplication of the inflation factors for the 8 years since FY 2015 (1.020116×1.164796) becomes the inflation adjustment for FY 2023. For FY 2023, the inflation adjustment is 18.8227 percent (rounded). We then add one, making the FY 2023 inflation adjustment factor 1.188227.

2. Small Business Adjustment Factor

Section 744K(c)(3) of the FD&C Act specifies that in addition to the inflation adjustment factor, the establishment fee for non-small businesses is to be further adjusted for a small business adjustment factor. Section 744K(c)(3)(B) of the FD&C Act provides that the small business adjustment factor is the adjustment to the establishment fee for non-small businesses that is necessary to achieve total fees equaling the amount that FDA would have collected if no entity qualified for the small business exception in section 744K(c)(4) of the FD&C Act. Additionally, section 744K(c)(5)(A) states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year.

Therefore, to calculate the small business adjustment to the establishment fee for non-small businesses for FY 2023, FDA must estimate: (1) the number of outsourcing facilities that will pay the reduced fee for small businesses for FY 2023 and (2) the total fee revenue it would have collected if no entity had qualified for the small business exception (*i.e.,* if each entity that registers as an outsourcing facility for FY 2023 were to pay the inflation-adjusted fee amount of $17,823).

With respect to (1), FDA estimates that 10 entities will qualify for small business exceptions and will pay the reduced fee for FY 2023. With respect to (2), to estimate the total number of entities that will register as outsourcing facilities for FY 2023, FDA used data submitted by outsourcing facilities through the voluntary registration process, which began in December 2013. Accordingly, FDA estimates that 78 outsourcing facilities, including 10 small businesses, will be registered with FDA in FY 2023.

If the projected 78 outsourcing facilities paid the full inflation-adjusted fee of $17,823, this would result in total revenue of $1,390,194 in FY 2023 ($17,823 \times 78$). However, 10 of the entities that are expected to register as outsourcing facilities for FY 2023 are projected to qualify for the small business exception and to pay one-third of the full fee ($5,941 \times 10$), totaling $59,410 instead of paying the full fee ($17,823 \times 10$), which would total $178,230. This would leave a potential shortfall of $118,820 ($178,230 minus $59,410).

Additionally, section 744K(c)(5)(A) of the FD&C Act states that in establishing the small business adjustment factor for a fiscal year, FDA shall provide for the crediting of fees from the previous year to the next year if FDA overestimated the amount of the small business adjustment factor for such previous fiscal year. FDA has determined that it is appropriate to credit excess fees collected from the last completed fiscal year, due to the inability to conclusively determine the amount of excess fees from the fiscal year that is in progress at the time this calculation is made. This crediting is done by comparing the small business adjustment factor for the last completed fiscal year, FY 2021 ($2,441), to what would have been the small business adjustment factor for FY 2021 ($1,582) if FDA had estimated perfectly.

The calculation for what the small business adjustment would have been if FDA had estimated perfectly begins by determining the total target collections ($15{,}000 \times$ (inflation adjustment factor) $\times$ (number of registrants). For the most recent complete fiscal year, FY 2021, this was $1,400,970 ($17{,}085 \times 82$). The actual FY 2021 revenue from the 82 total registrants (*i.e.,* 72 registrants paying FY 2021 non-small business establishment fee and 10 small business registrants) paying establishment fees is $1,287,070. $1,287,070 is calculated as follows: (FY 2021 Non-Small Business Establishment Fee adjusted for inflation only) $\times$ (total number of registrants in FY 2021 paying Non-Small Business Establishment Fee) + (FY 2021 Small Business Establishment Fee) $\times$ (total number of small business registrants in FY 2021 paying Small Business Establishment Fee). $\$17{,}085 \times 72 + \$5{,}695 \times 10 = \$1{,}287{,}070$. This left a shortfall of $113,900 from the estimated total target collection amount ($1,400,970 minus $1,287,070). This amount ($113,900) divided by the total number of registrants in FY 2021 paying Standard Establishment Fee (72) equals $1,582.

The difference between the small business adjustment factor used in FY 2021 and the small business adjustment factor that would have been used had FDA estimated perfectly is $859 ($2,441 minus $1,582). The $859 (rounded to the nearest dollar) is then multiplied by the number of actual registrants who paid the standard fee for FY 2021 (72), which provides us a total excess collection of $61,831 in FY 2021.

Therefore, to calculate the small business adjustment factor for FY 2023, FDA subtracts $61,831from the projected shortfall of $118,820 for FY 2023 to arrive at the numerator for the small business adjustment amount, which equals $56,989. This number divided by 68 (the number of expected non-small businesses for FY 2023) is the

small business adjustment amount for FY 2023, which is $838 (rounded to the nearest dollar).

B. FY 2023 Rates for Small Business Establishment Fee, Non-Small Business Establishment Fee, and Reinspection Fee

1. Establishment Fee for Qualified Small Businesses [1]

The amount of the establishment fee for a qualified small business is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, divided by 3 (see section 744K(c)(4)(A) and (c)(1)(A) of the FD&C Act). The inflation adjustment factor for FY 2023 is 1.188227. See section II.A.1 of this document for the methodology used to calculate the FY 2023 inflation adjustment factor. Therefore, the establishment fee for a qualified small business for FY 2023 is one third of $17,823, which equals $5,941 (rounded to the nearest dollar).

2. Establishment Fee for Non-Small Businesses

Under section 744K(c) of the FD&C Act, the amount of the establishment fee for a non-small business is equal to $15,000 multiplied by the inflation adjustment factor for that fiscal year, plus the small business adjustment factor for that fiscal year, and plus or minus an adjustment factor to account for over or under collections due to the small business adjustment factor in the prior year. The inflation adjustment factor for FY 2023 is 1.188227. The small business adjustment amount for FY 2023 is $838. See section II.A.2 of this document for the methodology used to calculate the small business adjustment factor for FY 2023. Therefore, the establishment fee for a non-small business for FY 2023 is $15,000 multiplied by 1.188227plus $838, which equals $18,661 (rounded to the nearest dollar).

3. Reinspection Fee

Section 744K(c)(1)(B) of the FD&C Act provides that the amount of the FY 2023 reinspection fee is equal to $15,000, multiplied by the inflation adjustment factor for that fiscal year. The inflation adjustment factor for FY 2023 is 1.188227. Therefore, the reinspection fee for FY 2023 is $15,000 multiplied by 1.188227, which equals $17,823 (rounded to the nearest dollar). There is no reduction in this fee for small businesses.

C. Summary of FY 2023 Fee Rates

TABLE 4—OUTSOURCING FACILITY FEES

Qualified Small Business Establishment Fee	$5,941.00
Non-Small Business Establishment Fee	18,661.00
Reinspection Fee	17,823.00

III. Fee Payment Options and Procedures

A. Establishment Fee

Once an entity submits registration information and FDA has determined that the information is complete, the entity will incur the annual establishment fee. FDA will send an invoice to the entity, via email to the email address indicated in the registration file. The invoice will contain information regarding the obligation incurred, the amount owed, and payment procedures. A facility will not be registered as an outsourcing facility until it has paid the annual establishment fee under section 744K of the FD&C Act. Accordingly, it is important that facilities seeking to operate as outsourcing facilities pay all fees immediately upon receiving an invoice. If an entity does not pay the full invoiced amount within 15 calendar days after FDA issues the invoice, FDA will consider the submission of registration information to have been withdrawn and adjust the invoice to reflect that no fee is due.

Outsourcing facilities that registered in FY 2022 and wish to maintain their status as an outsourcing facility in FY 2023 must register during the annual registration period that lasts from October 1, 2022, to December 31, 2022. Failure to register and complete payment by December 31, 2022, will result in a loss of status as an outsourcing facility on January 1, 2023. Entities should submit their registration information no later than December 10, 2022, to allow enough time for review of the registration information, invoicing, and payment of fees before the end of the registration period.

B. Reinspection Fee

FDA will issue invoices for each reinspection after the conclusion of the reinspection, via email to the email address indicated in the registration file or via regular mail if email is not an option. Invoices must be paid within 30 days.

C. Fee Payment Procedures

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (Note: only full payments are accepted. No partial payments can be made online.) Once you search for your invoice, click ''Pay Now'' to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

2. *If paying with a paper check*: Checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. Payments can be mailed to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. Include invoice number on check. If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314–418–4013).

3. When paying by wire transfer, the invoice number must be included. Without the invoice number the payment may not be applied. Regarding reinspection fees, if the payment amount is not applied, the invoice amount will be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required that the outsourcing facility add that amount to the payment to ensure that the invoice is paid in full. Use the following account information when sending a wire transfer: U.S. Dept of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53–0196965.

[1] To qualify for a small business reduction of the FY 2023 establishment fee, entities had to submit their exception requests by April 30, 2022. See section 744K(c)(4)(B) of the FD&C Act. The time for requesting a small business exception for FY 2023 has now passed. An entity that wishes to request a small business exception for FY 2024 should consult section 744K(c)(4) of the FD&C Act and section III.D of FDA's guidance for industry entitled ''Fees for Human Drug Compounding Outsourcing Facilities Under sections 503B and 744K of the FD&C Act,'' which can be accessed on FDA's website at *https://www.fda.gov/media/136683/download.*

Dated: July 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16170 Filed 7–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1607]

Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2023

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the fee rates and payment procedures for fiscal year (FY) 2023 animal drug user fees. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Animal Drug User Fee Amendments of 2018 (ADUFA IV), authorizes FDA to collect user fees for certain animal drug applications and supplemental animal drug applications, for certain animal drug products, for certain establishments where such products are made, and for certain sponsors of such animal drug applications and/or investigational animal drug submissions. This notice establishes the fee rates for FY 2023.

DATES: The application fee rates are effective for applications submitted on or after October 1, 2022, and will remain in effect through September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Visit FDA's website at *https://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm* or contact Lisa Kable, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–6888, *Lisa.Kable@fda.hhs.gov*. For general questions, you may also email FDA's Center for Veterinary Medicine (CVM) at: *cvmadufa@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the FD&C Act (21 U.S.C. 379j–12), as amended by ADUFA IV, establishes four different types of user fees: (1) fees for certain types of animal drug applications and supplemental animal drug applications; (2) annual fees for certain animal drug products; (3) annual fees for certain establishments where such products are made; and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions (21 U.S.C. 379j–12(a)). When certain conditions are met, FDA will waive or reduce fees (21 U.S.C. 379j–12(d)).

For FYs 2019 through 2023, the FD&C Act establishes the base revenue amount for each fiscal year (21 U.S.C. 379j–12(b)(1)). Base revenue amounts are subject to adjustment for inflation and workload (21 U.S.C. 379j–12(c)(2) and (3)). Beginning with FY 2021, the annual fee revenue amounts are also subject to adjustment to reduce workload-based increases by the amount of certain excess collections or to account for certain collection shortfalls (21 U.S.C. 379j–12(c)(3) and (g)(5)). Fees for applications, products, establishments, and sponsors are to be established each year by FDA so that the percentages of the total revenue that are derived from each type of user fee will be as follows: (1) revenue from application fees shall be 20 percent of total fee revenue; (2) revenue from product fees shall be 27 percent of total fee revenue; (3) revenue from establishment fees shall be 26 percent of total fee revenue; and (4) revenue from sponsor fees shall be 27 percent of total fee revenue (21 U.S.C. 379j–12(b)(2)). The target revenue amounts for each fee category for FY 2023, are as follows: for application fees, the target revenue amount is $6,428,800; for product fees, the target revenue amount is $8,678,880; for establishment fees, the target revenue amount is $8,357,440 and for sponsor fees, the target revenue amount is $8,678,880.

For FY 2023, the animal drug user fee rates are: $659,364 for an animal drug application; $329,682 for a supplemental animal drug application for which safety or effectiveness data are required and for an animal drug application subject to the criteria set forth in section 512(d)(4) of the FD&C Act (21 U.S.C. 360b(d)(4)); $11,375 for the annual product fee; $167,149 for the annual establishment fee; and $149,636 for an annual sponsor fee. FDA will issue invoices for FY 2023 product, establishment, and sponsor fees by December 31, 2022, and payment will be due by January 31, 2023. The application fee rates are effective for applications submitted on or after October 1, 2022, and will remain in effect through September 30, 2023. Applications will not be accepted for review until FDA has received full payment of application fees and any other animal drug user fees owed under the ADUFA program.

II. Revenue Amount for FY 2023

A. Statutory Fee Revenue Amounts

ADUFA IV, Title I of Public Law 115–234, specifies that the aggregate base fee revenue amount for FY 2023 for all animal drug user fee categories is $29,931,240 (21 U.S.C. 379j–12(b)(1)(B)).

B. Inflation Adjustment to Fee Revenue Amount

ADUFA IV specifies that the annual fee revenue amount is to be adjusted for inflation increases for FY 2020 and subsequent fiscal years, using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (21 U.S.C. 379j–12(c)(2)(A)(ii) and (iii)). The component of the inflation adjustment for payroll costs shall be one plus the average annual percent change in the cost of all PC&B paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding fiscal years of available data, multiplied by the average proportion of PC&B costs to total FDA costs for the first 3 of the 4 preceding fiscal years of available data. The data on total PC&B paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees.

Table 1 summarizes the actual cost and FTE data for the specified fiscal years, provides the percent change from the previous fiscal year, and provides the average percent change over the first 3 of the 4 fiscal years preceding FY 2023. The 3-year average is 1.3918 percent.

TABLE 1—FDA PC&B EACH YEAR AND PERCENT CHANGE

	FY 2019	FY 2020	FY 2021	3-Year average
Total PC&B	$2,620,052,000	$2,875,592,000	$3,039,513,000	
Total FTE	17,144	17,535	18,501	
PC&B per FTE	152,826	163,992	164,289	

TABLE 1—FDA PC&B EACH YEAR AND PERCENT CHANGE—Continued

	FY 2019	FY 2020	FY 2021	3-Year average
Percent Change From Previous Year	−3.3120%	7.3063%	0.1811%	1.3918%

The statute specifies that this 1.3918 percent should be multiplied by the proportion of PC&B costs to total FDA costs. Table 2 shows the amount of PC&B and the total amount obligated by FDA for the same 3 fiscal years.

TABLE 2—PC&B AS A PERCENT OF TOTAL COSTS AT FDA

	FY 2019	FY 2020	FY 2021	3-Year average
Total PC&B	$2,620,052,000	$2,875,592,000	$3,039,513,000	.....
Total Costs	5,663,389,000	6,039,321,000	6,049,798,000	.....
PC&B Percent	46.2630%	47.6145%	50.2416%	48.0397%

The portion of the inflation adjustment relating to payroll costs is 1.3918 percent multiplied by 48.0397 percent, or 0.6686 percent.

The statute specifies that the portion of the inflation adjustment for non-payroll costs is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items less food and energy; annual index) for the first 3 of the preceding 4 years of available data multiplied by the average proportion of all costs other than PC&B costs to total FDA costs for the first 3 of the 4 preceding fiscal years. As a result of a geographical revision made by the Bureau of Labor and Statistics in January 2018,[1] the ''Washington-Baltimore, DC-MD-VA-WV'' index was discontinued and replaced with two separate indices (*i.e.,* ''Washington-Arlington-Alexandria, DC-VA-MD-WV'' and ''Baltimore-Columbia-Towson, MD''). To continue applying a CPI that best reflects the geographic region in which FDA is headquartered and that provides the most current data available, FDA is using the Washington-Arlington-Alexandria less food and energy index when calculating the relevant adjustment factors for FY 2020 and subsequent years. Table 3 provides the summary data for the percent change in the specified CPI for the Washington-Arlington-Alexandria area. The data from the Bureau of Labor Statistics are shown in table 3.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN WASHINGTON-ARLINGTON-ALEXANDRIA AREA CPI LESS FOOD AND ENERGY

	FY 2019	FY 2020	FY 2021	3-Year average
Annual CPI	275.84	278.44	287.14	.....
Annual Percent Change	1.2580%	0.9411%	3.1271%	1.7754%

To calculate the inflation adjustment for non-payroll costs, we multiply 1.7754 percent by the proportion of all costs other than PC&B to total FDA costs. Since 48.0397 percent was obligated for PC&B as shown in table 2, 51.9603 percent is the portion of costs other than PC&B (100 percent minus 48.0397 percent equals 51.9603 percent). The portion of the inflation adjustment relating to non-payroll costs is 1.7754 percent times 51.9603 percent, or 0.9225 percent.

Next, we add the payroll component (0.6686 percent) to the non-payroll component (0.9225 percent), for an inflation adjustment of 1.5911 percent for FY 2023.

ADUFA IV provides for the inflation adjustment to be compounded each fiscal year after FY 2020 (see 21 U.S.C. 379j–12(c)(2)(B)). The inflation adjustment for FY 2023 (1.5911 percent) is compounded by adding 1 and then multiplying by 1 plus the inflation adjustment factor for FY 2022 (5.7121 percent), as published in the **Federal Register** on July 28, 2021 (86 FR 40595), which equals 1.0739 (rounded) (1.0159 × 1.0571) for FY 2023. We then multiply the base revenue amount for FY 2023 ($29,931,240) by 1.0739, yielding an inflation adjusted amount of $32,144,386.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

The fee revenue amounts established in ADUFA IV for FY 2020 and subsequent fiscal years are also subject to adjustment to account for changes in FDA's review workload. A workload adjustment will be applied to the inflation adjusted fee revenue amount (21 U.S.C. 379j–12(c)(3)).

To determine whether a workload adjustment applies, FDA calculates the weighted average of the change in the total number of each of the five types of applications and submissions specified in the workload adjustment provision (animal drug applications, supplemental animal drug applications for which data with respect to safety or efficacy are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions) received over the 5-year period that ended on September 30, 2018 (the base years), and the average number of each of these types of applications and submissions over the most recent 5-year period that ended May 31, 2022.

[1] *https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm.*

The results of these calculations are presented in the first two columns of table 4. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application/submissions, reflecting how much of the total FDA animal drug review workload was accounted for by each type of application or submission in the table during the most recent 5 years. Column 5 is the weighted percent change in each category of workload, and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of the table, the sum of the values in column 5 is calculated, reflecting a total change in workload of negative 4.5044 percent for FY 2023. This is the workload adjuster for FY 2023.

TABLE 4—WORKLOAD ADJUSTER CALCULATION

Application type	Column 1	Column 2	Column 3	Column 4	Column 5
	Year average (base years)	Latest 5-year average	Percent change	Weighting factor	Weighted percent change
New Animal Drug Application (NADAs)	16.40	12.80	−21.9512	0.04	−0.9235
Supplemental NADAs With Safety or Efficacy Data	11.60	9.00	−22.4138	0.03	−0.5627
Manufacturing Supplements	353.20	367.80	4.1336	0.19	0.7751
Investigational Study Submissions	183.20	170.40	−6.9869	0.57	−3.9856
Investigational Protocol Submissions	236.40	239.00	1.0998	0.17	0.1923
FY 2023 ADUFA IV Workload Adjuster					−4.5044

Under no circumstances shall the workload adjustment result in fee revenues that are less than the base fee revenues for that fiscal year as adjusted for inflation (21 U.S.C. 379j–12(c)(3)). FDA will not adjust the FY 2023 fee revenue amount for workload changes because the workload adjuster was less than 1 percent.[2]

D. Reduction of Workload-Based Increase by Amount of Certain Excess Collections

Under section 740(c)(3)(B) of the FD&C Act, for FYs 2021 through 2023, if application of the workload adjustment increases the amount of fee revenues established for the fiscal year, as adjusted for inflation, the fee revenue increase will be reduced by the amount of any excess collections for the second preceding fiscal year, up to the amount of the fee revenue increase for workload. Since there is no workload-based increase in FY 2023, this provision does not apply.

E. Recovery of Collection Shortfalls

Under section 740(g)(5)(A)(iii) of the FD&C Act, for FY 2023, the amount of fees otherwise authorized to be collected shall be increased by the cumulative amount, if any, by which the amount collected and appropriated for FY 2021 and FY 2022 (including estimated collections for FY 2022) falls below the cumulative amount of fees authorized for FYs 2021 and 2022.

In FY 2021, the total revenue amount authorized was $33,339,000 and the total amount of fees collected for FY 2021 as of May 31, 2022, was $33,811,815. The total revenue amount authorized for FY 2022 is $31,641,000 and the estimated collections for FY 2022 is projected to be $30,570,000. The cumulative amount of fees collected and estimated for FYs 2021 and 2022 is below the total authorized revenue amount by $1,071,000. Therefore, the recovery of collection shortfalls provision of section 740(g)(5)(A)(iii) is invoked. The next section details the reduction of the shortfall-based fee increase by prior year excess collections.

F. Reduction of Shortfall-Based Fee Increase by Prior Year Excess Collections

Under section 740(g)(5)(B) of the FD&C Act, where FDA's calculations under section 740(g)(5)(A) would result in a fee increase for that fiscal year to recover a collection shortfall in a prior year, FDA must reduce the increase by the amount of any excess collections for preceding fiscal years (after FY 2018) that have not already been applied to reduce workload-based fee increases. FDA's calculations under section 740(g)(5)(A) would result in a fee increase for FY 2023 to recover a collection shortfall of $1,071,000. FDA also calculates that it had $795,666 of excess collections in FY 2020 and $329,934 of excess collections in FY 2021 that have not previously been applied to reduce workload-based fee increases, for a total of $1,125,600 in excess collections. Because the FYs 2020 and 2021 excess collections not previously applied to a workload-based fee increase exceed the projected shortfall in FY 2022, there is a reduction of the shortfall-based fee increase under section 740(g)(5)(B). Therefore, no recovery of collections shortfall will be added to the FY 2023 target revenue.

G. Final Year Adjustment

For FY 2023, FDA may, in addition to other adjustments under section 740(c) of the FD&C Act, further increase the fees, if such an adjustment is necessary, to provide for up to 3 months of operating reserves of carryover user fees for the process for the review of animal drug applications for the first 3 months of FY 2024. If FDA has carryover balances for the process for the review of animal drug applications in excess of 3 months of such operating reserves, then this adjustment will not be made. (See 21 U.S.C. 379j–12(c)(4).) Since FDA currently has an excess of 3 months of such operating reserves, this adjustment will not be made for FY 2023.

H. FY 2023 Fee Revenue Amounts

The fee revenue amount for FY 2023, after considering the possible adjustments under sections 740(c) and (g)(5) of the FD&C Act, is $32,144,000 (rounded to the nearest thousand dollars). ADUFA IV specifies that this revenue amount is to be divided as follows: 20 percent, or a total of $6,428,800, is to come from application fees; 27 percent, or a total of $8,678,880, is to come from product fees; 26 percent, or a total of $8,357,440, is to come from establishment fees; and 27 percent, or a total of $8,678,880, is to come from sponsor fees (21 U.S.C. 379j–12(b)).

III. Application Fee Calculations for FY 2023

A. Application Fee Revenues and Numbers of Fee-Paying Applications

Each person who submits an animal drug application or a supplemental

[2] CVM increases the fee revenue amount established for the fiscal year to reflect changes in workload only if the workload adjuster is equal to or greater than 1 percent.

animal drug application shall be subject to an application fee, with limited exceptions (see 21 U.S.C. 379j–12(a)(1)). The term ''animal drug application'' means an application for approval of any new animal drug submitted under section 512(b)(1) of the FD&C Act or an application for conditional approval of a new animal drug submitted under section 571 of the FD&C Act (21 U.S.C. 360ccc) (see section 739(1) of the FD&C Act (21 U.S.C. 379j–11(1))). As the expanded definition of ''animal drug application'' includes applications for conditional approval submitted under section 571 of the FD&C Act, such applications are now subject to ADUFA fees, except that those fees may be waived if the drug is intended solely to provide for a minor use or minor species (MUMS) indication (see 21 U.S.C. 379j–12(d)(1)(D)).

Prior to ADUFA IV, FDA only had authority to grant conditional approval for drugs intended for a MUMS indication. Under amendments made to section 571 of the FD&C Act by ADUFA IV, FDA retains authority to grant conditional approval for drugs intended for MUMS indications but also will be able to grant conditional approval for certain drugs not intended for a MUMS indication provided certain criteria are met. Beginning with FY 2019, ADUFA IV provides an exception from application fees for animal drug applications submitted under section 512(b)(1) of the FD&C Act by a sponsor who previously applied for conditional approval under section 571 of the FD&C Act for the same product and paid an application fee at the time they applied for conditional approval. The purpose of this exception is to prevent sponsors of conditionally approved products from having to pay a second application fee at the time they apply for full approval of their products under section 512(b)(1) of the FD&C Act, provided the sponsor's application for full approval is filed consistent with the timeframes established in section 571(h) of the FD&C Act.

A ''supplemental animal drug application'' is defined as a request to the Secretary of Health and Human Services (Secretary) to approve a change in an animal drug application that has been approved, or a request to the Secretary to approve a change to an application approved under section 512(c)(2) of the FD&C Act for which data with respect to safety or effectiveness are required (21 U.S.C. 379j–11(2)). The application fees are to be set so that they will generate $6,428,800 in fee revenue for FY 2023. The fee for a supplemental animal drug application for which safety or effectiveness data are required and for an animal drug application subject to criteria set forth in section 512(d)(4) of the FD&C Act is to be set at 50 percent of the animal drug application fee (21 U.S.C. 379j–12(a)(1)(A)(ii)).

To set animal drug application fees and supplemental animal drug application fees to realize $6,428,800, FDA must first make some assumptions about the number of fee-paying applications and supplemental applications the Agency will receive in FY 2023.

The Agency knows the number of applications that have been submitted in previous fiscal years. That number fluctuates annually. In estimating the fee revenue to be generated by animal drug application fees in FY 2023, FDA is assuming that the number of applications for which fees will be paid in FY 2023 will equal the average number of applications over the 4 most recent completed fiscal years of the ADUFA program (FY 2018 to FY 2021). FDA decided to use a 4-year average for the FY 2023 fee rate calculation rather than a 5-year average. FDA made this adjustment because in the past 5 FY, 1 FY had an abnormally low number of applications. Thus, FDA used a 4-year average to remove this outlier from the forecast method, which resulted in a lower application fee rate.

Over the 4 most recent completed fiscal years, the average number of animal drug applications that would have been subject to the full fee was 5.25. Over this same period, the average number of supplemental applications for which safety or effectiveness data are required and applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act that would have been subject to half of the full fee was 9.0.

Based on the previous assumptions, FDA is estimating that it will receive a total of 9.75 fee-paying animal drug applications in FY 2023 (5.25 applications paying a full fee and 9.00 applications paying a half fee).

B. Application Fee Rates for FY 2023

FDA must set the fee rates for FY 2023 so that the estimated 9.75 applications that pay the fee will generate a total of $6,428,800. To generate this amount, the fee for an animal drug application, rounded to the nearest dollar, will have to be $659,364, and the fee for a supplemental animal drug application for which safety or effectiveness data are required and for applications subject to the criteria set forth in section 512(d)(4) of the FD&C Act will have to be $329,682.

IV. Animal Drug Product Fee Calculations for FY 2023

A. Product Fee Revenues and Numbers of Fee-Paying Products

The animal drug product fee must be paid annually by the person named as the applicant in a new animal drug application or supplemental new animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act (21 U.S.C. 360) and who had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003 (21 U.S.C. 379j–12(a)(2)). The term ''animal drug product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the National Drug Code, and for which an animal drug application or a supplemental animal drug application has been approved (21 U.S.C. 379j–11(3)). The product fees are to be set so that they will generate $8,678,880 in fee revenue for FY 2023.

To set animal drug product fees to realize $8,678,880, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2023. FDA gathered data on all animal drug products that have been submitted for listing under section 510 of the FD&C Act and matched this to the list of all persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. As of May 2022, FDA estimates that there is a total of 779 products submitted for listing by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA estimates that a total of 779 products will be subject to this fee in FY 2023.

In estimating the fee revenue to be generated by animal drug product fees in FY 2023, FDA is assuming that 2 percent of the products invoiced, or 16, will not pay fees in FY 2023 due to fee waivers and reductions. FDA has made this estimate at 2 percent this year, based on historical data over the past 5 completed fiscal years of the ADUFA program.

Accordingly, the Agency estimates that a total of 763 (779 minus 16) products will be subject to product fees in FY 2023.

B. Product Fee Rates for FY 2023

FDA must set the fee rates for FY 2023 so that the estimated 763 products for

which fees are paid will generate a total of $8,678,880. To generate this amount will require the fee for an animal drug product, rounded to the nearest dollar, to be $11,375.

V. Animal Drug Establishment Fee Calculations for FY 2023

A. Establishment Fee Revenues and Numbers of Fee-Paying Establishments

The animal drug establishment fee must be paid annually by the person who: (1) owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the FD&C Act; (3) had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the fiscal year (see 21 U.S.C. 379j–12(a)(3)). An establishment subject to animal drug establishment fees is assessed only one such fee per fiscal year. The term ''animal drug establishment'' is defined as a foreign or domestic place of business at one general physical location, consisting of one or more buildings, all of which are within 5 miles of each other, at which one or more animal drug products are manufactured in final dosage form (21 U.S.C. 379j–11(4)). The establishment fees are to be set so that they will generate $8,357,440 in fee revenue for FY 2023.

To set animal drug establishment fees to realize $8,357,440, FDA must make some assumptions about the number of establishments for which these fees will be paid in FY 2023. FDA gathered data on all animal drug establishments and matched this to the list of all persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. As of May 2022, FDA estimates that there is a total of 54 establishments owned or operated by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA believes that 54 establishments will be subject to this fee in FY 2023.

In estimating the fee revenue to be generated by animal drug establishment fees in FY 2023, FDA is assuming that 7 percent of the establishments invoiced, or four establishments, will not pay fees in FY 2023 due to fee waivers and reductions. FDA has made this estimate at 7 percent this year, based on historical data over the past 5 completed fiscal years.

Accordingly, the Agency estimates that a total of 50 (54 minus 4) establishments will be subject to establishment fees in FY 2023.

B. Establishment Fee Rates for FY 2023

FDA must set the fee rates for FY 2023 so that the fees paid for the estimated 50 establishments will generate a total of $8,357,440. To generate this amount will require the fee for an animal drug establishment, rounded to the nearest dollar, to be $167,149.

VI. Animal Drug Sponsor Fee Calculations for FY 2023

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The animal drug sponsor fee must be paid annually by each person who: (1) is named as the applicant in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510 of the FD&C Act, or has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive and (2) had an animal drug application, supplemental animal drug application, or investigational animal drug submission pending at FDA after September 1, 2003 (see 21 U.S.C. 379j–11(6) and 379j–12(a)(4)). An animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j–12(a)(4)). The sponsor fees are to be set so that they will generate $8,678,880 in fee revenue for FY 2023.

To set animal drug sponsor fees to realize $8,678,880, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2023. FDA estimates that a total of 182 sponsors will meet this definition in FY 2023.

In estimating the fee revenue to be generated by animal drug sponsor fees in FY 2023, FDA is assuming that 68 percent of the sponsors invoiced, or 124, will not pay sponsor fees in FY 2023 due to fee waivers and reductions. FDA has made this estimate at 68 percent this year, based on historical data over the past 5 completed fiscal years of the ADUFA program.

Accordingly, the Agency estimates that a total of 58 (182 minus 124) sponsors will be subject to and pay sponsor fees in FY 2023.

B. Sponsor Fee Rates for FY 2023

FDA must set the fee rates for FY 2023 so that the estimated 58 sponsors that pay fees will generate a total of $8,678,880. To generate this amount will require the fee for an animal drug sponsor, rounded to the nearest dollar, to be $149,636.

VII. Fee Schedule for FY 2023

The fee rates for FY 2023 are summarized in table 5.

TABLE 5—FY 2023 FEE RATES

Animal drug user fee category	Fee rate for FY 2023
Animal Drug Application Fees:	
Animal Drug Application	$659,364
Supplemental Animal Drug Application for Which Safety or Effectiveness Data are Required or Animal Drug Application Subject to the Criteria Set Forth in Section 512(d)(4) of the FD&C Act	329,682
Animal Drug Product Fee	11,375
Animal Drug Establishment Fee [1]	167,149
Animal Drug Sponsor Fee [2]	149,636

[1] An animal drug establishment is subject to only one such fee each fiscal year.

[2] An animal drug sponsor is subject to only one such fee each fiscal year.

VIII. Fee Waiver or Reduction; Exemption From Fees

A. Barrier to Innovation Waivers or Fee Reductions

Under section 740(d)(1)(A) of the FD&C Act, an animal drug applicant may qualify for a waiver or reduction of one or more ADUFA fees if the fee would present a significant barrier to innovation because of limited resources available to the applicant or other circumstances. CVM's guidance for industry (GFI) #170, entitled ''Animal Drug User Fees and Fee Waivers and Reductions,'' [3] states that the Agency interprets this provision to mean that a waiver or reduction is appropriate when: (1) the product for which the waiver is being requested is innovative, or the requestor is otherwise pursuing innovative animal drug products or technology and (2) the fee would be a significant barrier to the applicant's ability to develop, manufacture, or market the innovative product or technology. Only those applicants that meet both of these criteria will qualify for a waiver or reduction in user fees under this provision (see GFI #170 at pp. 6–8). For purposes of determining whether the second criterion would be met on the basis of limited financial resources available to the applicant, FDA has determined an applicant with financial resources of less than $20,000,000 (including the financial resources of the applicant's affiliates), adjusted annually for inflation, has limited resources available. Using the CPI for urban consumers (U.S. city average; not seasonally adjusted; all items; annual index), the inflation-adjusted level for FY 2023 will be $22,364,520; this level represents the financial resource ceiling that will be used to determine if there are limited resources available to an applicant requesting a Barrier to Innovation waiver on financial grounds for FY 2023. Requests for a waiver need to be submitted to FDA each fiscal year not later than 180 days from when the fees are due. A waiver granted on Barrier to Innovation grounds (or any of the other grounds listed in section 740(d)(1) of the FD&C Act) is only valid for 1 fiscal year. If a sponsor is not granted a waiver, they are liable for the fees.

B. Exemptions From Fees

The types of fee waivers and reductions that applied during ADUFA III still exist for FY 2023. In addition, ADUFA IV established two new exemptions and one new exception from fees, as described below:

If an animal drug application, supplemental animal drug application, or investigational submission involves the intentional genomic alteration of an animal that is intended to produce a human medical product, any person who is the named applicant or sponsor of that application or submission will not be subject to sponsor, product, or establishment fees under ADUFA based solely on that application or submission (21 U.S.C. 379j–12(d)(4)(B)).

Fees will not apply to any person who not later than September 30, 2023, submits to CVM a supplemental animal drug application relating to a new animal drug application approved under section 512 of the FD&C Act, solely to add the application number to the labeling of the drug in the manner specified in section 502(w)(3) of the FD&C Act (21 U.S.C. 352(w)(3)), if that person otherwise would be subject to user fees under ADUFA based only on the submission of the supplemental application (21 U.S.C. 379j–12(d)(4)(A)).

There is also an exception from application fees for animal drug applications submitted under section 512(b)(1) of the FD&C Act by a sponsor who previously applied for conditional approval under section 571 of the FD&C Act for the same product and paid an application fee at the time they applied for conditional approval, provided the sponsor has submitted the application under section 512(b)(1) of the FD&C Act within the timeframe specified in section 571(h) of the FD&C Act (see 21 U.S.C. 379j–12(a)(1)(C)(ii)).

IX. Procedures for Paying the FY 2023 Fees

A. Application Fees and Payment Instructions

The FY 2023 fee established in the new fee schedule must be paid for an animal drug application or supplement subject to fees under ADUFA IV that is submitted on or after October 1, 2022. The payment must be made in U.S. currency from a U.S. bank by one of the following methods: wire transfer, electronically, check, bank draft, or U.S. postal money order made payable to the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay,* or the *Pay.gov* payment option is available to you after you submit a cover sheet. (Note: only full payments are accepted. No partial payments can be made online.) Once you search for and find your invoice, select ''Pay Now'' to be redirected to *www.pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available only for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

When paying by check, bank draft, or U.S. postal money order, please write your application's unique Payment Identification Number (PIN), beginning with the letters AD, on the upper right-hand corner of your completed Animal Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 979033) and PIN on the enclosed check, bank draft, or money order. Mail the payment and a copy of the completed Animal Drug User Fee Cover Sheet to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. Note: in no case should the payment for the fee be submitted to FDA with the application.

When paying by wire transfer, the invoice number or PIN needs to be included; without the invoice number or PIN, the payment may not be applied, and the invoice amount would be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee, it is required to add that amount to the payment to ensure that the invoice is paid in full.

Use the following account information when sending a payment by wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account Number: 75060099, U.S. Department of the Treasury routing/transit number: 021030004, SWIFT Number: FRNYUS33.

To send a check by a courier such as FedEx, the courier must deliver the check and printed copy of the cover sheet to U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery, contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery.)

It is important that the fee arrives at the bank at least a day or two before the application arrives at FDA's CVM. FDA records the official application receipt date as the later of the following: the date the application was received by

[3] CVM's GFI #170 can be accessed at: *https://www.fda.gov/media/69918/download.*

CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Department of the Treasury notifies FDA of receipt of an electronic or wire transfer payment. U.S. Bank and the U.S. Department of the Treasury are required to notify FDA within 1 working day, using the PIN described previously.

The tax identification number of FDA is 53–0196965.

B. Application Cover Sheet Procedures

Step One: Create a user account and password. Log on to the ADUFA website at *https://www.fda.gov/industry/animal-drug-user-fee-act-adufa/animal-drug-user-fee-cover-sheet* and, under Application Submission Information, click on ''Create ADUFA User Fee Cover Sheet.'' For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two: Create an Animal Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your username and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet are accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique PIN.

Step Three: Send the payment for your application as described in section IX.A.

Step Four: Submit your application.

C. Product, Establishment, and Sponsor Fees

By December 31, 2022, FDA will issue invoices and payment instructions for product, establishment, and sponsor fees for FY 2023 using this fee schedule. Payment will be due by January 31, 2023. FDA will issue invoices in November 2023 for any products, establishments, and sponsors subject to fees for FY 2023 that qualify for fees after the December 2022 billing.

Dated: July 22, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–16176 Filed 7–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information (RFI): Inviting Comments and Suggestions on an ODS Strategic Plan 2022–2026

AGENCY: National Institutes of Health, HHS.

ACTION: Request for information.

SUMMARY: Since its inception in 1994, the National Institutes of Health (NIH), Office of Dietary Supplements (ODS) has used a structured planning process to develop five-year strategic plans. ODS is committed to engaging its stakeholders including representatives of the scientific community, industry, other federal agencies, and the public in the strategic planning process by soliciting their comments on the draft ODS Strategic Plan for Fiscal Years (FY) 2022–2026. Considering comments from representative stakeholder groups, and the general public will help ODS assess the outcomes of its investments and prioritize plans for the next five years.

DATES: The RFI is open for public comments and must be received by 11:59:59 p.m. (ET) on August 31, 2022, to ensure consideration.

ADDRESSES: All comments must be submitted electronically to *odsplan@od.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Please direct all inquiries to: Barbara Cohen at *ODSplan@od.nih.gov* or (301) 435–2920.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the 21st Century Cures Act, wherein NIH institutes are required to regularly update their strategic plans. The purpose of the FY 2022–2026 ODS Strategic Plan (*https://ods.od.nih.gov/About/StrategicPlan.aspx*) is to communicate how ODS will advance its mission to support, coordinate, and disseminate the results of scientific research, and provide leadership to help expand the knowledge, scientific evidence, and understanding of dietary supplements, thus fostering an enhanced quality of life and health for the U.S. population. The plan articulates ODS' priorities in five key areas (goals):

(1) Expand the scientific knowledge base on dietary supplements by stimulating and supporting a full range of biomedical research and by developing and contributing to relevant initiatives, workshops, meetings, and conferences;

(2) Enhance the dietary supplement research workforce through training and career development and simultaneously support the development of programs for diverse researchers who are underrepresented in science;

(3) Foster development and dissemination of research resources and tools to enhance the quality of dietary supplement research;

(4) Translate dietary supplement research findings into useful information for consumers, health professionals, researchers, and policymakers; and

(5) Coordinate and support the development of collaborative initiatives to address gaps in dietary supplement research.

ODS has completed a draft of its Five-Year Strategic Plan for FY 2022–2026 (*https://ods.od.nih.gov/About/StrategicPlan.aspx*) and is interested in receiving feedback from all interested parties on the following:

- Are there additional emerging public health issues that ODS can help address?
- Are there existing knowledge gaps that ODS can help address (not included in the current plan)?
- What can ODS do better to meet the needs of its stakeholders?

ODS encourages organizations to submit a single response reflective of the views of the organization as a whole.

Responses to this RFI are voluntary and may be submitted anonymously. Please do not include any personally identifiable information or any information that you do not wish to make public. Proprietary, classified, confidential, or sensitive information should not be included in your response. The NIH will use the information submitted in response to this RFI at its discretion. The NIH reserves the right to use any submitted information on public websites, in reports, in summaries of the state of the science, in any possible resultant solicitation(s), grant(s), or cooperative agreement(s), or in the development of future funding opportunity announcements. This RFI is for informational and planning purposes only and is not a solicitation for applications or an obligation on the part of the Government to provide support for any ideas identified in response to it. Please note that the Government will not pay for the preparation of any information submitted or for use of that information.

We look forward to your input and hope that you will share this RFI opportunity with your colleagues.

Dated: July 22, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–16152 Filed 7–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel: Mechanism for Time-Sensitive Research Opportunities in Environmental Health Sciences (R21).

Date: August 9, 2022.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Qingdi Quentin Li, Ph.D., MD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, (240) 858–3914, *liquenti@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. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 21, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–16157 Filed 7–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Conference, Meeting, Workshop, Registration and Challenges Generic Clearance (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Mikia P. Currie, Chief, Project Clearance Branch (PCB), Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 803–B, Bethesda, Maryland, 20892 or call non-toll-free number (301) 435–0941 or email your request, including your address to: *curriem@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on May 5, 2022, pages 26768 & 26769 (87 FR 26768) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Conference, Meeting, Workshop, Registration and Challenges Generic Clearance, –0925–0740—REVISION, expiration date 07/31/2022, National Institutes of Health (NIH).

Need and Use of Information Collection: This is a revision of a currently approved generic clearance to include Challenges and Competitions as a means of promoting innovative solutions. As a result of including Challenges and Competitions, the title of this generic has been revised. This generic will continue to provide a quick and efficient process to create registration forms for NIH sponsored conference, meetings, workshops, poster sessions, presentations, and panels. NIH directly sponsors, organizes, and conducts research-related activities such as conferences, workshops, meetings, poster sessions, and training courses. These activities are designed to be relevant to the current state of research in a given field or to the current state of participant's research projects or careers, and other resource limitations and determine the number of possible participants. For such activities to be timely and to optimally use available resources to address needs and opportunities within the research community, it is necessary for NIH to have a means to register and select the most appropriate participants, according to the type or purpose of a given activity.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 10,375.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of request	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Conferences	2,500	1	1	2,500
Meetings	2,500	1	45/60	1,875
Workshops	2,500	1	30/60	1,250
Poster Session	1,000	1	1	1,000
Panels	1,500	1	30/60	750
Presentations	1,500	1	1	1,500
Challenges and Competitions	1,500	1	1	1,500
Total	.....	13,000	.....	10,375

Dated: July 22, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–16153 Filed 7–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting website (*http://videocast.nih.gov/*).

The meeting will be closed to the public as indicated below, 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 Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 8, 2022.

Closed: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Open: 12:15 p.m. to 5:00 p.m.

Agenda: Presentations and other business of the Council.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Conference Rooms A, B, & C, Bethesda, MD 20817.

Contact Person: Abraham P. Bautista, Ph.D., Executive Secretary, National Advisory Council, Director, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 1458, MSC 6902, Bethesda, MD 20892, 301–443–9737, *bautista@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Security Statement for NIH Campus and Off Campus Federal Facilities: In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Additional Health and Safety Guidance: Before attending a meeting at an NIH facility, it is important that visitors review the NIH COVID–19 Safety Plan at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/Pages/default.aspx* and the NIH testing and assessment web page at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/visitor-testing-requirement.aspx* for information about requirements and procedures for entering NIH facilities, especially when COVID–19 community levels are medium or high. In addition, the Safer Federal Workforce website has FAQs for visitors at *https://www.saferfederalworkforce.gov/faq/visitors/.* Please note that if an individual has a COVID–19 diagnosis within 10 days of the meeting, that person must attend virtually. (For more information please read NIH's Requirements for Persons after Exposure at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/persons-after-exposure.aspx* and What Happens When Someone Tests Positive at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/test-positive.aspx.*) Anyone from the public can attend the open portion of the meeting virtually via the NIH Videocasting website (*http://videocast.nih.gov*). Please continue checking these websites, in addition to the committee website listed below, for the most up to date guidance as the meeting date approaches.

Information is also available on the Institute's/Center's home page: *http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 25, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–16212 Filed 7–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2249]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations,

which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before October 26, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2249, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Shelby County, Indiana and Incorporated Areas Project: 16–05–6727S Preliminary Date: April 10, 2020	
Unincorporated Areas of Shelby County	Shelby County Courthouse Annex, 25 West Polk Street, Shelbyville, IN 46176.
Kalamazoo County, Michigan (All Jurisdictions) Project: 18–05–0002S Preliminary Dates: March 31, 2021 and September 30, 2021	
Charter Township of Comstock	Comstock Township Offices, 6138 King Highway, Kalamazoo, MI 49048.
Charter Township of Cooper	Cooper Township Offices, 1590 D Avenue West, Kalamazoo, MI 49009.
Charter Township of Kalamazoo	Township Hall, 1720 Riverview Drive, Kalamazoo, MI 49004.
Charter Township of Texas	Texas Township Hall, 7110 West Q Avenue, Kalamazoo, MI 49009.
City of Galesburg	City Hall, 200 East Michigan Avenue, Galesburg, MI 49053.
City of Kalamazoo	City Hall, 241 West South Street, Kalamazoo, MI 49007.
City of Parchment	City Hall, 650 South Riverview Drive, Parchment, MI 49004.
City of Portage	City Hall, 7900 South Westnedge Avenue, Portage, MI 49002.
Township of Brady	Brady Town Hall, 13123 South 24th Street, Vicksburg, MI 49097.

Community	Community map repository address
Township of Prairie Ronde	Prairie Ronde Township Hall, 14050 South 6th Street, Schoolcraft, MI 49087.
Township of Richland	Township Offices, 7401 North 32nd Street, Richland, MI 49083.
Township of Ross	Ross Township Offices, 12086 East M–89, Richland, MI 49083.
Township of Schoolcraft	Schoolcraft Township Hall, 50 VW Avenue East, Vicksburg, MI 49097.
Village of Vicksburg	Village Hall, 126 North Kalamazoo Avenue, Vicksburg, MI 49097.
Delaware County, Ohio and Incorporated Areas Project: 14–05–4454S Preliminary Date: April 8, 2022	
City of Delaware	City Building, 1 South Sandusky Street, Delaware, OH 43015.
City of Powell	City Office, 47 Hall Street, Powell, OH 43065.
Unincorporated Areas of Delaware County	Delaware County Building Regulations, 50 Channing Street, South Wing, Delaware, OH 43015.
Village of Ostrander	Village Offices, 19 South Main Street, Ostrander, OH 43061.

[FR Doc. 2022–16194 Filed 7–27–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2253]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arkansas: Johnson	Unincorporated areas of Johnson County (21–06–1009P).	The Honorable Herman H. Houston, Johnston County Judge, 215 West Main Street, Clarksville, AR 72830.	Johnson County Courthouse, 215 West Main Street, Clarksville, AR 72830.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 20, 2022	050441
Colorado:						
Arapahoe	City of Littleton (21–08–0952P).	The Honorable Kyle Schlachter, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, CO 80120.	Public Works Department, 2255 West Berry Avenue, Littleton, CO 80120.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 21, 2022	080017
Arapahoe	Unincorporated areas of Arapahoe County (21–08–0952P).	The Honorable Nancy Jackson, Chair, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, CO 80120.	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 21, 2022	080011
Jefferson	Unincorporated areas of Jefferson County (21–08–0952P).	The Honorable Andy Kerr, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 21, 2022	080087
Florida:						
Broward	City of Oakland Park (22–04–0596P).	The Honorable Michael E. Carn, Mayor, City of Oakland Park, 3650 Northeast 12th Avenue, Oakland Park, FL 33334.	City Hall, 3650 Northeast, 12th Avenue, Oakland Park, FL 33334.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2022	120050
Monroe	Unincorporated areas of Monroe County (22–04–2567P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 27, 2022	125129
Monroe	Unincorporated areas of Monroe County (22–04–2665P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 24, 2022	125129
Orange	Unincorporated areas of Orange County (22–04–1714P).	The Honorable Jerry L. Demings, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Public Works Department, Stormwater Management Division, 4200 South John Young Parkway, Orlando, FL 32839.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 31, 2022	120179
Sarasota	City of Sarasota (22–04–2558P).	The Honorable Erik Arroyo, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Services Department, 1565 1st Street, Sarasota, FL 34236.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2022	125150
Kentucky: Scott	City of Georgetown (22–04–2347P).	The Honorable Tom Prather, Mayor, City of Georgetown, 100 North Court Street, Georgetown, KY 40324.	Planning and Zoning Department, 230 East Main Street, Georgetown, KY 40324.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2022	210208
Oklahoma: Canadian and Oklahoma.	City of Oklahoma City (21–06–3298P).	The Honorable David Holt, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	Public Works Department, 420 West Main Street, Suite 700, Oklahoma City, OK 73102.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2022	405378
Pennsylvania:						
Montgomery ...	Township of Lower Merion (21–03–1283P).	Ernie B. McNeely, Manager, Township of Lower Merion, 75 East Lancaster Avenue, Ardmore, PA 19003.	Township Hall, 75 East Lancaster Avenue, Ardmore, PA 19003.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 26, 2022	420701
Philadelphia ...	City of Philadelphia (21–03–1283P).	The Honorable Jim Kenney, Mayor, City of Philadelphia, 1400 John F. Kennedy Boulevard, Room 215, Philadelphia, PA 19107.	Department of Licenses and Inspections, 1401 John F. Kennedy Boulevard, 11th Floor, Philadelphia, PA 19102.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 26, 2022	420757
South Carolina:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Horry	Unincorporated areas of Horry County (22–04–0124P).	The Honorable Johnny Gardner, Chair, Horry County Council, P.O. Box 1236, Conway, SC 29528.	Horry County Government Office, 1301 2nd Avenue, Suite 1D09, Conway, SC 29526.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 21, 2022	450104
Sumter	City of Sumter (22–04–2326P).	The Honorable David P. Merchant, Mayor, City of Sumter, 21 North Main Street, Sumter, SC 29151.	Sumter City-County Planning Department, 12 West Liberty Street, Sumter, SC 29150.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 30, 2022	450184
Sumter	Unincorporated areas of Sumter County (22–04–2326P).	The Honorable James T. McCain, Jr., Chair, Sumter County Council, 13 East Canal Street, Sumter, SC 29150.	Sumter City-County Planning Department, 12 West Liberty Street, Sumter, SC 29150.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 30, 2022	450182
Texas:						
Bexar	City of San Antonio (21–06–2461P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Stormwater Division, 1901 South Alamo Street, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2022	480045
Bexar	Unincorporated areas of Bexar County (21–06–2900P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2022	480035
Collin	City of Anna (21–06–3396P).	The Honorable Nate Pike, Mayor, City of Anna, P.O. Box 776, Anna, TX 75409.	Public Works Department, 3223 North Powell Parkway, Anna, TX 75409.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 26, 2022	480132
Collin	Unincorporated areas of Collin County (21–06–3396P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 26, 2022	480130
Dallas	City of DeSoto (21–06–3174P).	The Honorable Rachel L. Proctor, Mayor, City of DeSoto, 211 East Pleasant Run Road, DeSoto, TX 75115.	Development Services Department, 211 East Pleasant Run Road, DeSoto, TX 75115.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 7, 2022	480172
Harris	City of Houston (21–06–2034P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Department, 1002 Washington Avenue, Houston, TX 77002.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2022	480296
Hays	City of Buda (21–06–2861P).	The Honorable Lee Urbanovsky, Mayor, City of Buda, 405 East Loop Street, Building 100, Buda, TX 78610.	Engineering Department, 405 East Loop Street, Building 100, Buda, TX 78610.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2022	481640
Hays	Unincorporated areas of Hays County (21–06–2861P).	The Honorable Ruben Becerra, Hays County Judge, 111 East San Antonio Street, Suite 300, San Marcos, TX 78666.	Hays County Office of Development Services, 2171 Yarrington Road, Suite 100, Kyle, TX 78640.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2022	480321
Johnson	City of Alvarado (22–06–0104P).	The Honorable Jacob Wheat, Mayor, City of Alvarado, 104 West College Street, Alvarado, TX 76009.	City Hall, 104 West College Street, Alvarado, TX 76009.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 20, 2022	480397
Johnson	Unincorporated areas of Johnson County (22–06–0104P).	The Honorable Roger Harmon, Johnson County Judge, 2 North Main Street, Cleburne, TX 76033.	Johnson County Public Works Department, 2 North Main Street, Cleburne, TX 76033.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 20, 2022	480879
Tarrant	City of Mansfield (22–06–0409P).	The Honorable Michael A. Evans, Mayor, City of Mansfield, 1200 East Broad Street, Mansfield, TX 76063.	Department of Zoning and Planning, 1200 East Broad Street, Mansfield, TX 76063.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 11, 2022	480606
Utah: Weber	Unincorporated areas of Weber County (21–08–1088P).	The Honorable Scott Jenkins, Chair, Weber County Commission, 2380 Washington Boulevard, Suite 360, Ogden, UT 84401.	Weber County Center, 2380 Washington Boulevard, Suite 360, Ogden, UT 84401.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 3, 2022	490187
Virginia:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Charles City ...	Unincorporated areas of Charles City County (22–03–0523P).	Michelle Johnson, Charles City County Administrator, P.O. Box 128, Charles City, VA 23030.	Charles City County Government Administration Building, 10900 Courthouse Road, Charles City, VA 23030.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 9, 2022	510198
Chesterfield	Unincorporated areas of Chesterfield County (22–03–0241P).	Joseph P. Casey, Chesterfield County Administrator, P.O. Box 40, Chesterfield, VA 23832.	Chesterfield County Environmental Engineering Department, 9800 Government Center Parkway, Chesterfield, VA 23832.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 20, 2022	510035

[FR Doc. 2022–16193 Filed 7–27–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7061–N–09]

60-Day Notice of Proposed Information Collection: Public/Private Partnerships for the Mixed-Finance Development of Public Housing Units, OMB Control No.: 2577–0275

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 26, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Proposal: Public/Private Partnerships for the Mixed-Finance Development of Public Housing Units.

OMB Control Number: 2577–0275.

Type of Request: Reinstatement with change of a currently approved collection.

Form Number: HUD–50156, HUD–50157, HUD–50158, HUD–50159, HUD–50160, HUD–50161, HUD–52190. This PRA also includes two new forms: The Mixed Finance Amendment to the Annual Contributions Contact and the Mixed Finance Development Proposal for Faircloth to RAD Transactions.

Description of the need for the information and proposed use: The Quality Housing and Work Responsibility Act of 1998 (Pub. L. 195–276, approved October 21, 1998), also known as the Public Housing Reform Act, created section 35 of the U.S. Housing Act of 1937, 42 U.S.C. 1437z–7.1437. Section 35 allows Public Housing Authorities (PHAs) to own, operate, assist, or otherwise participate in the development and operation of mixed-finance projects. Mixed-finance development refers to the development or rehabilitation of public housing, where the public housing units are owned in whole or in part by an entity other than a PHA. Prior to this, all public housing had to be developed and owned by a PHA. However, Section 35 allows PHAs to provide Section 9 Capital Funds and Operating Funds to mixed-finance projects, which are also financially assisted by private financing and other resources including tax credit equity, private mortgages and other federal, state, or local funds. Section 35 also allows non-PHA owner entities to own and operate mixed-finance projects that contain only public housing units or both public housing and non-public housing units. Mixed-finance real estate development or rehabilitation transactions also help to extend public housing appropriations for housing development and to support the development of mixed-income housing in which public housing residents are anonymously mixed in with affordable and market rate housing residents.

In order to approve the development of mixed-finance projects, HUD collects certain information from each PHA/Ownership Entity. Under current regulations, HUD collects and reviews the essential documents included in this Information Collection Request (ICR) in order to determine approval. After approval is given and the documents are recorded by the associated county, HUD collects the recorded versions of the documents in this ICR, along with financing and legal agreements that the PHA/owner entity has with HUD and with third-parties in connection with that mixed-finance project. This includes unique legal documents along with standardized forms and ''Certifications and Assurances'' which are not exempted under PRA.

The regulations that govern the processing of mixed-finance public housing projects are at 24 CFR part 905, subpart F. In accordance with these regulations, HUD collects information to ensure that the proposed mixed-finance development has sufficient funds to reach completion; will remain financially viable during its operating period; will follow HUD's legal and programmatic guidelines for housing project development or rehabilitation, ownership, and use restrictions; and will preserve HUD's rights to the project during its HUD-required affordability period. Information on HUD-prescribed forms and in HUD-prescribed contracts and agreements, along with other supplemental information called for in 24 CFR part 905, provides HUD with

sufficient information to determine whether the project should be approved and whether funds should or should not be reserved or a contractual commitment made. Specifically, regulations at 24 CFR 905.606, ''Development Proposal,'' state that a Mixed-finance Development Proposal (Proposal) must be submitted to HUD to facilitate approval of the development of public housing. The subsection also lists the information that is required in the Proposal. The documentation required is submitted using the collection documents (ICs) in this ICR.

HUD's Mixed-finance Development Proposal, and associated documents, can also be used to facilitate the approval of non-public housing developments whose development and/or operations are supported with Section 9 funds. For instance, Choice Neighborhoods grantees must use the Mixed-Finance Development Proposal to obtain HUD approval of their proposed housing development projects, even if those projects do not include public housing units. Moving to Work (MTW) agencies can also use this form to secure HUD approval of local, non-traditional development projects; however, it is not mandatory for them to do so. The Proposal notes requirements that apply to Choice Neighborhoods grantees and MTW agencies specifically. A PHA that is refinancing an existing Mixed-Finance project can also use the Proposal to secure HUD approval.

This ICR was last updated in FY 2018. Since that time, minor updates have been made to the Proposal to clarify instructions for grantees. The HUD Declaration of Trust/Declaration of Restrictive Covenants (DOT/DORC), which was previously approved under a separate PRA, is also being included in this submission, along with the Mixed Finance Amendment to the Annual Consolidated Contract. HUD is also including a revised version of the Mixed Finance Development Proposal that can be used for Faircloth to RAD transactions and that includes specific requirements for those projects. The list of documents being requested in this ICR have also been updated to reflect current practices: A couple documents no longer collected as part of the Mixed Finance review process have been removed. This ICR also adds the Ground Lease, Memorandum of Ground Lease, Management Agreement, Management Plan and Sample Tenant Lease to the list of evidentiary documents collected via this ICR. These documents were previously grouped together in this ICR under the category of ''Mixed Finance Evidentiary Documents.'' However, now the documents are being listed individually to provide greater clarity. Finally, the number of respondents has been adjusted since the last time this ICR was updated to more accurately reflect the current number of annual submissions.

Members of affected public: Public Housing Agencies, Developers.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Form/Document	Number of respondents	Frequency	Total responses	Hours per response	Total hours	Cost per hour	Total cost
HUD–50156: Mixed-Finance Development Proposal Calculator ..	40	1	40	4	160	$50	$8,000
HUD–50157: Mixed-Finance Development Proposal	40	1	40	16	640	50	32,000
HUD–XXXXX: Mixed-Finance Development Proposal for Faircloth to RAD Transactions	15	1	15	16	240	50	12,000
HUD–XXXXX: Mixed-Finance Amendment to the Annual Contributions Contract	40	1	40	24	960	50	48,000
HUD–50158: Mixed-Finance Homeownership Certifications and Assurances	10	1	10	0.25	3	50	125
HUD–50059: Mixed-Finance Homeownership Term Sheet	10	1	10	16	160	50	8,000
HUD–50160: Mixed-Finance and Homeownership Pre-Funding Certifications and Assurances	10	1	10	0.25	3	50	125
HUD–50161: Mixed-Finance Certifications and Assurances	40	1	40	0.25	10	50	500
HUD 52190: Mixed-Finance Declaration of Restrictive Covenants	40	1	40	0.25	10	250	2,500
Unique Legal Documents: Management Plan, Management Agreement and Sample Tenant Lease	40	1	40	15	600	250	150,000
Unique Legal Document: Regulatory and Operating Agreement	40	1	40	8	320	250	80,000

Form/Document	Number of respondents	Frequency	Total responses	Hours per response	Total hours	Cost per hour	Total cost
Unique Legal Documents: Ground Lease and Memorandum of Ground Lease	40	1	40	24	960	250	240,000
Unique Legal Document: ATLA Survey	40	1	40	12	480	50	24,000
Unique Legal Document: Mixed-Finance Legal Opinion	40	1	40	1	40	250	10,000
Unique Legal Document: Mixed-Finance Final Title Policy	40	1	40	16	640	250	160,000
Unique Legal Documents: Mixed-Finance Homeownership Addendum	10	1	10	16	160	250	40,000
Unique Legal Document: Mixed-Finance Homeownership Declaration of Restrictive Covenants	10	1	10	0.25	3	50	125
Totals	505		505	169.25	5388		$815,375

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Laura Miller-Pittman,

Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2022–16141 Filed 7–27–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7061–N–10]

60-Day Notice of Proposed Information Collection: Public Housing Operating Fund Program: Operating Budget and Related Form, OMB Control No.: 2577–0026

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 26, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: PHA Board Resolution Approving Operating Budget.

OMB Approval Number: 2577–0026.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: HUD–52574.

Description of the need for the information and proposed use: The operating budget and related form are submitted by PHAs for the low-income housing program. The operating budget provides a summary of proposed budget receipts and expenditures by major category, as well as blocks for indicating approval of budget receipts and expenditures by the PHA and HUD. The related form provides a record of PHA

Board approval of how the amount shown on the operating budget were arrived at, as well as justification of certain specified amounts. The information is reviewed by HUD to determine if the plan of operation adopted by the PHA and amounts included therein are reasonable for the efficient and economical operation of the development(s), and the PHA follows HUD procedures to assure that sound management practices will be followed in the operation of the development. PHAs are still required to prepare their operating budgets and submit them to their Board for approval prior to their operating fund grant being approved by HUD. The operating budgets must be kept on file and updated with actuals for HUD's review, if requested.

Respondents: Public Housing Authorities and the Public Housing Authority's board chair.

Information collection	Number of respondents	Average number of reponses per respondent	Total annual responses	Burden hours per response	Total burden hours	×	Hourly cost	=	Total annual cost
HUD–52574	3,000	1	3,000	0.17	510		$35.91		$18,314
PHA Operating Budget	3,000	2.1	6,300	1	6,300		35.91		226,233
PHA Operating Budget Actuals	350	5	4,500	1	4,500		35.91		161,595
Total	6,000		13,800		11,310				406,142

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Laura Miller-Pittman,

Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2022–16142 Filed 7–27–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2022–N035; FXES11140400000–223–FF04E00000]

Endangered Species; Recovery 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, have received applications for permits, permit renewals, and/or permit amendments to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act of 1973, as amended. 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.

DATES: We must receive written data or comments on the applications by August 29, 2022.

ADDRESSES:

Reviewing Documents: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Submit a request for a copy of such documents to Karen Marlowe (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Comments: If you wish to comment, you may submit comments by one of the following methods:

- *U.S. mail:* U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).
- *Email: permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the U.S. Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Karen Marlowe, Permit Coordinator, 404–679–7097 (telephone), *karen_marlowe@fws.gov* (email), or 404–679–7081 (fax). 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 invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. With some exceptions, the ESA prohibits take of listed species unless a Federal permit is issued that authorizes such take. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA

authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

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.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE 28597A–2 ..	Joseph Alderman, Hillsborough, NC.	*Fishes:* Cape Fear shiner (*Notropis mekistocholas*); and *Mussels:* Appalachian elktoe (*Alasmidonta raveneliana*), Carolina heelsplitter (*Lasmigona decorata*), dwarf wedgemussel (*Alasmidonta heterodon*), James spinymussel (*Parvaspina collina*), littlewing pearlymussel (*Pegias fabula*), and Tar River spinymussel (*Parvaspina steinstansana*).	North Carolina, South Carolina, and Virginia.	Presence/probable absence surveys.	*Fish:* Capture via seining, handle, identify, and release; and *Mussels:* Capture, handle, identify, mark, release, and salvage relic shells.	Renewal.
TE 11044C–1 ..	Tyler Newman, Richmond, KY.	Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), and northern long-eared bat (*M. septentrionalis*).	Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/probable absence surveys.	Capture with mist nets, handle, identify, band, and radio tag.	Renewal.
PER 0042918–0.	Frank Ridgley, Zoo Miami, Miami, FL.	Florida bonneted bat (*Eumops floridanus*).	Florida	Studies to document habitat use, population monitoring, and genetic, virome, dietary, and parasitology analyses.	Capture with mist nets, handle, identify, radio tag, buccal swab, recapture if needed, and release.	New.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE 81756A–4 ..	Jason Robinson, Lexington, KY.	*Bats:* Gray bat (*Myotis grisescens*), Indiana bat (*M. sodalis*), and northern long-eared bat (*M. septentrionalis*); *Fishes:* Blackside dace (*Phoxinus cumberlandensis*) and Kentucky arrow darter (*Etheostoma spilotum*); and *Crustaceans:* Big Sandy crayfish (*Cambarus callainus*).	Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.	Presence/probable absence surveys and population monitoring.	*Bats:* Capture with mist nets or harp traps, handle, identify, band, and radio tag; *Fishes:* Capture via seining, netting, or electroshock, handle identify, and release; and *Crustaceans:* Capture via seining, handle, identify, and release.	Renewal.
TE 114069–3 ...	Fairchild Tropical Botanic Garden, Coral Gables, FL.	*Agave eggersiana* (no common name [NCN]), *Amorpha crenulata* (crenulate lead-plant), *Argythamnia blodgettii* (Blodgett's silverbush), *Aristida chaseae* (NCN), *A. portoricensis* (pelos del diablo), *Brickellia mosieri* (Florida brickellbush), *Buxus vahlii* (Vahl's boxwood), *Calyptranthes thomasiana* (NCN), *Catesbaea melanocarpa* (NCN), *Cereus eriophorus* var. *fragrans* (fragrant prickly-apple), *Chamaecrista lineata keyensis* (big pine partridge pea), *Chamaesyce deltoidea pinetorum* (pineland sandmat), *C. deltoidea serpyllum* (wedge spurge), *C. deltoidea* ssp. *deltoidea* (deltoid spurge), *C. garberi* (Garber's spurge), *Chromolaena frustrata* (Cape Sable thoroughwort), *Consolea corallicola* (Florida semaphore cactus), *Cyathea dryopteroides*. (elfin tree fern), *Dalea carthagenensis floridana* (Florida prairie-clover), *Digitaria pauciflora*. (Florida pineland crabgrass), *Elaphoglossum serpens* (NCN), *Galactia smallii* (Small's milkpea), *Harrisia* (=*Cereus*) *aboriginum*. (=*gracilis*) (aboriginal prickly-apple), *Jacquemontia reclinata* (beach jacquemontia), *Linum arenicola* (sand flax), *L. carteri carteri* (Carter's small-flowered flax), *Lyonia truncata* var. *proctorii*.	Florida, Puerto Rico, and U.S. Virgin Islands.	Short- and long-term *ex situ* storage, artificial propagation, reintroduction projects, and scientific and conservation research.	Collect seeds, spores, cuttings, propagules, and whole plants.	Renewal and amendment.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
		(NCN), *Pilosocereus robinii* (key tree cactus), *Polygala smallii* (tiny polygala), *Polystichum. calderonense* (NCN), *Sideroxylon reclinatum* ssp. *austrofloridense* (Everglades bully), *Thelypteris inabonensis* (NCN), *T. yaucoensis*. (NCN), *Trichomanes punctatum* ssp. *floridanum* (Florida bristle fern), *Vernonia proctorii* (NCN), and *Zanthoxylum thomasianum* (St. Thomas prickly-ash).				
TE 102324–3 ...	Thomas Dickinson, Chapel Hill, NC.	*Amphibians:* Neuse River waterdog (*Necturus lewisi*); *Fishes:* Cape Fear shiner (*Notropis mekistocholas*), Carolina madtom (*Noturus furiosus*), Roanoke logperch (*Percina rex*), and yellow lance (*Elliptio lanceolata*); and *Mussels:* Appalachian elktoe (*Alasmidonta raveneliana*), Atlantic pigtoe (*Fusconaia masoni*), Carolina heelsplitter (*Lasmigona decorata*), Cumberland bean (pearlymussel) (*Villosa trabalis*), dwarf wedgemussel (*Alasmidonta heterodon*), James spinymussel (*Parvaspina collina*), littlewing pearlymussel (*Pegias fabula*), oyster mussel (*Epioblasma capsaeformis*), and Tar River spinymussel (*Parvaspina steinstansana*).	North Carolina and South Carolina.	Presence/probable absence surveys and population monitoring.	Capture, identify, and release.	Renewal and amendment.
TE 68616B–3 ..	Carla Atkinson, University of Alabama, Tuscaloosa, AL.	Alabama pearlshell (*Margaritifera marrianae*), Choctaw bean (*Obovaria choctawensis*), fuzzy pigtoe (*Pleurobema strodeanum*), narrow pigtoe (*Fusconaia escambia*), round ebonyshell (*Reginaia rotulata*), southern kidneyshell (*Ptychobranchus jonesi*), southern sandshell (*Hamiota australis*), and tapered pigtoe (*Fusconaia burkei*).	Mississippi	Presence/probable absence surveys, studies to document habitat use, and excretion/respiration studies.	Capture, handle, identify, hold temporarily in containers in stream, and release.	Amendment.
TE 18986C–3 ..	North Carolina Zoo, Asheboro, NC.	Virgin Islands tree boa (*Chilabothrus granti*).	Puerto Rico and U.S. Virgin Islands.	Captive propagation and reintroduction, maintenance of a satellite population in captivity, genetic analyses and disease screenings, and studies to document habitat use.	Remove from the wild, handle, PIT tag, collect blood and tissue samples, radio tag, and salvage.	Renewal and amendment.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Aaron Valenta,

Acting Deputy Assistant Regional Director, Ecological Services.

[FR Doc. 2022–16154 Filed 7–27–22; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1310]

Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation Based on Settlement; Termination of the Investigation; Certain Interactive Fitness Products Including Stationary Exercise Bikes, Treadmills, Elliptical Machines, and Rowing Machines and Components Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 8) of the presiding administrative law judge (''ALJ'') granting a joint motion to terminate the investigation in its entirety based on settlement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On April 7, 2022, the Commission instituted this investigation based on a complaint filed on behalf of Peloton Interactive, Inc. of New York, New York (''Peloton''). 87 FR 20463 (Apr. 7, 2022). The complaint, as supplemented and amended, alleges a violation of 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 interactive fitness products including stationary exercise bikes, treadmills, elliptical machines, and rowing machines and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 11,170,886; 7,938,755; 11,183,288; 11,145,399; and 10,864,406. *Id.* The notice of investigation names as respondents ICON Fitness Corp., IHF Holdings Inc., iFIT Inc. (FKA ICON Health & Fitness, Inc.), NordicTrack, Inc., and Free Motion Fitness, Inc., all of Logan, Utah (collectively, ''Respondents''). *Id.* OUII is not participating in this investigation.

On May 20, 2022, Peloton and Respondents jointly moved to terminate the investigation in its entirety based on settlement. On June 23, 2022, the parties supplemented their motion. No responses opposing the motion were filed.

On June 23, 2022, the ALJ issued the subject ID pursuant to Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)), granting the motion. The ID finds that no extraordinary circumstances prevent termination of the investigation. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on July 25, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 25, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–16224 Filed 7–27–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Public Availability of FY 2019 Service Contracts Inventory, Analysis and Planned Analysis of FY 2020 Service Contracts Inventory

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010, the U.S. International Trade Commission is publishing this notice to advise the public of the availability of the FY 2019 Service Contract Inventory and the Planned Analysis of FY 2020 Service Contracts Inventory.

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Debra Bridge, U.S. International Trade Commission, Office of Procurement, 500 E Street SW, Washington, DC 20436; *debra.bridge@usitc.gov;* (202) 205–2004.

SUPPLEMENTARY INFORMATION: The FY 2019 inventory analysis provides information on specific service contract actions that were analyzed. The 2019 inventory provides information on service contract actions over $25,000, which were made in FY 2019. The inventory information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 and December 19, 2011, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/procurement/memo/service-contract-inventory-guidance.pdf.*

The FY 2020 planned analysis of service contracts inventory provides information on which functional areas will be reviewed by the agency. The U.S. International Trade Commission has posted its FY 2019 inventory and FY 2020 planned analysis at the following link: *https://www.usitc.gov/offices/procurement.*

The link to the Government-wide service contract inventory is *https://www.acquisition.gov/service-contract-inventory.*

The Commission's FY2020 service contract inventory data is included in the government-wide inventory and may be filtered by agency.

Issued: July 19, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–15794 Filed 7–27–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1319]

Certain Electronic Devices and Semiconductor Devices With Timing-Aware Dummy Fill and Components Thereof; Notice of the Commission's Determination Not To Review an Initial Determination Setting a 20-Month Target Date and an Initial Determination Granting a Motion To Intervene

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 3) setting a 20-month target date and an ID (Order No. 5) granting Cadence Design Systems, Inc.'s (''Cadence'') motion to intervene.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 13, 2022, based on a complaint filed by Bell Semiconductor, LLC of Bethlehem, Pennsylvania (''Complainant''). 87 FR 35791–92 (June 13, 2022). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices and semiconductor devices with timing-aware dummy fill and components thereof by reason of the infringement of certain claims of U.S. Patent No. 7,007,259. The complaint, as supplemented, further alleged that a domestic industry exists. The notice of investigation named as respondents: NXP Semiconductors, N.V. of Eindhoven, Netherlands; NXP B.V. of Eindhoven, Netherlands; NXP USA, Inc. of Austin, Texas; SMC Networks, Inc. d/b/a/IgniteNet of Irvine, California; Micron Technology, Inc. of Boise, Idaho; NVIDIA Corporation of Santa Clara, California; Advanced Micro Devices, Inc. of Santa Clara, California; Acer, Inc. of New Taipei City, Taiwan; Acer America Corporation of San Jose, California; Infineon Technologies America Corp. of Milpitas, California; Analog Devices Inc. of Norwood, Massachusetts; Bose Corporation of Framingham, Massachusetts; Marvell Technology Group, Ltd. of Hamilton, Bermuda; Marvell Semiconductor, Inc. of Santa Clara, California; Suteng Innovation Technology Co., Ltd. d/b/a RoboSense of Shenzen, China; Kioxia Corporation of Tokyo, Japan; Kioxia America, Inc. of San Jose, California; Socionext Inc. of Yokohama, Japan; Socionext America, Inc. of Santa Clara, California; Qualcomm Technologies, Inc. of San Diego, California; Lenovo Group Ltd. of Haidan District, China and Motorola Mobility LLC of Chicago, Illinois. The Office of Unfair Import Investigations (''OUII'') is also participating in the investigation.

On June 15, 2022, Cadence moved to intervene in the instant investigation with full participation rights and obligations. Motion at 1–2 (June. 15, 2022). Cadence asserts, however, that while it requests full participation rights as an intervening party, it does not seek to be accorded respondent status. Cadence explains that Complainant's infringement allegations rely, at least in part, on the functionality of Cadence's software tool technology which is alleged to be used to design one or more of the respondents' devices. *Id.* at 4–6. Cadence further argues that Complainant also relies on Cadence's products to allege the existence of a domestic industry. *Id.* at 6–7. Cadence explains that the Commission follows Rule 24 of the Rules of Civil Procedure which ''provides that a party may intervene when it files a timely motion, has an interest relating to the property or transaction which is the subject of the action, is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, and is not adequately represented by existing parties.'' *Id.* at 7 (citing Rule 24). Cadence contends (1) that it has substantial interest in this investigation because Complainant seeks to exclude at least some products because they are made, produced, or processed by design tools from Cadence, (2) Cadence is the only party with knowledge of its technology and has the greatest interest in defending it, and (3) its motion is timely. *Id.* at 8–11.

On June 23, 2022, the presiding ALJ issued an ID (Order No. 5) granting Cadence's motion to intervene. The ID found that Cadence meets the requirements of Commission Rule 210.19 (19 CFR 210.19) and established that it has interests in this investigation, and thus the ALJ determined that Cadence should be granted intervenor status. No one petitioned for review of Order No. 5.

Also, on June 23, 2022, the presiding ALJ issued Order No. 3 setting a 20-month target date of February 20, 2024. The ID explained that the target date is necessary due to the ALJ's obligations in other investigations.

On June 30, 2022, Complainant petitioned for review of Order No. 3. On July 8, 2022, OUII, Respondents Analog Devices, Inc., Infineon Technologies Americas Corp., Bose Corporation, Motorola Mobility LLC, Qualcomm Technologies, Inc., Acer, Inc., Acer America Corporation, Advanced Micro Devices, Inc., and Micron Technology, Inc., and Respondents Kioxia Corporation, Kioxia America, Inc., Marvell Semiconductor, Inc., Marvell Technology Group Ltd., NVIDIA Corporation, NXP Semiconductors, N.V., NXP B.V, NXP USA, Inc., Suteng Innovation Technology Co. Ltd. d/b/a RoboSense, Socionext Inc., Socionext America, Inc., and SMC Networks, Inc. d/b/a/IgniteNet filed separate responses to Complainant's petition for review.

The Commission has determined not to review the subject IDs. With respect to Order No. 3, the Commission notes that the ALJs have wide discretion in managing their own caseloads. The target date for this investigation was set, for good cause, at 20-months based on the ALJ's obligations in other matters.

The Commission vote for this determination took place on July 25, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 25, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–16231 Filed 7–27–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1045]

Importer of Controlled Substances Application: Biopharmaceutical Research Company LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Biopharmaceutical Research Company LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before August 29, 2022. Such persons may also file a written request for a hearing on the application on or before August 29, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on June 8, 2022, Biopharmaceutical Research Company LLC, 11045 Commercial Parkway, Castroville, California 95012–3209, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana	7360	I

The company plans to import narcotic raw material for bulk manufacture and analytical purposes. This notice does not constitute an evaluation or determination of the merits of the company's application. No other activity for this drug code is authorized for this registration. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–16204 Filed 7–27–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1039]

Importer of Controlled Substances Application: AndersonBrecon Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: AndersonBrecon Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before August 29, 2022. Such persons may also file a written request for a hearing on the application on or before August 29, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on May 6, 2022, AndersonBrecon Inc., 5775 Logistics Parkway, Rockford, Illinois 61109–3608, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols ...	7370	I

The company plans to import the listed controlled substance for clinical trial studies only. No other activity for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–16205 Filed 7–27–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1040]

Bulk Manufacturer of Controlled Substances Application: AMPAC Fine Chemicals Virginia, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: AMPAC Fine Chemicals Virginia, LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before September 26, 2022. Such persons may also file a written request for a hearing on the application on or before September 26, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on April 21, 2022, AMPAC Fine Chemicals Virginia, LLC, 2820 North Normandy Drive, Petersburg, Virginia 23805–2380, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Levomethorphan	9210	II
Levorphanol	9220	II
Morphine	9300	II
Thebaine	9333	II
Noroxymorphone	9668	II
Tapentadol	9780	II

The company plans to manufacture the above-listed controlled substances as bulk for internal use as intermediates or for distribution to its customers. No other activities for these drug codes are authorized for this registration.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–16207 Filed 7–27–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1050]

Importer of Controlled Substances Application: Akorn Operating Company, LLC DBA Akorn

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Akorn Operating Company, LLC DBA Akorn has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before August 29, 2022. Such persons may also file a written request for a hearing on the application on or before August 29, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on June 6, 2022, Akorn Operating Company, LLC DBA Akorn, 1222 West Grand Avenue, Decatur, Illinois 62522, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Remifentanil	9739	II

The company plans to import the listed controlled substance for research purposes. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–16208 Filed 7–27–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1035]

Importer of Controlled Substances Application: Aspen API, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Aspen API, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before August 29, 2022. Such persons may also file a written request for a hearing on the application on or before August 29, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not

instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on May 9, 2022, Aspen API, Inc., 2136 South Wolf Road, Des Plaines, Illinois 60018, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Remifentanil	9739	II

The company plans to import the listed controlled substance as a bulk active pharmaceutical ingredient (API) for distribution to manufacture of finished dosage prescription drugs. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–16199 Filed 7–27–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection

AGENCY: Laboratory Division-RSU, Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Laboratory Division-RSU, Federal Bureau of Investigation, Department of Justice, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until September 26, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Libby Stern, Research Chemist, Federal Bureau of Investigation Laboratory Division, Research and Support Unit, 2501 Investigation Ave., Quantico, VA 22135, *geophysics@fbi.gov,* 703–632–7825.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

➢ Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Bureau of Investigation, Laboratory Division-RSU, 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;

➢ Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Geophysical Service Providers in Support of Law Enforcement.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* FBI IRB number 646–22. The applicable component within the Department of Justice is the Federal Bureau of Investigation, Laboratory Division-RSU.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals, Private Sector, Federal Government, State, Local or Trial Government. Those completing the questionnaires are personnel from universities, government agencies, instrument manufacturer and private contractors who conduct near surface geophysical investigations in aid of law enforcement. The FBI Laboratory Division seeks to gather information on the applications of geophysical methods (such as ground penetrating radar, electrical resistivity, magnetometry,etc.) to detect concealed targets as part of a criminal investigations. This questionnaire will ask which geophysical methodologies were applied, who performed the geophysical investigation, suspected targets, environments of the geophysical surveys for summaries of 1 to 3 geophysical surveys. The results may be published and used to understand practical uses of geophysical methods for law enforcement investigations.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* We expect no more than 100 individuals completing the questionnaire. On average we expect an average of 10–15 minutes to complete the questionnaire.

6. *An estimate of the total public burden (in hours) associated with the collection:* 25 hours.

If additional information is required contact: Robert Houser, Assistant Director, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 22, 2022.

Robert Houser,

Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–16158 Filed 7–27–22; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0002]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Notice of Appeal From a Decision of an Immigration Judge

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Executive Office for Immigration Review, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 26, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289.

SUPPLEMENTARY INFORMATION: This notice replaces the notice posted on June 8, 2022, at 87 FR 34905, for this collection.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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/or

—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.

Overview of This Information Collection

1. *Type of Information Collection:* Renewal with change of an approved collection.

2. *The Title of the Form/Collection:* Notice of Appeal from a Decision of an Immigration Judge.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR–26, Executive Office for Immigration Review, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual noncitizens determined to be removable from the United States and the Department of Homeland Security, Immigration and Customs Enforcement (ICE). Other: None. Abstract: A party (either the noncitizen or ICE) affected by a decision of an Immigration Judge may appeal that decision to the Board, provided that the Board has jurisdiction pursuant to 8 CFR 1003.1(b). An appeal from an Immigration Judge's decision is taken by completing the Form EOIR–26 and submitting it to the Board.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 34,921 respondents will complete the form annually with an average of 30 minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 17,460 hours.

If additional information is required contact: Robert Houser, Assistant Director, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: July 22, 2022.

Robert Houser,

Asst. Director, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–16147 Filed 7–27–22; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment to Consent Decree Under the Clean Air Act

On July 25, 2022, the Department of Justice lodged a proposed amendment to the consent decree entered in the matter of *United States* v. *Equistar Chemicals, LP; LyondellBasell Acetyls, LLC; and Lyondell Chemical Co.,* Civil Action No. 4:21–cv–3359 in the United States District Court for the Southern District of Texas.

The United States filed this lawsuit under the Clean Air Act. The complaint sought injunctive relief and civil penalties based on violations of the Clean Air Act's New Source Review requirements, New Source Performance Standards, National Emissions Standards for Hazardous Air Pollutants, ''Title V'' program requirements and operating permits, and related Texas and Iowa state implementation plan requirements. The violations resolved by the proposed consent decree amendment involve two flares used at a petrochemical manufacturing plant owned and operated by the defendants, Lyondell Chemical Co. and Equistar Chemicals, LP, in Morris, Illinois (the ''Morris Plant''). The consent decree amendment requires the defendants to perform injunctive relief at the Morris Plant and pay a $324,000 civil penalty.

The publication of this notice opens a period for public comment on the proposed consent decree amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Equistar Chemicals, LP; LyondellBasell Acetyls, LLC; and Lyondell Chemical Co.,* D.J. Ref. No. 90–5–2–1–11416/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree amendment may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent

decree amendment upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $3.50.

Patricia McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–16213 Filed 7–27–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

212th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Teleconference Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 212th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held via a teleconference on Thursday, September 8 and Friday, September 9, 2022.

The two-day meeting will begin at 9:00 a.m. and end at approximately 5:30 p.m. (ET) each day with a one-hour break for lunch. The purpose of the open meeting is for Advisory Council members to hear testimony from invited witnesses and to receive an update from the Employee Benefits Security Administration (EBSA).

The Advisory Council is studying the following topics: (1) Cybersecurity Issues Affecting Health Benefit Plans, and (2) Cybersecurity Insurance and Employee Benefit Plans. Descriptions of these topics are available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council.*

The agenda and instructions for public access to the teleconference meeting will be available on the ERISA Advisory Council's web page at *https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council* approximately one week prior to the meeting.

Organizations or members of the public wishing to submit a written statement may do so on or before Thursday, September 1, 2022, to Christine Donahue, Executive Secretary, ERISA Advisory Council. Statements should be transmitted electronically as an email attachment in text or pdf format to *donahue.christine@dol.gov.* Statements transmitted electronically that are included in the body of the email will not be accepted. Relevant statements received on or before Thursday, September 1, 2022, will be included in the record of the meeting and made available through the EBSA Public Disclosure Room. No deletions, modifications, or redactions will be made to the statements received as they are public records.

Individuals or representatives of organizations wishing to address the ERISA Advisory Council should forward their requests to the Executive Secretary on or before Thursday, September 1, 2022, via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record.

Individuals who need special accommodations should contact the Executive Secretary on or before Thursday, September 1, 2022, via email to *donahue.christine@dol.gov* or by telephoning (202) 693–8641.

For more information about the meeting, contact the Executive Secretary at the address or telephone number above.

Signed at Washington, DC, this 25th day of July, 2022.

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2022–16234 Filed 7–27–22; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Investment Manager Electronic Registration

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 29, 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Under section 402(c)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), if an ''investment manager'' (as defined in section 3(38) of ERISA) manages plan assets, the plan's trustee is relieved from certain fiduciary obligations relating to the management of the assets for which the investment manager is responsible. The Department's regulation, at 29 CFR 2510.3–38, provides that investment advisers that register with a state, rather than with the SEC, must satisfy ERISA's section 3(38) requirement to file a copy of the state registration with the Department by electronically registering through the Investment Adviser Registration Depository (IARD). For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 17, 2022 (87 FR 15267).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of

law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Investment Manager Electronic Registration.

OMB Control Number: 1210–0125.

Affected Public: Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 3.

Total Estimated Number of Responses: 3.

Total Estimated Annual Time Burden: 3 hours.

Total Estimated Annual Other Costs Burden: $230.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: July 20, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–16206 Filed 7–27–22; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Overpayment Recovery Questionnaire

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before August 29, 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Information collected with this form is used to evaluate the financial profile of OWCP beneficiaries who have been overpaid benefits, and their ability to repay. OWCP beneficiaries are typically retired coal miners disabled by black lung disease, Federal employees injured on the job, and their survivors. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 6, 2022 (87 FR 19978).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Overpayment Recovery Questionnaire.

OMB Control Number: 1240–0051.

Affected Public: Private Sector—Individuals or Households.

Total Estimated Number of Respondents: 1,878.

Total Estimated Number of Responses: 1,878.

Total Estimated Annual Time Burden: 1,878 hours.

Total Estimated Annual Other Costs Burden: $1,089.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2022–16195 Filed 7–27–22; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

NSF 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.

SUPPLEMENTARY INFORMATION:

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for program planning, management, evaluation, and audit purposes, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology; 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 collection techniques or other forms of information technology.

Title of Collection: Education and Human Resources Program Monitoring Data Collections.

OMB Approval Number: 3145–0226.

Type of Request: Intent to seek renewal, with change, of an information collection.

Abstract: The National Science Foundation (NSF) requests re-clearance of program data collections that describe and track outcomes associated with NSF funding that focuses on the Nation's science, technology, engineering, and mathematics (STEM) education and STEM workforce. NSF funds grants, contracts, and cooperative agreements to colleges, universities, and other eligible institutions, and provides graduate research fellowships to individuals in all parts of the United States and internationally.

The Directorate for Education and Human Resources (EHR), a unit within NSF, promotes rigor and vitality within the Nation's STEM education enterprise to further the development of the 21st century's STEM workforce and public scientific literacy. EHR does this through diverse projects and programs that support research, extension, outreach, and hands-on activities that service STEM learning and research at all institutional (*e.g.,* pre-school through postdoctoral) levels in formal and informal settings; and individuals of all ages (birth and beyond). EHR also focuses on broadening participation in STEM learning and careers among United States citizens, permanent residents, and nationals, particularly those individuals traditionally underemployed in the STEM research workforce, including but not limited to women, persons with disabilities, and racial and ethnic minorities.

The scope of this information collection request will primarily cover descriptive information gathered from education and training (E&T) projects that are funded by NSF. NSF will primarily use the data from this collection for program planning, management, and audit purposes to respond to queries from the Congress, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors (COVs), the NSF's Office of the Inspector General, and as a basis for either internal or third-party evaluations of individual programs.

The collections will generally include three categories of descriptive data: (1) Staff and project participants (data that are also necessary to determine individual-level treatment and control groups for future third-party study or for internal evaluation); (2) project implementation characteristics (also necessary for future use to identify well-matched comparison groups); and (3) project outputs (necessary to measure baseline for pre- and post- NSF-funding-level impacts).

Use of the Information: This information is required for effective administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project, and strategic goals, and as identified by the President's Accountability in Government Initiative; GPRA, and the NSF's Strategic Plan. The Foundation's FY 2014–2018 Strategic Plan may be found at: *http://www.nsf.gov/pubs/2014/nsf14043/nsf14043.pdf*

Since this collection will primarily be used for accountability and evaluation purposes, including responding to queries from COVs and other scientific experts, a census rather than sampling design typically is necessary. At the individual project level funding can be adjusted based on individual project's responses to some of the surveys. Some data collected under this collection will serve as baseline data for separate research and evaluation studies.

NSF-funded contract or grantee researchers and internal or external evaluators in part may identify control, comparison, or treatment groups for NSF's E&T portfolio using some of the descriptive data gathered through this collection to conduct well-designed, rigorous research and portfolio evaluation studies.

Respondents: Individuals or households, not-for-profit institutions, business or other for profit, and Federal, State, local or tribal government.

Number of Respondents: 1,893.

Burden on the Public: NSF estimates that a total reporting and recordkeeping burden of 29,856 hours will result from activities to monitor EHR STEM education programs. The calculation is shown in Table 1.

Table 1: Anticipated programs that will collect data on project progress and outcomes along with the number of respondents and burden hours per collection per year.

Collection title	Number of respondents	Number of responses	Annual hour burden
Centers of Research Excellence in Science and Technology (CREST) and Historically Black Colleges and Universities Research Infrastructure for Science and Engineering (HBCU–RISE) Monitoring System	46	46	147
Louis Stokes Alliances for Minority Participation (LSAMP) Monitoring System	643	643	10,288
Louis Stokes Alliances for Minority Participation Bridge to the Doctorate (LSAMP–BD) Monitoring System	53	53	530
Robert Noyce Teacher Scholarship Program (Noyce) Monitoring System	511	511	4,599
Scholarships in Science, Technology, Engineering, and Mathematics (S–STEM) Monitoring System	640	*1,280	2240
Total	1,893	2,533	19,133

*Two responses annually.

Dated: July 25, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–16172 Filed 7–27–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the *second notice* for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556. NSF 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.

SUPPLEMENTARY INFORMATION:

Title of Collection: Business Systems Review Guide.

OMB Approval Number: 3145–0255.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L. 81–507) set forth NSF's mission and purpose:

''To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. * * *''

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

Among Federal agencies, NSF is a leader in providing the academic community with advanced instrumentation needed to conduct state-of-the-art research and to educate the next generation of scientists, engineers and technical workers. The knowledge generated by these tools sustains U.S. leadership in science and engineering (S&E) to drive the U.S. economy and secure the future. NSF's responsibility is to ensure that the research and education communities have access to these resources, and to provide the support needed to utilize them optimally, and implement timely upgrades.

The scale of advanced instrumentation ranges from small research instruments to shared resources or facilities that can be used by entire communities. The demand for such instrumentation is very high, and is growing rapidly, along with the pace of discovery. For major facilities and shared infrastructure, the need is particularly high. This trend is expected to accelerate in the future as increasing numbers of researchers and educators rely on such large facilities, instruments, and databases to provide the reach to make the next intellectual leaps.

NSF currently provides support for facility construction from two accounts: the Major Research Equipment and Facility Construction (MREFC) account, and the Research and Related Activities (R&RA) account. The MREFC account, established in FY 1995, is a separate budget line item that provides an agency-wide mechanism, permitting directorates to undertake large facility projects, roughly $100M or greater, and mid-scale projects in the range of approximately $20–$100M.

Facilities are defined as shared-use infrastructure, instrumentation and equipment that are accessible to a broad community of researchers and/or educators. Facilities may be centralized or may consist of distributed installations. They may incorporate large-scale networking or computational infrastructure, multi-user instruments or networks of such instruments, or other infrastructure, instrumentation and equipment having a major impact on a broad segment of a scientific or engineering discipline. Historically, awards have been made for such diverse projects as accelerators, telescopes, research vessels and aircraft, and geographically distributed but networked sensors and instrumentation.

The growth and diversification of large facility projects require that NSF remain attentive to the ever-changing issues and challenges inherent in their planning, construction, operation, management and oversight. Most importantly, dedicated, competent NSF and awardee staff are needed to manage and oversee these projects; giving the attention and oversight that good practice dictates and that proper accountability to taxpayers and Congress demands. To this end, there is also a need for consistent, documented requirements and procedures to be understood and used by NSF program managers and awardees for all such large projects.

Use of the Information: Facilities are an essential part of the science and engineering enterprise and supporting them is one major responsibility of the National Science Foundation (NSF). NSF makes awards to external entities—primarily universities, consortia of universities or non-profit organizations—to undertake construction, management and operation of facilities. Such awards frequently take the form of cooperative agreements. NSF does not directly construct or operate the facilities it supports. However, NSF retains responsibility for overseeing their development, management, and successful performance.

Business Systems Reviews (BSR) of NSF's Major Facilities are designed to provide reasonable assurance that the business systems (people, processes, and technologies) of NSF Recipients are effective in meeting administrative responsibilities and satisfying Federal regulatory requirements, including those listed in NSF's Proposal & Award Policies & Procedures Guide (PAPPG).

These reviews are not considered audits but are intended to be assistive in nature; aiding the Recipient in following good practices where appropriate and bringing them into compliance, if needed. A team of BSR participants is assembled to assess the Recipient's policies, procedures, and practices to determine whether, taken collectively, these administrative business systems used in managing the Facility meet NSF award expectations and comply with Federal regulations.

The BSR Guide is designed for use by both our customer community and NSF staff for guidance in executing these reviews. The BSR Guide defines the overall framework and structure and summarizes the details outlined in the internal operating guidelines and procedures used by BSR Participants to execute the review process. Management principles and practices are specified for seven core functional areas (CFA) and are used by BSR participants in performing these evaluations. Roles and responsibilities of the NSF stakeholders involved in the process are outlined in the BSR Guide as well as the expectations of the Recipient.

This version of the Business Systems Guide aligns with the Uniform Guidance and the *NSF Research Infrastructure Guide.* This Guide will be updated periodically to reflect changes in requirements, policies and/or procedures. Award Recipients are expected to monitor and adopt the requirements and good practices included in the Guide.

The submission of Award Recipient and Project administrative business process and procedural documentation used in support of operations of the Major Facilities is part of the collection of information. This information is used to help NSF fulfill this responsibility in supporting merit-based research and education projects in all the scientific and engineering disciplines. The Foundation also has a continuing commitment to provide oversight on facilities through their full life cycle which must be balanced against monitoring its information collection so as to identify and address any excessive review and reporting burdens.

NSF has approximately twenty (20) Major Facilities in various stages of design, construction, operations, and divestment. The need for a BSR and review scope is based on NSF's internal annual Major Facility Portfolio Risk Assessment and the assessment of various risks factors.

Burden to the Public: The Foundation estimates that approximately one and half (1.5) Full Time Equivalents (FTEs) are necessary for a major facility to respond to the requirements of a BSR; or 3,120 hours. With an average of four (4) BSRs conducted a year, this equates to roughly 12,480 public burden hours annually.

Dated: July 22, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–16145 Filed 7–27–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556. NSF 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.

SUPPLEMENTARY INFORMATION:

Title of Collection: Research Performance Progress Report.

OMB Approval Number: 3145–0221.

Expiration Date of Approval: July 30, 2022.

Type of Request: Intent to seek approval to extend an information collection for three years.

Use of the Information:

NSF developed the RPPR as a service within *Research.gov.* The service provides a common portal for the research community to manage and submit annual project reports to the National Science Foundation (NSF) and to partner agencies. This service replaced NSF's annual and interim project reporting capabilities which resided in the FastLane System.

Complete information about NSF's implementation of the Research Performance Progress Report (RPPR) may be found at the following website: *http://www.nsf.gov/bfa/dias/policy/rppr/index.jsp.*

Burden on the Public: The Foundation estimates that an average of 6.6 hours is expended for each report submitted. An estimated 120,000 reports are expected during the course of one year for a total of 30,000 public burden hours annually.

Dated: July 25, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–16173 Filed 7–27–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–38679–LA; ASLBP No. 21–972–01–LA–BD01]

Cammenga and Associates, LLC (Denial of License Amendment Requests); Notice of Atomic Safety and Licensing Board Reconstitution

Pursuant to 10 CFR 2.313(c) and 2.321(b), the Atomic Safety and Licensing Board in the above-captioned *Cammenga and Associates, LLC* proceeding is hereby reconstituted as follows: Administrative Judge G. Paul Bollwerk, III, is designated to serve as Chairman in place of Administrative Judge Ronald M. Spritzer, who is retiring on July 30, 2022.[1]

All correspondence, documents, and other materials shall continue to be filed

[1] Judge Spritzer served with distinction on the Atomic Safety and Licensing Board Panel for over fourteen years, having been appointed as a full-time Administrative Judge in March 2008.

in accordance with the NRC E-filing rule. *See* 10 CFR 2.302 *et seq.*

Rockville, Maryland

Dated: July 25, 2022.

Edward R. Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2022–16232 Filed 7–27–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meetings

TIME AND DATE: Tuesday, August 9, 2022, at 9:00 a.m.; Tuesday, August 9, 2022, at 4:00 p.m.

PLACE: Washington, DC at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, in the Benjamin Franklin Room.

STATUS: Tuesday, August 9, 2022, at 9:00 a.m.—Closed. Tuesday, August 9, 2022, at 4:00 p.m.—Open.

MATTERS TO BE CONSIDERED:

Tuesday, August 9, 2022, at 9:00 a.m. (Closed)

1. Strategic Issues.
2. Financial and Operational Matters.
3. Executive Session.
4. Administrative Items.

Tuesday, August 9, 2022, at 4:00 p.m. (Open)

1. Remarks of the Chairman of the Board of Governors.
2. Remarks of the Postmaster General and CEO.
3. Approval of the Minutes.
4. Committee Reports.
5. Quarterly Financial Report.
6. Quarterly Service Performance Report.
7. Approval of Tentative Agenda for November 10 Meeting.

A public comment period will begin immediately following the adjournment of the open session on August 9, 2022. During the public comment period, which shall not exceed 45 minutes, members of the public may comment on any item or subject listed on the agenda for the open session above. Additionally, the public will be given the option to join the public comment session and participate via teleconference. Registration of speakers at the public comment period is required. Should you wish to participate via teleconference, you will be required to give your first and last name, a valid email address to send an invite and a phone number to reach you should a technical issue arise. Speakers may register online at *https://www.surveymonkey.com/r/bog-08-09-2022.* No more than three minutes shall be allotted to each speaker. The time allotted to each speaker will be determined after registration closes. Registration for the public comment period, either in person or via teleconference, will end on August 7 at 4 p.m. EDT. Participation in the public comment period is governed by 39 CFR 232.1(n).

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board of Governors, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2022–16242 Filed 7–26–22; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–174, OMB Control No. 3235–0179]

Proposed Collection; Comment Request; Extension: Rule 31a–2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 31(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Act'') requires registered investment companies (''funds'') and certain underwriters, broker-dealers, investment advisers, and depositors to maintain and preserve records as prescribed by Commission rules. Rule 31a–1 (17 CFR 270.31a–1) under the Act specifies the books and records that each of these entities must maintain. Rule 31a–2 (17 CFR 270.31a–2) under the Act specifies the time periods that entities must retain certain books and records, including those required to be maintained under rule 31a–1.

The retention of records, as required by the rule, is necessary to ensure access to material business and financial information about funds and certain related entities. We periodically inspect the operations of funds to ensure they are in compliance with the Act and regulations under the Act. Due to the limits on our resources, however, each fund may only be inspected at intervals of several years. In addition, the prosecution of persons who have engaged in certain violations of the federal securities laws may not be limited by timing restrictions. For these reasons, we often need information relating to events or transactions that occurred years ago. Without the requirement to preserve books, records, and other documents, our staff would have difficulty determining whether the fund was in compliance with the law in such areas as valuation of its portfolio securities, computation of the prices investors paid, and, when purchasing and selling fund shares, types and amounts of expenses the fund incurred, kinds of investments the fund purchased, actions of affiliated persons, or whether the fund had engaged in any illegal or fraudulent activities. As part of our examinations of funds, our staff also reviews the materials that directors consider in approving the advisory contract.

There are 2,754 funds currently operating as of December 31, 2021, all of which are required to comply with rule 31a–2. The Commission staff estimates that, on average, a fund spends 220.4 hours annually to comply with the rule. The Commission therefore estimates the total annual hour burden of the rule's and form's paperwork requirements to be 606,981.60 hours. In addition to the burden hours, the Commission staff estimates that the average yearly cost to each fund that is subject to rule 31a–2 is about $40,577,95. The Commission estimates total annual cost is therefore about $111.8 million.

Estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of the rule is mandatory. Responses to the disclosure requirements will not be kept confidential. 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.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's

estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by September 26, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: July 22, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16150 Filed 7–27–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95352; File No. SR–EMERALD–2022–25]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 515A and Exchange Rule 518

July 22, 2022.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 518 to adopt (i) Complex Auction-on-Arrival-Only (''cAOAO'') orders and (ii) Complex Attributable Orders. Additionally, the Exchange proposes to amend Exchange Rule 518 to exclude cPRIME Orders from the Complex MIAX Emerald Price Collar Protection. The Exchange proposes to amend Exchange Rule 515A to adopt ISO PRIME orders and to make last priority allocation available for cPRIME Agency Orders.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend: (i) Exchange Rule 518 to adopt a new Complex Auction-on-Arrival-Only (''cAOAO'') order type and to amend relevant portions of the rule to describe the behavior and operation of a cAOAO order; [3] (ii) Exchange Rule 518 to adopt a new order type, Complex Attributable Order; [4] (iii) Interpretation and Policy .05 of Exchange Rule 518 to exclude cPRIME Orders from the Complex MIAX Emerald Price Collar Protection; [5] (iv) Interpretation and Policy .12 of Exchange Rule 515A to remove the provision that precludes last priority in allocation from being available to Initiating Members [6] that submit cPRIME Agency Orders; [7] and (v) amend Exchange Rule 515A to adopt a new ISO PRIME order type and a new allocation methodology for Market Maker interest that is executed during an ISO PRIME Auction.[8]

Background

The Exchange launched in December 2018, and at that time, the Exchange Rulebook contained complex order rules that were substantially similar to the rules of its affiliate exchange, MIAX Options. Since December 2018, MIAX Options has added functionality to grow its complex order business. The Exchange proposes to amend its rules to adopt functionality that currently exists on the MIAX Options Exchange. The Exchange and MIAX Options seek to align functionality where feasible. The proposed rule changes described below are identical, or substantively identical, to rule changes filed by the Exchange's affiliate, MIAX Options.[9]

i. Complex Auction-on-Arrival-Only Order Type

The Exchange proposes to amend Exchange Rule 518, Complex Orders, to adopt a new cAOAO order type and to amend relevant portions of the rule to describe the behavior and operation of the new cAOAO order type. This proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options.[10]

Currently, the Exchange offers a Complex Auction-on-Arrival or ''cAOA'' order that is a complex order designated to be placed into a Complex Auction [11] upon receipt or upon evaluation. Complex orders that are not designated

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that the proposed rule text and functionality is identical to current rule text and functionality on MIAX Options. *See* MIAX Options Exchange Rule 518(b)(9).

[4] The Exchange notes that the proposed rule text and functionality is substantively identical to current rule text and functionality on MIAX Options. *See* MIAX Options Exchange Rule 518(b)(8).

[5] The Exchange notes that the proposed rule text and functionality is identical to current rule text and functionality on MIAX Options. *See* MIAX Options Exchange Rule 532(b)(6)(i).

[6] An ''Initiating Member'' initiates a PRIME Auction. *See* Exchange Rule 515A(a)(1). The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[7] The Exchange notes that the proposed rule text and functionality is identical to current rule text and functionality on MIAX Options. *See* Interpretations and Policies .12(c)(v) of MIAX Options Exchange Rule 515A.

[8] The Exchange notes that the proposed rule text and functionality is identical to current rule text and functionality on MIAX Options. *See* Interpretations and Policies .08 of MIAX Options Exchange Rule 515A and MIAX Options Exchange Rule 515A(a)(2)(iii)(C).

[9] *See* Securities Exchange Act Release Nos. 89212 (July 1, 2020), 85 FR 41075 (July 8, 2020) (SR–MIAX–2020–20); 89085 (June 17, 2020), 85 FR 37719 (June 23, 2020) (SR–MIAX–2020–16); 89206 (July 1, 2020), 85 FR 41079 (July 8, 2020) (SR–MIAX–2020–19); *and* 89991 (September 24, 2020), 85 FR 61782 (September 30, 2020) (SR–MIAX–2020–31).

[10] *See* Securities Exchange Act Release No. 89212 (July 1, 2020), 85 FR 41075 (July 8, 2020) (SR–MIAX–2020–20) (amending MIAX Options Exchange Rule 518, Complex Orders, to adopt a new Complex Auction-on-Arrival-Only Order type); *see also* MIAX Options Exchange Rule 518(b)(9).

[11] *See* Exchange Rule 518(d).

as cAOA will, by default, not initiate a Complex Auction upon arrival, but except as described in Exchange Rule 518, will be eligible to participate in a Complex Auction that is in progress when such complex order arrives, or if placed on the Strategy Book, may participate in or may initiate a Complex Auction, following evaluation conducted by the System.[12] Complex orders that are designated as cIOC[13] or cAOC[14] are not eligible for cAOA designation, and their evaluation will not result in the initiation of a Complex Auction either upon arrival or if eligible when resting on the Strategy Book.[15] Any unexecuted balance of a cAOA Order remaining upon the completion of the auction process is eligible[16] to be placed on the Strategy Book.

The Exchange now proposes to adopt a new Complex Auction-on-Arrival-Only or ''cAOAO'' order type.[17] A cAOAO order is a complex order that will be placed into an auction as described in Rule 518(d) if eligible, and cancelled if not eligible. Any unexecuted balance of a cAOAO order remaining upon the completion of the auction process is cancelled. Similar to Immediate-or-Cancel orders, the cAOAO order type is designed to assist Members[18] in achieving an expeditious execution by exposing eligible Complex orders for potential price improvement before cancelling any unexecuted balance.

Example 1

Suppose the following market in complex strategy ABC:

MIAX Emerald dcEBBO:[19] 1.00–1.10 (10 × 10)

A cAOAO order is entered to buy 20 @1.07.

A Request For Response (RFR) message is sent identifying the complex strategy, the price, quantity of matched complex quotes and/or orders at that price, imbalance quantity and side of the market of the cAOAO order, in accordance to Rule 518(d)(2).[20]

During the Response Time Interval, the following RFR Responses[21] are received:

Response 1: Sell 10 @1.07

Response 2: Sell 5 @1.07

At the conclusion of the Response Time Interval, the cAOAO order trades 15 @1.07.

The remaining quantity of 5 contracts from the cAOAO order is then cancelled.

The Exchange proposes to amend Exchange Rule 518(b), Types of Complex Orders, to adopt a new Complex Auction-on-Arrival Only (''cAOAO'') order type to be included among other complex order types that may be submitted to the Exchange as provided by Exchange Rule 518(b)(1). In addition, certain provisions in current Exchange Rule 518 that apply to cAOA orders would also apply to cAOAO orders. Therefore, the Exchange proposes to amend Rule 518 to incorporate references to cAOAO orders as necessary. Specifically, the Exchange proposes to amend Rule 518(c)(6) to provide that complex orders may be submitted as market orders and may be designated as cAOA or cAOAO. Additionally, the Exchange proposes to amend Rule 518(c)(6)(i) to provide that complex market orders designated as cAOA or cAOAO may initiate a Complex Auction upon arrival or join a Complex Auction in progress. Finally, the Exchange proposes to amend Rule 518(c)(6)(ii) to provide that complex market orders not designated as cAOA or cAOAO will trade immediately with any contra-side complex orders or quotes, or against the individual legs, up to and including the dcEBBO, and may be subject to the managed interest process described in subparagraph (c)(4) of Exchange Rule 518, and the evaluation process described in subparagraph (c)(5) of Exchange Rule 518.

The Exchange also proposes to amend Rule 518(d) to incorporate references to cAOAO orders. Specifically, the Exchange proposes to amend Rule 518(d)(1) to provide that, in order to initiate a Complex Auction upon receipt, a Complex Auction-eligible order must be designated as cAOA or cAOAO. Also, the order must meet the criteria described in Interpretation and Policy .03(b) of Exchange Rule 518 regarding the URIP.[22] Also, a complex order not designated as cAOA or cAOAO (*i.e.,* a complex order considered by default to be ''do not auction on arrival'' by the System) may: (i) join a Complex Auction in progress at the time of receipt; (ii) become a Complex Auction-eligible order after resting on the Strategy Book and automatically join a Complex Auction then in effect for the complex strategy; or (iii) initiate a Complex Auction if it meets the criteria described in Interpretation and Policy .03(a) of Exchange Rule 518 regarding the IIP or .03(c) of Exchange Rule 518 regarding the RIP.

Aside from including references to cAOAO orders, the proposal makes no changes to the operation of Rule 518(d)(1).

The Exchange also proposes to amend Exchange Rule 518(d)(9) to add a reference to cAOAO orders. The title of Rule 518(d)(9) as amended will read, ''Processing of Non-cAOA or cAOAO Complex Orders.'' The text of Rule 518(d)(9) as amended will provide that a complex order not designated as cAOA or cAOAO will either be: (i) executed in full at a single price or at multiple prices up to its limit price, with remaining contracts placed on the

[12] *See* Exchange Rule 518(b)(2)(i); The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[13] A Complex Immediate-or-Cancel or ''cIOC'' order is a complex order that is to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. *See* Exchange Rule 518(b)(4).

[14] A Complex Auction-or-Cancel or ''cAOC'' order is a complex limit order used to provide liquidity during a specific Complex Auction with a time in force that corresponds with that of the event. cAOC Orders are not displayed to any market participant, and are not eligible for trading outside of the event. A cAOC order with a size greater than the aggregate auctioned size (as defined in Rule 518(d)(4)) will be capped for allocation purposes at the aggregate auctioned size. *See* Exchange Rule 518(b)(3).

[15] *See* Exchange Rule 518(b)(2)(ii); The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[16] Any unexecuted portion of a Complex Auction-eligible order remaining at the end of the Response Time Interval will either be: (A) evaluated to determine if it may initiate another Complex Auction; or (B) placed on the Strategy Book and ranked pursuant to subparagraph (c)(3) of Exchange Rule 518. *See* Exchange Rule 518(d)(5)(ii).

[17] *See* proposed Exchange Rule 518(b)(9).

[18] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[19] The dcEBBO is calculated using the best displayed price for each component of a complex strategy from the Simple Order Book. For stock-option orders, the dcEBBO for a complex strategy will be calculated using the Exchange's best displayed bid or offer in the individual option component(s) and the NBBO in the stock component. *See* Exchange Rule 518(a)(8).

[20] An auction is commenced as the cAOAO order satisfies the URIP requirement described in Exchange Rule 518(c)(5)(i).

[21] Members may submit a response to the RFR message (an ''RFR Response'') during the Response Time Interval. RFR Responses may be submitted in $0.01 increments. RFR Responses must be a cAOC Order or a cAOC eQuote as defined in Interpretations and Policies .02 of Exchange Rule 518 and may be submitted on either side of the market. *See* Exchange Rule 518(d)(4).

[22] Upon receipt of a complex order when the complex strategy is open, the System will calculate an Upon Receipt Improvement Percentage (''URIP'') value, which is a defined percentage of the current dcEBBO bid/ask differential. Such percentage will be defined by the Exchange and communicated to Members via Regulatory Circular. If a Complex Auction-eligible Order is priced equal to, or improves, the URIP value and is also priced to improve other complex orders and/or quotes resting at the top of the Strategy Book, the complex order will be eligible to initiate a Complex Auction. *See* Interpretations and Polices .03(b) of Exchange Rule 518.

Strategy Book; (ii) executed until the order exhausts the opposite side dcEBBO, at which time the order will be placed on the Strategy Book and evaluated for Complex Auction eligibility; or (iii) cancelled. Aside from adding a reference for cAOAO orders, the proposal makes no changes to the operation of Rule 518(d)(9).

The Exchange believes the proposed changes will allow the Exchange to effectively implement the proposed cAOAO order type.

ii. Complex Attributable Order Type

The Exchange proposes to amend Exchange Rule 518, Complex Orders, to adopt a new order type, Complex Attributable Order.[23] This proposed rule change is substantively identical to a rule change filed by the Exchange's affiliate, MIAX Options.[24]

Currently, the Exchange offers an Attributable Order [25] in its simple market.[26] Current Exchange Rule 516(e) states that an Attributable Order is a market [27] or limit order [28] which displays the user firm ID for purposes of trading on the Exchange. Use of Attributable Orders is voluntary. Attributable Orders entered into the Exchange System will be available for execution but may not display the user firm ID for all Exchange processes. The Exchange will issue a Regulatory Circular specifying the Exchange processes and the class(es) of securities for which the Attributable Order type shall be available.[29] Currently, an Attributable Order is available for all option classes [30] and will display the Executing Broker MPID [31] for new and updated simple orders on the MIAX Order (''MOR'') Feed and will also display the Executing Broker MPID for certain liquidity seeking events such as opening/reopening imbalances or the opening route mechanism on the Administrative Information Subscriber (''AIS'') Feed.

The Exchange now proposes to adopt new subparagraph (8) to Exchange Rule 518(b) which will similarly provide that a Complex Attributable Order is a complex market or limit order which displays the user firm ID for purposes of trading on the Exchange. Proposed Rule 518(b)(8) further states that the use of Complex Attributable Orders is voluntary. Complex Attributable Orders entered into the Exchange System will be available for execution but may not display the Executing Broker ID for all Exchange processes. Complex Attributable Orders will be used similarly to Attributable Orders on the simple market.

If enabled, the Executing Broker MPID will be displayed on the MOR Feed for new and updated complex orders, and on the AIS Feed when a Complex Attributable Order initiates or participates in the following events: a cPRIME Auction, a Complex Auction, or a Complex Liquidity Exposure Process (''cLEP'') Auction. The Complex Attributable Order type can be activated on an order-by-order basis with the default set to off. The Exchange will issue a Regulatory Circular specifying the Exchange processes and the class(es) of securities for which the Complex Attributable Order type shall be available.[32]

iii. Complex PRIME Through MPC

The Exchange proposes to amend Interpretation and Policy .05 of Exchange Rule 518 to exclude cPRIME Orders from the Complex MIAX Emerald Price Collar Protection provided to complex orders as described in paragraph (f)(1) of the Rule. This proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options.[33]

Background

In December of 2018, the Exchange adopted rules governing the trading in, and detailing the functionality of the MIAX Emerald System in the handling of, complex orders on the Exchange.[34] In order to further support the trading of complex orders on the Exchange, the Exchange adopted an additional price protection feature for complex orders, the Complex MIAX Emerald Price Collar (''MPC'').[35] The MPC price protection feature is designed to help maintain a fair and orderly market by helping to mitigate the potential risk of executions at prices that are extreme and potentially erroneous.

More specifically, the MPC price protection feature is an Exchange-wide price protection mechanism under which a complex order or eQuote to sell will not be displayed or executed at a price that is lower than the opposite side cNBBO [36] at the time the MPC is assigned by the System (*i.e.,* upon receipt or upon opening) by more than a specific dollar amount expressed in $0.01 increments (the ''MPC Setting''), and under which a complex order or eQuote to buy will not be displayed or executed at a price that is higher than the opposite side cNBBO offer at the time the MPC is assigned by the System by more than the MPC Setting (each the ''MPC Price'').[37] All complex orders, together with cAOC eQuotes and cIOC eQuotes (as defined in Interpretations and Policies .02(c)(1) and (2) of Exchange Rule 518) (collectively, ''eQuotes''), are subject to the MPC price protection feature.[38]

When the Exchange began its operations in December of 2018, the Exchange Rulebook contained three complex order types: Complex

[23] *See* proposed Rule 518(b)(8).

[24] *See* Securities Exchange Act Release No. 89085 (June 17, 2020), 85 FR 37719 (June 23, 2020) (SR–MIAX–2020–16) (amending MIAX Options Exchange Rule 518, Complex Orders, to adopt a new Complex Attributable Order type); *see also* MIAX Options Exchange Rule 518(b)(8).

[25] *See* Exchange Rule 516(e).

[26] The Exchange has a Simple Order Book, which is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15). The Exchange also has a Strategy Order book, which is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[27] A market order is an order to buy or sell a stated number of option contracts at the best price available at the time of execution. *See* Exchange Rule 516(a).

[28] A limit order is an order to buy or sell a stated number of option contracts at a specified price or better. *See* Exchange Rule 516(b).

[29] *See* Exchange Rule 516(e).

[30] *See* MIAX Emerald Regulatory Circular 2019–28, Attributable Order (February 28, 2019) available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2019_28.pdf.*

[31] An MPID is a Market Participant Identifier used by the Exchange.

[32] The ability to display information pertaining to a single order depends upon the Exchange's ability to broadcast that information to its members. This is currently accomplished through the Exchange's market data products, which, for example, includes the Administrative Information Subscriber Feed (''AIS''). Thus, the functionality of a Complex Attributable Order is linked to what is technologically feasible through the Exchange's market data products. The definition of a Complex Attributable Order will acknowledge this relationship and allow the functionality of the Complex Attributable Order type to develop and be deployed correspondingly with technical advances related to its market data products. In its definition of a Complex Attributable Order, the Exchange proposes to state that, ''Complex Attributable Orders entered into the Exchange System will be available for execution but may not display the user firm ID for all Exchange processes.'' This will serve to put Emerald members on notice that the functionality of a Complex Attributable Order to display the user firm ID, as it continually develops, may not be available during all Exchange processes.

[33] *See* Securities Exchange Act Release No. 89206 (July 1, 2020), 85 FR 41079 (July 8, 2020) (SR–MIAX–2020–19) (amending MIAX Options Exchange Rule 518, Complex Orders, to exclude cPRIME Orders from the Complex MIAX Options Price Collar Protection provided to complex orders as described in the Rule); *see also* MIAX Options Exchange Rule 532(b)(6)(i).

[34] *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (Order approving application of MIAX Emerald, LLC for registration as a national securities exchange).

[35] *Id.*

[36] The cNBBO is calculated using the NBBO for each component of a complex strategy to establish the best net bid and offer for a complex strategy. *See* Exchange Rule 518(a)(2).

[37] *See* Interpretations and Policies .05(f) of Exchange Rule 518.

[38] *See* Interpretations and Policies .05(f)(1) of Exchange Rule 518.

Customer Cross (''cC2C''),[39] Complex Qualified Contingent Cross (''cQCC''),[40] and cPRIME,[41] which, by definition, became subject to the MPC price protection. The Exchange rules exclude these three new complex order types from certain price protection features available on the Exchange.[42] Specifically, in Interpretation and Policy .05(d) of Rule 518, it is stated that the Implied Away Best Bid or Offer (''ixABBO'') Price Protection feature is not available for cPRIME Orders, cC2C Orders, and cQCC Orders. The ixABBO protection was not available initially because this type of protection wasn't necessary for these complex order types. Specifically, with respect to cPRIME Orders, a cPRIME Agency Order is received by the Exchange, and guaranteed an execution against, a contra-side order at a single price or at multiple prices with a ''stop'' price outside of which the cPRIME Agency Order, the contra-side order, and auction responses will not be executed.

The Exchange also excluded cPRIME Orders, cC2C Orders and cQCC Orders from the MIAX Emerald Order Monitor for Complex Orders (''cMOM'') stating in its filing, ''that cPRIME Orders, cC2C Orders and cQCC Orders are all guaranteed an execution at a price or prices determined by the participants, and cPRIME Orders are subject to further price improvement. Therefore, the cMOM price protection feature isn't necessary for these complex order types, and thus these complex orders types will not be rejected based upon cMOM price parameters.'' [43]

For similar reasons, the Exchange now proposes to amend Interpretation and Policy .05(f)(1) of Exchange Rule 518. As amended, Interpretation and Policy .05(f)(1) of Exchange Rule 518 will state that, all complex orders (excluding cPRIME Orders),[44] together with AOC eQuotes and cIOC eQuotes (as defined in Interpretation and Policy .02(c)(1) and (c) of Exchange Rule 518) (collectively ''eQuotes''), are subject to the MPC price protection feature.

A cPRIME Order is a paired order with an established minimum execution price that must meet certain defined internal criteria to be eligible to participate in a cPRIME Auction. Specifically, the initiating price for a cPRIME Agency Order must be better than (inside) the icEBBO[45] for the strategy and any other complex orders on the Strategy Book.[46] The System will reject cPRIME Agency Orders submitted with an initiating price that is equal to or worse than (outside) the icEBBO or any other complex orders on the Strategy Book.[47] Because of these requirements, the Exchange believes that the MPC protection for cPRIME Orders is unnecessary, and in certain occasions, prevents orders that are otherwise eligible for participation in the cPRIME process from being accepted by the Exchange. Further, a cPRIME Order is a paired order, and the Agency side of a cPRIME Order is effectively executed when received (and, in the case of cPRIME Orders, subject to price improvement) because it is a paired order with a guaranteed execution.

The following examples demonstrate the current behavior as compared to the proposed behavior.

Current cPRIME Evaluation Subject to MPC Protection

Example 1A The auction start price (''ASP'') of a Complex PRIME order cannot be outside the MPC opposite the Agency side

MIAX Emerald Price Collar Value (MPCV) = 0.25
cEBBO 3.00×4.00
cNBBO 3.00×3.50
MPC = $(3.00 - 0.25) \times (3.50 + 0.25) = 2.75 \times 3.75$

An incoming cPRIME Order is received where the ASP of the Agency order is to buy complex strategies at a price of 3.80. Because the ASP of the Agency order to buy at 3.80 is outside the opposite side MPC of 3.75 (cNBO plus the MPCV), the cPRIME Order is rejected.

Proposed cPRIME Evaluation Without MPC Protection

Example 1B The auction start price of a Complex PRIME Order CAN be outside the MPC opposite the Agency side

MIAX Emerald Price Collar Value (MPCV) = 0.25
cEBBO 3.00×4.00
cNBBO 3.00×3.50
MPC = $(3.00 - 0.25) \times (3.50 + 0.25) = 2.75 \times 3.75$

An incoming cPRIME Order is received where the ASP of the Agency Order is to buy complex strategies at a price of 3.80. Although the ASP of the Agency Order to buy at 3.80 is outside the opposite side MPC of 3.75 (cNBO plus the MPCV), the cPRIME Order is accepted and initiates an auction.

Proposed cPRIME Evaluation Without MPC Protection When Inside the icEBBO

Example 2A The auction start price of a Complex PRIME Order CAN be outside the MPC opposite the Agency side, and accepted if inside the icEBBO

MIAX Emerald Price Collar Value (MPCV) = 0.25
Strategy +1A+1B
Option A EBBO[48] 1.00×1.50
Option B EBBO 2.00×2.50
icEBBO $1(1.00 + 2.00) \times 1(1.50 + 2.50) = 3.00 \times 4.00$
Option A NBBO 1.00×1.30
Option B NBBO 2.00×2.20
cNBBO $1(1.00 + 2.00) \times 1(1.30 + 2.20) = 3.00 \times 3.50$
MPC = $(3.00 - 0.25) \times (3.50 + 0.25) = 2.75 \times 3.75$

An incoming cPRIME Order is received where the ASP of the Agency Order is to buy complex strategies at a price of 3.80. The ASP of the Agency Order to buy at 3.80 is permitted outside the opposite side MPC of 3.75 (cNBO plus the MPCV), and it is inside the icEBBO of 3.00×4.00; therefore the cPRIME Order is accepted and initiates an auction.

Proposed cPRIME Evaluation Without MPC Protection When Outside the icEBBO

Example 2B The auction start price of a Complex PRIME Order CAN be outside the MPC opposite the Agency side, but is rejected if outside the icEBBO[49]

MIAX Emerald Price Collar Value (MPCV) = 0.25
Strategy +1A+1B
Option A EBBO 1.00×1.50
cEBBO 3.00×4.00
cNBBO 3.00×3.50
MPC = $(3.00 - 0.25) \times (3.50 + 0.25) = 2.75 \times 3.75$

An incoming cPRIME Order is received where the ASP of the Agency Order is to buy complex strategies at a price of 3.80. Although the ASP of the Agency Order to buy at 3.80 is outside the opposite side MPC of 3.75 (cNBO plus the MPCV), the cPRIME Order is accepted and initiates an auction.

Proposed cPRIME Evaluation Without MPC Protection When Inside the icEBBO

Example 2A The auction start price of a Complex PRIME Order CAN be outside the MPC opposite the Agency side, and accepted if inside the icEBBO

MIAX Emerald Price Collar Value (MPCV) = 0.25
Strategy +1A+1B
Option A EBBO[48] 1.00×1.50
Option B EBBO 2.00×2.50
icEBBO $1(1.00 + 2.00) \times 1(1.50 + 2.50) = 3.00 \times 4.00$
Option A NBBO 1.00×1.30
Option B NBBO 2.00×2.20
cNBBO $1(1.00 + 2.00) \times 1(1.30 + 2.20) = 3.00 \times 3.50$
MPC = $(3.00 - 0.25) \times (3.50 + 0.25) = 2.75 \times 3.75$

An incoming cPRIME Order is received where the ASP of the Agency Order is to buy complex strategies at a price of 3.80. The ASP of the Agency Order to buy at 3.80 is permitted outside the opposite side MPC of 3.75 (cNBO plus the MPCV), and it is inside the icEBBO of 3.00×4.00; therefore the cPRIME Order is accepted and initiates an auction.

Proposed cPRIME Evaluation Without MPC Protection When Outside the icEBBO

Example 2B The auction start price of a Complex PRIME Order CAN be outside the MPC opposite the Agency side, but is rejected if outside the icEBBO[49]

MIAX Emerald Price Collar Value (MPCV) = 0.25
Strategy +1A+1B
Option A EBBO 1.00×1.50

[39] *See* Exchange Rule 518(b)(5).

[40] *See* Exchange Rule 518(b)(6).

[41] *See* Exchange Rule 518(b)(7).

[42] *See supra* note 34.

[43] *Id.*

[44] The Exchange notes that while cPRIME, cQCC, and cC2C Orders are all paired orders, the proposal is limited in scope to cPRIME Orders only.

[45] The Implied Complex MIAX Emerald Best Bid or Offer or ''icEBBO'' is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed interest. For stock-option orders, the icEBBO for a complex strategy will be calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. *See* Exchange Rule 518(a)(12).

[46] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[47] *See* Interpretations and Policies .12(a)(i) of Exchange Rule 515A.

[48] The term ''EBBO'' means the best bid or offer on the Simple Order Book on the Exchange. *See* Exchange Rule 518(a)(10).

[49] The initiating price for a cPRIME Agency Order must be better than (inside) the icEBBO for the strategy and any other complex orders on the Strategy Book. The System will reject cPRIME Agency Orders submitted with an initiating price that is equal to or worse than (outside) the icEBBO or any other complex orders on the Strategy Book. *See* Interpretations and Policies .12(a)(i) of Exchange Rule 515A.

Option B EBBO 2.00 × 2.25
icEBBO 1(1.00 + 2.00) × 1(1.50 + 2.25) = 3.00 × 3.75
Option A NBBO [50] 1.00 × 1.30
Option B NBBO 2.00 × 2.20
cNBBO 1(1.00 + 2.00) × 1(1.30 + 2.20) = 3.00 × 3.50
MPC = (3.00 − 0.25) × (3.50 + 0.25) = 2.75 × 3.75

An incoming cPRIME Order is received where the ASP of the Agency Order is to buy complex strategies at a price of 3.80. Although the ASP of the Agency Order to buy at 3.80 is permitted outside the opposite side MPC of 3.75 (cNBO plus the MPCV), it is outside the icEBBO of 3.00 × 3.75; therefore the cPRIME Order is rejected.

iv. Complex Last To Fill

The Exchange proposes to amend Interpretation and Policy .12 of Exchange Rule 515A to remove the provision that precludes last priority in allocation from being available to Initiating Members [51] that submit cPRIME Agency Orders. This proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options.[52]

Currently Interpretation and Policy .12(c)(v) of Exchange Rule 515A provides that the order allocation provisions contained in Rule 515A(a)(2)(iii) shall apply to cPRIME Auctions, provided that: (A) all references to contracts shall be deemed to be references to complex strategies as defined in Rule 518(a)(6); and (B) the last priority allocation option described in Rule 515A(a)(2)(iii)(L) is not available for Initiating Members that submit cPRIME Agency Orders. When the Exchange launched and adopted cPRIME functionality,[53] the Exchange stated that the last priority in allocation option described in Rule 515A(a)(2)(iii)(L) [54] is not available for Initiating Members that submit cPRIME Agency Orders. As, at that time, the Exchange did not believe that there was significant Member demand for the use of the last priority in allocation option in cPRIME Auctions, there was therefore no need to include it in the allocation model then in use for cPRIME Auctions.

The Exchange now believes that there is significant Member demand for the use of the last priority in [sic] allocation option in cPRIME Auctions, and proposes to amend its current rule to remove the provision that makes it unavailable for Initiating Members that submit cPRIME Agency Orders. The Exchange proposes to remove subsection (c)(v)(B) of Interpretation and Policy .12 in its entirety. New proposed subsection (c)(v) will provide that, the order allocation provisions contained in Rule 515A(a)(2)(iii) shall apply to cPRIME Auctions, provided that all references to contracts shall be deemed to be references to complex strategies as defined in Rule 518(a)(6).

v. ISO PRIME

The Exchange proposes to amend Exchange Rule 515A, MIAX Emerald Price Improvement Mechanism (''PRIME'') and PRIME Solicitation Mechanism, to adopt a new ISO PRIME order type. This proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options.[55]

PRIME is a process by which a Member may electronically submit for execution (''Auction'') an order it represents as agent (''Agency Order'') against principal interest, and/or an Agency Order against solicited interest.[56] A Member (the ''Initiating Member'') may initiate an Auction provided all of the following are met: (i) the Agency Order is in a class designated as eligible for PRIME as determined by the Exchange and within the designated Auction order eligibility size parameters as such size parameters are determined by the Exchange; (ii) the Initiating Member must stop the entire Agency Order as principal or with a solicited order at the better of the NBBO or the Agency Order's limit price (if the order is a limit order); (iii) with respect to Agency Orders that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the NBBO has a bid/ask differential of $0.01, the System will reject the Agency Order; and (iv) Post-Only OQs [57] may not participate in PRIME as an Agency Order, principal interest or solicited interest.[58]

An Intermarket Sweep Order (''ISO'') is defined in Exchange Rule 1400(i) as a limit order for an options series that, simultaneously with the routing of the ISO, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid,[59] in the case of a limit order to sell, or any Protected Offer,[60] in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO. A Member may submit an ISO to the Exchange only if it has simultaneously routed one or more additional Intermarket Sweep Orders to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the ISO. An ISO may be either an Immediate-Or-Cancel Order [61] or an order that expires on the day it is entered.[62]

The Exchange now proposes to implement an ISO PRIME order type (''ISO PRIME'') that will allow the submission of an ISO into the PRIME. Specifically, an ISO PRIME is the transmission of two orders for crossing pursuant to Rule 515A, MIAX Emerald Price Improvement Mechanism (''PRIME'') and PRIME Solicitation Mechanism, without regard for better priced Protected Bids or Protected Offers because the Member transmitting the ISO PRIME order to the Exchange has, simultaneously with the submission of the ISO PRIME order, routed one or more ISOs, as necessary,

[50] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from the appropriate Securities Information Processor (''SIP''). *See* Exchange Rule 518(a)(14).

[51] An ''Initiating Member'' initiates a PRIME Auction. *See* Exchange Rule 515A(a)(1). The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[52] *See* Securities Exchange Act Release No. 89206 (July 1, 2020), 85 FR 41079 (July 8, 2020) (SR–MIAX–2020–19) (amending Interpretation and Policy .12 of MIAX Options Exchange Rule 515A to remove the provision that precludes last priority in allocation from being available to Initiating Members that submit cPRIME Agency Orders); *see also* Interpretations and Policies .12(c)(v) of MIAX Options Exchange Rule 515A.

[53] *See supra* note 34.

[54] If the Initiating Member elected to have last priority in allocation when submitting an Agency Order to initiate an Auction against a single-price submission, the Initiating Member will be allocated only the amount of contracts remaining, if any, after the Agency Order is allocated to all other responses at the single price specified by the Initiating Member. *See* Exchange Rule 515A(a)(2)(iii)(L).

[55] *See* Securities Exchange Act Release No. 89991 (September 24, 2020), 85 FR 61782 (September 30, 2020) (SR–MIAX–2020–31) (amending MIAX Options Exchange Rule 515A, MIAX PRIME and PRIME Solicitation Mechanism, to adopt a new ISO PRIME Order type); *see also* Interpretations and Policies .08 of MIAX Options Exchange Rule 515A.

[56] *See* Exchange Rule 515A(a).

[57] Post-Only Orders are defined in Rule 516(m). Post-Only Quotes are defined in Rule 517(a)(1)(i). Post-Only Orders and Post-Only Quotes are together referred to as ''Post-Only OQ.'' *See* Exchange Rule 515(a).

[58] *See* Exchange Rule 515A(a)(1).

[59] A ''Protected Bid'' or ''Protected Offer'' means a Bid or Offer in an options series, respectively, that: (a) is disseminated pursuant to the OPRA Plan; and (b) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. *See* MIAX Options Exchange Rule 1400(p), which is incorporated into the Exchange Rules by reference.

[60] *Id.*

[61] An immediate-or-cancel order is an order that is to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. An immediate-or-cancel order is not valid during the opening rotation process described in Rule 503. *See* Exchange Rule 516(c).

[62] *See* Exchange Rule 1400(i).

to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PRIME Auction price, and has swept all interest in the Exchange's Book[63] priced better than the proposed Auction starting price.[64] Any execution(s) resulting from such sweeps shall accrue to the PRIME Order, meaning that any executions will be given to the agency side of the order.

The Exchange will accept an ISO PRIME provided that the order adheres to the current PRIME Order acceptance criteria outlined above, except that the initiating Member is only required to stop the entire Agency Order as principal or with a solicited order at the Agency Order's limit price (if the order is a limit order). Therefore, the Initiating Member may initiate an Auction provided that all of the following are met: (i) the Agency Order is in a class designated as eligible for PRIME as determined by the Exchange and within the designated Auction order eligibility size parameters as such size parameters are determined by the Exchange; (ii) the Initiating Member must stop the entire Agency Order as principal or with a solicited order at the better of the NBBO or the Agency Order's limit price (if the order is a limit order); (iii) with respect to Agency Orders that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the NBBO has a bid/ask differential of $0.01, the System will reject the Agency Order; and (iv) Post-Only OQs may not participate in PRIME as an Agency Order, principal interest or solicited interest.[65]

The Exchange will process the ISO PRIME order in the same manner that it currently processes PRIME Orders, except that it will initiate a PRIME Auction without protecting away prices. The Member transmitting the ISO PRIME order will bear the responsibility to clear all better priced interest away simultaneously with the submission of the ISO PRIME order to the Exchange.[66]

The Exchange also proposes to adopt a new allocation methodology specifically for Market Maker[67] interest that is executed during an ISO PRIME Auction.[68] Currently, allocation in a PRIME Auction follows the order allocation methodology defined in Exchange Rule 515A(a)(2)(iii), which provides that Priority Customer[69] Orders resting on the Book before, or that are received during, the Response Time Interval[70] and Priority Customer RFR[71] responses shall, collectively have first priority to trade against the Agency Order. The allocation of an Agency Order against the Priority Customer Orders resting in the Book, Priority Customer Orders received during the Response Time Interval, and Priority Customer RFR responses shall be in the sequence in which they are received by the System.[72] Market Maker priority quotes[73] and RFR responses from Market Makers with priority quotes will collectively have second priority. The allocation of Agency Orders against these contra side quotes and RFR responses shall be on a size pro rata basis[74] as defined in Rule 514(c)(2).[75] Professional Interest[76] Orders resting in the Book, Professional Interest Orders placed in the Book during the Response Time Interval, Professional Interest quotes, and Professional Interest RFR responses will collectively have third priority. The allocation of Agency Orders against these contra side orders and RFR Responses shall be on a size pro rata basis as defined in Rule 514(c)(2).[77]

The Exchange now proposes to amend Exchange Rule 515A(a)(2)(iii)(C) to adopt a new allocation for Market Maker priority quotes at the conclusion of an Auction for an ISO PRIME order. The Exchange notes that the proposed rule is identical to MIAX Options Exchange Rule 515A(a)(2)(iii)(C). The proposed rule text will state that, at the conclusion of an Auction for an ISO PRIME order, the allocation of Agency Orders at the final Auction price shall be: (i) to Market Makers that traded in the associated ISO sweep, for up to the full size of such Market Makers' refreshed priority quotes, as well as any RFR responses submitted by those Market Makers; (ii) to those Market Makers with quotes at the Auction start price that were resting and any RFR responses submitted by those Market Makers at the final Auction price; and (iii) to all other Market Makers that did not trade in the associated ISO sweep and did not have resting quotes at the Auction start price with joining interest at the final Auction price that was submitted during the Auction. If two or more Market Makers are entitled to priority under (i), (ii) or (iii) above, priority will be afforded to the extent practicable on a pro-rata basis.

This can be demonstrated in the following examples, which assume away markets priced better than the auction start price have been swept.

Example 1—(Current PRIME Allocation) Single Price Submission, Priority Customer has first priority and Market Maker with priority quotes has second priority

[63] The term ''Book'' means the electronic book of buy and sell orders and quotes maintained by the System. *See* Exchange Rule 100.

[64] The Exchange notes that it has an ISO Trade Through surveillance in place that will identify and capture when an order provider marks an order (standard or PRIME) ISO and the order possibly trades through a protected bid or ask price at an away exchange. The Exchange will monitor the NBBO prior to and after the order trades on the Exchange to detect potential trade through violations.

[65] *See* Exchange Rule 515A(a)(1).

[66] *See supra* note 64.

[67] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[68] *See* proposed Interpretations and Policies .12(c)(v) of Rule 515A.

[69] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

[70] The ''Response Time Interval'' means the period of time during which responses to the Request for Responses (''RFR'') may be entered. The RFR timer is 100 milliseconds. *See* MIAX Emerald Regulatory Circular 2019–65, MIAX Emerald PRIME Timer Effective August 26, 2019 (August 13, 2019) available at *https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2019_65.pdf.*

[71] When the Exchange receives a properly designated Agency Order for auction processing, a RFR detailing the option, side, size, and initiating price will be sent to all subscribers of the Exchange's data feeds. *See* Exchange Rule 515A(a)(2)(i)(B).

[72] *See* Exchange Rule 515A(a)(2)(iii)(B).

[73] To be considered a priority quote, at the time of execution, each of the following standards must be met: (A) the bid/ask differential of a Market Maker's two-sided quote pair must be valid width (no wider than the bid/ask differentials outlined in Exchange Rule 603(b)(4)); (B) the initial size of both or the Market Maker's bid and the offer must be in compliance with the requirements of Exchange Rule 604(b)(2); (C) the bid/ask differential of a Market Maker's two-sided quote pair must meet the priority quote width requirements defined in Exchange Rule 517(b)(1)(ii) for each option; and (D) either of the following are true: 1. At the time a locking or crossing quote or order enters the System, the Market Maker's two-sided quote pair must be valid width for that option and must have been resting on the Book; or 2. Immediately prior to the time the Market Maker enters a new quote that locks or crosses the EBBO, the Market Maker must have had a valid width quote already existing (*i.e.,* exclusive of the Market Maker's new marketable quote or update) among his two-sided quotes for that option. *See* Exchange Rule 517(b). The term ''EBBO'' means the best bid or offer on the Exchange. *See* Exchange Rule 100.

[74] Exchange Rule 514(c)(2), Pro-Rata Allocation, states that, under this method, resting quotes and orders on the Book are prioritized according to price. If there are two or more quotes or orders at the best price then the contracts are allocated proportionally according to size (in a pro-rata fashion). If the executed quantity cannot be evenly allocated, the remaining contracts will be distributed one at a time based upon price-size-time priority.

[75] *See* Exchange Rule 515A(a)(2)(iii)(C).

[76] The term ''Professional Interest'' means (i) an order that is for the account of a person or entity that is not a Priority Customer, or (ii) an order or non-priority quote for the account of a Market Maker. *See* Exchange Rule 100.

[77] *See* Exchange Rule 515A(a)(2)(iii)(D).

MM3 = $1.15 − $1.25 100 × 100 (priority quote) [78]
EBBO = $1.15 − $1.25 100 × 100
NBBO = $1.15 − $1.25 200 × 200
Agency Order to buy 50 contracts with a limit price of $1.20
Initiating Member's Contra Order selling 50 contracts with a single stop price of $1.20
RFR sent identifying the option, side and size, with initiating price of $1.20
(Auction Starts)
- @10 milliseconds MM1 response received (did not have a priority quote on the Book), AOC eQuote to Sell 10 at $1.18
- @30 milliseconds BD4 response received, AOC order to Sell 10 at $1.18
- @50 milliseconds Priority Customer response received, AOC order to Sell 15 at $1.18
- @75 milliseconds MM3 response received, AOC eQuote to Sell 20 at $1.18
- 100 milliseconds (Auction Ends)

Under this scenario the Agency Order would be executed as follows:

1. 15 contracts trade with Priority Customer @$1.18
2. 20 contracts trade with MM3 @$1.18
3. 8 contracts trade with MM1 @$1.18
4. 7 contracts trade with BD4 @$1.18 (This fills the entire Agency Order and Contra Order does not receive an execution)

Example 2—(Proposed ISO PRIME Allocation) Single Price Submission, Priority Customer has first priority and Market Maker (who initially traded as part of the associated ISO Sweep) with joining quotes at the final Auction price has second priority

MM3 = $1.15 − $1.17 100 × 10 (priority quote)
EBBO = $1.15 − $1.17 100 × 10
NBBO = $1.15 − $1.17 300 × 210

ISO PRIME Agency Order to buy 50 contracts with a limit price of $1.20 is received.

It will ISO Sweep resting liquidity priced better than the Auction start price of $1.20.

Under this scenario the Agency Order would be executed as follows:

1. 10 contracts trade with MM3 @1.17
Contemporaneously the balance of the ISO PRIME Agency Order initiates a PRIME Auction to buy 40 contracts with a limit price of $1.20
Initiating Member's Contra Order selling 50 contracts with a single stop price of $1.20
RFR sent identifying the option, side and size, with initiating price of $1.20
(Auction Starts)
- @10 milliseconds MM1 response received, AOC eQuote to Sell 10 at $1.18
- @30 milliseconds BD4 response received, AOC order to Sell 10 at $1.18
- @40 milliseconds Priority Customer response received, AOC order to Sell 15 at $1.18
- @65 milliseconds MM3 (who traded as part of the initial sweep), response received, AOC eQuote to Sell 40 at $1.18
- 100 milliseconds (Auction Ends)

Under this scenario the Agency Order would be executed as follows:

2. 15 contracts trade with Priority Customer @$1.18
3. 25 contracts trade with MM3 @$1.18 (This fills the entire Agency Order and Contra Order does not receive an execution)

Example 3—(Proposed ISO PRIME Allocation) Single Price Submission, Market Maker who has a joining quote at a better price has priority and Market Maker (who has a resting quote at the Auction start price) that submits an RFR response at the final Auction price has priority

MM1 = $1.15 − $1.17 10 × 10 (priority quote)
MM2 = $1.15 − $1.20 20 × 20 (priority quote)
MM3 = $1.15 − $1.21 20 × 20 (priority quote)
EBBO = $1.15 − $1.17 50 × 10
NBBO = $1.15 − $1.17 150 × 110

ISO PRIME Agency Order to buy 50 contracts with a limit price of $1.20 is received.

It will ISO Sweep resting liquidity priced better than the Auction start price of $1.20.

Under this scenario the Agency Order would be executed as follows:

1. 10 contracts trade with MM1 @$1.17
Contemporaneously the balance of the ISO PRIME Agency Order initiates a PRIME Auction to buy 40 contracts with a limit price of $1.20
Initiating Member's Contra Order selling 50 contracts with a single stop price of $1.20
RFR sent identifying the option, side and size, with initiating price of $1.20
(Auction Starts)
- @10 milliseconds MM4 response received, AOC eQuote to Sell 30 at $1.18
- @30 milliseconds MM3 response received, AOC eQuote to Sell 20 at $1.19
- @75 milliseconds MM2 (who has a resting quote at the Auction Start Price), response received, AOC eQuote to Sell 20 at $1.19
- 100 milliseconds (Auction Ends)

Under this scenario, the Agency Order would be executed as follows:

2. 30 contracts trade with MM4 @$1.18
3. 10 contracts trade with MM2 @$1.19 (This is the final Auction price and fills the entire Agency Order and Contra Order and MM3 does not receive an execution)

Example 4—(Proposed ISO PRIME Allocation) Single Price Submission, Priority Customer has first priority and Market Maker (who initially traded as part of an ISO Sweep) with joining quotes has second priority, Market Maker with joining interest that is received during the associated ISO PRIME Auction that did not trade in the associated ISO sweep and did not have resting interest at the Auction start price receives last priority among Market Makers

MM3 = $1.15 − $1.17 100 × 10 (priority quote)
EBBO = $1.15 − $1.17 100 × 10
NBBO = $1.15 − $1.17 300 × 210

ISO PRIME Agency Order to buy 50 contracts with a limit price of $1.20 is received.

It will ISO Sweep resting liquidity priced better than the Auction start price of $1.20.

Under this scenario, the Agency Order would be executed as follows:

1. 10 contracts trade with MM3 @1.17
Contemporaneously, the balance of the ISO PRIME Agency Order initiates a PRIME Auction to buy 40 contracts with a limit price of $1.20
Initiating Member's Contra Order selling 50 contracts with a single stop price of $1.20
RFR sent identifying the option, side and size, with an initiating price of $1.20
(Auction Starts)
- @10 milliseconds MM1 response received (did not have a priority quote on the Book), AOC eQuote to Sell 20 at $1.18
- @30 milliseconds BD4 response received, AOC order to Sell 20 at $1.18
- @40 milliseconds Priority Customer response received, AOC order to Sell 15 at $1.18
- @65 milliseconds MM3 (who traded as part of the initial sweep), quote response received, AOC eQuote to Sell 20 at $1.18
- @100 milliseconds (Auction Ends)

Under this scenario, the Agency Order would be executed as follows:

2. 15 contracts trade with Priority Customer @$1.18
3. 20 contracts trade with MM3 @$1.18
4. 3 contracts trade with MM1 @$1.18

[78] The term ''priority quote'' has the meaning set forth in Rule 517(b)(1)(i). *See* Exchange Rule 100. *See also* supra note 73.

5. 2 contracts trade with BD4 @$1.18 (This fills the entire Agency Order and the Contra Order does not receive an execution)

The Exchange believes this allocation methodology, used only for Market Maker priority interest and only at the conclusion of an ISO PRIME Auction, will provide an additional incentive for Market Makers to provide their most aggressive quotes to the market throughout the entire trading session. The proposed allocation methodology is identical to MIAX Options Exchange Rule 515A(a)(2)(iii)(C).

The Exchange also proposes to amend Rule 515A(a)(2)(iii)(J) which currently states, notwithstanding (a)(2)(iii)(C), (D) above, if the Auction does not result in price improvement over the Exchange's disseminated price at the time the Auction began, resting unchanged quotes or orders that were disseminated at the best price before the Auction began shall have priority after any Priority Customer order priority and the Initiating Member's priority (40%) have been satisfied. The new proposed rule text will provide, notwithstanding (a)(2)(iii)(C), (D) above, provided the Auction is not for an ISO PRIME order, if the Auction does not result in price improvement over the Exchange's disseminated price at the time the Auction began, resting unchanged quotes or orders that were disseminated at the best price before the Auction began shall have priority after any Priority Customer order priority and the Initiating Member's priority (40%) have been satisfied. The Exchange notes that the proposed rule is identical to MIAX Options Exchange Rule 515A(a)(2)(iii)(J).

Implementation

The Exchange will announce the implementation of these changes in a Regulatory Circular to be published no later than 90 days following the operative date of the proposed rule. The implementation date will be no later than 90 days following the issuance of the Regulatory Circular.

2. Statutory Basis

i. cAOAO Order Type

MIAX believes that its proposed rule change regarding adopting a new Complex Auction-on-Arrival-Only (''cAOAO'') order type is consistent with Section 6(b) of the Act [79] in general, and furthers the objectives of Section 6(b)(5) of the Act [80] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to adopt a cAOAO order type promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest. The Exchange believes it is reasonable to provide an opportunity for investors to seek to have their complex orders exposed for an opportunity for price improvement and to also provide investors the option to have such orders canceled if they are not filled. The Exchange believes its proposal to amend other portions of Exchange Rule 518 to describe the operation and behavior of a cAOAO order benefits investors and the public interest by providing information that investors can use to ascertain the suitability of this order type in relation to their investment objectives. Moreover, this proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options to adopt a cAOAO order type.[81]

The Exchange believes its proposed rule change regarding a cAOAO order type promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by providing an opportunity for investors to have their complex orders exposed for an opportunity for price improvement. Furthermore, the Exchange believes that it is appropriate to provide an order type that will (i) initiate a complex auction if eligible, and (ii) cancel the balance of such order if there is interest remaining at the conclusion of the auction.

ii. Complex Attributable Order Type

The Exchange believes that its proposed rule change regarding adopting a new Complex Attributable Order type is consistent with Section 6(b) of the Act [82] in general, and furthers the objectives of Section 6(b)(5) of the Act [83] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal to adopt a Complex Attributable Order promotes just and equitable principles of trade, and removes impediments to and perfects the mechanisms of a free and open market system and, in general, protects investors and the public interest by introducing an order type for use on the complex market that is currently available for use on the Exchange's simple market. Use of Complex Attributable Orders will be voluntary and will provide Members of the Exchange similar order types for use on both the simple market and the complex market for use during liquidity seeking events to facilitate executions. Additionally, this proposed rule change is substantively identical to a rule change filed by the Exchange's affiliate, MIAX Options to adopt a Complex Attributable Order type.[84]

iii. Complex PRIME Through MPC

The Exchange believes that its proposed rule change regarding excluding cPRIME Orders from the Complex MIAX Emerald Price Collar Protection (''MPC'') is consistent with Section 6(b) of the Act [85] in general, and furthers the objectives of Section 6(b)(5) of the Act [86] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal to exclude cPRIME Orders from the MPC promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by

[79] 15 U.S.C. 78f(b).

[80] 15 U.S.C. 78f(b)(5).

[81] *See supra* note 10.

[82] 15 U.S.C. 78f(b).

[83] 15 U.S.C. 78f(b)(5).

[84] *See supra* note 24.

[85] 15 U.S.C. 78f(b).

[86] 15 U.S.C. 78f(b)(5).

allowing otherwise eligible orders to benefit from submission to the cPRIME mechanism. The Exchange believes that, if not excluded, the MPC feature could unnecessarily impede certain transactions in this order type that are submitted with contra-side participation and guaranteed executions for the Agency side. The Agency side of a cPRIME Order is effectively executed when received (and, in the case of cPRIME Orders, subject to price improvement) because it is a paired order with a guaranteed execution. The Exchange believes that accepting these orders, rather than rejecting them, protects investors that have established crossing orders at a specific execution price, and in the case of cPRIME Orders, allows the opportunity for further price improvement. Additionally, this proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options, which excluded cPRIME Orders from MPC Protection.[87]

iv. Complex Last To Fill

The Exchange believes that its proposed rule change regarding last priority in allocation for Initiating Members submitting cPRIME Agency Orders is consistent with Section 6(b) of the Act[88] in general, and furthers the objectives of Section 6(b)(5) of the Act[89] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to allow Initiating Members that submit cPRIME Agency Orders to the Exchange to elect to have last priority in allocation promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by offering an additional allocation choice which could result in an increase of cPRIME Agency Orders being submitted to the Exchange. The Exchange believes offering last priority in allocation gives the Initiating Member additional flexibility and control over cPRIME Agency Orders which and may result in the submission of more cPRIME Orders to the Exchange resulting in an increase of price improvement opportunities.

Additionally, this proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options, which removed the provision that precluded last priority in allocation from being available to Initiating Members that submit cPRIME Agency Orders.[90]

v. ISO PRIME

The Exchange believes that its proposed rule change regarding a new ISO PRIME order is consistent with Section 6(b) of the Act[91] in general, and furthers the objectives of Section 6(b)(5) of the Act[92] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market in that it promotes competition as described below. Specifically, the proposal allows the Exchange to offer its Members an order type that is already offered by other exchanges.[93] In addition, the proposal benefits traders and investors because it adds a new order type for seeking price improvement through the PRIME. ISO PRIME orders will also be subject to all eligibility requirements that currently apply to PRIME orders. The Initiating Member, simultaneous with the routing of the ISO PRIME order to the Exchange, remains responsible for (i) routing one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PRIME Auction price and (ii) sweeping all interest in the Exchange's Book priced better than the proposed Auction starting price. Finally, the proposal does not unfairly discriminate among Members because all Members of the Exchange are eligible to submit an ISO PRIME order.

The Exchange's proposal to amend Emerald Rule 515A(a)(2)(iii)(C) to adopt a new allocation at the conclusion of an ISO PRIME Auction for Market Maker priority quotes and RFR responses from Market Makers with priority quotes, that participate in the associated ISO sweep, promotes just and equitable principles of trade, perfects the mechanisms of a free and open market and a national market system and, in general, benefits investors as it provides an additional incentive to Market Makers to provide their most aggressive quotes to the market at all times. Prioritizing Market Maker interest such that Market Makers that trade in the associated ISO sweep that also have joining interest at the final Auction price receive first priority in allocation provides an incentive to Market Makers to have their most aggressive quotes on the Book in order to participate in any potential ISO sweeps.

The Exchange's proposal does not change the existing allocation priority for PRIME Auctions, and is narrowly tailored to allocation priority only among Market Makers and only at the conclusion of a PRIME Auction initiated by an ISO PRIME order. Additionally, the proposed rule is identical to a rule change filed by the Exchange's affiliate, MIAX Options, to adopt a new allocation methodology specifically for Market Maker interest executed during an ISO PRIME Auction.[94]

Additionally, the Exchange believes its proposal to amend Exchange Rule 515A(a)(2)(iii)(J) to clarify that the subsection does not apply to Auctions for ISO PRIME orders, promotes just and equitable principles of trade, and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by removing any ambiguity in the Exchange's Rulebook about the type of Auctions subsection (J) pertains to. Current subsection (J) provides additional clarifying language concerning the priority of allocations at the conclusion of a PRIME Auction that does not result in price improvement

[87] *See supra* note 33.

[88] 15 U.S.C. 78f(b).

[89] 15 U.S.C. 78f(b)(5).

[90] *See supra* note 52.

[91] 15 U.S.C. 78f(b).

[92] 15 U.S.C. 78f(b)(5).

[93] *See* Nasdaq ISE Exchange Rule, Options 3, Section 13, Supplementary Material .08 (stating that a PIM ISO Order is the transmission of two orders for crossing pursuant to this Rule without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the PIM ISO to the Exchange has, simultaneously with the routing of the PIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price); *see also* Interpretations and Policies .08 of MIAX Options Exchange Rule 515A.

[94] *See supra* note 55; see also MIAX Options Exchange Rule 515A(a)(2)(iii)(C).

over the Exchange's disseminated price at the time the Auction began stating that, ''resting unchanged quotes or orders that were disseminated at the best price before the Auction began shall have priority after any Priority Customer order priority. . . .'' [95] The Exchange's proposal concerning allocation at the conclusion of an Auction for an ISO PRIME order provides a more nuanced and detailed hierarchy of allocation for Market Makers which would be applicable in the scenario contemplated by subsection (J). Therefore, the Exchange is proposing to exclude the application of subsection (J) to Auctions that are initiated by ISO PRIME orders. The Exchange believes this change eliminates any potential conflict regarding the application of the Exchange's rules and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion. The Exchange notes that the proposed rule is identical to MIAX Options Exchange Rule 515A(a)(2)(iii)(J).

The Exchange believes this change will benefit market participants as it encourages Market Makers to participate in ISO PRIME Auctions and will provide additional incentive to Market Makers to provide their most aggressive quotes to the market throughout the trading session and may also result in increased liquidity being available during the Auction. Additionally, this proposed rule change is identical to a rule change filed by Exchange's affiliate, MIAX Options, to adopt ISO PRIME orders.[96]

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.

(i) cAOAO Order Type

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition but will rather promote inter-market competition as the Exchange is proposing an order type that operates and is functionally identical to an order type offered on other option exchanges.[97] The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change will enhance competition among the various markets for complex order execution, potentially resulting in more active complex order trading on all exchanges. Moreover, since the proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options,[98] the Exchange does not believe that its proposal will impose any burden on inter-market competition as it would offer its Members similar functionality to that of the Exchange's affiliate.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply equally to all Exchange Members, and any Member of the Exchange may use the cAOAO order type.

(ii) Complex Attributable Order Type

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change to adopt a Complex Attributable Order will impose any burden on inter-market competition but rather may increase competition among exchanges as the Exchange is proposing an order type that operates and is functionally identical to other options exchanges.[99] The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change will enhance competition among the various markets for complex order execution, potentially resulting in more active complex order trading on all exchanges. Moreover, since the proposed rule change is substantively identical to a rule change filed by the Exchange's affiliate, MIAX Options,[100] the Exchange does not believe that its proposal will impose any burden on inter-market competition as it would offer its Members similar functionality to that of the Exchange's affiliate.

The Exchange does not believe that the proposed rule change to adopt a Complex Attributable Order will impose any burden on intra-market competition as use of a Complex Attributable Order will be voluntary and all Members of the Exchange will have the option to use a Complex Attributable Order when submitting a complex order to the Exchange.

(iii) Complex PRIME Through MPC

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposal to exclude cPRIME Orders from the Exchange's MPC price protection promotes inter-market competition by enabling the Exchange to better compete for this type of order flow with at least one other exchange that offers similar price improvement auctions.[101] Moreover, since the proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options,[102] the Exchange does not believe that its proposal will impose any burden on inter-market competition as it would offer its Members similar functionality to that of the Exchange's affiliate.

The Exchange does not believe that its proposal will impose any burden on intra-market competition as all Members of the Exchange that submit cPRIME Orders will benefit equally from the Exchange's proposal. The proposed rule change is intended to promote competition and is designed to benefit all Exchange participants by ensuring that unnecessary price protections which would preclude executions on the Exchange are removed, thus enabling Exchange participants to execute more complex orders on the Exchange.

For all the reasons stated, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed changes will in fact enhance competition.

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[95] *See* Exchange Rule 515A(a)(2)(iii)(J).

[96] *See supra* note 55.

[97] *See* Nasdaq ISE Exchange Rule, Options 3, Section 14(b)(14) which provides that, ''[a]n Exposure Only Complex Order is an order that will be exposed upon entry . . . if eligible, or cancelled if not eligible'' and ''[a]ny unexecuted balance of an Exposure Only Complex Order remaining upon the completion of the exposure process will be cancelled.''; *see also* MIAX Options Exchange Rule 518(b)(9).

[98] *See supra* note 10.

[99] The Nasdaq ISE Exchange and Nasdaq MRX Exchange currently offer Attributable Complex Orders. *See* Nasdaq ISE Exchange, Options 3, Section 14, Complex Orders (b)(4) (explaining that one of the types of Complex Orders that may be entered is an Attributable Complex Order, which is ''a Market or Limit Complex Order [that] may be designated as an Attributable Order''); *and* Nasdaq MRX Exchange, Options 3, Section 14, Complex Orders (b)(4) (explaining that one of the types of Complex Orders that may be entered is an Attributable Complex Order, which is ''a Market or Limit Complex Order [that] may be designated as an Attributable Order''); *see also* MIAX Options Exchange Rule 518(b)(8).

[100] *See supra* note 24.

[101] *See* Cboe Exchange Rule 5.38

[102] *See supra* note 33.

(iv) Complex Last To Fill

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that its proposal will impose any burden on inter-market competition because the Exchange believes that the proposal to offer a last in priority allocation option to Initiating Members that submit cPRIME Agency Orders allows the Exchange to compete with at least one other options exchange that offers identical functionality.[103] Moreover, since the proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options,[104] the Exchange does not believe that its proposal will impose any burden on inter-market competition as it would offer its Members similar functionality to that of the Exchange's affiliate, and allow MIAX Emerald to compete with other exchanges that provide this allocation option to exchange participants.

The Exchange does not believe that its proposal will impose any burden on intra-market competition as all Members of the Exchange that submit cPRIME Orders will be able to elect last priority in allocation. Offering Initiating Members that submit cPRIME Agency Orders an additional allocation choice gives Members more flexibility and control over their orders and may result in the submission of more cPRIME Orders which would benefit competition on the Exchange.

For all the reasons stated, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed changes will in fact enhance competition.

(v) ISO PRIME

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will benefit inter-market competition as it will allow the Exchange to compete with other markets that already allow an ISO Order type in their price improvement mechanisms.[105]

The Exchange's proposal to adopt an ISO PRIME order type benefits intra-market competition because it will enable the Exchange to provide market participants with an additional method of seeking price improvement through the PRIME. The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply equally to all Exchange Members, and all Exchange Members may submit an ISO PRIME order.

The Exchange does not believe its proposal to amend Exchange Rule 515A(a)(2)(iii)(C) to adopt a new allocation hierarchy to further apportion Market Maker allocation at the conclusion of an Auction of an ISO PRIME order will impose any burden on intra-market competition but rather promotes intra-market competition as it provides a further incentive to Market Makers to provide their most aggressive quotes to the market throughout the entire trading session and may increase liquidity available during a PRIME Auction. The proposal provides Market Makers with priority quotes on the Book, that participate in an associated ISO sweep, with priority over other Market Makers, which benefits intra-market competition as it also provides an incentive to Market Makers to provide their most aggressive quotes to the market during the entire trading session to be in position to participate in any potential ISO sweeps.

The Exchange's proposal does not change existing order allocation under Exchange Rule 515A(2)(iii) and the Exchange does not believe its proposal will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, but rather will promote inter-market competition as it provides an additional incentive to Market Makers on the Exchange to provide their most aggressive quotes to the market at all times, which could result in tighter quotes and greater liquidity being available in the market place, which would benefit all investors. Moreover, since the proposed rule change is identical to a rule change filed by the Exchange's affiliate, MIAX Options,[106] the Exchange does not believe that its proposal will impose any burden on inter-market competition as it would offer its Members similar functionality to that of the Exchange's affiliate.

The Exchange believes its proposal to amend Exchange Rule 515A(a)(2)(iii)(J) promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed rule change provides additional detail and further clarifies the rule. The Exchange does not believe its proposal is a burden on inter-market competition as the change is not competitive in nature and only clarifies the operation of the rule. Additionally, the Exchange does not believe its proposal is a burden on intra-market competition as the Exchange's rules apply equally to all Members, and any Member may submit an ISO Prime order to the Exchange. Further, the Exchange believes the proposed change adds additional detail to the Exchange's rules, and it is in the public interest for rules to be clear and concise so as to eliminate the potential for confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[107] and Rule 19b–4(f)(6) thereunder.[108]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

[103] *See* Cboe Exchange Rule 5.38(e)(5) (stating that if the Initiating Trading Permit Holder selects a single-price submission, it may elect for the Initiating Order to have last priority to trade against the Agency Order and then notwithstanding the Price Improvement provisions as laid out in subparagraphs (e)(1) and (2), the System only executes the Initiating Order against any remaining Agency Order contracts at the stop price after the Agency Order is allocated to all other contra-side interest at all prices equal to or better than the stop price).

[104] *See supra* note 52.

[105] *See supra* note 93.

[106] *See supra* note 52.

[107] 15 U.S.C. 78s(b)(3)(A)(iii).

[108] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2022–25 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–EMERALD–2022–25. 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–EMERALD–2022–25, and should be submitted on or before August 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[109]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16148 Filed 7–27–22; 8:45 am]

BILLING CODE 8011–01–P

[109] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95354; File No. SR–NYSE–2022–32]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Rule 7.35B Relating to the Closing Auction and Make Certain Conforming and Non-Substantive Changes to Rule 7.31, Rule 7.35, Rule 7.35B and Rule 104

July 22, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on July 13, 2022, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) amend Rule 7.35B (DMM-Facilitated Closing Auctions) relating to the Closing Auction, and (2) make certain conforming and non-substantive changes to Rule 7.31 (Orders and Modifiers), Rule 7.35, Rule 7.35B and Rule 104 (Dealings and Responsibilities of DMMs). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) amend Rule 7.35B (DMM-Facilitated Closing Auctions) relating to the Closing Auction,[4] and (2) make certain conforming and non-substantive changes to Rule 7.31 (Orders and Modifiers), Rule 7.35, Rule 7.35B and Rule 104 (Dealings and Responsibilities of DMMs).

Overview of Current Closing Auction Process

The following current rules describe the Closing Auction process on the Exchange:

- Rule 7.31 (identifying the order types eligible to participate in an Auction);
- Rule 7.35 (general rules and definitions applicable to Auctions);
- Rule 7.35B (describing the process for DMM-facilitated Closing Auctions);
- Rule 7.35C (describing the process for Exchange-facilitated Auctions); and
- Rule 104 (establishing DMM obligations with respect to Closing Auctions and trading leading into the Closing Auction).

The following interest is eligible to participate in a Closing Auction:

- unexecuted buy and sell orders resting on the Exchange Book at the end of Core Trading Hours (including DMM Orders);[5]
- Auction-Only Orders;[6] and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Capitalized terms used in connection with Auctions on the Exchange are defined in Rule 7.35(a).

[5] Rule 7.35(a)(9) defines ''DMM Interest'' for purposes of Auctions to mean all buy and sell interest entered by a DMM unit in its assigned securities and includes the following: (i) ''DMM Auction Liquidity,'' which is non-displayed buy and sell interest that is designated for an Auction only (see Rule 7.35(a)(9)(A)); (ii) ''DMM Orders,'' which are orders, as defined under Rule 7.31, entered by a DMM unit (*see* Rule 7.35(a)(9)(B)); and (iii) ''DMM After-Auction Orders,'' which are orders entered by a DMM unit before either the Core Open Auction or Trading Halt Auction that do not participate in an Auction and are intended instead to maintain price continuity with reasonable depth following an Auction (*see* Rule 7.35(a)(9)(C)).

[6] Auction-Only Orders available for the Closing Auction are defined in Rule 7.31(c)(2)(A)–(D) as the Limit-on-Close Order (''LOC Order''), Market-on-Close Order (''MOC Order''), Closing D Order, and Closing Imbalance Offset Order (''Closing IO Order'').

• DMM Auction Liquidity entered by the DMM in connection with facilitating the Closing Auction.[7]

Beginning 10 minutes before the scheduled end of Core Trading Hours, the Exchange begins disseminating through its proprietary data feed Closing Auction Imbalance Information that is calculated based on the interest eligible to participate in the Closing Auction.[8] The Closing Auction Imbalance Information includes the Continuous Book Clearing Price, which is the price at which all better-priced orders eligible to trade in the Closing Auction on the Side of the Imbalance can be traded.[9] The Closing Auction Imbalance Information also includes an Imbalance Reference Price, which is the Exchange Last Sale Price bound by the Exchange BBO.[10] Beginning five minutes before the end of Core Trading Hours, Closing D Orders are included in the Closing Auction Imbalance Information at their undisplayed discretionary price.[11] The Closing Auction Imbalance Information is updated at least every second, unless there is no change to the information, and is disseminated until the Closing Auction begins.[12] In addition, if at the Closing Auction Imbalance Freeze Time [13] the Closing Imbalance [14] is 500 round lots or more, the Exchange will disseminate a Regulatory Closing Imbalance to both the securities information processor and proprietary data feeds.[15]

Pursuant to Rule 104(a)(3), Designated Market Makers (''DMM'') have the responsibility to facilitate the close of trading for each of the securities in which the DMM is registered as required by Exchange rules, which may include supplying liquidity as needed. Rule 104(a)(3) further provides that DMMs and DMM unit algorithms have access to aggregate order information in order to comply with their requirement to facilitate the close of trading for each of the securities in which the DMM is registered. Accordingly, aggregate order information about all orders eligible to participate in the Closing Auction, including the full quantity of Reserve Orders [16] and MOC and LOC Order quantities, are available to DMMs at each price point. This information is available at the point of sale to DMMs. In addition, it is made available to DMM unit algorithms in connection with the electronic message sent to a DMM unit algorithm to close an assigned security electronically, which is sent shortly after the end of Core Trading Hours.

Rule 7.35B specifies the process for DMM-facilitated Closing Auctions. Pursuant to Rule 7.35B(a), it is the responsibility of each DMM to ensure that registered securities close as soon after the end of Core Trading Hours as possible, while at the same time not unduly hasty, particularly when at a price disparity from the Exchange Last Sale Price.[17] As provided for in Rule 7.35B(a)(2), a DMM may enter or cancel DMM Interest after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner, and entry of DMM Interest after the end of Core Trading Hours is not subject to Limit Order Price Protection. Pursuant to Rule 7.35B(c), the DMM may effectuate a Closing Auction manually or electronically. Rule 7.35B(g) provides that the DMM is responsible for determining the Auction Price for a Closing Auction and that if there is an Imbalance of any size, the DMM must select an Auction Price at which all better-priced orders on the Side of the Imbalance can be satisfied.

Rule 7.35C specifies the process for Exchange-facilitated Auctions if a DMM cannot facilitate an Auction in one or more securities in which the DMM is registered. DMM Interest does not participate in an Exchange-facilitated Closing Auction trade.[18]

Proposed Amendments to Rule 7.35B

The Exchange proposes to amend Rule 7.35B to modify how the Closing Auction Price would be determined by adding price parameters within which the DMM must select a Closing Auction Price. As described in more detail below, the proposed pricing parameters would be based on non-DMM interest eligible to participate in the Closing Auction that was included in the last-published Auction Imbalance Information. The Exchange also proposes to modify how the DMM would participate in the Closing Auction by cancelling any resting DMM Orders at the end of Core Trading Hours. The Exchange does not propose to change the DMMs' Rule 104 obligation to facilitate the Closing Auction, including the obligation to supply liquidity as needed. The Exchange believes that the proposed changes would make the Closing Auction more transparent and deterministic while retaining the DMMs' unique obligation to facilitate the Closing Auction.

Proposed Changes to Closing Auction Price

The Exchange proposes to amend Rule 7.35B(g) to add explicit price parameters to the Closing Auction Price. As noted above, the DMM is responsible for determining a Closing Auction Price that is able to satisfy all better-priced orders on the Side of the Imbalance. This requirement would not change.

[7] In 2021, the Commission approved changes to Rule 7.35B providing that Floor Broker Interest is no longer eligible to participate in the Closing Auction. *See* Securities Exchange Act Release No. 92480 (July 23, 2021), 86 FR 40886 (July 29, 2021) (SR–NYSE–2020–95) (''Floor Broker Interest Approval Order''). The term ''Floor Broker Interest'' is defined in Rule 7.35(a)(10) to mean orders represented orally by a Floor broker at the point of sale. In light of the Floor Broker Interest Approval Order, the Exchange proposes conforming changes to Rules 7.35B(c)(1)(B), Rule 7.35B(j)(2) and Rule 7.35B(j)(2)(A)(iii). Specifically, Rule 7.35B(c)(1)(B) provides that a DMM may not effect a Closing Auction electronically if, among other things, Floor Broker Interest for the Closing Auction that has been electronically entered or requested to be cancelled has not yet been accepted by the DMM. Rule 7.35B(j)(2) provides that, to avoid closing price dislocation that may result from an order entered into Exchange systems or represented to a DMM orally at or near the end of Core Trading Hours, the Exchange may temporarily suspend the requirement to enter all order instructions by the end of Core Trading Hours. Because the Exchange has eliminated Floor Broker Interest at the close, the Exchange proposes to delete Rule 7.35B(c)(1)(B) in its entirety. The remaining subsections of Rule 7.35B(c)(1) would be renumbered accordingly and the Exchange proposes conforming changes to Rule 7.35B(j)(1)(A) and (B) to update the cross references from Rule 7.35B(c)(1)(G) to Rule 7.35B(c)(1)(F). For the same reasons, the Exchange proposes to delete the phrase ''or represented to a DMM orally'' in Rule 7.35B(j)(2) and the phrase ''and Floor Broker Interest'' in Rule 7.35B(j)(2)(A)(iii).

[8] *See* Rule 7.35B(e)(1)(A). DMM Orders, as defined in Rule 7.35(d)(9)(B), that have been entered by the DMM in advance of a Closing Auction are currently included in the Closing Auction Imbalance Information.

[9] *See* Rule 7.35(a)(4)(C). In the case of a buy Imbalance, the Continuous Book Clearing Price would be the highest potential Closing Auction Price and in the case of a sell Imbalance, the Continuous Book Clearing Price would be the lowest potential Closing Auction Price.

[10] *See* Rule 7.35B(e)(3).

[11] *See* Rule 7.35(b)(1)(C)(ii).

[12] *See* Rule 7.35(c)(1) and (2).

[13] *See* Rule 7.35(a)(8) (defining the ''Closing Auction Imbalance Freeze Time'' to be 10 minutes before the scheduled end of Core Trading Hours).

[14] As defined in Rule 7.35(a)(4)(A)(ii), a ''Closing Imbalance'' means the Imbalance of MOC and LOC Orders to buy and MOC and LOC Orders to sell. That Rule further defines a ''Regulatory Closing Imbalance'' as a Closing Imbalance disseminated at or after the Closing Auction Imbalance Freeze Time.

[15] *See* Rule 7.35B(d)(1).

[16] Reserve Orders, including the non-displayed reserve interest of such orders, are eligible to participate in the Closing Auction. *See, e.g.,* Rule 7.35B(h)(2)(B) (describing the allocation ranking of at-priced orders ranked Priority 3—Non-Displayed Orders, which refers to the reserve interest of Reserve Orders).

[17] The term ''Exchange Last Sale Price'' is defined in Rule 7.35(a)(12)(B) to mean the most recent trade on the Exchange of a round lot or more in a security during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security.

[18] *See* Rule 7.35C(a)(1) (''If the Exchange facilitates an Auction, DMM Interest will not be eligible to participate if such Auction results in a trade, and will be eligible to participate if such Auction results in a quote.'').

The Exchange proposes to add that the Closing Auction Price determined by the DMM must also be at a price that is at or between the last-published Imbalance Reference Price and the last-published Continuous Book Clearing Price. Specifically, the Exchange proposes to amend Rule 7.35B(g) as follows (proposed changes italicized):

(g) *Determining an Auction Price.* The DMM is responsible for determining the Auction Price for a Closing Auction under this Rule.

(1) If there is an Imbalance of any size, the DMM must select an Auction Price at which all better-priced orders on the Side of the Imbalance can be satisfied.

(2) The Auction Price must be at or between the last-published Imbalance Reference Price and the last-published non-zero Continuous Book Clearing Price.[19]

The Exchange believes that adding this proposed Closing Auction Price parameter is consistent with how the Closing Auction Price has been determined for the vast majority of Closing Auctions. For example, in the period January 1, 2021 to June 17, 2022, 95.6% of all Closing Auctions were priced at or between the last-published Imbalance Reference Price and Continuous Book Clearing Price. Similarly, during this same period, 94.6% of closing auction volume priced within these parameters. Moreover, 73.6% of the 4.4% of Closing Auctions that did not price within those parameters closed at prices only one or two cents away from those boundaries.[20] More recent Closing Auction data also shows that auctions executing within the proposed range resulted in more representative prices for market participants.[21] The Exchange further believes that this proposed change would eliminate any potential for a Closing Auction Price to be lower (higher) than the last-published Imbalance Reference Price in the case of a Buy (Sell) Imbalance. This proposed change would also promote transparency and determinism with respect to the Closing Auction because the Closing Auction Price would be required to be within a pre-determined range of prices that have been disseminated via the Closing Auction Imbalance Information and that cannot be changed after the end of Core Trading Hours.[22]

Proposed Changes to How DMMs Would Participate in the Closing Auction

The Exchange proposes to change how DMMs would be able to enter buy and sell interest to participate in the Closing Auction by modifying how a DMM could enter or cancel interest after the end of Core Trading Hours.

Currently, Rule 7.35B(a)(2) provides that a DMM may enter or cancel DMM Interest after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner. Consistent with this current Rule, the Exchange does not systematically block a DMM from entering or cancelling DMM Interest after the end of Core Trading Hours. Instead, the DMM's determination of whether to enter or cancel DMM Interest after the end of Core Trading Hours is subject to the DMM's obligation to maintain a fair and orderly market, as specified in Rule 104.

The Exchange proposes to amend Rule 7.35B(a)(2) to provide that after the end of Core Trading Hours, a DMM may enter only DMM Auction Liquidity in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner. With this proposed change, a DMM could enter DMM Auction Liquidity after the end of Core Trading Hours only to close a security within the proposed new price parameters, described above.[23] Because only DMM Auction Liquidity could be entered after the end of Core Trading Hours, such interest could be entered either electronically in response to the electronic message sent to a DMM unit algorithm to close an assigned security or manually.

The Exchange proposes that DMM Orders (*i.e.,* DMM buy and sell orders resting on the Exchange Book) would not be eligible to participate in the Closing Auction.[24] Because DMM Orders would not participate in the Closing Auction, the Exchange further proposes that such interest would not be included in the calculation of the Continuous Book Clearing Price. With this change, the Continuous Book Clearing Price would be based on non-DMM interest eligible to participate in the Closing Auction. Finally, because resting DMM Orders would not participate in the Closing Auction, the Exchange also proposes to cancel DMM Orders at the end of Core Trading Hours.[25] The Exchange proposes a related amendment to delete the phrase ''or cancel'' in the first sentence of Rule 7.35B(a)(2) as moot.

To effect these changes, the Exchange proposes to amend Rule 7.35B(a)(2) as

[19] Rule 7.35(a)(4)(C) provides that if there is no Imbalance of all orders eligible to trade in the Auction, the Continuous Book Clearing Price will be the Imbalance Reference Price. The Exchange proposes to amend this provision to clarify that if the Imbalance Reference Price is in an increment smaller than the minimum price variation (''MPV'') for the security (*e.g.,* Exchange Last Sale Price was a midpoint execution in a penny-spread security), it will be rounded to the MPV for the specific security. The Exchange would also make a conforming change to Rule 7.35B(c)(1)(G) (to be renumbered F, *see* note 6, *supra*), which provides that a DMM may not effect a Closing Auction electronically if the Closing Auction Price will be more than 10% away from Exchange Last Sale Price. The Exchange would replace Exchange Last Sale Price with last-published Imbalance Reference Price.

[20] More specifically, 59.6% were one cent away and 14.0% were two cents away.

[21] During the last quarter of 2021 and year to date, 95.0% of Closing Auctions occurred within the proposed pricing parameters. These numbers did not materially change for volatile trading days. For example, in the December 2021 quarterly rebalance, 96.5% of Closing Auctions occurred within this range; in the March 2022 quarterly rebalance, 95.6% of Closing Auctions occurred within the range. Closing Auctions pricing outside the range were mostly within 2 cents of the range; only 1% of all auctions occurred more than 2 cents outside the range. For instance, in the December 2021 quarterly rebalance, just 0.6% of all Closing Auctions occurred more than 2 cents outside the range; in the more volatile March 2022 rebalance, just 1.2% of Closing Auctions occurred more than 2 cents outside the range. More significantly, Closing Auctions executing within the proposed range during the same period (excluding rebalance days) were 11.3% closer to the consolidated two-minute VWAP price benchmark than Closing Auctions that priced outside of the proposed range, *i.e.,* Closing Auctions executing within the proposed range were more in-line with the range of continuous trading leading into the close. And this was true for rebalance days as well: during the December 2021 rebalance, Closing Auctions executing within the proposed range were 14% closer to the VWAP benchmark; during the March 2022 rebalance, Closing Auctions executing within the proposed range were 40% closer to the VWAP benchmark.

[22] The only circumstance when the Continuous Book Clearing Price could change after the end of Core Trading Hours would be if Rule 7.35B(j)(2)(A), described below, were invoked and the requirement to enter all order instructions by the end of Core Trading Hours were temporarily suspended for a security.

[23] For example, if there is an Imbalance to buy, the Imbalance Reference Price is $10.00, and the Continuous Book Clearing Price is $10.10, the DMM could enter DMM Auction Liquidity to sell only at prices ranging from $10.00 to $10.10. The Exchange does not propose to systematically prescribe whether such interest must be offsetting to the last-published Imbalance because DMM same-side interest could result in more orders participating in the Closing Auction. For example, DMM Auction Liquidity entered on the same side of the Imbalance could result in greater liquidity being supplied by the DMM to trade with at-priced orders, which are not included in the calculation of the Imbalance. In such a scenario, even though the DMM may be participating on the same-side of the imbalance, such interest would not move the Closing Price outside the Continuous Book Clearing Price.

[24] The Exchange also proposes to amend Rule 7.35B(j)(2)(A)(iii) to provide that DMM Orders would be rejected if entered after the end of Core Trading Hours (*i.e.,* during the ''Solicitation Period'') to offset an extreme order imbalance at or near the close.

[25] The Exchange understands that it is current practice for DMMs to cancel their DMM Orders at the end of Core Trading Hours.

follows (proposed additions italicized, proposed deletions bracketed):

(2) *DMM Interest:* A DMM may enter [or cancel] DMM *Auction Liquidity*[Interest] after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner. The entry of DMM *Auction Liquidity*[Interest] after the end of Core Trading Hours will not be subject to Limit Order Price Protection. *DMM Orders will not be eligible to participate in the Closing Auction, will not be included in the calculation of the Continuous Book Clearing Price for the Closing Auction, and will be cancelled at the end of Core Trading Hours.*

With this proposed change to Rule 7.35B(a)(2), in connection with the Closing Auction, DMMs would still be required consistent with their obligations under Rule 104 to contribute their own capital to supply liquidity as needed to assist in the maintenance of a fair and orderly market. In addition, DMMs would continue to have an obligation with respect to determining a Closing Auction Price that satisfies all better-priced orders on the Side of the Imbalance.

Proposed Conforming and Non-Substantive Amendments

The Exchange proposes to amend Rule 104 to eliminate obsolete rule text and update rule references, and make other conforming changes to Rule 7.31 and Rule 104. The following proposed changes would not result in any substantive changes to DMM obligations:

- The Exchange proposes to amend Rule 104(a)(2) to update the cross reference from Rule 123D to Rule 7.35A and to use the Pillar terms of ''Core Open Auctions and Trading Halt Auctions'' instead of referring to ''openings.'' The Exchange also proposes to delete the reference to Rule 13 and Reserve Order interest procedures at the opening as obsolete. Finally, the Exchange proposes to delete the reference to Supplementary Material .05 to Rule 104 with respect to odd-lot order information to the DMM unit algorithm, as this is also obsolete now that the Exchange trades on Pillar.
- The Exchange proposes to amend Rule 104(a)(3) to update the cross reference from Rule 123C to Rule 7.35B and to use the Pillar term of ''Closing Auctions'' instead of ''closes.'' The Exchange also proposes to delete the reference to Rule 13 and Reserve Order interest procedures at the close as obsolete.
- The Exchange proposes to amend Rule 104(b) by deleting subparagraphs (2) and (6) and replacing the text for Rule 104(b)(2) with the following: ''Unless otherwise specified in Rule 7.31, DMM unit algorithms may use the orders and modifiers set forth in Rule 7.31.''

Rule 104(b)(2) currently provides that ''Exchange systems shall enforce the proper sequencing of incoming orders and algorithmically-generated messages and will prevent incoming DMM interest from trading with resting DMM interest. If the incoming DMM interest would trade with resting DMM interest only, the incoming DMM interest will be cancelled. If the incoming DMM interest would trade with interest other than DMM interest, the resting DMM interest will be cancelled.'' Since the Exchange transitioned to Pillar, the Exchange no longer enforces self-trade prevention on behalf of DMMs. Instead, DMMs may use one of the Self-Trade Prevention Modifiers (''STP'') described in Rule 7.31(i)(2).

Rule 104(b)(6) currently provides that ''DMM Units may not enter the following orders and modifiers: Market Orders, Inside Limit Orders, MOO Orders, CO Orders, MOC Orders, LOC Orders, or Last Sale Peg Orders.'' In the Pillar rules, Rule 7.31 sets forth which orders and modifiers are not available to DMMs, and therefore Rule 104(b)(6) is obsolete. All of the orders and modifiers set forth in Rule 104(b)(6) that are unavailable to DMMs are reflected in Rule 7.31 except for Inside Limit Orders, which limitation was only added to Rule 104(b)(6).[26] The Exchange accordingly proposes to amend Rule 7.31(a)(3) to reflect that Inside Limit Orders are not available to DMMs. The Exchange believes that the proposed new text for Rule 104(b)(2) would provide transparency that Rule 7.31 would describe which orders and modifiers would be available to DMMs, including STP modifiers.

- The Exchange proposes to amend Rule 104(b)(3) to delete references to ''Floor broker agency interest files or reserve interest'' as such references are now obsolete. The Exchange no longer uses ''Floor broker agency interest files'' and no longer provides Floor brokers with reserve interest functionality that differs from the Reserve Orders available to all member organizations, as described in Rule 7.31.
- The Exchange proposes to amend Rule 104(b) by deleting subparagraph (4), which provides that ''[t]he DMM unit's algorithm may place within Exchange systems trading interest to be known as a ''Capital Commitment Schedule''. (See Rule 1000 concerning the operation of the Capital Commitment Schedule).'' With the transition to Pillar, the Exchange has replaced the ''Capital Commitment Schedule'' with Capital Commitment Orders, as described in Rule 7.31(d)(5), and has deleted Rule 1000. Accordingly, this current rule is obsolete. The Exchange proposes a non-substantive amendment to renumber Rule 104(b)(5) as Rule 104(b)(4).
- The Exchange proposes to delete the text accompanying current Rules 104(c), (d), and (e) as obsolete now that the Exchange trades on Pillar. Rule 104(c) currently provides: ''A DMM unit may maintain reserve interest consistent with Exchange rules governing Reserve Orders. Such reserve interest is eligible for execution in manual transactions.'' Rule 7.31 now describes how Reserve Orders function.

Rule 104(d) currently provides: ''A DMM unit may provide algorithmically-generated price improvement to all or part of an incoming order that can be executed at or within the Exchange BBO through the use of Capital Commitment Schedule interest (see Rule 1000). Any orders eligible for execution in Exchange systems at the price of the DMM unit's interest will trade on parity with such interest, as will any displayed interest representing a d-Quote enabling such interest to trade at the same price as the DMM unit's interest.'' As noted above, with Pillar, the Exchange has deleted Rule 1000 and no longer offers the Capital Commitment Schedule to DMMs.

Rule 104(e) currently provides: ''DMM units shall provide contra side liquidity as needed for the execution of odd-lot quantities that are eligible to be executed as part of the opening, re-opening and closing transactions but remain unpaired after the DMM has paired all other eligible round lot sized interest.'' This requirement is obsolete.

With these proposed deletions, the Exchange proposes non-substantive amendments to renumber Rules 104(f), (g), (h), (i), and (j) as Rules 104(c), (d), (e), (f), and (g) and update cross-references in proposed Rule 104(e)(iii) from subparagraph (h)(ii) and (iii) to (e)(ii) and (iii).

- The Exchange proposes to amend current Rule 104(h)(ii) (proposed Rule 104(e)(ii)) to delete reference to information that is no longer available to a DMM at the post. Specifically, the

[26] *See* Securities Exchange Act Release No. 94030 (January 24, 2022), 87 FR 4695, 4696 (January 28, 2022) (SR–NYSE–2022–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 7.31 To Provide for Inside Limit Orders and Make Other Conforming Changes).

Exchange no longer provides DMMs at the post with the following information: ''the price and size of any individual order or Floor broker agency interest file and the entering and clearing firm information for such order, except that the display shall exclude any order or portion thereof that a market participant has elected not to display to a DMM.'' Accordingly, the Exchange proposes to amend Rule 104(e)(ii) to delete that rule text.

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The Exchange proposes that the non-substantive amendments to Rule 104 would be operative immediately upon approval of this proposed rule change. Because of the technology changes associated with the proposed changes to Rule 7.35B, the Exchange proposes that, subject to approval of the proposed rule change, the Exchange will announce the implementation date of the remaining proposed rule changes by Trader Update. Subject to approval of this proposed rule change, the Exchange anticipates that such changes will be implemented in the fourth quarter of 2022.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[27] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[28] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Proposed Changes to Closing Auction Price. The Exchange believes that the proposed amendment to Rule 7.35B(g) regarding how the Closing Auction Price would be determined would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote a more transparent and deterministic Closing Auction process and support the maintenance of a fair and orderly market. Specifically, the proposed change would require that the DMM determine a Closing Auction Price that is at or between the last-published Imbalance Reference Price and Continuous Book Clearing Price.[29] Accordingly, the Closing Auction Price must be within a pre-determined range of prices that would have been disseminated via the Closing Auction Imbalance Information and that cannot be changed by the DMM after the end of Core Trading Hours. The Exchange further believes that this proposed parameter is consistent with how Closing Auction Prices have been determined for the vast majority of Closing Auctions. For example, as noted above, in the period January 1, 2021 to December 31, 2021, 95.8% of all Closing Auctions were priced at or between the last-published Imbalance Reference Price and Continuous Book Clearing Price. Similarly, during this same period, 94.6% of closing auction volume priced within these parameters. Moreover, 74% of the 4.2% of Closing Auctions that did not price within those parameters closed at prices only one or two cents away from those boundaries.[30] More recent Closing Auction data also shows that Closing Auctions executing within the proposed range resulted in more representative prices for market participants.[31]

Proposed Changes to How DMMs Would Participate in the Closing Auction. The Exchange believes that the proposed amendments to Rule 7.35B(a)(2) relating to how DMMs would participate in the Closing Auction would remove impediments to and perfect the mechanism of a free and open market and a national market system because with these changes, the price range at which a security could close would be based on non-DMM interest eligible to participate in the Closing Auction. The proposed change would continue to provide DMMs with tools to comply with their Rule 104(a)(3) obligation to supply liquidity as needed to facilitate a fair and orderly Closing Auction. Specifically, in order to supply liquidity as needed to facilitate the Closing Auction, DMMs could enter DMM Auction Liquidity after the end of Core Trading Hours either in response to the electronic message sent by the Exchange to close a security or manually. In addition, by cancelling resting DMM Orders, only non-DMM interest eligible to participate in the Closing Auction would be considered in the calculation of the Continuous Book Clearing Price. The Exchange believes that these changes, together with the proposed pricing parameters for determining the Closing Auction Price, would eliminate the potential for a Closing Auction to be priced outside of the last-published imbalance information, and therefore promote transparency and determinism in the Closing Auction process and support the maintenance of a fair and orderly market.

Proposed Non-Substantive Amendments. The Exchange believes that the proposed non-substantive amendments to Rules 7.31, 7.35, 7.35B and 104 would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes are designed to eliminate obsolete rule text, update rule references to reflect Pillar functionality, and make other conforming changes. Specifically, the Exchange proposes to eliminate references to pre-Pillar Rules and trading functionality, including references to Rules 123D, 123C, Rule 1000, the Capital Commitment Schedule, Floor broker agency interest files, odd-lot orders in the close, and self-trade prevention. The Exchange also proposes to update Rule 104(b) to cross reference Rule 7.31 to determine which orders and modifiers are available to DMMs, rather than separately (and duplicatively) including this description in Rule 104. The Exchange also proposes to update current Rule 104(h)(ii) (proposed Rule 104(e)(ii)) to delete reference to information that is no longer available to DMMs at the post. The Exchange believes that these proposed amendments will promote transparency and clarity in Exchange rules regarding how DMMs function on the Exchange, including what information is available to them at the post. The Exchange also proposes to modify Rule 7.35(a)(4)(C), which provides that the Continuous Book Clearing Price will be the Imbalance Reference Price if there is no Imbalance of all orders eligible to trade in the Auction, to clarify that the Imbalance Reference Price would be rounded to the MPV for the specific security if it is in an increment smaller than the MPV for such security. The Exchange believes this proposed change would add clarity to Exchange rules regarding the determination of the Continuous Book Clearing Price, in connection with the proposed changes to Rule 7.35B(g) regarding how the Closing Auction Price would be determined.

Finally, the Exchange believes that the proposed non-substantive

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] The DMM's determination of the precise Closing Auction Price within the proposed range would remain subject to the DMM's obligation to maintain a fair and orderly market as specified in Rule 104.

[30] More specifically, as noted, 55.9% were one cent away and 14.2% were two cents away.

[31] *See* note 21, *supra.*

amendments to Rules 7.35B(c)(1)(D), 7.35B(j)(2) and 7.35B(j)(2)(A)(iii) to eliminate references to Floor broker interest and oral interest entered by Floor brokers at the close would remove impediments to and perfect the mechanism of a free and open market and a national market system because these proposed changes are designed to conform Exchange rules to the changes described in the Floor Broker Interest Approval Order.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[32] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to revise the Closing Auction process on the Exchange to make it more transparent and deterministic, while still retaining the DMM market model. The Exchange believes that the proposed rule change would promote intermarket competition, particularly for issuers in connection with their determination of which exchange to select as a primary listing exchange. The Exchange does not believe that the proposed rule change would impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because they are designed to address the DMM's unique role at the Exchange, including the DMM's Rule 104(a)(3) obligation to facilitate the Closing Auction by supplying liquidity as needed for a fair and orderly Closing Auction. The proposed changes are designed to make the process more transparent and deterministic.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–32 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2022–32. 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–NYSE–2022–32 and should be submitted on or before August 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–16149 Filed 7–27–22; 8:45 am]

BILLING CODE 8011–01–P

[32] 15 U.S.C. 78f(b)(8).

[33] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

AGENCY: Small Business Administration.

ACTION: 60-Day notice and request for comments

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before September 26, 2022.

ADDRESSES: Send all comments to Joseph Eitel, Director, Office of Personnel Security, Small Business Administration, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Joseph Eitel, Director, Office of Personnel Security *joseph.eitel@sba.gov* 303–844–7750, or Curtis B. Rich, Agency Clearance Officer, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Small Business Administration SBA Form 912 is used to collect information needed to make character determinations with respect to applicants for monetary loan assistance or applicants for participation in SBA programs. The information collected is used as the basis for conducting name checks at national Federal Bureau of Investigations (FBI) and local levels.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of

information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number 3245–0178.
Title: Statement of Personal History.
Description of Respondents: Applicants participating in SBA programs.
Form Number: SBA Form 912.
Total Estimated Annual Responses: 142,000.
Total Estimated Annual Hour Burden: 35,500.

Curtis B. Rich,

Agency Clearance Officer.

[FR Doc. 2022–16186 Filed 7–27–22; 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: Small Business Administration.

ACTION: Amendment 2.

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 07/22/2022.
Physical Loan Application Deadline Date: 08/29/2022.
Economic Injury (EIDL) Loan Application Deadline Date: 03/30/2023.

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 the State of Montana, dated 06/30/2022, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):
Yellowstone.
Contiguous Counties (Economic Injury Loans Only):
Montana: Musselshell, Rosebud, Treasure.

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. 2022–16197 Filed 7–27–22; 8:45 am]

BILLING CODE 8026–09–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: Small Business Administration.

ACTION: Amendment 3.

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 07/22/2022.
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 include the following areas as adversely affected by the disaster.

Primary Counties: Flathead.

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. 2022–16200 Filed 7–27–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

AGENCY: Small Business Administration.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before September 26, 2022.

ADDRESSES: Send all comments to Mary Frias, Loan Specialist, Office of Financial Assistance, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mary Frias, Loan Specialist, Office of Financial Assistance, *mary.frias@sba.gov* 202–401–8234, or Curtis B. Rich, Agency Clearance Officer, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) regulations require that we determine that a participating Certified Development Company's Non-Bank Lender Institution's or Microlender's management, ownership, etc. is of ''good character''. To do so requires the information requested on the Form 1081. This form also provides data used to determine the qualifications and capabilities of the lender's key personnel.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB PRA Number: 3245–0080.
Title: Statement of Personal History.
Description of Respondents: Small Business Lending Companies.
Form Number: SBA Form 1081.
Total Estimated Annual Responses: 215.

Total Estimated Annual Hour Burden: 107.50.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2022–16178 Filed 7–27–22; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36605]

Northern Illinois & Wisconsin Railway Corporation, d.b.a. NIWX Corporation—Control Exemption—West Erie Short Line, Inc.

Northern Illinois & Wisconsin Railway Corporation, d.b.a. NIWX Corporation (NIWX), has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to acquire control of West Erie Short Line, Inc. (WESL), a Class III carrier, from EFCO, Inc., d.b.a. Ajax/CECO/Erie Press (EFCO), a noncarrier.

The transaction may be consummated on or after August 11, 2022, the effective date of the exemption (30 days after the verified notice was filed).[1]

According to the verified notice of exemption, NIWX indirectly controls Blackwell Northern Gateway Railroad Company (BNG) by virtue of controlling US Rail Partners, Ltd. (USRP), which owns all of BNG's stock. The verified notice additionally indicates that Davenport Industrial Railroad, LLC, is affiliated with, but not controlled by, NIWX.

The verified notice indicates that: (1) WESL does not connect with the rail lines of any of the rail carriers in NIWX's corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect WESL with the rail lines of any carriers in NIWX's corporate family; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 4, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36605, 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. In addition, one copy of each pleading must be served on NIWX's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 2230 Marston Lane, Flossmoor, IL 60422–1336.

According to NIWX, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: July 25, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2022–16201 Filed 7–27–22; 8:45 am]

BILLING CODE 4915–01–P

[1] NIWX supplemented its verified notice of exemption on July 7 and July 12, 2022. Therefore, July 12, 2022, is considered the filing date for the purpose of calculating the effective date of the exemption.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the Interstate 81 Viaduct Project, Onondaga County, New York

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the extension of the judicial review time period for claims relating to the Interstate 81 Viaduct Project located in Onondaga County, New York.

DATES: A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before November 21, 2022. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Richard J. Marquis, Division Administrator, Federal Highway Administration, Leo W. O'Brien Federal Building, 11A Clinton Avenue, Suite 719, Albany, New York 12207, Telephone (518) 431–4127.

SUPPLEMENTARY INFORMATION: On June 3, 2022, at 87 FR 33872, FHWA published a Statute of Limitations Notice for the Interstate 81 Viaduct Project, Onondaga County, New York. This notice extends the judicial review time period from October 31, 2022, to November 21, 2022, as a result of publishing an addendum to the Record of Decision (ROD) containing responses to comments inadvertently omitted from the original publication. The FEIS, ROD, and other documents in the FHWA administrative record files are available by contacting FHWA at the address provided above. The FEIS and ROD can also be viewed and downloaded from the project website at: *https://webapps.dot.ny.gov/i-81-viaduct-project.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Issued on: July 25, 2022.

Richard J. Marquis,

Division Administrator, Albany, NY.

[FR Doc. 2022–16191 Filed 7–27–22; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2022–0026]

Notice of Availability of a Final General Conformity Determination for the California High-Speed Rail System, San Francisco to San Jose Section

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

ACTION: Notice.

SUMMARY: FRA is providing this notice to advise the public that it is issuing a Final General Conformity Determination (FCD) for the San Francisco to San Jose Section of the California High-Speed Rail (HSR) System (Project). The Project is located between Fourth and King Street Station in San Francisco, CA, and Scott Boulevard in Santa Clara, CA, along and adjacent to the existing Caltrain rail corridor.

FOR FURTHER INFORMATION CONTACT: Lana Lau, Supervisory Environmental

Protection Specialist, RPD, telephone: (202) 923–5314, email: *Lana.Lau@dot.gov;* or Marlys Osterhues, Chief Environment and Project Engineering, RPD, telephone: (202) 493–0413, email: *Marlys.Osterhues@dot.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 23 U.S.C. 327 (Section 327), the California High-Speed Rail Authority (Authority) has assumed FRA's environmental review responsibilities under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). However, under Section 327, FRA remains responsible for compliance with the Clean Air Act General Conformity requirements. In compliance with NEPA and the California Environmental Quality Act (CEQA), the Authority published a Final Environmental Impact Record/Final Environmental Impact Statement (EIR/EIS) for the San Francisco to San Jose Section of the California High-Speed Rail (HSR) System on June 10, 2022.

FRA prepared a Draft General Conformity Determination, pursuant to 40 CFR part 93, subpart B, which establishes the process for complying with the General Conformity requirements of the Clean Air Act. FRA published a notice in the **Federal Register** on May 2, 2022, advising the public of the availability of the Draft Conformity Determination for a 30-day review and comment period. The Draft Conformity Determination was published at *http://www.regulations.gov,* Docket No. FRA–2022–0026. The comment period of the Draft Conformity Determination closed on June 2, 2022. FRA received one comment on the Draft General Conformity Determination on behalf of the City of Brisbane. The commenter stated ''the Draft GCD findings are erroneous because it is based upon the Project's EIR/EIS, which provides inaccurate and incomplete information.'' The commenter also identified specific statements in the Draft General Conformity Determination where the commenter believed the analysis was deficient. FRA prepared a response to the City's comment, which is included as Attachment B to the Final General Conformity Determination.

FRA prepared the Final General Conformity Determination pursuant to 40 CFR part 93, subpart B, and based on the Authority's coordination with the U.S. Environmental Protection Agency (EPA), Bay Area Air Quality Management District (BAAQMD), and the California Air Resources Board (CARB). The analysis found that construction period emissions for one of the Project alternatives (Alternative B) would exceed the General Conformity *de minimis* threshold for Nitrogen Oxides (NOx). However, operation of the Project would result in an overall reduction of regional emissions of all applicable air pollutants and would not cause a localized exceedance of an air quality standard. Consistent with the General Conformity Rule, the Authority will ensure all remaining emissions that exceed the *de minimis* thresholds, after implementation of the impact avoidance and minimization features and onsite mitigation measures, will be completely mitigated to zero through agreements with the applicable air districts. Based on this commitment, FRA determined the Project will conform to the requirements in the approved State Implementation Plan.

The Final General Conformity Determination is available at *http://www.regulations.gov,* Docket No. FRA–2022–0026, and FRA's website at *https://railroads.dot.gov/environment/environmental-reviews/clean-air-act-california-general-conformity-determinations*,

Issued in Washington, DC

Marlys A. Osterhues,

Chief Environment and Project Engineering.

[FR Doc. 2022–16164 Filed 7–27–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0149]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Thunderbird 1119 (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 29, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0149 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0149 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–2022–0149, 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 THUNDERBIRD 1119 is:

—*Intended Commercial Use of Vessel:* ''Sailing charters and sailing instruction.''

—*Geographic Region Including Base of Operations:* ''Washington.'' (Base of Operations: Port Townsend, WA)

—*Vessel Length and Type:* 25.9′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2022–0149 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–2022–0149 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. 2022–16134 Filed 7–27–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0153]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Sarah'ndipity (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 29, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0153 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0153 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–2022–0153, 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 SARAH'NDIPITY is:

—*Intended Commercial Use of Vessel:* ''Charter fishing, snorkel trips, coastal tours, whale watching, dolphin watching, scuba diving.''

—*Geographic Region Including Base of Operations:* ''Hawaii.'' (Base of Operations: Maalaea, HI)

—*Vessel Length and Type:* 57′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0153 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–2022–0153 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. 2022–16129 Filed 7–27–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0147]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Thomas Crosby 5 (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 29, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0147 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0147 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–2022–0147, 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 THOMAS CROSBY 5 is:

—*Intended Commercial Use of Vessel:* ''The intent is a 2-week, 8 passenger, charter that will sail from Friday Harbor, Washington, to Ketchikan, Alaska. A new group of 8 passengers will then reverse the route from Ketchikan to Friday Harbor, Washington. Basically 16 passengers a month during the months of June/July/August.''

—*Geographic Region Including Base of Operations:* ''Alaska, Washington.'' (Base of Operations: Friday Harbor, WA)

—*Vessel Length and Type:* 90′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0147 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–2022–0147 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. 2022–16133 Filed 7–27–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0154]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Serenity (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 29, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0154 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0154 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–2022–0154, 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 SERENITY is:

—*Intended Commercial Use of Vessel:* ''Occasional charter or bareboat.''
—*Geographic Region Including Base of Operations:* ''Connecticut, New York, Rhode Island, Florida.'' (Base of Operations: Riverside, CT)
—*Vessel Length and Type:* 56′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0154 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–2022–0154 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

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–16130 Filed 7–27–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0150]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Lavish (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 29, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0150 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0150 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–2022–0150, 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 LAVISH is:

—*Intended Commercial Use of Vessel:* ''Pleasure chartering.''
—*Geographic Region Including Base of Operations:* ''Florida.'' (Base of Operations: Hollywood, FL)
—*Vessel Length and Type:* 69.1′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0150 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–2022–0150 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for

new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–16126 Filed 7–27–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2022–0157]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Tempus Fugit (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 29, 2022.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0157 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2022–0157 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–2022–0157, 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 TEMPUS FUGIT is:

—*Intended Commercial Use of Vessel:* ''Day charters for recreational use.''

—*Geographic Region Including Base of Operations:* ''Florida, Massachusetts, Rhode Island.'' (Base of Operations: Naples, FL)

—*Vessel Length and Type:* 71.6′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2022–0157 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–2022–0157 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

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–16132 Filed 7–27–22; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2022–0047]

Construction Materials Used in Federal Financial Assistance Projects for Transportation Infrastructure in the United States Under the Build America, Buy America Act; Request for Information

AGENCY: Department of Transportation (DOT).

ACTION: Notice; request for information.

SUMMARY: The Build America, Buy America Act (BABA), enacted as part of the Bipartisan Infrastructure Law (BIL) on November 15, 2021, requires iron, steel, manufactured products, and construction materials used in infrastructure projects funded by Federal financial assistance to be produced in the United States. DOT is seeking input on the requirement as applied to construction materials: how the requirement should be interpreted and implemented, the present availability of construction materials produced in the United States that are commonly used in transportation infrastructure projects, and the potential impacts to DOT-funded projects.

DATES: Written submissions must be received by August 12, 2022. DOT will consider comments received after this date to the extent practicable.

ADDRESSES: Please submit any written comments to Docket Number DOT–OST–2022–0047 electronically through the Federal eRulemaking Portal at *https://regulations.gov.* Go to *https://regulations.gov* and select ''Department of Transportation (DOT)'' from the agency menu to submit or view public comments. Note that, except as provided below, all submissions received, including any personal information provided, will be posted without change and will be available to the public on *https://www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *https://www.transportation.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For questions about this RFI, please contact Darren Timothy, Office of the Assistant Secretary for Transportation Policy, at *darren.timothy@dot.gov* or (202) 366–4051; Jason Luebbers, Federal Transit Administration, at *jason.luebbers@dot.gov* or (202) 366–8864; Lauren Gill, Maritime Administration, at *lauren.gill@dot.gov* or (202) 366–2150; John Johnson, Federal Railroad Administration, at *john.johnson@dot.gov* or (202) 493–0078; Patrick Smith, Federal Highway Administration, at *patrick.c.smith@dot.gov* or (202) 366–1345; or Carlos Fields, Federal Aviation Administration, at *carlos.fields@faa.gov* or (202) 267–8826.

SUPPLEMENTARY INFORMATION:

Construction Materials Procured Under Department of Transportation Programs

On November 15, 2021, President Biden signed into law the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act, Public Law 117–58, which includes the Build America, Buy America Act (BABA). Public Law 117–58, div. G §§ 70901–52. BABA's requirements for the use of iron, steel, manufactured products, and construction materials produced in the United States will bolster America's industrial base, protect national security, and support good-paying jobs.

Consistent with Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers (E.O. 14005), BABA affirms the Biden-Harris Administration's priority to ''use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States.'' (E.O. 14005). Under BABA, all iron, steel, manufactured products, and construction materials used in infrastructure projects funded at least partly by Federal financial assistance must be produced in the United States.[1]

One of the new Buy America preferences included under Section 70914 of the Act is for construction materials. As of May 14, 2022, each covered Federal agency must ensure that all manufacturing processes for construction materials used in Federally assisted infrastructure projects occur in the United States. None of the specific statutes that apply particular Buy America[2] requirements to the Federal financial assistance programs administered by DOT's Operating Administrations (OAs), including 49 U.S.C. 50101 (FAA); 23 U.S.C. 313 (FHWA); 49 U.S.C. 22905(a) (FRA); 49 U.S.C. 5323(j) (FTA); and 46 U.S.C. 54101(d)(2) (MARAD), specifically cover construction materials, other than to the extent that such materials would already be considered iron, steel, or manufactured products.

Waivers are authorized under BABA where (1) applying the Buy America requirement would be inconsistent with the public interest; (2) where the iron, steel, manufactured product, or construction material is not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; and (3) where inclusion of the domestic products or construction materials will increase the cost of the overall project by more than 25 percent. BIL § 70914(b). On May 19, 2022, DOT issued a temporary waiver of the construction materials requirement for 180 days, from May 14 until November 10, 2022. 87 FR 31931. Federal awards that DOT makes on or after November 10 will be subject to the

[1] Under section 70917(a) of the BIL, the BABA requirements apply to financial assistance programs for infrastructure only to the extent that a domestic content procurement preference does not already apply to iron, steel, manufactured products, and construction materials. Thus, the BABA requirement for construction materials supplements the existing DOT Buy America requirements for steel, iron, and manufactured products.

[2] In this notice, references to ''Buy America'' include domestic preference laws called ''Buy American'' that apply to DOT financial assistance programs.

requirement that construction materials used in the project are produced in the United States.

In the waiver notice, DOT stated that ''public interest waivers should be used sparingly'' and that stakeholders must rapidly adopt procedures during the waiver period to ensure compliance with the new requirement after expiration of the waiver. During the waiver period, DOT continues its engagement to help facilitate the creation of robust enforcement and compliance mechanisms and to rapidly encourage domestic sourcing of construction materials for transportation infrastructure improvements.

Interim Standards for Construction Materials

Under BABA, construction materials are ''produced in the United States'' if ''all manufacturing processes'' for the materials occurred in the United States. BIL § 70912. BABA directs the U.S. Office of Management and Budget's Made in America Office (MIAO) to issue standards that define the term ''all manufacturing processes'' as it applies to construction materials produced in the United States. On April 18, 2022, OMB issued memorandum M–22–11, ''Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure'' (OMB Initial Implementation Guidance). Section VIII of the OMB Initial Implementation Guidance states: ''Pending MIAO's issuance of final standards on construction materials . . . agencies should consider 'all manufacturing processes' for construction materials to mean the final manufacturing process and the immediately preceding manufacturing stage for the construction material.'' OMB Initial Implementation Guidance at 14.

The OMB Initial Implementation Guidance also contains a preliminary list of construction materials that includes:

[A]n article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

OMB Initial Implementation Guidance at 13–14. On April 21, 2022, OMB also issued a request for information to gather public input on its development of standards for construction materials. 87 FR 23888. The OMB RFI states that it ''seeks input on whether to refine this list, and requests input on specific materials or products or categories of materials or products that should be added, removed, or clarified, as well as advice on how to distinguish construction materials from manufactured products.''

The OMB Initial Implementation Guidance additionally indicates that:

[I]tems that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

OMB Initial Implementation Guidance at 14. The OMB Initial Implementation Guidance also states that an article, material, or supply should be classified into only one of the following categories: (1) iron or steel; (2) a manufactured product; or (3) a construction material; an article, material, or supply should not be considered to fall into multiple categories. Id. at 6.

Request for Information

In the May 19 final waiver notice, DOT stated that it ''continues to encourage suppliers and other stakeholders to inform DOT of any procedures that may be developed or be in place to certify the compliance of construction materials with the domestic preference requirement in the Act. That information helps DOT rapidly encourage domestic sourcing and potentially shorten the effective period or narrow the applicability of the transitional waiver. The Department also encourages supplier and other stakeholders to identify categories of construction materials that currently have sufficient domestic availability to support DOT-assisted infrastructure projects, to assist contractors and project sponsors in incorporating compliant products in their projects and to help the Department focus its activities to benefit domestic manufacturers.''

To assist in gathering this information, DOT seeks input from the public, including DOT's project sponsors, their contractors and offerors, manufacturers, labor unions, transportation and trade associations, and other interested parties on implementing the new construction materials requirement. DOT seeks information in several categories related to identifying and categorizing articles as construction materials for transportation infrastructure projects; establishing procedures for certifying the origin of construction materials; and determining which construction materials commonly used in transportation infrastructure projects are or are not produced in the United States in sufficient quantity and quality.

This RFI is intended to assist DOT in implementing and ensuring compliance with OMB standards. Responses to this RFI will further the goals and objectives of BABA and E.O. 14005 by providing information to assist the Department in implementing the construction materials requirement for transportation infrastructure projects to maximize the use of construction materials produced in the United States while ensuring the efficient and effective delivery of projects. The type of feedback that would be especially useful includes information on the impact of the construction materials requirement on DOT-funded projects, as well as input and recommendations on an effective compliance certification process for construction materials.

Commenters should identify any administrative burdens, program requirements, or unnecessary complexity as they relate to the BABA construction materials requirement that may impose unjustified barriers to transportation project delivery under DOT-funded assistance programs in general, or that may have adverse effects on equity for all, including individuals who belong to underserved communities that have been denied equitable treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities, including learning disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

Commenters should provide, with as much detail as possible, an explanation why their recommendations advance the statutory objectives of BABA for DOT-funded projects and the policies stated in section 2 of E.O. 14005. Additionally, where applicable, please provide citations and sources that

support your recommendations. All information submitted will assist DOT in determining the extent to which additional guidance or other actions are necessary to implement the construction materials requirement. However, stakeholders should not expect that DOT will extend the existing temporary waiver beyond November 10, 2022.

If commenters identify benefits, costs, burdens, or shortcomings of particular options for implementing the BABA construction materials requirement, commenters should provide data and evidence to support these conclusions.

Specific Questions

DOT is providing the following questions to prompt feedback. DOT encourages public comment on any or all of these questions, and also seeks any other information commenters believe is relevant. Except where noted, the questions below are intended to apply to all financial assistance programs for transportation infrastructure are administered by DOT's OAs. However, the Department also welcomes feedback that may be tied to specific programs and agency requirements.

(1) In addition to those construction materials identified by OMB, are there specific materials, products, or categories of materials or products that are commonly used in DOT-funded projects that should be included as ''construction materials'' for the purpose of BABA implementation?

(2) Are there materials used in DOT-funded projects that do not clearly fit in any one of the three categories: steel and iron; manufactured products; or construction materials? How should DOT assign them to one of these statutory categories?

(3) Are there items that DOT agencies currently treat as manufactured products that should instead, under the OMB Initial Implementation Guidance, be treated as construction materials?

(4) Based on the definition of ''all manufacturing processes'' in the OMB Initial Implementation Guidance, what do you consider ''the final manufacturing process'' and the ''immediately preceding manufacturing stage'' for common goods used in DOT-funded projects in each category of construction material listed in the OMB Initial Implementation Guidance or any other category you identify in response to Question 1 above?

i. Non-ferrous metals
ii. Plastic and Polymer based Products
iii. Glass
iv. Lumber
v. Drywall
vi. Other (please specify)

(5) Are the final manufacturing process and the immediately preceding manufacturing stage different for different types of products made from similar materials (*e.g.,* Polyvinyl Chloride (PVC) or High-Density Polyethylene (HDPE) pipe vs. PVC or HDPE lumber)?

(6) Certain DOT OAs have long provided definitions of ''manufacturing processes'' in their implementing regulations for Buy America requirements. For example, FTA's regulation at 49 CFR 661.3, which it applies to manufactured products, states: ''[T]he application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials.'' FHWA's regulation for steel and iron materials at 23 CFR 635.410(b)(1) applies to all ''manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.'' Should the same (or a similar) definition of a manufacturing process apply to the final manufacturing process and the immediately preceding manufacturing stage for construction materials commonly used in DOT-funded projects? If not, why not, and is there another standard for manufacturing processes that might be more appropriate to apply to construction materials?

(7) Are there some items in OMB's list of construction materials that typically are used in DOT-funded projects only after they have been combined into a manufactured product? For example, is glass regularly used by itself as a construction material, or does it usually arrive at a project already incorporated with other materials as a manufactured product?

(8) FTA already has an established procedure for bidders or offerors to certify the origin of steel and iron and manufactured products in its implementing regulation at 49 CFR 661.6. Should FTA require the same procedure to assure the origin of construction materials for FTA-funded projects? If not, what should FTA do differently?

(9) Under FHWA-funded programs, State DOTs are responsible for Buy America compliance, per 23 CFR 635.410(d). Bidders are required to comply with the project specifications, including Federal-aid projects with Buy America requirements. Most State DOTs require certifications/Step-certifications from bidders/contractors/suppliers to ensure compliance. Should FHWA continue to follow this process for certifying construction materials? If not, what should FHWA do differently?

(10) A commenter on DOT's proposed temporary Buy America waiver for construction materials stated that ''the ability to certify materials will grow over time, so there should be a good faith certification process that can be refined over time.'' What would such a ''good faith certification process'' that can be implemented in the near term (*i.e.,* prior to the expiration of the temporary waiver on November 10, 2022) look like? What steps would be required to refine those processes over time?

(11) Is the standard in the OMB Initial Implementation Guidance sufficiently clear to enable a bidder or offeror for a DOT-funded project to certify the construction materials to be used in the project are produced in the United States? If not, what further clarification is needed?

(12) Are there construction materials commonly used in DOT-funded projects for which suppliers or manufacturers cannot readily determine or trace the country of origin of the final manufacturing process and the immediately preceding manufacturing stage? Are there records or documentation already in use that could serve as evidence of the origin of these to manufacturing processes (*e.g.,* country of origin documentation, mill markings, quality control tracking)?

(13) Are there any construction materials commonly used in DOT-funded projects that are known not to be produced in the United States based on OMB's final manufacturing process and the immediately preceding manufacturing stage standard, or are known not to be produced in sufficient quantity or of satisfactory quality? What is the basis for that knowledge?

(14) Which construction materials commonly used in DOT-funded projects currently are produced in the United States in sufficient and reasonably available amount and of satisfactory quality? Please feel free to provide any additional information on how production of these construction materials in the United States supports the regional or local economy or workforce.

(15) Are there construction materials commonly used in DOT-funded projects that are produced in the United States but subject to supply constraints? Please be specific regarding lead times or delays that will be experienced on DOT-

funded projects as a result of a specific construction material supply constraint. Is the constraint on domestic supply a recent phenomenon (*i.e.,* beginning in 2020 or later), or is it a longstanding market condition?

(16) Are there construction materials commonly used in DOT-funded projects that previously were not produced in the United States but are currently produced in the United States or are in the process of ''onshoring'' as a result of recent statutory, regulatory, or market changes?

Confidential Business Information

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 RFI 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 RFI, it is important that you clearly designate the submitted comments as CBI. You may ask DOT to give confidential treatment to information you give to the Department by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send DOT, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, DOT will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this RFI. Submissions containing CBI should be sent to Darren Timothy, Office of the Assistant Secretary for Transportation Policy, 1200 New Jersey Avenue SE, OST P–20, Washington, DC 20590. Any comment submissions that the DOT receives that are not specifically designated as CBI will be placed in the public docket for this matter.

Issued in Washington, DC, on July 22, 2022.

Polly E. Trottenberg,

Deputy Secretary.

[FR Doc. 2022–16151 Filed 7–27–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

[CDFI–2022–0001]

Minority Lending Institution Designation Criteria

ACTION: Notice and request for comment.

SUMMARY: The Community Development Financial Institutions Fund (CDFI Fund) at the Department of the Treasury requests comments from the public regarding the criteria to designate a certified Community Development Financial Institution (CDFI) as a Minority Lending Institution (MLI). Unless otherwise noted, capitalized terms found in this notice are defined in the regulations that govern the CDFI Program.

DATES: Written comments must be received on or before November 25, 2022 to be assured of consideration.

ADDRESSES: You may submit comments via the Federal eRulemaking Portal: *www.regulations.gov.* Follow the instructions on the website for submitting comments. In general, all comments will be available for inspection at *www.regulations.gov.* Comments, including attachments and other supporting materials, are part of the public record. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

For further information, contact Jeff Merkowitz, Senior Advisor, CDFI Fund, 1500 Pennsylvania Avenue NW, Washington, DC 20220 or by email at *mli@cdfi.treas.gov.* Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at *www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 523 of Division N of the Consolidated Appropriations Act, 2021, Public Law 116–260 (the Act), an MLI is a CDFI that (i) directs a majority of its financial products to minority populations or communities; and (ii) either (a) is a Minority Depository Institution (MDI) or (b) demonstrates accountability to Minority populations. Although no federal funding will be associated with an MLI designation at this time, the CDFI Fund seeks to implement the designation for those CDFIs that wish to be recognized for their high levels of service and accountability to Minority populations, as well as to identify barriers such CDFIs experience in providing access to capital. A list of designated MLIs will be made available to the public via the CDFI Fund website.

Through this request for comment, the CDFI Fund seeks feedback from the public on certain aspects of the criteria and process the CDFI Fund will use to designate a CDFI as an MLI, as listed in Section I. The CDFI Fund also seeks any additional information beyond these questions that members of the public believe would assist the CDFI Fund in establishing policies and procedures related to MLI designation. The CDFI Fund will consider the feedback received through this request for comment prior to establishing a final definition and designation process.

I. Definitions

A. Minority: The Act defines the term ''minority'' as ''any Black American, Hispanic American, Asian American, Native American, Native Alaskan, Native Hawaiian, or Pacific Islander.'' For purposes of designating an MLI, the CDFI Fund proposes to rely on the following definitions established by the 1997 Office of Management and Budget (OMB) standards on race and ethnicity:

1. *Native American/American Indian or Alaska Native.* A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

2. *Asian.* A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

3. *Black or African American.* A person having origins in any of the black racial groups of Africa.

4. *Hispanic or Latino.* A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

5. *Native Hawaiian or Other Pacific Islander.* A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Because of the Act's requirement to include ''any'' members of the listed Minority populations, this definition differs slightly from some of the definitions for Native populations used by the CDFI Fund in its other programs, most significantly in the absence of any residential requirement for Native Alaskans or Native Hawaiians. For example, for Target Market purposes and as part of the Native Initiatives program, the CDFI Fund recognizes the following Other Targeted Populations: ''Native American/American Indian

with maintained tribal affiliation or community attachment, Native Alaskan residing in Alaska with maintained tribal affiliation or community attachment, Native Hawaiian residing in Hawaii.''

B. Majority-Minority Census Tracts: For purposes of designating an MLI, the CDFI Fund proposes to define a Majority-Minority Census Tract as those census tracts or equivalents in which the sum of the tract's non-duplicative population of Minority persons is greater than 50% of the census tract's total population, as determined by the U.S. Census Bureau and identified by the CDFI Fund on its website in the table of all census tracts or equivalents that meet this definition based on the 2011–2015 American Community Survey (ACS) (see *https://www.cdfifund.gov/documents/geographic-reports).* The census data upon which the CDFI Fund proposes to rely for this purpose will be updated periodically based upon the most recent decennial census or, for a mid-decade update, using the five-year ACS. At this time, the CDFI Fund anticipates that it will implement the use of the 2016–2020 ACS data by the end of the 2022 calendar year.

1. Are the proposed definitions of ''Minority'' and ''Majority-Minority Census Tracts'' appropriate for the purposes of designating an MLI?

II. Designation Criteria

In accordance with the Act's definition of MLI, the CDFI Fund is considering the following criteria to designate a CDFI as an MLI.

A. CDFI Status: To receive the MLI designation, the Act requires that an entity be certified as a CDFI, meaning that the entity must meet all applicable CDFI certification requirements. CDFI certification application requirements and supplemental information can be found on the CDFI Fund website at *https://www.cdfifund.gov/programs-training/certification/cdfi.*

B. Financial Products Directed to Minorities and Majority-Minority Census Tracts: To fulfill the statutory requirement that a majority of an MLI's financial products are directed at Minorities or Majority-Minority Census Tracts or equivalent, the CDFI Fund proposes to seek evidence that an applicant has directed greater than 50% of both the number and dollar volume of its arm's-length, on-balance sheet Financial Products to Minorities (including minority-owned businesses) or Majority-Minority Census Tracts over the most recently completed 36 months upon initial designation, and on a three-year rolling average over each subsequent, completed fiscal year to maintain the MLI designation. Entities with less than three years of financing activity will be measured based upon the full history of their financing activity.

1. Is a rolling 36-month period the appropriate length of time to assess an applicant's track record of serving Minorities or Majority-Minority Census Tracts for the purposes of designating a CDFI an MLI? Should the CDFI Fund instead require applicants to meet this requirement using some other time period, either upon initial designation or to maintain the designation? If yes, what is an appropriate time period?

2. The Act requires that an MLI must direct a majority of its financial products ''at minorities or majority-minority census tracts or equivalents.'' Should the CDFI Fund assess Financial Products delivered to legal entities that are not owned or controlled by Minority individuals to finance projects such as affordable housing, child care centers, charter schools, or health centers that are not located within a Majority-Minority Census Tract but whose end-beneficiaries (*e.g.,* customers, residents, or employees) are members of a Minority population? If yes, how?

C. Accountability: In addition to the above criteria, the Act requires that an MLI be a CDFI that is recognized as an MDI or meets standards for accountability to minority populations as determined by the CDFI Fund. The Act recognizes MDIs defined in section 308(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note), or otherwise considered to be an MDI by the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), or by the National Credit Union Administration, as applicable.

Under current practice, a CDFI must demonstrate accountability to the Target Market it serves through representation on its governing board or advisory board. For a CDFI serving a Minority Targeted Population, a board member must be a member of that Minority population to count towards the accountability requirements. When assessing whether an advisory board provides accountability to Minority populations, the CDFI Fund reviews each board member and also considers the following factors: how often the advisory board meets (must be at least bi-annually); how the advisory board members were selected; how advisory board members obtain input from Minority populations; and how the advisory board input is incorporated into the organization's governing board's decision-making processes.

The CDFI Fund is considering whether non-MDI CDFIs seeking MLI status should demonstrate accountability to Minority populations through Minority representation on the CDFI's governing board or advisory board. The CDFI Fund seeks comment on whether to require that a *majority* of a CDFI's governing board members should be members of a Minority population and whether CDFIs should have options to meet the accountability standards through loan committees (committees delegated authority by the governing board to approve or disapprove loan applications) or a non-governing advisory board.

In addition, the CDFI Fund is considering whether to allow a CDFI's executive staff to demonstrate accountability to Minority populations for the purpose of an MLI designation. Currently, for CDFI certification purposes, principals or staff members of an applicant organization or its Subsidiaries, Affiliates, or investors, or whose family members are principals or staff members, cannot be used to demonstrate Target Market accountability, as it is considered a conflict of interest.

For example, one approach could be for the CDFI Fund to establish the following options to meet the accountability criteria for designating an MLI.

Option One: Greater than 50 percent of the governing board or ownership of an organization is made up of individuals who are members of Minority populations;

Option Two: Between 33 percent and 50 percent of the governing board or ownership of an organization is made up of individuals who are members of Minority populations, *and* at least two of the following additional criteria are met: the chief executive officer of the organization is a member of a Minority population; greater than 50 percent of the executive staff, other than the chief executive officer, are members of Minority populations; greater than 50 percent of the loan committee members are members of Minority populations; and greater than 50 percent of the organization's advisory board members are members of Minority populations.

1. Should a majority (greater than 50 percent) of a CDFI's governing board members be required to be members of Minority populations to demonstrate accountability to Minority populations? Specifically, the CDFI Fund requests comments on whether it should set a standard higher than the 33 percent level proposed separately for Native

CDFI designation and for general Target Market accountability as part of the CDFI Fund certification standards (see *https://www.cdfifund.gov/programs-training/certification/cdfi/certification-pra*).

2. Should there be options for CDFIs to meet the accountability requirement through a lower threshold of Minority representation on a CDFI's governing board? If yes, what level of representation is appropriate?

3. Alternatively, is a standard of 33 percent Minority representation for a CDFI's governing board members in combination with 66 percent for a CDFI's advisory board (with at least one governing board member serving on the advisory board) appropriate to demonstrate accountability to Minority populations?

4. Given the regulatory requirements for the governing board composition of regulated financial institutions, as well as the absence of governing boards for some privately held entities, should there also be an option for non-MDI regulated entities or privately held entities without a governing board to demonstrate accountability for the purposes of MLI designation? If yes, what standard should be used?

5. Should the CDFI Fund allow a CDFI's principals or executive staff (meaning all directors and executive officers vested with the powers to manage and supervise the day-to-day affairs of an organization) to demonstrate accountability to Minority populations, either as an alternative to accountability through a governing board or in combination with a lower threshold of representative governing board members? If yes:

a. Which and how many of a CDFI's executive staff members should be necessary to demonstrate accountability to Minority populations, and in what combination with the CDFI's governing board?

b. The use of executive staff or principals to demonstrate accountability to a Minority population may be undermined due to the principal's or executive staff member's financial relationship to the organization. Are there any appropriate safeguards to mitigate such a conflict between the interests of a principal or executive staff member and the Minority community to which they are to be accountable? If yes, what are some safeguards?

6. Should the CDFI Fund allow the ownership of a CDFI to demonstrate accountability to Minority populations, either as an alternative to accountability through a governing board or in combination with a lower threshold of representative governing board members? If yes, should accountability mirror the MDI definition (*i.e.,* 51 percent or more of the voting stock is owned by minority individuals) to be counted in determining minority ownership? If ownership should be permitted to demonstrate accountability only in combination with some level of governing board representation, what should that threshold be?

7. Should the CDFI Fund allow the composition of a CDFI's loan committees to demonstrate accountability to Minority populations, either as an alternative to accountability through a governing board or in combination with a lower threshold of representative governing board members? If yes, how many members of a CDFI's loan committee should be necessary to demonstrate accountability to Minority populations, and in what combination with the CDFI's governing board?

8. If a CDFI serves multiple Minority populations, for purposes of the MLI designation should it be required to have board or other representation reflective of each of the Minority populations it serves? If yes, how should the share of board or other representation for each Minority population the CDFI serves be determined?

9. The CDFI Fund is also considering the relationship between the standards for designation as an MLI and those for designation as a Native CDFI. To what extent should the two align?

a. Should status as a Native MDI automatically qualify as an accountability criterion for designation as a Native CDFI?

b. Should the status as a Native MDI automatically qualify as an accountability criterion if the CDFI also serves other Minority populations?

10. Should MLIs be able to demonstrate accountability through means other than those identified above? If yes, how?

III. General Designation Questions for Public Comment

In addition to the questions above, the CDFI Fund welcomes public comment on any aspect of the process or substance of the MLI designation. Is there additional information that the CDFI Fund should consider in the MLI designation process? If yes, please describe.

Authority: 12 U.S.C. 4701 *et seq.;* 12 CFR 1805; Public Law 116–260.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2022–16143 Filed 7–27–22; 8:45 am]

BILLING CODE 4810–05–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: You should submit written comments by August 29, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible.

You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0184, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0184'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change,

including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also 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.

On May 16, 2022, the OCC published a 60-day notice for this information collection, 87 FR 29782. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

• *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0184'' or ''Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency of information by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons. The OCC asks that OMB extend its approval of the collection in this notice.

Title: Municipal Securities Dealers and Government Securities Brokers and Dealers—Registration and Withdrawal.

OMB Control No.: 1557–0184.

Form Numbers: MSD, MSDW,[1] MSD–4, MSD–5, G–FIN, G–FINW, GFIN–4 and GFIN–5.[2]

Abstract: This information collection is required to satisfy the requirements of section 15B [3] and section 15C [4] of the Securities Exchange Act of 1934, which require, in part, any national bank or Federal savings association that acts as a government securities broker/dealer or a municipal securities dealer to file the appropriate form with the OCC to inform the agency of its broker/dealer activities. The OCC uses this information to determine which national banks and Federal savings associations are acting as government securities broker/dealers and municipal securities dealers and to monitor entry into and exit from these activities by institutions and registered persons. The OCC also uses the information in planning national bank and Federal savings association examinations.

Type of Review: Renewal of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 15 (5 government securities dealers and 10 municipal and government securities dealers).

Estimated Number of Responses: 717.

Frequency of Response: On occasion.

Estimated Annual Burden: 597 burden hours.

On May 16, 2022, the OCC published a 60-day notice for this information collection, 87 FR 29782. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–16159 Filed 7–27–22; 8:45 am]

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[1] The Securities and Exchange Commission (SEC) maintains collections for the MSD and MSDW under OMB Control Nos. 3235–0083 and 3235–0087; however, there is a requirement that these be filed with the OCC, which is covered by OMB Control No. 1557–0184.

[2] The Department of the Treasury maintains collections for the G–FIN–4 and G–FIN–5 under OMB Control No. 1535–0089; however, there is a requirement that the forms be filed with the OCC, which is covered by OMB Control No. 1557–0184.

[3] 15 U.S.C. 78o–4.

[4] 15 U.S.C. 78o–5.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one person that has been removed from the List of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On July 14, 2022, OFAC determined that circumstances no longer warrant the inclusion of the following person on

the SDN List and that their property and interests in property are no longer blocked under Executive Order 14024 of April 15, 2021, ''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation,'' 86 FR 20249 (April 15, 2021).

Entity

1. SUBSIDIARY BANK ALFA–BANK JSC (a.k.a. JSC SB ALFA BANK), Masanchy Street 57a, Almaty 050012, Kazakhstan; SWIFT/BIC ALFAKZKA; website *www.alfabank.kz;* Organization Established Date 1994 [RUSSIA–EO14024] (Linked To: JOINT STOCK COMPANY ALFA–BANK)

Dated: July 22, 2022.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–16156 Filed 7–27–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending June 30, 2022. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
AARONSON	ILANA	FREDERIEKE
AARONSON	JUSTINE	ANNA
ABEND	GABRIEL.	
ABERNETHY	COLIN	JOHN
ACKERMANN	LUKAS	SEBASTIAN
ADAMS	CAROLE	ANN
ADDIS	JUSTIN	PATRICK
AHERN	SHAWN	PAUL P GUIMARAES
ALDERSON	BARBARA	ANN BURTON
ALEMANI	MICOL.	
AL-SUWAIDI	FAISAL.	
ALTMANN	MICHAEL	BEN
ALVETRO	JAMES	LEONARD
AMMANN	OLIVER	RICHARD AUBREY
ANDERSON	DAVID	JOHN COLQUHOUN
ANDERSON	JEEVAN	KAINTH
ANDERSON	LATEFA.	
ANDERSON	ROBERT	PAUL
ANDERSON	RONALD	CARL
ANDREAS	VICTORIA	JULIANE
ANDRETZKY	BERNHARD	WILHELM
ANDREWS	JOAN	IRENE
ANNICCHINO	FELIPE	S
ANTUNOVIC	ROBERT.	
AOKI	HARUKA	ANAA
APPLEBAUM	TAMAR	SARA LEAH
ARFSTEN-ROMBERG	URSULA.	
ARITA	KEIZO.	
ARMBRUSTER	MAXIME	JOHN WORTH
ARMSTRONG	JANA	ANJULI MORRELL
ARMSTRONG	SALLY	MARIE
ARMSTRONG	THOMAS	VALENTINE
ARNAOUT	ALI	M
ARRIETA RUIZ	MARILENE.	
ARSCOTT	RAMON	DION BOYD
ASPINALL	JILLIAN	MARY
ASSBERGER	JUDITH	MONIKA
ASTWOOD	SHARON	GUBBELS
AU	YEUNG.	
AUCLAIR	SHELLI	DIAN
AYRES	BYRDIE	DARDEN
BACH	CHRISTINA.	
BACSFALVI	KLARA	HAJNALKA
BADGER	GARY	ANDREW
BADR	MAYSSA	HELEN
BAJPAI	SAURABH.	
BAKER	DEBBIE	ANN
BAKER	MARTIN	GEOFFREY
BALDUCCHI	BENJAMIN	CHRITPHE
BALDWIN	DEBORAH	ROSEMARY
BARBIR	SHIHO	HARADA
BARCLAY	JOHN	DAVID
BARDY WALKER	PATRICIA	CAROLYN

Last name	First name	Middle name/initials
BAREAU	OLIVER.	
BARKLEY	JANET	L
BARLOW	DAVID	SIMPSON
BARNES	CHRISTIAN	LEE
BARNES	JOANNA	ELIZABETH
BARROS	JOSEFINA	W
BATCHRA	NANDITA.	
BAUMANN KOCHEISEN	KARIN.	
BEACH	FREDERIC	WILLIAM
BECK	MARKUS	MICHAEL
BECKER	ANDREW	PATRICK
BECKER	HOLLY	CLAIRE
BEERENS	MARIA	JOHANNE
BEHBEHANI	ESSA	ABDULLA
BEHM	AUDRONE.	
BELFIELD-KENNEDY	REBECCA	MARION
BELINELLI	MARCO	STEFANO
BELL	DIANE	ELAINE
BENKART	SILVIA	CHRISTINA
BENKART	STEFAN	OLIVER
BENNETT	HUDDIE	ANN
BENNETT	STEPHEN	G
BERCU	MARIE-FRANCE CHARLOTTE	SUZANNE PAPILLON
BERGSTEIN	GERI	MERLE
BERGU	NELU.	
BERNAY	ROSS	STACY
BERSANI	PETER	EDWARD
BESMEHN	BRIGITTE.	
BESSELL	MICHAEL	JOHN
BIANCHI	MARIA-IGNACIA.	
BIANCHI	NICOLAS.	
BIANCHI	THOMAS.	
BIEGER	JOAN	ANN
BIGWOOD	WILLIAM	WATKINS
BINFET	MATTHEW	JAY
BINGHAM	ANGUS	GORDON
BIRCH	BECKY	ANN
BIRCH	JOANNE	LYNN
BIRCH	SIMON	JAMES
BIRD	ANTONY	IAN
BIRDLING	WILLIAM	JOHN
BIRMAN	JACK	M
BISHOP	JUDITH	MARY
BISLEY	SPENCER.	
BLAKE	LOGAN	R
BLASS	THOMAS.	
BLITZER	DAVID	JEFFREY
BLUEM	GERHARD	HEINRICH
BOBBIN	AMANDA	FIONA
BONDY	ANNE	ELIZABETH
BONGERS	AMY	ZELLIA
BORYSENKO	MICHAEL	IVAN
BORYSENKO	TARA	CATHERINE
BOUDREAU	CAROL	ANN
BOULANGER	LOUIS-NICOLAS.	
BOWEN	TRACEY	WINTER
BOWER	JOHN	WILLIAM
BOWERS	HARRIET	LOUISE
BOWERS	PETER	JOSEPH
BOWLEN JR	WILLIAM	ALEXANDER
BRADBURY	CHRISTOPHER	JOHN
BREMNESS	ANDREW	BAWDEN
BRENNAN	TANIA	MARGARET
BREWER	GARY	ARTHUR
BRIEDIS	DALIUS	JOUZAS
BRIGGS	JOHN	ANDREW
BRODHEAD	MARY	VIRGINIA
BROPHY	JAMES	THOMS
BROWN	PETER	MACDONALD
BROWNE	DAMIAN	JOHN
BROWNLEE	JAMES	ROSS
BRYAN	BARBARA	C
BRYAN	GEORGIA	A
BUCHI	CONRADIN.	

Last name	First name	Middle name/initials
BUCK	BELINDA	K
BUDASHEWITZ	SAYAKA.	
BUGNION	JACQUELINE	BROWNE
BURNETT	ADAM	LESLIE JOHN
BURNS	ALASTAIR	JAMES
BUSBY	STUART	LEE
BUSCH-PETERSEN	MARGRETHE.	
BUTTRICK	MICHAEL	SAMUEL
BYRNE	JOAN	LOUISE
BYRNE	KENNETH	FRANCIS
CACCHIONE	CHRISTINE	FRANCES
CAHALAN	DANYA	T
CAHALAN	JESSE	DANIEL
CAHALAN	PATRICIA.	
CALIL	JOAO	MIGUEL AMENDOLA
CALLAN	BARBARA	ANNE
CALLINICOS	ANNEMARIE	C
CAMBEROS	HECTOR	ROMUALDO
CAMILLERI	WILLIAM	FISHER
CAMPBELL	MICHAEL	ANDREW
CAMPERT-SPELMAN	DEBORAH	P
CANTIN-LANGLOIS	SARAH.	
CAO	YABO.	
CAPPER	PAUL	JONATHAN
CARAWAN-HUBIN	NOEL	LEE
CARCHEDI	JULIETTE.	
CARNEY III	JAMES	HENRY
CARNRITE	TED	S
CAROTHERS	MICHELLE	LOVRETTA
CARPENTER	SHEILA	MARIE
CARPENTER	THEODORE	PERCY
CARS	ANN	M
CARSON	JAMES	PATRICK
CARTER	KEITH	BARRETT
CARTY	M BRIAN	WILLIAM
CASEY	ASHLEY	JANE
CASEY	KYLIE	ANN
CASTILLEJO	ROBI LEXEME	T
CASTRITIUS	CELINE	DESIREE
CATALANOTTO	THOMAS	James
CATHIE	ESTHER	ANNETTE KEEF
CAVANAGH	PATRICK	P
CEHA	HELEEN	MARGRIET
CERNY	MILENA.	
CERYCH	YVETTE	MADELON
CHAN	CECIL	TAT CHEONG
CHAN	MADELEINE	SY
CHAN	SOPHIA	SAU FONG
CHAN	WAI	YIN
CHAN	WING-KUEN.	
CHANG	CHUAN-TIEN.	
CHANG	SHIN	YOUNG
CHANG	SHIN-JU	D
CHARLES	LAURA	ANNE
CHARNLEY	MICHAEL	JOHAN
CHATTERTON	MICHAEL	ROBERT
CHAVALITTUMRONG	TRIN.	
CHEETHAM	GENEVIEVE	MARY
CHEN	HELEN	YI-HWA
CHEN	HENRY	TAI-HENG
CHEN	JAN	KU
CHEN	MENG	HSIEN
CHEN	WILLEEN.	
CHEN	XIAOLING.	
CHEN	YING-CHEN.	
CHENG	ALVIN	KAWAY
CHENG	CHUN	HO
CHENG	YU	CHEUNG
CHERRY	ALEXANDRA	L
CHEW	SERENE	SUE WAH
CHI	KOW	MEI
CHIANG	CHIH-FENG.	
CHICHI	FRANCESCA	A
CHICUREL CORREA	MARIA	LAURA

Last name	First name	Middle name/initials
CHIKAMATSU	MIYUKI.	
CHILIP	CHERINA	LUK
CHILTON	SKYE	ALEXANDER
CHO	FIONA	HWAN HUI
CHO	WILLIAM	KI CHUL
CHOI	JI	SUN
CHON	SONG	CHOL
CHOW	EMILY	HWAY JOAN
CHRISTIAN	CHASE	BLAIR
CHRISTIANSEN	GERRITT.	
CHU	PATRICK	MING
CHU	YOUNG	KWANG
CLARK	HEIDRUN	E
CLARK	JONATHON	ANDREW
CLARK	NICHOLAS	ANTHONY
CLARKE	PETER	WILLIAM
CLARKE-SMITHEMAN	RACHEL	MARY
CLINGMAN	DAVID	ARTHUR
COMER	NICHOLAS	JAMES
CONTRADA	PETRA	HILDEGARD
CONVERS	PHILIPPE	PAUL FREDERIC
CONVERY	KAREN	FRANCES
CONWAY	ANDREW	GRAHAM
CONWAY	MARTIN.	
COOK	JUDITH	ANN
COOKE	GRAHAM	CHRISTOPHER
COOMBES	DAVID	
COOMBES	TERRENCE	LEONARD
COONEY	JOHN	ANDREW
COOPER	ADELE	JOANNA
COOPER	RENA	HENRI
COSTELLO	DANIELLE	NICOLE
COTREAN	CEZAR	DUMITRU
CREIGHTON	KIERA	MORGANNA CHAYTORS
CROIN	LAURA.	
CRONE	DAVID	CARL
CROWLEY	KEVIN	MATTHEW
CROXFORD	ELIZABETH	JANE
CUDD	THOMAS	VINCENT
CULBERT	ROBERT	ALLEN
CULLEN	EMMA	MARIA
CUSHMAN	AMEY	DEXTER
DAEPPEN	PAULA	JEAN
DAIGNEAULT	FRANCINE	DOROTHY
DAITZ	LAURA	ROSS
DALES	RICHARD	DOUGLAS
D'ALESSANDRO	EDUARDO	E
DAMAPONG	KHEMWIKA.	
DAMIBA	DAVID	EMILE
DAMOISEAUX	JOLENE	SASKIA
DAMOISEAUX WOUTERS	KATINKA	AGNES
DANIELI	VALENTINA	FRANCESCA
DANOWSKI	JANE	SPENCER
DARBYSHIRE	JOHN	FREDERICK
DAVIET	JEAN	FRANCOIS MICHEL
DAVIS	BENJAMIN	JAMES
DAVIS	NOELLE	LEE
DAVISON	JEFFREY	SPENCER
DAY	ANNE	ROBERG
DE BURLET	DIANE	MARIE CHRISTINE
DE CORDES	AUGUSTIN	PATRICK
DE LA RICA	MARTA	M
DE LU	KATIA	GRACE
DE MELIO	KAREN.	
DE URIBE BEJARANO	MARIA	P
DE VOS	BAUKJE.	
DE ZOETE	WILLEM	GERARD
DEACON	ROBIN	MARK
DEACON	STEPHEN	RONALD
DEAN	CATHERINE	JEANNE
DEAN	MARCELLA	E
DELAHAYE	OLIVIER	PIERRE CHRISTOPHE
DELAPERCHE-WALKER	HELENE	BERNADETTE
DEMILLE	RODGER	THOMAS

Last name	First name	Middle name/initials
DENNING	WENDY	ELIZABETH
DENNY	SHELIA	A
DEPENBROCK-KRAMME	ISABELLE.	
DEPIERRE SOTIN	BRIGITTE	ISABELLE
DESSORT	HELMUT	LUDWIG
DETWILLER	HILARY	RACHAEL
DETWILLER, JR	DENNIS	PETER
DEZIEL	DEBRA	IVA
DHAR	JYOTI	
DIAZ	MONICA	DANIELA
DIBBEN	CHRISTOPHER	DAVID GRAHAM
DIEJOMAOH	DAFE.	
DINIZ	PEDRO	C
DINNIS	SANDRA	GAY
DITTRICH	MARCO.	
DOBLER	TOBIAS	KLAUS
DOBSON	THERESA	ANN
DODD	FAITH	
DOEGLAS	MARCUS	HENDRIK
DOHM	FAITH	ANNE
DOLAN	ANNLEE	ELIZABETH
DOOLHOF	MANOUK	NANETTE
D'ORANTE	JAMES	DONALD
DOUGHTY	MARY	SUSANNE
DOUGLAS	ANGELA	DAWN
DOWN	PETER	J.
DOWN	PETER	J.
DOYLE	PAULA	ANNE
DOYLE	RICHARD	STANLEY
DRESSI	PAOLA	MARIA
DROLET	JEAN	JACQUES PHILIPPE
DUC	JULIE	
DUC	SEBASTIEN	NICOLAS
DUCHESNAY	PAUL	HENRI
DUINA	ALESSANDRO	ANGELO
DUNCAN	ROBERT	WAYNE
DUNNEBIER	ERWIN	ALEXANDER
DURANTON	PHILIPPE	MARCEL
DUVAL-EPSTEIN	MARIE	CHRISTINE
EARLY	MARION	ANNE
EBERLE	PATRICIA	JANE
ECKENFELS	TIMOTHY	LEE
EFENDOV	THERESA	ANNE
EGGERS	SUSANNE	RUTH
EGLER	DIETER	RUDOLF
EGLER	JUTTA	MARIE
EHLERS	NORA	ELINOR
EIDEL	OLIVER	KHENG HERMANN
EK	EILEEN	MAY
EK	MARVIN	RAYMOND
ELDRIDGE	SHEILA	CATHERINE
ELLIS	JANE	ANNE
ELLMAN	EVA	MONIKA
EMEL	ERIC	JOHN
ENGELHARD	MARK.	
ENGSTROM	BRADLEY	M
ENNIS	NANCY	SUSAN
ENSSLIN	SIMONE	DENISE
EPSTEIN	JOHANN	GORDON
ERDMANN-JONSSON	KRISTEN	ELENA
ERNEST	ANDREW	MONROE
ERNST	NANCY	CATHERINE
ESCALANTE HULSE	ROBERTO	L
ESCHBACH	SONJA	MARIE
ETO	KAORI.	
EVANS	KENNETH	W
EYCKMANS	MONIQUE	JOHANNA MARIA
EZION	ORLY	M
FABRITIUS	ANDREAS	MORITZ
FAHEY	SIMONE	DENISE SUKOSHI
FAIR	NITA	KATHLEEN
FALLENTIN	NILS	
FANG	PAMELA	JIA JUN
FANG	XUEMIN	MIN

Last name	First name	Middle name/initials
FATIMA	TASHBIH.	
FAUDON	PATRICK	MICHAEL ERICH
FAY	KRISSA	ELAINE
FELDSTEIN	BARBARA	CLAIRE
FELKER	EMILY	ROSE
FENNEFORE	MARIE	KATHERINE
FERGUSON	ELIZABETH	CLARE
FERGUSON	LINDA	LOUISE
FERME	MAGGY	MARIE MONIQUE
FERRIS	WILLIAM	WESLEY
FERRO	ROBERTO	GIOVANNI
FICHERT	MICHAEL.	
FIELDING	LAURIE	LOUISE
FIFIELD	ANNA	LOUISE
FIGUEIREDO	ANTHONY	JESUS
FIORE WALDER	GINA	A
FIRKINS	JENNIFER	LAUREN
FISCHER	SHIRLEY	SUSANNA
FISCUS	JAMES	DONALD
FISCUS	TROY	DONALD EARL
FISHER	LAURA	WILSON
FITT	ELIZABETH	ANNE
FITZPATRICK	REBECCA	BEEN
FJELDSTAD	HEIDI	ELISABETH
FLANAGAN	LAUREL	EILEEN ALISSA
FLANDERS	SUZAN	T
FLOYD	ERIC	KEITH
FLUET	IVAN	ALBERT
FOKKEMA	MARGARET	JENNIE
FOLLOWS	JOSEPH	FREDERICK
FORAKER	JAY.	
FORD	CHRISTOPHER	D
FORD	WILLIAM	CHARLES
FORNER	MALIA	CHALISE
FORRESTER	HAYDEN	DOUGLAS
FORSSEN	ING MARIE.	
FOSTER	BRIAN	HUGH
FOSTER	CAROL	ANN
FOSTER	MARILYN	JOAN
FOSTER	RICHARD	IAN
FOWERAKER	JEAN.	
FOWERAKER	RALPH	STEPHEN
FOX	IAN	TREVOR
FRANCIS-BRUCE	SASSICA	ESMERALDA
FRANK	LEONIE	WENHAM
FRANK	TYMOTHY	FREDERICK
FRANZEN	LAURA.	
FRASA-ODOK	SELMA	DENIZ
FRASER	MARIA	S
FRATINI	ALEJANDRO.	
FRENGLEY	INGA	JANE
FREY	LUCAS	MARTIN
FRIED	MARIETTA	
FROISSARDEY	ARIANE	CYNTHIA
FU	RUNQI.	
FUJIMURA	MICHIO.	
FUJIMURA	MINO.	
FUKAWA	KEVIN	SHOJI
FUNG	DAVID	KINMING
FUNG	MONICA	MUN SIN
FURUYA	NANASE.	
FURUYA	YUKI.	
GAERTMER	BARBARA	BROWN
GAIA	CHIARA.	
GAILIUNAS	VICTOR	STUART
GAL	ILDIKO.	
GALLAGHER	KIKUKA	TAKATSUKI
GALLANT	ANDREW	DAVID
GALLANT	THERESA	MARIE
GAMBIN	LEONARD	MICHAEL
GAMBLE	JACQUELYN	DEE
GAMSGAARD	JANE	ELIZABETH DONOVAN
GANDHI	PRIYANKA	MAHENDRA
GANT	MARY	JODENE

Last name	First name	Middle name/initials
GARCELON	KYLIE	ANNE
GARNAUT	DEBBIE	JEANETTE
GARNAUT	GLENN	JOHN
GARNEAU	ADRIEN	BRAUN
GARNEAU	GEORGE	XAVIER
GATTON	ROBERT	JEFFREY
GEKOSKI	RICHARD	ABRAHAM
GENECHESI	NICOLAS.	
GENTILE	CORALIA	ZI-MEI
GENTILE	MATTEO.	
GERIN	HENRY	MARIE YVES
GERSTER	LUKAS	PASCAL
GERVAIS	DENNIS	HECTOR
GHEMENT	ISABELLA	RODICA
GHERT-ZAND	RENEE.	
GIBSON	ANNIKA	ERMA
GIBSON	JENNIFER	MARIE
GIBSON	YLVA	MARGARETHA
GILBERT	JACQUELINE	MARIE
GILBERT-RAMIREZ	KARIN	MARIA
GILLIAM	HARRY	THUNDER
GILMAN	CAROLE	SUE
GIVEN	GEORGE	EDWARD
GLASSMAN	EDWARDS	JAY
GLICKMAN	MARIKA	KRISTINA
GLOVER	TODD.	
GLUHAK	JOSEPHINE	MARY
GOBLET D'ALVIELLA	RICHARD	AIME PATRICK
GOETZINGER	DONNA	CLARE
GOLDSTEIN	RONALD	STEVEN
GONSALVES	EVELYN	SADIE
GONZALEZ	ANA	MARIA
GONZALEZ	LINDA	JEAN
GORDON	JOHN	BERNARD
GORE	DHANANJAY	ASHOK
GORE	SUJATA	DHANANJAY
GORLIER	PATRICIA	ANNE O'CONNOR
GOSSCHALK	ANNETTE	LOUISE
GOSSELIN	MARIE	CLAUDE
GOTO	CHIYOMI.	
GOULD	LLOYD	ROBERT
GOWAN	KIYOMI	AKA REYNOLDS
GRACE	JOHN	S
GRAFF	LORI	D
GRAHAME-CLARKE	JACKIE	ALLYSON
GRANT	MARY	DARLENE
GRANT	WILLIAM	SCOTT
GRASSI	JOSEPH	DAVID
GREAVES	MATTHEW	ANTHONY
GREEN	DAINA	Z
GREEN	MICHAEL	CHARLES
GREEN	PAUL	EDWARD DONALD
GREEN	RICHARD	MICHAEL
GREENBERG	PAUL	CLARK
GREGOIRE	CLAIRE	ANNE
GREGOR	CHERIE	ANNE
GREGORY	ISABELLE	SHELLEY
GRIEBEL	CYRIL.	
GRIFFITHS	KIMBERLY	ANN
GRIFFITHS	NINA	MARIA
GROSS	ALEXANDRA	MARGARET
GROVE	ADAM	JOSEPH
GRUBB	LISA	MARIE
GRUEN	GILLIAN	BEA
GRUENSTEIN	DAVID	MICHEL
GRUNAU	MARA.	
GRUNAUER	LUIS	EDUARDO
GRYC	ANDREW	JAMES
GU	JUNLIN.	
GUAN	HONGBING.	
GUEHR	MARKUS.	
GUENTER	CHRISTINE	JOY
GUJRAL	RAGNINI.	
GUJRAL	VISHAL.	

Last name	First name	Middle name/initials
GUNKELMAN IV	RALPH	FRANK
GUO	LIYUN.	
GUO	YUNYAN.	
GUPTA	RAJAT.	
GURNEY	LAVERNE.	
GUSTAFSSON	KATARINA	BIRGITTA
GUTH	SHAUNA	ALEXIS
HAAC	VICTORIA	SUZANNE
HABING	MARTY	ARNOUT
HACKER	JOSEPH	SAMUEL
HAGEN	JAMES	WARREN
HAGGREN-ARKOMA	ELISA	HELI KRISTINA
HAGHIGHI	HOMAN.	
HALL	JAMES	PERCIVAL
HALLE	ROBIN.	
HALLIN	BENTE	REBECCA
HALMINEN	LISA	ANN
HALSEY	KERI	SUZANNE
HAMBLIN	PETER	NORMAN
HAMILTON	HUGO	ADOLF
HAMILTON	SAHNI.	
HAMMANT	PAUL	J
HAMMER	PAUL	FORRESTER
HAMMOND	TIMOTHY	READ
HANFORD	CAITLIN.	
HANN DE	MICHA	RENE
HANNA	NICHOLAS	JOSEPH
HANSEN	PATRICK	DUFORT KRISSOPON
HARALLAMBI	DAWN	LOUISE
HARDIN	CHRISTIAN	ALEXANDER
HARMEIER	STEPHANIE	JAN
HARMEL	MARTINE	MARIE-CLAUDE
HARRIS	REBECCA	EVE
HART	ANNE	SIOBHAN
HARTZELL	ANDREW	(none)
HAUSER	ANDREA	ELSA
HAUSTED	KAROLINE	NEERGAARD
HAWAWINI	ALFRED	
HAWKINS	MICHELE	DENIS
HEEMSKERK	MICHAEL	GERARDUS
HEESE	MARLON	FORREST
HEIMBUCHER	THOMAS	WALTER
HEIN	RUBY	IRENE
HEMMINGSEN	ROBIN	ANN
HEMPHILL	JOHN	ERIK SMITH
HENDERSON (ZELLER)	LINDA	JEAN
HENDLER	SHANE	SOPHIE
HENDLER	MAYA	SHEIN
HENEY	RUTH.	
HENNIGHAUSEN	HARTWIG.	
HERRMANN	BENJAMIN.	
HERTEL	THOMAS	JAMES HASCAL
HEUSSER	ANDREA	CHRISTIAN
HEZKY	ZDENEK	DANIEL
HICKLI	ALISON	HOPE
HILL	ANTHONY	L
HILL	JAMES	CLARENCE
HILL	ROBERT	JOE
HILL	WENDY	E
HILLYER	KEITH	D
HINCHCLIFF	DANIEL	LUKE
HINDS	ANJA.	
HIRAMA	KOICHI.	
HIRAMA	MAKIKO.	
HIRASE	HIDEHIRO.	
HIRASE	YURIKA.	
HLADY	PAULA	MARIE
HO	GEORGE	YU SHU
HO	KAREN	SU SAN
HOBBS	JULIAN	L
HOBSON	ROBERTA	ANNE
HOBY	INGER.	
HOCHSTRASSER	ANNIE.	
HODGSON	CHRISTOPHER	JAMES

Last name	First name	Middle name/initials
HODOWANY	JUDY	CHEN
HOEDEMAKER	SALLY	BROOKS
HOENIG	NINA.	
HOGAN	BARBARA	JEAN
HOGAN	MICHAEL	SEAMUS NIALL
HOLBROOK	ANDREW	TODD LOUIS
HOLLAND	MARK	ANDREW
HOLMES	JOHN	CARL
HOLMES	KATHLEEN	ELIZABETH
HOLST	KAREN	VIRGINIA
HOLTZ	SUSAN	SLOAN
HOMAN	NANCY	LEE
HONG	HAOJIAN.	
HONG	HAOWEI.	
HOOPER	MARY	SUZANNE WOODMAN
HOOPER	MICHAEL	C
HORNBY	JONATHAN	MARK
HORNE	JOHN	ROBERT
HORNE	SIMON	CHRISTOPHER
HORNSBY	MARIE	EDNA
HORSTER	SOPHIA	FLORINA
HORTH	THERESE	MARIE
HOSONO	LOUIS	YOSHIYUKI
HOUGHTON	MICHAEL	ELSON
HOUSTON	JANET	CONSTANCE
HOWSON	ALISON	CLARE
HOYNE	PAUL	REARDON
HSU	LIHSUN	HSUN
HSU	WENSHEN	SHEN
HSU	YUNGHAN	HAN
HU	FAYE	OY
HU	HSI	CHAO
HUANG	KATRINA PAO-FONG	YEH
HUBBARD	SARAH	L.
HUEBNER	MICHAEL	WALTER
HUGHES	EMILY	GWYNETH
HUMENIUK	LINDA	ALICE
HUNT	SHANNON	ROBERT
HUNTINGTON	AMY	ELIZABETTH
HUNWARDSEN	CARMEN	ANN
HUSSELMAN	DIRK.	
HUTCHINSON	DAVID	LYNDON
HUXLEY	LIAM	Y
HYDE	NEIL	MANSLEY
HYDE	SHARON	MYRA
HYDE	THOMAS	NEIL
HYNDMAN	MARC	GABRIEL
ICHIKI	KOICHI.	
IKEDA	KAYOKO.	
IMBACH	FRANCESCA	NATASCHA
INGLE	NILESH	PANDHARINATH
INSKEEP	HAYLEY	JONELL
ISHIKAWA	SACHIKO.	
ISHIKAWA	YUKARI.	
ISRAEL	MICHEL	EDUARD
ITAKURA	DAISUKE.	
ITAKURA	TAKAKO.	
IYER	MAHALAKSHMI	SUNDARAM
JAMES	MARK	DICK
JAQUES-DALCROZE	ERIC	EMILE
JASPER	DALLAS	MARIE
JAY	PAULETTE	ANN
JAYAL	ALAIN.	
JECKELMANN	DANIELLE	SARAH
JEEKEL	ROBERT	JOHANNES
JEFFERSON	ELIZABETH	HOPE
JEFFERSON	GILLIAN	CORA
JEMETZ	ALEXANDER.	
JENSEN	BRIANE	BINGHAM
JENSEN	CLINTON	LEE
JENSEN	KIMBERLEY	IRENE
JI	CONGHUI.	
JIANCHENG	ZHOA.	
JIAO	YUCHEN.	

Last name	First name	Middle name/initials
JOFFE	ANDREW.	
JOHNSEN	ERIK	L
JOHNSON	ANNE	E
JOHNSON	JAMES	DUNCAN
JOHNSON	KEVIN	MICHAEL
JOHNSON	TIMOTHY	ARTHUR
JOHNSON-REISER	SABINE	ULRIKE
JOHNSTON	ROBERT	LEO
JOHNSTON	STEPHEN	DAVID
JONES	ANDREA	MARGARET IRENE
JONES	DIANE	DEIRDRE
JONES	ROBERT	ALEXANDER
JONES	RONALD	EMORY
JONES	WILLIAM	LAWRENCE
JONES	ROSALIND	NANCY
JOURDEN	CHRISTINE	DIANNE
JUNG	JASMINE	LAURA
KADATZ	DOUGLAS	DONALD
KADATZ	STEVEN	LAWRENCE
KALANTAR	LOUISE	EMILY
KALE	HRISHIKESH	ARWIND
KANATA	TAMIE.	
KANDASAMY	TASHEN	G
KANDASAMY	TASHEN	GAJAN
KANEB	ELAINE	KATHERINE
KANOST	HAROLD	S
KARAGEORGEVIC	ELIZABETH.	
KARASANTI	MOSHE.	
KARLSEN	JONATHAN	EIVIND
KAROLY	JEFFREY	LASZLO
KARREN	DANIEL	JOSEPH
KASPER	ROMAN	MARCUS
KASSOUF	WASSIM.	
KATHNER	ROBERT	JOHN
KAY	WILLIAM	JOHN
KEAST	MELANIE	MARGARET ENG
KELLEY	KEVIN	THOMAS
KELLY RABOLT	SHERI	LOUISE
KEMPLEMANN	GLORIA	EVA MARIE-LUISE
KENDALL	YASMIN	SERENA
KENNEDY	SIMON	PETER
KEW	ANTONI	JASON
KEYOWSKI	STEPHANIE	CLAIRE
KHETAN	MANISHA	AMIT
KIDO	TAKEO.	
KIKUCHI	MIKA.	
KILLEN	CATHERINE	PATTERSON
KILPATRICK	SONYA	FIELDING
KIM	JENNIFER	YOON
KIM	MYUNG	SOO
KIM	JUNG	A
KINDL	HEINZ	R
KING	NANCY	JEAN
KIRKPATRICK	MARIAN	VERA
KIZILBASH	SAMI	MOHAMMAD MIRZA
KLEIN	FLORIAN	BENEDICT MICHAEL
KLOVAN	DOROTHY	ANN
KLUIVERS	ASTRID	MARIANNE WILELMINE
KNAPP	HELMUT	FREDERICK
KNIGHT	JACQUELINE	EDITH
KNOFLACH	GEORG	PETER
KNUCHEL	BEAT.	
KNUCHEL	RENATE.	
KOBAYASHI	MAKIKO.	
KOCHEISEN	MICHAEL	K
KOCHENDOERFER	ANDREA	SABINE
KOESTLBAUER	JOHANNA	EILEE
KOIZUMI	TAKASHIGE.	
KOLODZIEJ	RONALD	JOHN
KONISHI	YURIKO.	
KONST	CLARE	NICOLA RIANIN
KORNELL	DANIELLE	DEBRA
KORNHABER	MARC	SHAWN
KOTTMAN	STEFANIE	LYDIA

Last name	First name	Middle name/initials
KOUDIJS	PETER	ARIE ELIZA
KOZMINSKI	ANNA	EWA
KOZUMA	TSUGMI.	
KRAFT	BIRGIT.	
KRANTZ	JULIANE.	
KRENTZ	LEIGH	ANN PAYTON
KREUTZ	INGE	LUISE
KRISTAL	ZUNO.	
KRISTIANSEN	PER	ERIK
KRISTJANSDOTTIR	EVA	OSK
KROEKER	GRACE	LINETTE
KRUSE	MARSHA	ANNE
KRUSE	PETER	ANDREW
KUKAR	MILENCA.	
KUMAUCHI	ITSUKI.	
KURASHINA	ATSUSHI.	
KUROIWA	FUYUKI.	
KVAJIC	DRAGANA	CAROLYN
KWAN	NORMAN.	
KWON	HEE	JAE
LACHANCE	PAUL	DAVID
LAFORTUNE	RACHEL	ANNE
LAI	ALAN	YEH CHIEN
LAI	SZU	YING
LAMSVELT	VANESSA	LUVONNE
LANDBERG	THOMAS	STURE
LANDRY	KATHERINE	M
LANGLEY	BRIAN.	
LARKIN	MICHELLE	ANNE
LASSNER	ERIK	JOHNSON
LATHOP	FELICITY	ANN
LATOUR	MARC	THOMAS
LAUER	ANN	MARIE
LAVIGNE	GINETTE	MARIE
LAVIOLETTE	DIANE	ADELE
LAWSON	ELIZABETH	ANNE
LAWSON	JENNIFER	ANNE
LAWSON	MARYANN.	
LAWSON	TODD	ALEXANDER
LAWTHER	DEBORAH	LOFT RODMAN
LAYCOCK	DEBORAH	MARIA
LAZARUS	SARAH.	
LAZZARO	PIER-GINO	MARIO
LAZZARONI	MARIO.	
LAZZER	BARRY	N
LAZZER	VIOLA	HAZEL
LECOMPTE	ALAIN.	
LEE	EUN	JU
LEE	JAEHWAN.	
LEE	KELLY	MARIE
LEE	KWAN	WOONG
LEE	KWANG.	
LEE	MINJAE.	
LEE	SEUNG	WHAN
LEE	SEUNGGEUN.	
LEE	SUSAN	K
LEECH	SUSAN	M
LEGER	MELANIE	JOY
LEIBIL	PATRICIA	MARY
LENDERS	ACHIM.	
LENKINSKI	ROBERT	BEREK
LENKINSKI	YAEL	AMIT
LEONE	FRANCESCO.	
LESLIE	HUGH	STUART
LESZAI	NICK.	
LEURS	PETER	FOP
LEVEY SCHORP	JESSICA	BINAH
LEVITT	JOSEPH	FARREL
LI	BING.	
LI	BIRGITTA	YAN WING
LIANG	LYDIA	YINYE
LIGHAAM	PATRICK	EDWIN
LIM	MUI HUAN	ELAINE
LIM	SENG	MING

Last name	First name	Middle name/initials
LIM-KONG	CLAIRE	KUON YOON
LIN	ALEXANDER.	
LIN	CHUN	HAN
LIN	FUMIKO	FLORENCE
LISCHAK	LISA	M
LIVESEY	KAREN	L
LLOYD	CAROLINE	MAY
LO	ROXANE.	
LOCKHART	MARC	RICHARD
LOH	VICTORIA	ALLISON
LOMBARD	VINCENT	C
LOURGOUILLOUX	DOMINIQUE	
LOW	BEVERLY	LAY HONG
LUBAVIN	LIAT.	
LUCARONI	EDWARD	J
LUCAS	KERRY	ANNE
LUCHSINGER	JUERG	THOMAS
LUK	FRANK	HO WAH
LUSCOMBE	DOMINICA	ELLEN
LUTRARIO	CHRISTOPHER	ROBERT
LYONS	SUZANNE	MARIE SHAW
MA	AO.	
MA	HUNG	MAN
MAASLAND	MILDRED	NELL
MACDERMOTT	KAREN	LENOIR
MACDONALD	SCOTTI	RAE
MACDONALD	TODD	KINGLEY
MACGILLIVRAY	MICHELLE	CHRISTINE
MACGREGOR	ANDERS	JAMES GRIERSON
MACLENNAN	LAURIE	M
MADDEN	BRIAN	JAMES
MADSEN	MADS	GLEERUP
MAGEE	JILL	WEBB
MAGNEE	OCTAVE	ROBERT JACQUES MARIE
MAGYAR	JEFFREY	HAN
MAHER	DENISE	CHRISTINE
MAHONY	ISABEL	A.
MAKIN	CAMERON	LLEWELLYN
MALCOLM	ROSEMARY	J
MALIK	STEPHANIE	ANN
MALINGE	JEAN	LOUIS
MANCHISI	MARIA JOSEPHINE.	
MANT	MERRILL.	
MAPSON	GEORGE	KEMP
MARCINA	DIANE.	
MARK	NICHOLAS	PETER
MARLOW	CATHLEEN	MAEBETH
MAROUN	PIERRE-GEORGES.	
MARRIAGE	BARBARA	JEAN
MARRIOTT	PHILIPPA	CATHERINE
MARSHALL	ELIZABETH	ANN
MARSHALL	KEVIN.	
MARTIN	CHRISTOPHER	D
MARTIN	TIMOTHY	JOHN
MASSELINK	SEBASTIAAN	JOHANNES FREDERIK
MASSICOTTE-VEZEAU	RENEE.	
MATSUOKA	KYOKO.	
MATTHEWS	JORDAN	PATRICK
MATTHIJSSEN	JEANNETTE	CHRISTINE
MAURITZ	ERIK	MICHIEL
MAUSER	MATHIEU	XAVIER
MAYER	CAROLYN	MARGARET
MAYRHOFER	JULIA	VERENA
MCCLEMENT	JAY	DAVID
MCCLEMENT	LESLEY	ANNE
MCCUTCHEON	MARINA	CORWEN
MCDONALD	WENDY	CAROL
MCDONALD	YOLANDE	ELIZABETH
MCILVENNY	JAMES	DAVID
MCINNES	ALAN	ALEXANDER
MCINNES	SUSAN	FRANCES
MCKELLIN	ELEANOR	CARRIE
MCKELLIN	KAREN	RACHEL
MCKELLIN	WILLIAM	HUGH

Last name	First name	Middle name/initials
MCLINTOCK	JAYNE	BARBARA
MCMAHON	PATRICIA.	
MELLOR	FARRIS	S
MENDE	FAINE	DELWYN
MERA	HISAKO.	
MERCER	STEVEN	HOWARD
MERCER	TERESA	MARGARET
MEREL	PETER	A
MERGEAY	SARAH-MARIE.	
METAXAS	VICTORIA	ELIZABETH
METZ	ARLENE	MARIE
MEULEMA	KARL	HEINZ
MEURRENS	CELESTE	C M
MEURRENS	FABIENNE	ANDREE MYRIAM
MEURRENS	FLEUR	E L
MEYBAUM	HARDI.	
MEYBAUM	LANA.	
MEYER	BRIGITTE.	
MEYER	DANIEL	Alexander
MIDDLETON	CHRISTINE	ANN
MIELCAREK	BEATA	I
MILKAITIS	PAUL	THOMAS
MILLER	LYNDA	W
MILLIKEN	DANIEL	SCOTT
MILNE	JENNIFER	DENISE
MILNER	KEVIN	ALBERT JOSEPH
MILVERTON	SYLVIE	FRANCOISE
MITCHELL	CHRISTINE	L
MITCHELL	KEITH	ANDREW
MIYASAKA	YOSHIE.	
MOBASSER	ZOHREH.	
MODI	NEEHAR	REJESH
MOE	TIMOTHY	H
MOHAN	SREEJIT.	
MOL	MARIJE	JENNIFER
MOLLOY	RYAN.	
MONARDO FULLER	SHERYL	DIANNE
MONETTA	ANGELA	MARIA
MONK	MICHAEL	FREDERICK
MONTALI	JASON	OLIVER
MONTIRONI	MAURIZIO	FAUSTO
MOODYCLIFFE	OLIVIA	MARGARET THERESE
MOORE	RYAN.	
MOORE	SIMON	JEREMY
MORAN	MARY	CATHERINE
MORAWITZ	DELEAH	LYN REBORSE
MOREAU	SARAH	SUZANNE CAMPBELL
MOREY	DONALD	ALLEN
MOREY	KEVIN	CHRISTOPHER
MOREY	TREVOR	STACEY
MORIGUCHI	KAUYOSHI.	
MORIGUCHI	MICHIKO.	
MORIN	CHRISTEL	EVA SIMONE
MORISSET	PIERRE	ANTONIO JULIEN
MORISSETTE	FRANCOIS	PETER
MORLEY	JAMES	CHRISTOPHER
MOROZOVA	TATYANA.	
MUKAMWEZI-JOYAL	MARIE.	
MULCHANDANI	SIDDHARTH	J
MULVENNA	CHARLES	JOSEPH
MUNOZ ALVARES	MARIA	CAROLINA
MUNRO	JAMES	LEE
MURAI	KIYOKO.	
MURAI	TOSHIAKI.	
MURAOKA	AKIRA.	
MURAOKA	MUTSUKO.	
MURPHY	ERIN	LOU ANNE
MURPHY	ERIN LOU ANNE.	
MURRELL	KALI	FANNING
MURSIC	ZACHARY	ALLEN
MUSHENKO	CHRISTIAN	MICHAEL
MUSSLEWHITE	LAWAYNE	J
NAGAMORI	CHISATO.	
NAICKER	PRAVIN.	

Last name	First name	Middle name/initials
NAKAGAWA	JUNKO.	
NAKAHARA	SANAE.	
NAKAOKA	HIROSHI.	
NAKAOKA	YUKA.	
NANTAIS	RAYMOND	JOSEPH
NAOUM	SAMER	SALAM
NASH	JUSTIN	JAMES HARVEY
NASH	KATHERINE	TIMBURY
NASH	MARY	THEKLA
NAVON	ROY.	
NEAVE	EDWIN	HAROLD
NEBE	PATRICIA	SANDRA
NEIDHART	LUKAS	EMMANUEL
NEMEC	MARTIN.	
NEUFELD	MARGARET	RACHEL MCKELLIN
NEUMAN	JOSHUA	GREGORY
NEUMANN	KENNETH	JOHN
NEWLANDS	JOHN	BUSHELL
NEWTON	HEIDE	NARRELL
NEWTON	LINDSAY	JANE
NEZU	NOBUYUKI.	
NG	THOMAS	K
NGUYEN	OANH	HOANG
NICCOLS	LUKE	LLOYD CAMERON
NIELSON	DAVID	JOHN
NIEUWEWEME	BAS	CHRISTIAN
NIEUWEWEME-DE BRUIJN	JULIE	JOHANNA
NILSSON	MONICA	ELISABETH
NISBET	MARY	J
NIXON	MAUREEN	FRANCES BULA
NOBLE	MARY	I
NOE	PATRICK	JOHAN
NOGUERA GILI	FRANCESC.	
NOMURA	RIE.	
NORMAN	ALAN	JOHN
NORRIS	ANDREW	JOHN
NORRIS	PAUL	ANTHONY
NSOULI	KARIM	M
OCHIAI	KYOKO.	
O'CONNOR	SIMON	PHILIP JOHN
ODRISCOLL	TIMOTHY	JOHN
OFFUTT	DONNA	ANDERSON
OGURA	RICHARD	KAZUHIRO
OJJEH	LOULOU	MAY
OLVER	GERALD	B
ONDERCIN	BORIS.	
OPDEMOM	PETER.	
OPESKIN	BRIAN	ROBERT
ORBAUM	RUTH	LAURA
ORJI	NWAKERENDU	U
ORLANDO	TINA	MARGARET
OSHIMA	SAE.	
OSTERTAG	MARC	OLIVER
O'SULLIVAN	BRIAN	MARCUS
OTERO	FRANCISCO	JOSE
OTSUKA	EMIKO.	
OTSUKA	SHINSUKE.	
OUDMAIJER	VICTOR	THEO
OUIMET	JACQUES.	
OYOUNG	MELISSA	MABEL SAU-HUNG
PALANI	JAYABARATHY.	
PALAZZO	ALBERT	PELLEGRINO
PALMER	IRENE.	
PALMER	LORRAINE	ALIX EVELYN
PAMEIJER	PAMELA	MARIA
PARAT	MARIE-ODILE.	
PARK	ERIC	C
PARKER	THERESA	ELIZABETH
PARKER	THOMAS	GORDON
PARSONS	NELLIE	JANE
PARTINGTON WALSH	LORNA	BARBARA
PATEL	MRUNALINI	RAMESHCHANDRA
PATEL	PRAVINBHAI	CHATURBHAI
PATEL	SANJAY	S

Last name	First name	Middle name/initials
PATRY	JANINE.	
PAYER	DORIS	E
PEACOCK	DOUG	GEORGE
PEARSON	BRIAN	JOSEPH
PEARSON	DOROTHY	PATRICIA
PEASE	RICHARD	G
PECHMANN	CHRISTINE	M.
PENG	JENNY	H
PEREIRA	MARCELA	SOBRINHO
PERLIS	HERSCHEL	AZRIEL
PERONNET	BENJAMIN.	
PETRIE	GREGORY	RAMSAY
PETRIG	BENNO	L
PETRIG	RUTH	V
PETROV	CONSTANTIN	ALEXANDER
PFAU	BRADLEY	MADISON
PHILIPPI	PETER	MICHAEL
PHILLIPS	NICOLAS	JOHN
PHILLIPS	SUSAN	ANGELA
PIGFORD	JOEL	EDWARD
PIGGIN	CHRISTOPHER	RICHARD
PIGNATELLI DI MONTERODUNI	FEDERICO.	
PIKE	ROBERT	
PINHEIRO	FLAVIO	FROES FONSECA SILV
PITTER	MIKAEL	JOHANN
POHL	FRANCES	KATHRYN
POLLEMAN	SARAH	ELIZABETH
POLLOCK	MARA	KATHERINE
POLONSKAYA	SUZANNA.	
POLONSKY	EHUD	MORDECHAI
PORETTI	CRISTINA.	
PORTER	SIMON	INGRAM
PORTHOUSE	KEITH.	
PORTHOUSE	REBECCA.	
POWELL	KAREN.	
POWELL	MARK	ANTHONY
POWER	JOSEPH	PATRICK
PRAVITRA	KALAYANARAK.	
PRESSMAN	ALEXANDER	SAMUEL
PRUTTON	SIMON	MARTIN
PRYER	CYNTHIA	SUE
PULVER	LANA	CHERYL MARKS
PYTELA	ROBERT.	
QUACKENBUSH	MAXWELL	ERIK
QUADERER	ANNE	MARIE
QUIMBO	CHRISTOPHER.	
QUIMET	MARIETTE.	
QUINIAN	MATTHEW.	
RADERMACHER	MICHAEL.	
RAFTERY	KEVIN	COLLINS
RAHMAN	ISABELLE	MAHNAAZ
RAND	PETER	WOODBURY
RANDLE	ALAN.	
RANGACHARI	RADHALAKSHMI.	
RAO	KAUSHIKI.	
RASSMUSSEN	DANIEL	HALDEN
RAY	LUCRETIA	N
RAYNOR	MARJORIE	BETH
REED	ARCHIE	SCOTT
REED	KATRINA	ANN
REEDIJK	RONALD.	
REEVES	ELIZABETH	MAILE
REHDER	SANDRA.	
REISCHL	CHRISTINE	MARIA
REN	XIAOMIN.	
RENGGER	KATHARINA	MARIA
RENSINK	MARIE	CLAIRE LOUISE
REUTER-ODENI	BEATE	GERTRUD JOHANNA
REYHER	CHARLES	EDWARD
REYNOLDS SCHIER	IRENE	SABINA
RICH	DANIELLE	DEBORAH
RIDLEY	AMY	HARGAN
RIDLEY	ELIZABETH	JANE
RINGLAND	PATRICK	JAMES

Last name	First name	Middle name/initials
RIVIERE	FLORENCE	Y
ROBBINS	ORLANDO	TOUCHSTONE
ROBERS	BRYAN	MICHAEL
ROBERTSON	DONNA	CHERYLE
ROBERTSON	DAVID	S
ROBINO	GIANLUCA.	
ROBINSON	MARTIN	EPELI
ROBINSON	NANCY	J
ROBLES	VANESSA	ALMA
RODD	BRITTANY	JAD
RODRIGUEZ	SHELIA	MARITZA
ROELLINGHOFF	LARA	ALANIS
ROESLI	CHRISTOPH	OLIVER
ROMKEY	JAMIE	WILSON
ROSENSWEIG	ELISHA	JUDAH
ROSS	LOUIS	ARTHUR
ROSS	VICTORIA	HELENA
ROTHKOPF	STEPHEN	JAROS
ROTHWELL	PAMELA	SUE
ROWE	ANDREA	ANNE
RUCHTI	BRIAN	YVES
RUGGEBERG	CHRISTEL.	
RUIZ	TERESA.	
RUNDELL	ANDRE	RICHARD
RUNNELLS	ALLAN	LEE
RUNNELLS	SONJA	NELSINE
RUSCH	DORIS	CARMEN
RUSNOCK	HARRY	ANTON PAUL
RUSO	CHRISTINE	IRENE
RUSO	DOMENICO	ANTONIO
RUSO	VINCENT	JAMES
RUSSELL	IRENE	E
RUTGERS	TANNER	REECE NEVADA
SAADAT-LADJEVARDI	SABRINA	SUDABEH
SAENZ-ARCE	PEDRO	NOLASCO
SAITO	TAKU.	
SAKAGUCHI	IKUKO.	
SAKAGUCHI	TOSHIAKI.	
SALETU	ALEXANDER	BERND
SALETU	MICHAEL	TIMOTHY
SALGADO	ELIZABETH.	
SANDEL	MARK	RICHARD
SANGHERA	KANWALWIR.	
SARPI	LEONIDA	DARA
SAUNDERS	ELIZABETH	ANNE HELEN
SAVOURET	VINCENT	FRANCOIS
SAWKA	MARGARET	ELIZABETH
SAYAMA	FUMIE.	
SAYAMA	TAKASHI.	
SCAIFE	SAMUEL	ELIAS
SCHERRER	LUKAS	MARTIN
SCHIEPERS	CHRISTIAN	WILHELMUS
SCHILLER	JULIA	JANET
SCHINDELHAUER	SHIRLEY	ANN
SCHMIDT	ANNETTE	DANIELA
SCHNEIDER	ANNEMARIE.	
SCHNEIDER	YEHOCHAI.	
SCHOUMAKERS	FRANK	JOZEF
SCHREIER	FLORIAN	STEFAN
SCHULTZ ILLEK	ANGELIKA	MANITA
SCHUMANN	HEIKE.	
SCHUTTE	JEAN-THIERRY	CHARLES PAUL
SCHWEIMLER	TATIANA	ARCEO
SCOTTI	CHARLENE	DENNIS
SCOTTI	PAUL	DOUGLAS
SCURFIELD	ANNE	MARIE LAWTON
SEBUNYA	KADDU	KIWE
SEEAR	ROBERT	FREDERICK
SEEBER	SCOTT	WILLIAM
SEIXEIRO	STEVE	FERNANDES
SELLO	ADAM	CRAIG
SELLO	JACOB	TOBIAS
SENG	ANNA.	
SETTLES	MARCUS	RONALD

Last name	First name	Middle name/initials
SEU	JUNG	SOO
SEVCIK	JULIUS.	
SHACHAT	KEITH	MAX
SHAFFER	MILO	SEBASTIAN
SHAIKH	LINDA	DIANE
SHANLEY	GUY.	
SHAPIRO	BAILLIE	ELLEN
SHARPE	WILLIAM	KIPLING
SHAW	JOANNA	CAROLINE
SHEIN	RENA.	
SHERLOCK	TONI	SUZANNE
SHETTLE	CYNTHIA	DENISE
SHIMOMA	ISAMU.	
SHIMOMA	YOKO.	
SHPAK	PETER	JOHN EMIL ERLING
SHU	QIANG.	
SIEGELE	JESSICA	MARIE
SILVA	CASSANDRA	KAY
SILVER	MARIAN	RACHEL
SIMON	CELINE	B
SIMON	PIERRE	MICHEL GERMAIN RAYMOND
SIMPSON	MORAG	LESLEY FRASER
SIMPSON	SUSAN	E
SINCLAIR	SUSAN	ELLEN
SINGER	JEFFREY	MICHAEL
SINGH	NIRAJ	KUMAR
SIROTNIK	GARETH	STEPHEN
SKAVYSH	ALEXANDER.	
SKEATE	ROBERT	CHARLES
SLITER	ROBERT	EARL
SLOWE	SOPHIE	MAY
SMART	ANDREW	DAVID
SMITH	CHRISTINE	PATRICIA
SMITH	DANIELLE	LOUISE
SMITH	GREGORY	JOHN
SMITH	LEON	THURSFIELD
SMITH	MOIRA	BEATRICE
SMITH	REBECCA	KATHERINE
SNYDER	WILLIAM	FLECK
SNYDER HEIJNEN	GLENDA	JOY
SOFFE	MATTHEW	CHRISTOPHER
SOHI	CHIAU	JOO
SOHN	GI	YOUNG
SOLE DUCH	PERE.	
SONNENBERG	DORIS.	
SONODA HARRIS	LYNN.	
SORDO	JOSE	IGNACIO
SORENSEN	JOHN	AARESTRUP
SOUBEYRE	JULIEN.	
SOWDEN	HARVEY	BRUCE
SPARKS	DERRICK	ADAM
SPEICHER	LARA	ELISABETH
SPENCER	JAN	BRYON C.
SPIES	ANNA	ROSALIND PATRICIA
SPRINGATE	JILL	P
SRINIVASULU	DINESH	KUMAR AKAMBARAM
ST JOHN-GREEN	CELIA.	
ST PIERRE	KIMBERLY	ANN
ST PIERRE	RACHELLE	CHRISTINE
STAMBOULI	ANNE	MARIE
STANANOUGHT	LESLEY.	
STANGELBERGER	AURELIA	SOPHIA
STECKLEY	CHERYL	L
STEELE	GREGORY	ROBERT
STEEVES	LAURA	ANN
STELLA	FRANK.	
STELLA	WENDY	A
STEPAK	AVNER.	
STERN	LINDA.	
STERNBERG	SHELLEY	ANN
STEVENHAGEN PEPPING	ELISABETH	CORNELIA MARIA
STEVENS	KENDALL	EDWARD
STEWART	DORIAN	ANDREW
STEWART	JOY	MARGARET

Last name	First name	Middle name/initials
STEYSKAL	JORG	NIKLAS
STIPE	SANDRA	SUE
STIRZENBECHER	CLAUS	CHRISTOPH
STOBART	KAILEE	ELIZABETH
STODDARD	AMY	KIMBALL
STOECKLI	STEPHANIE	MARIE
STOLTMAN	PATRICK.	
STOUT	DARYL	MORRIS
STOVER	AYLSSA	LEA
STOYKO	RONALD	FRED
STRANGIS	JEAN-LOUIS.	
STRATTON	ANTHONY	EDWARD
STREICH	OLIVER	STEPHAN
STROMEYER	HANS	STEFAN
STUART	IAN	ARTHUR
STUBBINGS	CARL	S
STUBBINGS	KIM	M
STUECKELBERGER	ANNA	LUISA
STUMM	PATRICK	MARK
SUESCUM	ALFREDO.	
SUGITA	SHUUICHI.	
SUMIN	DMITRY	KONSTANTINOVICH
SUN	YI.	
SURRY	PATRICK	D
SUTANTO	JESSELYNN	QUINN
SUTER	KARIN	MARIE
SUTTON	EMILY	ANNE
SUZUKI	KATSUMI.	
SWIFT	PAMELA	B
SWIFT	ROBERT	M
SWIFT	TIMOTHY	LOREN
TABACHNICK	KAREN	FAITH
TAKAHASHI	HIROMITSU.	
TANAKA	KYOKO.	
TANAKA	REI.	
TANIGUCHI	SUSAN.	
TANIGUCHI	IWAAKI.	
TAY	KIRK	SHIUAN
TAYLOR	CAROL	MAREE
TAYLOR	DAVID	ALEXANDER
TAYLOR	MICHAEL	SCOTT
TAYLOR-HELL	CATHERINE	MORGANA
TAYSI	AYSE	YASEMIN
TEATHER	DAVID.	
TEELAND	WALTER	F
TEN-WOLDE	BEVERLY	ANN
TER WEEME	PAUL.	
TERAO	AKIRA.	
THIOLLIER	ALEXANDRE	HONORE MARIE
THOMAS	CHRISTOPHER	MARK ROBERT
THOMPSON	KELSEY	JO
THOMPSON	NICHOLAS	DALE
THOMPSON	WILLIAM	JOSEPH
THOMSON	BARBARA	JOAN
TIBURTIUS	PHILLIP	ALEXANDER
TINBERG	RICKARD	JON
TORIDE	HIROSHI.	
TOTAH	MICHAEL.	
TOULIOPOULOS	SERAFIM.	
TOWNS	MIKI.	
TRACY JR	GALEN	LAVERNE
TRENT	SHARON	SUE
TREPP	VALERIE	CHRISTINE
TRESSLER	TANIA	D
TROYON	HELENE	BRIGITTE
TSUCHIDA	JUNKO.	
TUNINGA	NICK.	
TURNER	KARREN	E
TYGIELSKI	MAJA.	
UCHIKOSHI	KAZUMI.	
UMEDA	KAZHUHIKO.	
UMEDA	TOAKO.	
UVA	TEODORO	VITO
VAILLANCOURT	PAULA.	

Last name	First name	Middle name/initials
VAN ANDERS	GREG.	
VAN ANDERS	SARI	M.
VAN BARNEVELD	JOHN.	
VAN DE GOOR	MARIE	JACQUELINE
VAN DER WILDEN	ERIC.	
VAN DIJKEN	SOPHIE	ELISABETH
VAN DYKE	DEBRA	ANNE
VAN HOREBECK	SAM	MARIA EMIEL
VAN HOVEN	JOCELYN.	
VAN LANEN	EDWARD	JAMES
VAN NIEUWKERK	JAN	A.
VAN OOSTEN	JEROEN.	
VAN STEENBERGEN	ESTHER.	
VANDENBERGH	JEANINE	JOAN CECELIA
VANDEPUTTE	PATRICK	ANDRE
VANHESSCHE	KOENRAAD	PAUL MARCEL
VAP	CINDY	K
VARTANIAN-BRIANZA	SYLVIA	HAMPARZOUM
VASILEVA	TANJA.	
VENDERINK	MARLENE	JOANNA
VERDELLET COUTURE	ANNIE	JOELLE MARIE
VERDENIUS	INGE	LIAN
VERSAVEL	MARIA	ALIX
VEZEAU	MARCEL.	
VICKERS	BARRON.	
VINCI	ALESSIO.	
VOGAS	ARISTEIDES.	
VOLLMER	JULIANE	ANNA
VOLOS	HARIS.	
VON DRASEK	SARAH	ELIZABETH
WAKEFIELD	STEPHANIE	ANNE
WALDMANN	MAIA.	
WALDMANN	RONALD.	
WALKER	FRITH	J
WALKER	JOHANNES	NIKOLAUS
WALMAN	JAIME	LOUISE
WALTER JR	RICHARD	LEE
WAN	QING.	
WANDERS	SUSAN.	
WANG	CHENGHUI.	
WANG	CHRISTINA.	
WANG	WEIJIAN.	
WANG	YI	FAN
WANG	YING.	
WARD	KRISTINA	ANNE
WARDZINSKI	ANDRZEJ	JERZY
WARFIELD	CARLA	PATRICIA
WARLOE	THOMAS	EVAN
WARNSBY	STEPHEN	PETER
WARRIMER	INEZ	LIANE
WARTENERG	NIELS	VIGGO FRIIS
WATANABE	JUNKO.	
WATANABE	KIMIKO.	
WATT	KEVIN	SPENCER
WEBB, JR	CECIL	POITEVENT
WEEKS	GRAHAM	NEIL
WEERDENBURG	CAROL	ANN
WEHKING	CAROL	LEIGH
WEI	GRACE	LINGJU
WEIDINGER-HOELZER	SUSANNA	LUISE
WEIR	DULCE	CLAIRE
WEITKAMP	EMMA	LOUISA CAROLINE
WELLINGS	SHAUNA	EVELYN
WELLINGSTEIN	TAMAR.	
WELLINGSTEIN	YUVAL.	
WELLMAN	DIANE	ELIZABETH
WELLS	IAN.	
WELLS	MARILYN	SUSAN
WENDEL	DANIELLE	M
WEST	JOHN	EDD
WEST	MARIA	CARMEN
WESTBERG NEHM	KARIN	CHARLOTTA
WESTON	CRYSTAL	DAWN
WHALAN	HUGH	ROBERT

Last name	First name	Middle name/initials
WHITAKER	ANNA	MARIE
WHITVER	HEATHER	ELIZABETH
WICKRAMARACHI	PIERRE	LANKA ALAIN M
WIENS	ORAN	KENT
WIESENTHAL	DAVID	LAWRENCE
WIESENTHAL	SANDRA	LOUISE
WIESER	EDWARD	JAMES
WIGLEY	CAROL	ELIZABETH
WILDER	CHANTELLE	MARIE
WILKINSON	MICHAEL	C
WILLEMS	MARK.	
WILLIAMS	IAIN	PAUL
WILLIAMS	KATHLEEN	FAITH
WILLIAMS	MICHAEL	SINCLAIR
WILLKE	SYLVIE	MARIE
WILLSHER	MARK	SIMON
WILSON	DEBORAH	JEAN
WILSON	ERI.	
WINNER	PETER	A
WINTERNITZ	LORRAINE	JOANNE
WINTERNITZ	PIPER	ELIZABETH
WITKOS	KATARZYNA.	
WOLDRING	ANNA	VOORTHUIJSEN
WOLF	ANNETTE	BETTINA
WOLTERS	ANN-KATRIN.	
WONG	ALFRED	TSZ CHUN
WONG	ANITA	KAR WAI
WONG	SIU	HA IRIS
WOOD	THOMAS	BARRY
WOODS	HYLA	EMMI
WOODY	SHEILA	ROXANNE
WRIGHT	EDEN	KATHLEEN
WRIGHT	KELLY	MARIE
WRIGHT	ROY	ALFRED
WRIGHT	SVENJA	MARIA
WU	HUIMING.	
WU	LAN.	
WUESTEMANN	THIES.	
WYMAN-ROSENTHAL	JANEFER.	
XIA	JIE.	
XIE	GONGHUI.	
XIE	GUO	LEE
XIE	XUAN.	
YAGHOUBPOUR	GOLZAR.	
YAMADA	NOBUHIKO.	
YAMADA	SADAYOSHI.	
YAMAMOTO	VALENCIA.	
YAMAMOTO	YOKO.	
YAMAMOTO	TAKEO.	
YAN	JUNJIE.	
YANG	JIHOON.	
YANG	MICHAEL	CHAO-CHUEN
YANG	VINCENT	ALINDOGAN
YAO	YUE.	
YASHIRO	YUMIKO.	
YASNY	JEFFREY	SCOTT
YATES	JILL.	
YATRACOS	YANNIS.	
YE	JING.	
YELLEN	PENNY	F
YEOMANSON	JOHN.	
YERMOLITSKAYA	YEKATERINA	GENNADIYEVNA
YIM	SOPHIA	HOI SEE
YIU	INGRID.	
YOKOYAMA	TSUYOSHI	SERGE
YON	SOON	HO
YOON	JUNGMO.	
YOUARD	ANDREW	RICHARD FREELAND
YOUNGER	STUART	GORDON
YUSUF	HUMA.	
ZAGIER	DON	BERNARD
ZARCHAN	DANIEL	GOFSEYEFF
ZEMEK	MARGARET	THEODORA
ZHANG	MARK	XINGJIAN

Last name	First name	Middle name/initials
ZHANG	SHUTING.	
ZHANG	YAN	MIN
ZHANG	JUN.	
ZHENG	YAQIN.	
ZHOU	KEVIN.	
ZHOU	LULU.	
ZIENKIEWICZ	ANDREW	PETERE
ZINN	ANAT.	
ZIPPLIESS	HANS	FRANK
ZIPPLIESS	RAMONA.	
ZISSERSON	BENJAMIN	MICHAEL
ZIVNY	JOSEPH	ANDRE
ZUCK	AUDREY	ABRAHAM
ZUEGER	DORIS	VERENA

Dated: July 25, 2022.

Steven B. Levine,

Manager, Team 1940, CSDC—Compliance Support, Development & Communications, LB&I: WEIIC: IIC: T4.

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DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service (IRS) Information Collection Requests

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before August 29, 2022 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service

1. Title: Railroad Retirement Tax Act (Forms CT–1 and CT–1X).

OMB Number: 1545–0001.

Type of Review: Revision of a currently approved collection.

Abstract: Form CT–1 is used by railroad employers to report taxes imposed by the Railroad Retirement Tax Act (RRTA) and claim eligible employer tax credits. The IRS uses the information to ensure that the employer has paid the correct tax. Form CT–1X is used to correct previously filed Forms CT–1.

Form Number: Forms CT–1 and CT–1X.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Responses: 2,400.

Estimated Time per Respondent: 26 hours, 5 minutes.

Estimated Total Annual Burden Hours: 62,589.

2. Title: Supplemental Income and Loss.

OMB Number: 1545–1972.

Type of Review: Extension of a currently approved collection.

Form Number: Schedule E (Form 1040).

Abstract: Pursuant to Internal Revenue Code (IRC) section 6012(b) and Treasury Regulations section 1.6012–3, fiduciaries file tax returns for estates and trusts using Form 1041. Filers of Form 1041 use Schedule E (Form 1040) to report income and loss from rental real estate, royalties, partnerships, S corporations, estates, trusts, and residual interests in real estate mortgage investment conduits (REMICs).

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 832,395.

Estimated Time per Respondent: 9 hours, 56 minutes.

Estimated Total Annual Burden Hours: 8,274,006.

3. *Title:* Alternative Motor Vehicle Credit.

OMB Number: 1545–1998.

Type of Review: Extension of a currently approved collection.

Form Number: 8910.

Description: Taxpayers will file Form 8910 to claim the credit for certain alternative motor vehicles placed in service during the tax year. The credit attributable to depreciable property (vehicles used for business or investment purposes) is treated as a general business credit. Any credit not attributable to depreciable property is treated as a personal credit. Taxpayers that are not partnerships or S corporations, and whose only source of this credit is from those pass-through entities, are not required to complete or file this form. They can report the credit directly on line 1r in Part 111 of form 3800.

Current Actions: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations, Not-for-profit institutions, farms, Federal Government and State, Local or Tribal Government.

Estimated Number of Responses: 22,183.

Estimated Time per Response: 5 hours, 56 minutes.

Estimated Total Annual Burden Hours: 131,543 hours.

4. Title: Reducing Tax Burden on America's Taxpayers.

OMB Number: 1545–2009.

Type of Review: Extension of a currently approved collection.

Form Number: 1325–A.

Abstract: The IRS Office of Taxpayer Burden Reduction (TBR) needs the taxpaying public's help to identify meaningful taxpayer burden reduction opportunities that impact a large number of taxpayers. This form should be used to refer ideas for reducing

taxpayer burden to the TBR for consideration and implementation.

Current Actions: There is no change to the form or burden at this time.

Affected Public: Individuals or households, Business or other for-profit organizations, non-profit institutions, farms, Federal Government, State, local or tribal governments.

Estimated Number of Respondents: 250.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 62 hours.

5. Title: Revocation of Election filed under I.R.C. 83(b).

OMB Number: 1545–2018.

Form Number: Rev. Proc. 2006–31.

Abstract: This revenue procedure sets forth the procedures to be followed by individuals who wish to request permission to revoke the election they made under section 83(b).

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and households.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 400.

6. Title: Obligations principally secured by an interest in real property.

OMB Number: 1545–2110.

Form Number: TD 9463.

Abstract: This collection covers final regulations under section 1.860G–2 that expand the list of permitted loan modifications to include certain modifications that are often made to commercial mortgages. The collection of information in this regulation is in section 1.860G–2(b)(7). To establish that the 80-percent test is met at the time of modification, the servicer must obtain an appraisal or some other form of commercially reasonable valuation (the appraisal requirement). This information is required to show that modifications to mortgages permitted will not cause the modified mortgage to cease to be a qualified mortgage.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 375.

Estimated Time per Respondent: 8 hrs.

Estimated Total Annual Burden Hours: 3,000.

7. Title: Election of Investment Tax Credit In lieu of Production Tax Credit; Coordination With Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credits.

OMB Number: 1545–2145.

Notice Number: 2009–52.

Abstract: This notice provides a Abstract of the procedures that taxpayers will be required to follow to make an irrevocable election to take the investment tax credit for energy property under § 48 of the Internal Revenue Code in lieu of the production tax credit under § 45. This election was created by the American Recovery and Reinvestment Act of 2009, H.R. 1, 123 STAT. 115 (the Act), which was enacted on February 17, 2009. This notice includes information about election procedures and the documentation required to complete the election. The notice also discusses the coordination of this irrevocable election with an election to take a Department of Treasury grant for specified energy property.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100 hours.

8. Title: Application for Group or Pooled Trust Ruling.

OMB Number: 1545–2166.

Form Number: Form 5316.

Abstract: Group/pooled trust sponsors file this form to request a determination letter from the IRS for a determination that the trust is a group trust arrangement as described in Rev. Rul. 81–100, 1981–1 C.B. 326 as modified and clarified by Rev. Rul. 2004–67, 2004–28 I.R.B. 28, as modified by Rev. Rul. 2011–1, 2011–2, I.R.B. 251, and as modified by Rev. Rul. 2014–24, 2014–37 I.R.B. 529.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 200.

Estimated Time per Respondent: 14 hours, 6 minutes.

Estimated Total Annual Burden Hours: 2,820.

9. Title: Miscellaneous Information.

OMB Number: 1545–0115.

Form Number: 1099–MISC.

Abstract: Form 1099–MISC is used by payers to report payments of $600 or more of rents, prizes and awards, medical and health care payments, nonemployee compensation, and crop insurance proceeds, $10 or more of royalties, any amount of fishing boat proceeds, certain substitute payments, golden parachute payments, and an indication of direct sales of $5,000 or more.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 99,447,800.

Estimated Time per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 30,828,818.

10. Title: Credit for Federal Tax Paid on Fuels.

OMB Number: 1545–0162.

Form Number: Form 4136.

Abstract: Internal Revenue Code section 34 allows a credit for federal excise tax paid on certain fuel uses. This form is used to figure the amount of the income tax credit. The data is used to verify the validity of the claim for the type of nontaxable or exempt use.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Responses: 2,140.

Estimated Time per Respondent: 37 hours, 23 minutes.

Estimated Total Annual Burden Hours: 80,015.

11. Title: Tax on Lump-Sum Distributions (From Qualified Plans of Participants Born Before January 2, 1936).

OMB Number: 1545–0193.

Form Number: Form 4972.

Abstract: Form 4972 is used to figure the tax on a qualified lump-sum distribution you received in the tax year using the 20 percent capital gain election, the 10-year tax option, or both. These are special formulas used to figure a separate tax on the distribution that may result in a smaller tax than if you reported the taxable amount of the distribution as ordinary income.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 5,601.

Estimated Time per Respondent: 4 hrs. 24 min.

Estimated Total Annual Burden Hours: 24,644.

12. Title: Election to Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

OMB Number: 1545–0195.

Form Number: 5213.

Abstract: Section 183 of the Internal Revenue Code allows taxpayers to elect

to postpone a determination as to whether an activity is entered into for profit or is in the nature of a nondeductible hobby. The election is made on Form 5213 and allows taxpayers 5 years (7 years for breeding, training, showing, or racing horses) to show a profit from an activity.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,541.

Estimated Time per Respondent: 47 minutes.

Estimated Total Annual Burden Hours: 2,762 hours.

13. Title: Installment Sale Income.

OMB Number: 1545–0228.

Form Number: Form 6252.

Abstract: Internal Revenue Code section 453 provides that if real or personal property is disposed of at a gain and at least one payment is to be received in a tax year after the year of sale, the income is to be reported in installments, as payment is received. Form 6252 provides for the computation of income to be reported in the year of sale and in years after the year of sale. It also provides for the computation of installment sales between certain related parties required by Code section 453(e).

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and farms.

Estimated Number of Respondents: 521,898.

Estimated Time per Respondent: 3 hrs., 4 min.

Estimated Total Annual Burden Hours: 1,597,008.

14. Title: Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.

OMB Number: 1545–0233.

Form Number: 7004.

Abstract: Form 7004 is used by corporations and certain nonprofit institutions to request an automatic extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to ensure that the proper amount of tax was computed and deposited.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and non-profit institutions.

Estimated Number of Respondents: 1,818,037.

Estimated Time per Respondent: 6 hr., 46 min.

Estimated Total Annual Burden Hours: 12,326,291.

15. Title: Certificate of Payment of Foreign Death Tax.

OMB Number: 1545–0260.

Form Number: 706–CE.

Abstract: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit allowed by Internal Revenue Code section 2014. The information is used by IRS to verify that the proper credit has been claimed.

Type of Review: Extension of a previously approved collection.

Affected Public: Individual or households.

Estimated Number of Responses: 2,250.

Estimated Time per Response: 1 hour, 44 minutes.

Estimated Total Annual Burden Hours: 3,870 hours.

16. Title: At-Risk Limitations.

OMB Number: 1545–0712.

Form Number: Form 6198.

Abstract: Internal Revenue Code section 465 requires taxpayers to limit their at-risk loss to the lesser of the loss or their amount at risk. Form 6198 is used by taxpayers to determine their deductible loss and by the IRS to verify the amount deducted.

Type of Review: Extension of a currently approved collection.

Affected Public: Estates, trusts, and not-for-profit organizations.

Estimated Number of Responses: 26,451.

Estimated Time per Respondent: 3 hours, 58 minutes.

Estimated Total Annual Burden Hours: 105,010.

17. Title: Material Advisor Disclosure Statement.

OMB Number: 1545–0865.

Form Numbers: 8918.

Abstract: Internal Revenue Code (IRC) 6111 requires a sub-set of promoters called ''material advisors'' to disclose information about the promotion of certain types of transactions called ''reportable transactions.'' Material advisors to any reportable transaction must disclose certain information about the reportable transaction by filing a Form 8918 with the IRS. Material advisors who file a Form 8918 will receive a reportable transaction number from the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor. Form 8918 has been redesigned with 2D Barcodes Placed on Page 4, which will be submitted with the rest of the form. 2D Barcodes are capable of capturing a vast amount of information, relieving material advisors of the need to submit attachments to ensure all required information is provided.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 2,279.

Estimated Time per Respondent: 16 hrs., 30 minutes.

Estimated Total Annual Burden Hours: 37,627.

18. Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

OMB Number: 1545–1016.

Form Number: 8613.

Abstract: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under Internal Revenue Code section 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time per Respondent: 11 hours, 53 minutes.

Estimated Total Annual Burden Hours: 17,820 hours.

19. Title: Allocation of Estimated Tax Payments to Beneficiaries (Under Code section 643(g)).

OMB Number: 1545–1020.

Form Number: Form 1041–T.

Abstract: This form allows a trustee of a trust or an executor of an estimate to make an election under Internal Revenue Code section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). The IRS uses the information on the form to determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,381.

Estimated Time per Respondent: 42 min.

Estimated Total Annual Burden Hours: 1,715.

20. Title: Recapture of Low-Income Housing Credit.

OMB Number: 1545–1035.

Form Number: 8611.

Abstract: IRC section 42 permits owners of residential rental projects

providing low-income housing to claim a credit against their income tax. If the property is disposed of or if it fails to meet certain requirements over a 15-year compliance period and a bond is not posted, the owner must recapture on Form 8611 part of the credits taken in prior years.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 9 hours, 33 minutes.

Estimated Total Annual Burden Hours: 956.

21. Title: Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.

OMB Number: 1545–1060.

Form Number: 8288–B.

Abstract: Section 1445 of the Internal Revenue Code requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Code sections 1445(b) and (c) allow the withholding to be reduced or eliminated under certain circumstances. Form 8288–B is used to apply for a withholding certificate from IRS to reduce or eliminate the withholding required by Code section 1445.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 508.

Estimated Time per Respondent: 5hrs., 45 minutes.

Estimated Total Annual Burden Hours: 2,926 hours.

22. Title: TD 8400—Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

OMB Number: 1545–1131.

Form Number: TD 8400.

Abstract: This document contains previously approved final regulations regarding the taxation of gain or loss from certain foreign currency transactions under Internal Revenue Code (IRC) section 988 and applies to taxpayers engaging in such transactions. Such gains and losses are characterized as ordinary income or loss. However, under *IRC section 988*(a)(1)(B), taxpayers may elect to characterize exchange gain or loss on certain transactions as capital gain or loss. Treasury Regulations section 1.988–3(b) provides the procedure for making the election. Under *IRC section 988*(c)(1)(D)(ii), taxpayers may elect to have regulated futures contracts and certain options (which generally are not subject to section 988) treated as section 988 transactions. Treasury Regulations sections 1.988–1(a)(7)(iii) and (iv) provide the procedure for making that election. Under *IRC section 988*(c)(1)(E)(iii), a qualified fund may elect out of section 988 with respect to certain financial transactions. Treasury Regulations section 1.988–1(a)(8)(iv) provides the procedure for making that election. Under *IRC section 988*(d), taxpayers may receive special treatment allowing integration with respect to certain borrowings and property if the transactions are properly identified. The identification rules are in Treasury Regulations sections 1.988–5(a)(8), 1.988–5(b)(3), and 1.988–5(c)(2). Treasury Regulations section 1.988–2(a)(2)(v) allows an accrual basis taxpayer to make an election that provides special translation rules regarding the purchase and sale of stock or securities traded on an established securities market. Treasury Regulations section 1.988–2(b)(2)(iii)(B) provides an election allowing the translation of interest income and expense using a spot accrual convention.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and individuals and households.

Estimated Number of Responses: 5,000.

Estimated Time per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 3,333.

23. Title: Section 6662—Imposition of the Accuracy-Related Penalty.

OMB Number: 1545–1426.

Form Number: TD 8656.

Abstract: These regulations provide guidance on the accuracy-related penalty imposed on underpayments of tax caused by substantial and gross valuation misstatements as defined in Internal Revenue Code sections 6662(e) and 6662(h). Under section 1.6662–6(d) of the regulations, an amount is excluded from the penalty if certain requirements are met and a taxpayer maintains documentation of how a transfer price was determined for a transaction subject to Code section 482.

Current Actions: There is no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated annual recordkeeping burden hours: Section 482 is 125 hours and Section 6662(e) is 20,000 hrs.

Estimated annual burden time per recordkeeper: Section 482 is 15 minutes and Section 6662(e) is 8–15 hours.

Estimated Number of Respondents: Section 482 is 500 recordkeepers and Section 6662 (e) is 2000 recordkeepers.

24. Title: Conduit Arrangements Regulations.

OMB Number: 1545–1440.

Form Number: T.D. 8611.

Abstract: This regulation provides rules that permit the district director to recharacterize a financing arrangement as a conduit arrangement. The recharacterization will affect the amount of U.S. withholding tax due on financing transactions that are part of the financing arrangement. This regulation affects withholding agents and foreign investors who engage in multi-party financing arrangements.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 10,000 hours.

25. Title: Empowerment Zone Employment Credit.

OMB Number: 1545–1444.

Form Number: Form 8844.

Abstract: Employers who hire employees who live and work in one of the eleven designated empowerment zones can receive a tax credit for the first $15,000 of wages paid to each employee. Employers use Form 8844 to claim the empowerment zone and renewal community employment credit.

Current Actions: There is no change in the paperwork burden previously approved by the Office of Management and Budget (OMB). This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms and not-for-profit institutions.

Estimated Number of Respondents: 25.

Estimated Time per Respondent: 6 hrs., 33 min.

Estimated Total Annual Burden Hours: 158.

26. Title: Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)

OMB Number: 1545–1502.

Form Number: Form 5304–SIMPLE, Form 5305–SIMPLE, and Notice 98–4.

Abstract: Form 5304–SIMPLE is a model SIMPLE IRA agreement that was created to be used by an employer to permit employees who are not using a designated financial institution to make salary reduction contributions to a SIMPLE IRA described in *Internal Revenue Code section 408*(p). Form 5305–SIMPLE is also a model SIMPLE IRA agreement, but it is for use with a designated financial institution. Notice 98–4 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE IRA, including information regarding the notification and reporting requirements under Code section 408.

Current Actions: There are no changes to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations not-for-profit institutions, and individuals. Estimated Number of Respondents: 600,000.

Estimated Time per Respondent: 3 hours, 31 minutes.

Estimated Total Annual Burden Hours: 2,113,000.

27. Title: Entity Classification Election.

OMB Number: 1545–1516.

Form Number: 8832.

Abstract: An eligible entity that chooses not to be classified under the default rules or that wishes to change its current classification must file Form 8832 to elect a classification.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Responses: 5,000.

Estimated Time per Response: 7 hours, 10 minutes.

Estimated Total Annual Burden Hours: 35,900 hours.

28. Title: Long-Term Care and Accelerated Death Benefits.

OMB Number: 1545–1519.

Form Number: Form 1099–LTC.

Abstract: Under the terms of IRC sections 7702B and 101(g), qualified long-term care and accelerated death benefits paid to chronically ill individuals are treated as amounts received for expenses incurred for medical care. *IRC section 6050Q* requires the payer to report all such benefit amounts, specifying whether or not the benefits were paid in whole or in part on a per diem or other periodic basis without regard to expenses. Form 1099–LTC is used if any long-term care benefits, including accelerated death benefits are paid. Payers include insurance companies, governmental units, and viatical settlement providers.

Current Actions: There is no change to the existing collection. However, the estimated number of responses has increased based on the most current filing data.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and governments.

Estimated Number of Respondents: 3,000.

Estimated Time per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 94,438.

29. Title: Changes in Corporate Control and Capital Structure.

OMB Number: 1545–1814.

Form Number: 1099–CAP.

Abstract: A corporation whose control was acquired or who underwent a substantial change in capital structure uses Form 1099–CAP if it determines the shareholders may have to recognize gain from the cash, stock, or other property they received in exchange for the corporation's stock.

Current Actions: There are no changes being made to the form at this time. However, the agency is updating the estimated number of responses based on the most recent filing data.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 114.

Estimated Time per Respondent: 11 minutes.

Estimated Total Annual Burden Hours: 21 hours.

30. Title: Disclosure of Returns and Return Information to Designee of Taxpayer.

OMB Number: 1545–1816.

Regulation Project Number: TD 9054, as amended by TD 9618.

Abstract: Under section 6103(a), returns and return information are confidential unless disclosure is otherwise authorized by the Code. Section 6103(c), as amended in 1996 by section 1207 of the Taxpayer Bill of Rights II, *Public Law 104–168* (110 Stat. 1452), authorizes the IRS to disclose returns and return information to such person or persons as the taxpayer may designate in a request for or consent to disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. Disclosure is permitted subject to such requirements and conditions as may be prescribed by regulations. With the amendment in 1996, Congress eliminated the longstanding requirement that disclosures to designees of the taxpayer must be pursuant to the written request or consent of the taxpayer.

Current Actions: There are no changes to the regulation that would affect burden. However, the agency is updating the estimated number of responses based on recent collection data.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 9,000.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 1,800 hours.

31. Title: Excise Tax on Structured Settlement Factoring Transactions.

OMB Number: 1545–1826.

Project Number: Form 8876.

Abstract: Form 8876 is used to report structured settlement transactions and pay the applicable excise tax.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 5 hrs., 36 min.

Estimated Total Annual Burden Hours: 560.

32. Title: Systemic Advocacy Issue Submission.

OMB Number: 1545–1832.

Form Number: 14411.

Abstract: Systemic Advocacy Issue Submission Form, is an optional use form for taxpayers (individual and business), tax professionals, trade and business associations, etc. to submit systemic problems. These problems may pertain to experiences with the Internal Revenue Service's processes procedures or make legislative recommendations.

Current Actions: There are no changes to the existing collection.

Type of Review: Extension of a previously approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, Federal, State, Local or Tribal governments.

Estimated Number of Responses: 420.

Estimated Time Per Response: 48 minutes.

Estimated Total Annual Burden Hours: 336 hours.

33. Title: LKE (Like-Kind Exchanges) Auto Leasing Programs.

OMB Number: 1545–1834.

Revenue Procedure Number: 2003–39.

Abstract: Revenue Procedure 2003–39 provides safe harbors for certain aspects of the qualification under § 1031 of certain exchanges of property pursuant to LKE Programs for federal income tax purposes.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 8,600.

Estimated Average Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 8,600.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–16168 Filed 7–27–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Advisory Committee on Cemeteries and Memorials

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), National Cemetery Administration (NCA), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Cemeteries and Memorials (herein-after in this section referred to as ''the Committee'').

DATES: Nominations of qualified candidates are being sought to fill upcoming vacancies on the Committee. Nominations for membership on the Committee must be received **no later than 5 p.m. EST on August 30, 2022.**

ADDRESSES: All nominations should be mailed to C/O Faith Hopkins, Department of Veterans Affairs, National Cemetery Administration, 810 Vermont Ave. NW, (40A1), Washington, DC 20420, or faxed to (202) 273–6709.

FOR FURTHER INFORMATION CONTACT: Ms. Faith Hopkins, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, (40A1), Washington, DC 20420, telephone (202) 603–4499. A copy of Committee charter and list of the current membership can be obtained by contacting Ms. Hopkins or by accessing the website managed by NCA at: *http://www.cem.va.gov/cem/about/advisory_committee.asp.*

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth, the Committee responsibilities include:

(1) Advising the Secretary on VA's administration of burial benefits and the selection of cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits;

(2) Providing to the Secretary and Congress periodic reports outlining recommendations, concerns, and observations on VA's delivery of these benefits and services to Veterans;

(3) Meeting with VA officials, Veteran Service Organizations, and other stakeholders to assess the Department's efforts in providing burial benefits and outreach on these benefits to Veterans and their dependents;

(4) Undertaking assignments to conduct research and assess existing burial and memorial programs; to examine potential revisions or expansion of burial and memorial programs and services; and to provide advice and recommendations to the Secretary based on this research.

Authority: The Committee is authorized by 38 U.S.C. 2401 to provide advice to the Secretary of VA with respect to the administration of VA national cemeteries, soldiers' lots and plots, which are the responsibility of the Secretary, the erection of appropriate memorials and the adequacy of Federal burial benefits. The Secretary shall determine the number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that a term of service of any such member may not exceed three years. The Secretary may reappoint any such member for additional terms of service.

Membership Criteria and Qualification: NCA is requesting nominations for upcoming vacancies on the Committee. The Committee is composed of up to twelve members and several ex-officio members.

The members of the Committee are appointed by the Secretary of Veteran Affairs from the general public, including but not limited to:

(1) Veterans or other individuals who are recognized authorities in fields pertinent to the needs of Veterans;

(2) Veterans who have experience in a military theater of operations;

(3) Recently separated service members;

(4) Officials from Government, non-Government organizations (NGOs) and industry partners in the provision of memorial benefits and services, and outreach information to VA beneficiaries.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications, including but not limited to prior military experience and military deployments, experience working with Veterans, and experience in large and complex organizations, and subject matter expertise in the areas described above. We ask that nominations include information of this type so that VA can ensure diverse Committee membership.

Requirements for Nomination Submission: Nominations should be typed (one nomination per nominator). Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating the willingness to serve as a member of the Committee;

(2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) The nominee's curriculum vitae; and

(4) A summary of the nominee's experience and qualifications relative to the membership considerations described above.

Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive a stipend for attending Committee meetings, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of VA federal advisory committees is diverse in terms of points of view represented and the committee's capabilities. Appointments to this Committee shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identify, national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: July 25, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–16218 Filed 7–27–22; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Education

34 CFR Parts 600, 668, and 690
Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 668, and 690

[Docket ID ED–2022–OPE–0062]

RIN 1840–AD54, 1840–AD55, 1840–AD66

Institutional Eligibility, Student Assistance General Provisions, and Federal Pell Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend regulations for the Federal Pell Grant program, institutional eligibility, and student assistance general provisions. First, the Secretary proposes to establish regulations for Federal Pell Grants (Pell Grants or Pell) for Prison Education Programs (PEPs), to implement new statutory requirements to establish Pell Grant eligibility for a confined or incarcerated individual enrolled in a PEP. Second, the Secretary proposes to revise the Title IV Revenue and Non-Federal Education Assistance Funds regulations (referred to as ''90/10'' or the ''90/10 Rule'') to implement the statutory change in the American Rescue Plan Act of 2021 (ARP). The Secretary further proposes to amend which non-Federal funds can be counted when determining compliance with the 90/10 rule to align allowable non-Federal revenue more closely with statutory intent. Finally, the Secretary proposes regulations to clarify the process for consideration of changes in ownership and control, to promote compliance with the Higher Education Act of 1965, as amended (HEA), and related regulations and reduce risk for students and taxpayers, as well as institutions contemplating or undergoing such a change.

DATES: We must receive your comments on or before August 26, 2022.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov.* Information on using *Regulations.gov*, including instructions for finding a rule on the site and submitting comments, is available on the site under ''FAQ.'' If you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

The Department strongly encourages you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), the Department strongly encourages you to convert the PDF to ''print-to-PDF'' format, or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions to assist in the rulemaking process.

Privacy Note: The Department's policy is to generally make comments received from members of the public available for public viewing at *www.regulations.gov.* Therefore, commenters should include in their comments only information about themselves that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. If, for example, your comment describes an experience of someone other than yourself, please do not identify that individual or include information that would allow readers to identify that individual. The Department will not make comments that contain personally identifiable information (PII) about someone other than the commenter publicly available on *www.regulations.gov* for privacy reasons. This may include comments where the commenter refers to a third-party individual without using their name if the Department determines that the comment provides enough detail that could allow one or more readers to link the information to the third party. If your comment refers to a third-party individual, to help ensure that your comment is posted, please consider submitting your comment anonymously to reduce the chance that information in your comment about a third party could be linked to the third party. The Department will also not make comments that contain threats of harm to another person or to oneself available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For PEPs: Aaron Washington. Telephone (202) 453–7241. Email: *Aaron.Washington@ed.gov.* For 90/10: Ashley Clark. Telephone: (202) 453–7977. Email: *Ashley.Clark@ed.gov.* For Change in Ownership: Brian Schelling. Telephone: (202) 453–5966. Email: *Brian.Schelling@ed.gov.* You may also email your questions to *Sophia.Mcardle@ed.gov,* but as described above, comments must be submitted via *www.regulations.gov.* The mailing address for all of the contacts above is U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 2nd Floor, Washington, DC 20202.

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

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action:

The Department convened two negotiated rulemaking committees between October 4, 2021 and March 18, 2022 [1] to consider proposed regulations for the Federal Student Aid programs authorized under title IV of the HEA (title IV, HEA programs): the Affordability and Student Loans Committee and the Institutional and Programmatic Eligibility Committee (see the section under *Negotiated Rulemaking* for more information on the negotiated rulemaking process). Both Committees operated by consensus, defined as no dissent by any member when votes are taken. Consensus votes were taken issue by issue. Consensus was reached on the topic of Pell Grants for Prison Education Programs by the Affordability and Student Loans Committee. Consensus was also reached on the topic of Title IV revenue and non-Federal education assistance funds (90/10 Rule) by the Institutional and Programmatic Eligibility Committee.

On July 13, 2022, the Department published in the **Federal Register** (87 FR 41878) a notice of proposed rulemaking (NPRM) related to Interest Capitalization, Public Service Loan Forgiveness (PSLF), Borrower Defense to Repayment, Total and Permanent Disability, Pre-dispute Arbitration and Class Action Waivers, Closed School Discharge, and False Certification Discharge (''NPRM 1''), topics which were considered by the Affordability and Student Loans Committee. This NPRM addresses Prison Education Programs (PEPs), which were also considered by the Affordability and Student Loans Committee, and the 90/10 rule and institutional changes in ownership, which were considered by the Institutional and Programmatic Eligibility Committee. Regulations related to income-driven repayment will be included in a separate NPRM.

[1] *Negotiated Rulemaking for Higher Education 2020–21.*

These proposed regulations address three topics: Pell Grants for PEPs, the 90/10 rule, and institutional changes in ownership. The proposed PEP regulations, on which the Affordability and Student Loans Committee reached consensus, would implement statutory changes that extend Pell Grant eligibility to confined or incarcerated individuals who enroll in qualifying PEPs. The proposed 90/10 regulations, on which the Institutional and Programmatic Eligibility Committee reached consensus, would implement statutory changes that require proprietary institutions to obtain at least 10 percent of their revenue from sources other than Federal education assistance funds and would more closely align allowable non-Federal revenue with statutory intent. Finally, the Department proposes revisions to current regulations related to changes in ownership to ensure a clearer and more defined process.

Prison Education Programs

The proposed PEP regulations would provide the Department and stakeholders, including students, correctional agencies and institutions, postsecondary institutions, accrediting agencies, and related organizations, with a detailed and clear framework for how to implement section 484(t) of the HEA. The Department is proposing to amend the regulations in §§ 600.2, 600.10, 600.21, 668.8, 668.32, 668.43, 668 subpart P, and 690.62. A new legal provision takes effect July 1, 2023, that addresses prison education programs (PEP). Section 484(t) of the HEA will provide PEP requirements that include: (1) a prohibition on proprietary institutions offering PEPs; (2) the definitions of a ''confined or incarcerated individual'' and a ''prison education program''; (3) the program approval process by the Bureau of Prisons, State Department of Corrections, or other entity that is responsible for overseeing the correctional facility (these entities are referred to throughout this NPRM as the oversight entity); (4) a credit transfer requirement for prison education programs; (5) a prohibition against program offerings by institutions that are subject to adverse actions by the Department, their accrediting agency, or the relevant State; (6) requirements that prison education programs offer educational programming that satisfies professional licensure or certification, as applicable; (7) student enrollment restrictions for programs in which there would be prohibitions on ultimate licensure or employment; (8) the requirement that confined or incarcerated individuals be enrolled in an eligible prison education program in order to access a Pell Grant; and (9) various Department reporting requirements for postsecondary institutions offering prison education programs.

The proposed regulations would clarify and implement these statutory requirements by setting clear standards for postsecondary institutions offering PEPs and outlining the steps that must be taken to develop and implement such programs in order to gain access to Pell Grant funds and maintain that access over time. The proposed regulations would also ensure that institutions report needed data to the Department, which would assist in assessing program outcomes. The proposed rule would establish important guardrails for confined or incarcerated students and taxpayers to protect students from enrolling in programs that would not permit them to benefit by finding employment in the field after graduating and being released and to prevent taxpayer funds from financing such programs. It would also outline title IV program requirements for PEPs related to States and accrediting agencies.

Section 484(t)(1)(B)(iii) of the HEA requires an oversight entity, defined in the proposed regulations as a state department of corrections or other entity responsible for overseeing correctional facilities or the Federal Bureau of Prisons, to determine that a prison education program that it approves is ''operating in the best interest'' of the confined or incarcerated students under its supervision. Congress outlined indicators of ''best interest''—both inputs and outcomes—which are explained in the SUMMARY OF PROPOSED CHANGES section below. Because oversight entities may not have previously assessed some of the ''best interest'' indicators outlined in statute, such as student earnings and job placement post-release, the proposed regulations would provide needed clarity on how to implement this requirement. To ensure that program assessment is thorough and well-informed, these regulations would require oversight entities to seek input from relevant stakeholders in making the ''best interest'' determination.

90/10 Rule

The proposed 90/10 regulations would amend § 668.28 to change how proprietary institutions calculate and report to the Department the percentage of their revenue that comes from Federal sources, in accordance with section 487(a) of the HEA. Section 487(a) establishes the requirement that proprietary institutions derive not less than 10 percent of their revenue from non-Federal sources. Section 487(d) of the HEA: (1) defines how proprietary institutions calculate the percentage of their revenue that is derived from non-Federal sources; (2) sets out sanctions for proprietary institutions that fail to meet the requirement in section 487(a); (3) requires the Secretary to publicly disclose on the College Navigator website proprietary institutions that fail to meet the requirement; and (4) requires that the Secretary submit a report to Congress that contains the Federal and non-Federal revenue amounts and percentages for each proprietary institution.

The ARP amended these sections to require proprietary institutions to include other sources of Federal revenue, in addition to title IV revenue from the Department, in the calculation that proprietary institutions make to determine if they are in compliance with the 90/10 rule. These proposed regulatory amendments would align the regulations with this statutory change and provide periodic updates to proprietary institutions regarding which Federal funds should be included in their calculations.

Additionally, the proposed regulations would amend how proprietary institutions calculate 90/10 to address the permissibility of practices that some proprietary institutions have employed to alter their revenue calculation or inflate their non-Federal revenue percentage. The NPRM would create a new requirement for when proprietary institutions must request and disburse title IV student aid funds from the Department to ensure that proprietary institutions are not delaying disbursements to the next fiscal year. The proposed regulations would also more closely align allowable non-Federal revenue with statutory intent by clarifying (1) allowable non-Federal revenue generated from programs and activities that can count for the purposes of 90/10; (2) how schools must apply Federal funds to student accounts and determine the funds' inclusion in the Federal revenue percentage of 90/10; (3) which revenue generated from institutional aid can count as non-Federal revenue for purposes of 90/10; and (4) funds that must be excluded from the calculation determining 90/10 compliance.

The proposed regulations would also modify the steps that proprietary institutions must take if they fail to derive at least 10 percent of their revenue from allowable non-Federal sources by requiring them to notify students of the failure and the students'

potential loss of title IV aid at that proprietary institution. The proposed regulations would also provide the steps that proprietary institutions that determined they met the 90/10 requirement for the preceding fiscal year must take to notify the Secretary immediately, if they obtain information after the reporting deadline indicating they failed 90/10. Lastly, under the proposed regulations, a proprietary institution would be liable for repaying all title IV funds disbursed for the fiscal year after it became ineligible to participate in the title IV program due to failing 90/10.

Changes in Ownership

To address the risks that some changes in ownership of postsecondary institutions present to students and taxpayers and to address the growing complexity of those transactions, the Department proposes under the authority of section 498(i) of the HEA to amend regulations covering changes in ownership in §§ 600.2, 600.4, 600.20, 600.21, and 600.31. These changes would modify the definitions of ''additional location,'' ''branch campus,'' ''main campus,'' ''distance education'' locations, and ''nonprofit institution,'' as well as the terms ''closely-held corporation,'' ''ownership or ownership interest,'' ''parent,'' ''person,'' and ''other entities'' in the context of changes in ownership that result in a change in control, where the individual or entity with control has the power to direct the management or policies of the institution.

Institutions would be required to provide a minimum 90-day notice to the Department when they are to undergo a change in control, and the Department may apply necessary terms to a proposed new temporary provisional Program Participation Agreement (TPPPA) after the change and until a decision on the pending application for approval of the change is issued. The proposed regulations would also increase transparency for changes in ownership that do not constitute a change of control by increasing the reporting requirements to the Department on such transactions at lower levels.

Summary of the Major Provisions of This Regulatory Action

The proposed regulations would make the following changes.

- Make updates to appropriate cross-references. Prison Education Programs (PEP) (§§ 600.2, 600.7, 600.10, 600.21, 668.8, 668.32, 668.43, 668.234–242, 690.62)
- Extend access to Pell Grants for confined or incarcerated individuals in qualifying postsecondary education programs by defining an eligible PEP based on the statutory requirements.
- Clarify that only public or private nonprofit institutions as defined in § 600.4, or vocational institutions as defined in § 600.6, may offer eligible PEPs and require that those PEPs offered at a correctional institution be reported to the Department as an ''additional location.''
- Amend requirements for postsecondary institutions to obtain and maintain a waiver from the Secretary to allow students who are confined or incarcerated to exceed 25 percent of the institution's regular student enrollment.
- For a PEP that is designed to meet educational requirements for a specific professional license or certification, require disclosures to students of typical State or Federal prohibitions on the licensure or employment of formerly incarcerated individuals.
- Prohibit institutions from enrolling a confined or incarcerated individual in a PEP that is designed to lead to licensure or employment in a specific job or occupation where State or Federal law would prohibit that individual from licensure or employment based on the type of the criminal conviction for which the student has been confined or incarcerated.
- Define the process and the factors that the oversight entity would use to determine if a PEP is operating in the best interest of the confined or incarcerated individuals over which they have supervision, including consulting with interested third parties and conducting periodic re-evaluations.
- Define the requirements for approval from the Secretary and the IHE's accrediting agency for the first PEP at the institution's first two additional locations at prison facilities.
- Require a postsecondary institution to obtain and report to the Department the release or transfer date of all confined or incarcerated individuals who participated in its PEP.
- Outline the process for winding down eligible programs for confined or incarcerated individuals prior to July 1, 2023, that are not operating at a Federal or State correctional facility and are not approved as eligible prison education programs.
- Outline the process a postsecondary institution must follow to reduce a Pell Grant award that exceeds the confined or incarcerated individual's cost of attendance. Title IV Revenue and Non-Federal Education Assistance Funds (90/10 Rule) (§ 668.28)
- Revise the revenue calculation methodology in the 90/10 rule by changing references to ''title IV revenue'' to ''Federal revenue'' where appropriate to align with the statutory amendment that revises the 90/10 revenue requirement to include all Federal revenue.
- Outline how the Department would publish, and update as necessary, which Federal funds it expects proprietary institutions to include in their 90/10 calculation.
- Create a new requirement for when proprietary institutions must request and disburse title IV, HEA program funds to prevent proprietary institutions from delaying disbursements to reduce their Federal revenue percentage for a fiscal year in order to meet the 90/10 revenue requirement.
- Clarify the allowable revenue generated from programs and activities that can be counted as non-Federal revenue for purposes of the 90/10 revenue requirement to provide additional consumer protection.
- Revise how proprietary institutions apply funds to student accounts and determine the funds' inclusion in the 90/10 revenue requirement calculation to incorporate statutory changes, clarify how grants from non-Federal public agencies that include Federal funds must be treated, and add additional consumer protection measures.
- Revise the provisions governing which revenue generated from institutional aid can be included in the 90/10 revenue requirement calculation to remove sections that are no longer applicable, codify existing practices in regulation, promote consumer protection measures, and close potential loopholes related to Income Share Agreements (ISAs) or other alternative financing agreements issued by the institution or a related party.
- Revise the provisions governing which funds must be excluded from a proprietary institution's calculation of its revenue percentage to remove regulations that no longer apply and to limit certain types of revenues that proprietary institutions have employed to alter their revenue calculation.
- Revise the steps that a proprietary institution must take to better protect students and taxpayers if it does not generate 10 percent or more of its revenue from allowable non-Federal sources in a fiscal year. The proposed regulations would also provide reporting procedures for proprietary institutions that learn, based on information received after the initial 45-day reporting period, that they failed the revenue requirement for the previous fiscal year.

Changes in Ownership (CIO) (§§ 600.2, 600.4, 600.20, 600.21, 600.31)

- Clarify the definitions of ''additional location,'' ''branch campus,'' ''main campus,'' ''distance education'' locations, and ''nonprofit institution'' and, for the last term, describe characteristics of institutions that do not generally meet the definition of a ''nonprofit institution.''
- Require that institutions provide the Department with 90 days' notice of an impending change in ownership, ensure that accreditation and State licensure are in effect as of the day before the proposed change, and codify practices on submission of financial statements and provision of financial protection.
- Explain the terms by which a TPPPA may be extended to institutions seeking a change in ownership.
- Clarify what constitutes a change in ownership and, more narrowly, a change in control, distinguishing between natural persons and entities in § 600.21 and the conditions under which they constitute a change of control.
- Refine the definitions of the terms ''ownership or ownership interest,'' ''parent,'' and ''other entities,'' as applied to changes in ownership, and add ''trust'' to the definition of ''person.''
- Add to the list of covered transactions the acquisition of another institution and clarify the application of the regulations in cases of resignation or death of an owner.

Costs and Benefits: As further detailed in the Regulatory Impact Analysis, the proposed regulations would have significant impacts on students, borrowers, educational institutions, taxpayers, and the Department.

Proposed PEP regulations would benefit incarcerated individuals, taxpayers, and communities by creating higher employment and earnings, and lower recidivism rates, for those who enroll in higher education programs in prison, as described in the Regulatory Impact Analysis of this proposed regulation. Institutions that offer programs in correctional facilities and do not currently receive Pell Grants sometimes bear some or all of the costs of that programming. Institutions that do not currently receive Pell funds for these programs would benefit from these revisions. Pell Grant transfers are estimated to increase by $1.1 billion from these programs. There would be increased costs for the Department due to various requirements in the proposed regulations including, but not limited to: data collection and dissemination, approval of prison education programs, and required reporting to Congress and the public. There would be increased costs to the oversight entity due to the required ''best interest determination'' defined in proposed 34 CFR 668.241. There would be no direct costs to students, completing the FAFSA® is free (though there is some burden associated with completing the form) and Pell Grant program does not need to be repaid.

Under the proposed 90/10 revisions, veteran borrowers and students would benefit as proprietary institutions' incentive to aggressively recruit GI Bill and Department of Defense (DOD) Tuition Assistance recipients would be greatly reduced because Federal assistance for those students was treated differently than title IV funds in the 90/10 revenue calculation. The Department is aware that some proprietary institutions have sought to enroll additional VA or DOD recipients because their dollars provide a larger cushion to pursue more title IV, HEA funds, sometimes to the detriment of those veterans and service members. The proposed regulatory changes would remove that incentive by counting all Federal education assistance funds on the 90 side of the 90/10 calculation. These changes would produce some savings to the taxpayer in the form of reduced expenditures of title IV, HEA aid to institutions that are not able to adapt and would lose eligibility. As indicated in the RIA, we estimate transfers would be reduced by −$292 million from the changes to the 90/10 provisions. The proposed revisions would further decrease proprietary institutions' incentive to rely on potentially costly student financing options to meet 90/10 requirements. Costs to institutions would include the need to ensure compliance with the proposed regulations. Institutions unable to generate sufficient non-Federal revenues through their eligible program may have to create programs that are not title IV eligible to generate revenue to meet 90/10 requirements.

The proposed revisions to CIO would benefit institutions and the Department by clarifying requirements as well as providing timely feedback for those undergoing CIO transactions. Students and borrowers would benefit from the 90-day CIO notice requirement that ensures students receive important information timely that would impact their education and that they can make future educational decisions based on that knowledge. Costs to institutions would include compliance and the paperwork burden associated with the increased reporting and disclosure requirements.

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities. The Department also welcomes comments on any alternative approaches to the subjects addressed in the proposed regulations.

During and after the comment period, you may inspect public comments about these proposed regulations by accessing *Regulations.gov*.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Prison Education Program (PEP) (§§ 600.2, 600.7, 600.10, 600.21, 668.43, 668.234–242, 690.62)

The Pell Grant program was established in 1972. Pell Grants are awarded to undergraduate students who document financial need and who have not earned a bachelor's, graduate, or professional degree. A Pell Grant does not have to be repaid, except under certain circumstances.

Pell Grant eligibility for confined or incarcerated students has changed over time. Before 1994, individuals in correctional facilities were able to receive Pell Grants. Thereafter, the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) made individuals confined or

incarcerated in a Federal or State correctional facility ineligible to receive Pell Grants. Individuals in any other type of correctional facility, for example local jails, reformatories, work farms, and juvenile justice facilities, remained eligible to receive Pell Grants.

A growing body of research has demonstrated the value of quality higher education programs for confined or incarcerated individuals. Incarcerated people who participate in postsecondary education programs are 48 percent less likely to return to prison than those who do not.[2] As incarcerated people achieve higher levels of education, the likelihood of recidivism decreases.[3] This research also indicates that prison education programs increase the literacy and numeracy skills of incarcerated students and improve their employment outcomes.[4]

In 2015, the Department used its authority under the HEA to allow a limited number of postsecondary institutions to seek a waiver of the statutory restriction on Pell Grant eligibility for confined or incarcerated students. Conducted under the Department's Experimental Sites Initiative authority, this experimental waiver is known as the Second Chance Pell experiment.[5] Between 2015 and 2022, the Department expanded the experiment twice to include additional participating postsecondary institutions. From 2016 to 2021, over 28,000 students enrolled in postsecondary education through Second Chance Pell, with more than 9,000 students earning a certificate or diploma, associate degree, or bachelor's degree.[6]

The First Step Act of 2018 (Pub. L. 115–391) sought to improve criminal justice outcomes, as well as to reduce the size of the Federal prison population while also creating mechanisms to maintain public safety. It required the Federal government to develop frameworks around recidivism reduction, including a provision about educational programs, to offer incentives for success of confined or incarcerated individuals, and Federal correctional reforms, among other things.

The Consolidated Appropriations Act, 2021 added section 484(t) to the HEA to formally establish Pell Grant eligibility for confined or incarcerated individuals, as long as they are enrolled in a PEP as defined under the HEA. We propose regulations to implement the statutory requirements allowing access to Federal Pell Grants for individuals who are confined or incarcerated when enrolled in programs that meet necessary standards.

Title IV Revenue and Non-Federal Education Assistance Funds (90/10 Rule) (§ 668.28)

The HEA has required that proprietary institutions derive a minimum percentage of their revenue from non-title IV sources since the Higher Education Amendments of 1992.[7] Originally, proprietary institutions were required to derive at least 15 percent of their revenue in a fiscal year from non-title IV sources (originally referred to as the 85/15 rule to reflect that institutions could receive up to 85 percent of funds from title IV, HEA sources and were required to receive at least 15 percent of funds from non-title IV, HEA sources). The Higher Education Amendments in 1998 reduced this requirement to at least 10 percent of a proprietary institution's revenue in a fiscal year that must come from non-title IV sources (now referred to as the 90/10 rule).[8]

Proprietary institutions are required to report, as a footnote in their audited financial statements, the percentage of their revenue derived from title IV, HEA program funds for the fiscal year, the dollar amount of the numerator and denominator of the ratio, and the individual revenue amounts from the sources of allowable title IV and non-title IV funds. They must also notify the Secretary within 45 days after the end of their fiscal year if they fail to meet the 90/10 requirement for that fiscal year. When the 85/15 statutory provision became effective in 1995, proprietary institutions became ineligible to participate in the title IV program after failing to meet the revenue requirement for one year. The Higher Education and Opportunity Act of 2008 (HEOA) amended this so that proprietary institutions would only lose eligibility to participate in the title IV programs if they failed for two consecutive fiscal years.[9]

Over the last decade, lawmakers and other stakeholders have raised concerns that counting Federal funds provided by the Department of Defense (DOD) and the Department of Veterans Affairs (VA) as non-title IV revenue resulted in some proprietary institutions aggressively marketing their programs to service members and veterans, as well as military-connected family members.[10] By enrolling those students, policymakers noted the institutions would be able to offset title IV aid with other Federal education aid without running afoul of the 90/10 rule. In other cases, proprietary institutions offered institutional loans, opened or closed locations to reach different student populations less dependent upon title IV funds, or engaged in other activities that allowed them to meet the 90/10 rule. In some reported cases, proprietary institutions using these strategies allegedly also engaged in aggressive, abusive, or deceptive marketing practices.[11]

In 2021, the ARP modified the 90/10 calculation by requiring proprietary institutions to derive at least 10 percent of their revenue from non-Federal sources (as opposed to non-title IV funds). The Department's proposed regulations implement those changes and more closely align the 90/10 calculation with the statutory intent of the provision.

Change in Ownership (CIO) (§§ 600.2, 600.4, 600.20, 600.21, 600.31)

In recent years the Department has seen an increase in the number of institutions applying for changes in ownership, many of which result in a change in the entity or persons controlling the institution and therefore

[2] Bozick, R., Steele, J., Davis, L., and Turner, S., ''Does Providing Inmates with Education Improve Postrelease Outcomes? A Meta-Analysis of Correctional Education Programs in the United States,'' *Journal of Experimental Criminology* 14, no. 3 (2018), 389–428. *https://www.rand.org/pubs/external_publications/EP67650.html#:~:text=Conclusion,program%20is%20to%20reduce%20recidivism.*

[3] Ibid.

[4] Davis, L., Bozick, R., Steele, J., Saunders, J., Miles, J., ''Evaluating the Effectiveness of Correctional Education,'' Rand Corp. (2013), *https://www.rand.org/pubs/research_reports/RR266.html* (pages41-47); Ositelu, M., ''Equipping Individuals for Life Behind Bars,'' *New America* (last updated Nov. 2019), *https://www.newamerica.org/education-policy/reports/equipping-individuals-life-beyond-bars/* (pages 49–53); Oakford, P., Brumfield, C., Goldvale, C., Tatum, L., diZerega, M., and Patrick, F., ''Investing in Futures: Economic and Fiscal Benefits of Postsecondary Education in Prison,'' Vera Institute of Justice (Jan. 2019) (''Investing in Futures''), *https://www.vera.org/downloads/publications/investing-in-futures.pdf.*

[5] Second Chance Pell Experiment, *https://experimentalsites.ed.gov/exp/approved.html.*

[6] Chesnut, K., Taber, N., and Quintana, J. ''Second Chance Pell: Five Years of Expanding Higher Education Programs in Prisons, 2016–2021.'' Vera Institute of Justice, May 2022.

[7] Public Law 102–325.

[8] Public Law 105–244.

[9] Public Law 110–315.

[10] See, for example, *https://www.nytimes.com/2011/09/22/opinion/for-profit-colleges-vulnerable-gis.html*; *https://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf.*

[11] See, for example, *https://www.chronicle.com/article/for-profit-college-marketer-settles-allegations-of-preying-on-veterans/*; *https://www.insidehighered.com/quicktakes/2015/10/09/defense-department-puts-u-phoenix-probation*; *https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-settlement-itt-tech-lender-illegal-student*; and *https://files.eric.ed.gov/fulltext/ED614219.pdf.*

the policies or management of the institution. In a few cases, those newly in control of an institution also sought a conversion in status from proprietary to nonprofit or public.

As reported in 2020 by the Government Accountability Office (GAO), between January 2011 and August 2020, of 59 changes of ownership (involving 20 separate transactions) involving a conversion from a for-profit entity to a nonprofit entity, one entire chain that comprised 13 separate institutions was granted temporary continued access to title IV, HEA aid, but ceased operations prior to the Department reaching a decision on whether to approve the requested conversion to nonprofit status.[12] Three-fourths were sold to a nonprofit entity that had not previously operated an institution of higher education, increasing the risk that students may not get the educational experience for which they are paying. One-third had what GAO termed ''insider involvement'' in the purchasing nonprofit organization (*i.e.,* someone from the former for-profit ownership was also involved with the nonprofit purchaser), suggesting greater risk of impermissible benefits to those insiders. Altogether, the 59 institutions that underwent a change in ownership resulting in a conversion received more than $2 billion in Award Year 2018–19 in taxpayer-financed Federal student aid.

Based on the GAO report and other information, the Department has determined it is necessary to reevaluate the relevant policies to accommodate the increased complexity of changes in ownership arrangements and to mitigate the greater risk to students and taxpayers when institutions fail to meet Federal requirements. These proposed regulations would clarify the existing definition of a ''nonprofit institution'' to ensure particularly that institutions converting from proprietary status meet the standards to qualify as a nonprofit, including to avoid providing net earnings of the institution to a private entity or person; establish clearer up-front requirements for applications for changes in ownership; and provide for greater clarity in the procedures the Department follows in reviewing changes in ownership for continued eligibility for title IV aid.

[12] GAO Report, GAO–21–89, ''Higher Education: IRS and Education Could Better Address Risks Associated with Some For-Profit College Conversions'', Dec. 31, 2020. Accessed at *https://www.gao.gov/products/gao-21-89.*

Public Participation

The Department has significantly engaged the public in developing this NPRM, including through review of oral and written comments submitted by the public during four public hearings. During each negotiated rulemaking session, we provided opportunities for public comment at the end of each day. Additionally, during each negotiated rulemaking session, non-Federal negotiators obtained feedback from their stakeholders that they shared with the negotiating committee.

On May 26, 2021, the Department published a notice in the **Federal Register** (86 FR 28299) announcing our intent to establish multiple negotiated rulemaking committees to prepare proposed regulations on the affordability of postsecondary education, institutional accountability, and Federal student loans.

The Department developed a list of proposed regulatory provisions for an Affordability and Student Loans Committee (Committee 1) and an Institutional and Programmatic Eligibility Committee (Committee 2) based on advice and recommendations submitted by individuals and organizations in testimony at three virtual public hearings held by the Department on June 21 and June 23–24, 2021. An additional virtual public hearing on the 90/10 rule was held on October 26–27, 2021.

Additionally, the Department accepted written comments on possible regulatory provisions that were submitted directly to the Department by interested parties and organizations. You may view the written comments submitted in response to the May 26, 2021, **Federal Register** notice on the Federal eRulemaking Portal at *www.regulations.gov,* within docket ID ED–2021–OPE–0077. Instructions for finding comments are also available on the site under ''FAQ.''

Transcripts of the public hearings can be accessed at *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html?src=rn.*

Negotiated Rulemaking

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting programs authorized by title IV of the HEA. After obtaining extensive input and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Secretary, in most cases, must engage in the negotiated rulemaking process before publishing proposed regulations in the **Federal Register**. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without substantive alteration a defined group of regulations on which the negotiators reached consensus—unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.*

The Department held two separate negotiated rulemakings related to this NPRM. The negotiated rulemaking session for Committee 1 consisted of three rounds of negotiations that lasted five days each, as well as two subcommittee meetings specific to the PEP proposed regulations that lasted three days each. The negotiated rulemaking session for Committee 2 consisted of three rounds of negotiations, the first of which was held over four extended days, while the latter two were five days each.

With respect to Committee 1, on August 10, 2021, the Department published a notice in the **Federal Register** (86 FR 43609) announcing its intention to establish the committee to prepare proposed regulations for the title IV, HEA programs. The notice set forth a schedule for Committee 1 meetings and requested nominations for individual negotiators to serve on the negotiating committee. In the notice, we announced the topics that Committee 1 would address. We also announced the creation of the PEP Subcommittee (Subcommittee) and requested nominations for individual negotiators and others with relevant expertise to serve on the Subcommittee.

Committee 1 included the following members, representing their respective constituencies:

- *Accrediting Agencies:* Heather Perfetti, Middle States Commission on Higher Education, and Michale McComis (alternate), Accrediting Commission of Career Schools and Colleges.
- *Dependent Students:* Dixie Samaniego, California State University, and Greg Norwood (alternate), Young Invincibles.
- *Departments of Corrections:* Anne L. Precythe, Missouri Department of Corrections.
- *Federal Family Education Loan Lenders and/or Guaranty Agencies:* Jaye O'Connell, Vermont Student Assistance Corporation, and Will Shaffner

(alternate), Higher Education Loan Authority of the State of Missouri.

- *Financial Aid Administrators at Postsecondary Institutions:* Daniel Barkowitz, Valencia College, and Alyssa A. Dobson (alternate), Slippery Rock University.
- *Four-Year Public Institutions:* Marjorie Dorimé-Williams, University of Missouri, and Rachelle Feldman (alternate), University of North Carolina at Chapel Hill.
- *Independent Students:* Michaela Martin, University of La Verne, and Stanley Andrisse (alternate), Howard University.
- *Individuals with Disabilities or Groups Representing Them:* Bethany Lilly, The Arc of the United States, and John Whitelaw (alternate), Community Legal Aid Society.
- *Legal Assistance Organizations that Represent Students and/or Borrowers:* Persis Yu, National Consumer Law Center, and Joshua Rovenger (alternate), Legal Aid Society of Cleveland.
- *Minority-serving Institutions:* Noelia Gonzalez, California State University.
- *Private Nonprofit Institutions:* Misty Sabouneh, Southern New Hampshire University, and Terrence S. McTier, Jr. (alternate), Washington University.
- *Proprietary Institutions:* Jessica Barry, The Modern College of Design in Kettering, Ohio, and Carol Colvin (alternate), South College.
- *State Attorneys General:* Joseph Sanders, Illinois Board of Higher Education, and Eric Apar (alternate), New Jersey Department of Consumer Affairs.
- *State Higher Education Executive Officers, State Authorizing Agencies, and/or State Regulators:* David Tandberg, State Higher Education Executive Officers Association, and Suzanne Martindale (alternate), California Department of Financial Protection and Innovation.
- *Student Loan Borrowers:* Jeri O'Bryan-Losee, United University Professions, and Jennifer Cardenas (alternate), Young Invincibles.
- *Two-year Public Institutions:* Robert Ayala, Southwest Texas Junior College, and Christina Tangalakis (alternate), Glendale Community College.
- *U.S. Military Service Members and Veterans or Groups Representing Them:* Justin Hauschild, Student Veterans of America, and Emily DeVito (alternate), The Veterans of Foreign Wars.
- *Federal Negotiator:* Jennifer M. Hong, U.S. Department of Education.

The Department also invited nominations for two advisors. These advisors were not voting members of Committee 1 and did not impact the consensus vote; however, they were consulted and served as a resource. The advisors were:

- Rajeev Darolia, University of Kentucky, for issues related to economic and/or higher education policy analysis and data.
- Heather Jarvis, Fosterus, for issues related to qualifying employers on the topic of Public Service Loan Forgiveness.

The Subcommittee included the following members, representing their respective constituencies:

- *Consumer Advocacy Organizations:* Belinda Wheeler, Vera Institute of Justice.
- *Financial Aid Administrators:* Kim Cary, Ozarks Technical Community College.
- *Formerly Incarcerated Students:* Stanley Andrisse, Howard University College of Medicine.
- *Groups That Represent Incarcerated Students:* Terrell Blount, Formerly Incarcerated College Graduates Network.
- *Postsecondary Institutions that are PEP Providers:* Terrence S. McTier, Jr., Washington University.
- *State Correctional Education Directors:* Marisa Britton-Bostwick, Montana Department of Corrections.
- *State Higher Education Executive Officers:* Angie Paccione, Colorado Department of Higher Education.
- *State Departments of Corrections:* Anne L. Precythe, Director of the Missouri Department of Corrections.
- *Department of Education Representative:* Aaron Washington, U.S. Department of Education.

Committee 1 met to develop proposed regulations in October, November, and December 2021. During the second session, a Committee 1 member petitioned to add another constituency, State Departments of Corrections, to Committee 1 and the Subcommittee. Committee 1 voted to add that constituency to the groups represented at the Committee and Subcommittee.

The Department tasked the Subcommittee with making recommendations to the full Committee on issues related to PEPs. The Subcommittee met in October and November 2021.

At its first meeting, Committee 1 reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that Committee 1 would operate by consensus. The protocols defined consensus as no dissent by any member of Committee 1 and noted that consensus votes would be taken issue by issue.

Committee 1 reviewed and discussed the Department's drafts of regulatory language and alternative language and suggestions proposed by negotiators and Subcommittee members. Two members of the Subcommittee briefed the committee on the Subcommittee's work and provided extensive written materials for Committee 1's consideration. At the final meeting on December 10, 2021, Committee 1 reached consensus on the Department's proposed regulations regarding PEPs. Committee 1 also reached consensus on three other issues that are not included in this publication: total and permanent disability discharge; elimination of interest capitalization for non-statutory capitalization events; and false certification discharge. For more information on the negotiated rulemaking sessions, including the work of the Subcommittee, please visit: *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.*

With respect to Committee 2, on December 8, 2021, the Department published a notice in the **Federal Register** (86 FR 69607) announcing its intention to establish a second Committee, the Institutional and Programmatic Eligibility Committee, to prepare proposed regulations for the title IV, HEA programs. The notice set forth a schedule for Committee 2 meetings and requested nominations for individual negotiators to serve on the negotiating Committee. In the notice, the Department announced the topics that Committee 2 would address.

Committee 2 included the following members, representing their respective constituencies:

- *Accrediting Agencies:* Jamienne S. Studley, WASC Senior College and University Commission (WSCUC), and Laura Rasar King (alternate), Council on Education for Public Health.
- *Civil Rights Organizations:* Amanda Martinez, UnidosUS.
- *Consumer Advocacy Organizations:* Carolyn Fast, The Century Foundation, and Jaylon Herbin (alternate), Center for Responsible Lending.
- *Financial Aid Administrators at Postsecondary Institutions:* Samantha Veeder, University of Rochester, and David Peterson (alternate), University of Cincinnati.
- *Four-Year Public Institutions of Higher Education:* Marvin Smith, University of California, Los Angeles, and Deborah Stanley (alternate), Bowie State University.
- *Legal Assistance Organizations that Represent Students and/or Borrowers:* Johnson Tyler, Brooklyn Legal Services, and Jessica Ranucci (alternate), New York Legal Assistance Group.
- *Minority-Serving Institutions:* Beverly Hogan, Tougaloo College

(retired), and Ashley Schofield (alternate), Claflin University.

• *Private, Nonprofit Institutions of Higher Education:* Kelli Perry, Rensselaer Polytechnic Institute, and Emmanual A. Guillory (alternate), National Association of Independent Colleges and Universities (NAICU).

• *Proprietary Institutions of Higher Education:* Bradley Adams, South College, and Michael Lanouette (alternate), Aviation Institute of Maintenance/Centura College/Tidewater Tech.

• *State Attorneys General:* Adam Welle, Minnesota Attorney General's Office, and Yael Shavit (alternate), Office of the Massachusetts Attorney General.

• *State Higher Education Executive Officers, State Authorizing Agencies, and/or State Regulators of Institutions of Higher Education and/or Loan Servicers:* Debbie Cochrane, California Bureau of Private Postsecondary Education, and David Socolow (alternate), New Jersey's Higher Education Student Assistance Authority (HESAA).

• *Students and Student Loan Borrowers:* Ernest Ezeugo, Young Invincibles, and Carney King (alternate), California State Senate.

• *Two-Year Public Institutions of Higher Education:* Anne Kress, Northern Virginia Community College, and William S. Durden (alternate), Washington State Board for Community and Technical Colleges.

• *U.S. Military Service Members, Veterans, or Groups Representing them:* Travis Horr, Iraq and Afghanistan Veterans of America, and Barmak Nassirian (alternate), Veterans Education Success.

• *Federal Negotiator:* Gregory Martin, U.S. Department of Education.

The Department also invited nominations for two advisors. These advisors were not voting members of the Committee; however, they were consulted and served as a resource. The advisors were:

• David McClintock, McClintock & Associates, P.C. for issues with auditing institutions that participate in the title IV, HEA programs.

• Adam Looney, David Eccles School of Business at the University of Utah, for issues related to economics, as well as research, accountability, and/or analysis of higher education data.

At its first meeting, Committee 2 reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that Committee 2 would operate by consensus. The protocols defined consensus as no dissent by any member of Committee 2 and noted that consensus votes would be taken issue by issue. During its first week of sessions, Committee 2 was petitioned to add, and reached consensus on adding, a member from another constituency group, Civil Rights Organizations.

Committee 2 reviewed and discussed the Department's drafts of regulatory language and the alternative language and suggestions proposed by Committee 2 members. At the final meeting on March 18, 2022, Committee 2 reached consensus on the Department's proposed regulations regarding the 90/10 rule, but did not reach consensus on the proposed regulations for changes in ownership. For more information on the negotiated rulemaking sessions please visit *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.*

Summary of Proposed Changes

The proposed regulations would make the following changes to current regulations.

Pell Grants for Prison Education Programs (PEP) ((34 CFR 600.2, 600.7, 600.10, 600.21, 668.43, 668.234–242, 690.62) (Sections 102(a)(3), 401(b)(3), 484(t), 485(a)(1)(G), 498(k)of the HEA))

• Amend in § 600.2 the definition of ''additional location'' so that prison education programs offered at correctional facilities are properly reported to the Department.

• Amend in § 600.7 the requirements for an institution to obtain and maintain a waiver from the Secretary to allow students who are confined or incarcerated to exceed 25 percent of regular student enrollment. We also propose to consider the financial responsibility and administrative capability of postsecondary institutions in determining whether to grant a waiver.

• Amend § 600.10 to require that institutions seek approval from the Secretary prior to offering the first PEP at the first two additional locations at correctional facilities.

• Amend § 600.21 to require that institutions report the addition of any subsequent new PEP to the Secretary within 10 days of the program's establishment.

• Amend § 668.43 to require disclosure of typical State or Federal prohibitions on the licensure or employment of formerly confined or incarcerated individuals for a PEP that is designed to meet educational requirements for a specific professional license or certification.

• Create § 668.234, which would describe a scope and purpose for the new subpart P.

• Create § 668.235, which would define ''advisory committee'', ''feedback process'', ''oversight entity'', and ''relevant stakeholders''.

• Create § 668.236, which would define and set forth the requirements for an ''eligible prison education program.''

• Create § 668.237, which would prescribe program evaluation and review requirements for the institution's accrediting agency or State approval agency.

• Create § 668.238, which would require the Secretary's approval of an institution's first PEP at the first two additional locations for purposes of participation in title IV programs. Applications for approval of subsequent PEPs would be subject to fewer requirements.

• Create § 668.239, which would require a postsecondary institution that offers an eligible prison education program to submit required reports to the Secretary and establish an agreement with the oversight entity to report information to the Secretary about the transfer and release of confined or incarcerated individuals enrolled in eligible prison education programs.

• Create § 668.240, which would set forth the Secretary's authority to limit or terminate approval of an institution's eligible PEP.

• Create § 668.241, which would define the ''best interest'' program assessment that must be conducted by the oversight entity at least two years after the postsecondary institution has continuously provided a PEP and the documentation requirements for such assessment.

After the initial ''best interest'' determination, subsequent assessments would be conducted not less than 120 calendar days prior to the expiration of each institution's Program Participation Agreement (PPA).

• Create § 668.242, which would prescribe the process for the winddown of eligible programs operating at a facility that is not a Federal or State correctional facility if those programs are not approved as eligible prison education programs.

• Amend § 690.62 to codify a statutory requirement that the Pell Grant award not exceed cost of attendance.

Title IV Revenue and Non-Federal Education Assistance Funds (90/10 Rule) ((34 CFR 668.28) (Sections 487(a) and 487(d) of the HEA))

• Amend the heading of § 668.28 and references throughout the section to

change ''non-title IV revenue'' to ''non-Federal funds.''

• Modify § 668.28(a)(1) to provide for periodic publication of information identifying the sources of Federal funds proprietary institutions must include in their 90/10 calculation and clarify how the Department will alert them when new Federal funds must be counted in the calculation in subsequent years.

• Amend § 668.28(a)(2) to create a disbursement rule that outlines how proprietary institutions calculate the percentage of their revenue that is Federal revenue and creates an end-of-fiscal-year deadline for proprietary institutions to request and disburse title IV funds to students.

• Amend § 668.28(a)(3) to reflect which non-Federal revenue generated from programs and activities proprietary institutions may count in the calculation.

• Amend § 668.28(a)(4) to describe how proprietary institutions apply Federal funds to student accounts and determine the funds' inclusion in their revenue calculation.

• Amend § 668.28(a)(5) to specify what revenue generated from institutional activities proprietary institutions may count as non-Federal revenue.

• Remove outdated provisions in § 668.28(a)(6) that no longer impact the non-Federal revenue calculation.

• Redesignate § 668.28(a)(7) as § 668.28(a)(6) and amend the types of funds that proprietary institutions may not include in their revenue calculation.

• Amend § 668.28(c) to establish disclosures for proprietary institutions that fail to derive at least 10 percent of their fiscal-year revenues from allowable non-Federal funds, clarify reporting requirements, and clarify liabilities for institutions that lose access to title IV, HEA funds due to failing 90/10 for two consecutive years. Changes in Ownership (CIO) ((§§ 600.2, 600.4, 600.20, 600.21, 600.31) (Sections 101, 102, 103, 410, 498 of the HEA)).

• Add a definition of ''main campus'' in § 600.2 to clarify a commonly used term that is currently undefined.

• Amend the definitions of ''additional location'' and ''branch campus'' in § 600.2 to emphasize that they are physical locations within the ownership structure of the institution. These amendments would further clarify that an additional location participates in the title IV, HEA programs through the certification of the main campus, and a branch campus must be designated as such by the Department.

• To codify current practice, add under the definition of ''distance education'' in § 600.2 that, for institutions offering both on-campus instruction and distance education, the distance education programs are associated with the main campus where one or more approved educational programs are offered. For institutions offering only distance education, the location of the institution is where its administrative offices are located and approved by its accrediting agency.

• Clarify the definition of ''nonprofit institution'' in § 600.2 to reflect that no part of its net earnings may benefit a natural person or private entity. We would also specify that, in general, a nonprofit institution is not an obligor on a debt to a former owner or affiliated person or entity and does not enter into a revenue-sharing or other kind of agreement involving payment to a former owner or affiliated person or entity.

• Add under § 600.20(g) the requirement for institutions to notify the Department at least 90 days in advance of any proposed change in ownership, which includes any modification to such a change.

• Add a new § 600.20(g)(2) to provide that, even with the submission of the proposed CIO, the Department may determine that the institution's participation in the title IV, HEA programs should not continue after the change in ownership.

• Amend § 600.20(g)(3) to add the requirement, discussed in current paragraph (g)(2), that a complete application must include documentation that the institution's accreditation and State authorization remained in effect as of the day before the change in ownership and add provisions explaining when the Secretary may require an institution to provide financial protection, and in what amounts, as part of the change in ownership application.

• Add § 600.20(g)(4), which requires institutions to notify enrolled and prospective students at least 90 days prior to the proposed change in ownership.

• Establish in § 600.20(h) the terms of the extension of a TPPPA and clarify when the TPPPA expires.

• Clarify § 600.21 to specify when institutions are required to report to the Department changes in ownership and/or changes in control and clarify the terminology for owners who are natural persons versus entities.

• Specify in § 600.31(c) when ''other entities'' undergo a change in control, such as when a person or combination of persons acquires or loses 50 percent of voting interests in the entity or otherwise acquires or loses 50 percent control, or when an entity with members loses them or an entity without members acquires them. The paragraph would provide what qualifies to meet the 50 percent thresholds and under what other conditions a person or persons may be deemed to have actual control of the entity, including based on ownership by a combination of persons, each of whom has less than a 50 percent interest in the entity.

• Amend § 600.31(d) to add that a change of control may include the acquisition of an institution to become an additional location of another institution unless the acquired institution closed or ceased to provide educational instruction.

• Clarify the terminology in § 600.31(e) related to the death or resignation of an individual owner.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect. The Department made small, technical, non-substantive updates to the PEP amendatory consensus language to conform with proper formatting, capitalization, and cross-reference standards.

Prison Education Programs

§ 600.2 Definitions

Additional Location

Statute: Section 410 of the General Education Provisions Act (20 U.S.C. 1221e–3) provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. Furthermore, under section 414 of the Department of Education Organization Act (20 U.S.C. 3474), the Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department. These authorities, together with the provisions in the HEA, thus include promulgating regulations that, in this case amend the definition of ''additional location''. Finally, section 498(k) of the HEA refers to additional locations.

Current Regulations: The current definition of an ''additional location'' in § 600.2 is a ''facility that is geographically apart from the main campus of the institution and at which the institution offers at least 50 percent

of a program and may qualify as a branch campus.''

Proposed Regulations: The proposed regulation would treat a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility or other similar correctional institution as an ''additional location'' for purposes of § 600.2, even if a student receives instruction primarily through distance education or correspondence courses at that location.

Reasons: Section 484(t)(5) requires institutions offering one or more PEPs to file annual reports with the Department and requires the Department to annually report to Congress. Among other items, annual reports include the names and types of institutions, Pell Grant expenditures, demographics of enrolled students, and mode of instruction (such as distance education). In the course of administering the Second Chance Pell experiment (described in the Background section), the Department became aware that some postsecondary institutions were not reporting to the Department certain educational programming they were providing in Federal or State correctional facilities. This is because the current definition of an ''additional location'' is phrased in terms of a location that is ''geographically apart from the main campus of the institution'' and ''may qualify as a branch campus,'' which institutions were interpreting such as to exclude non-traditional locations where distance education programs are offered. To ensure adequate data collection and accurate reports, it is imperative that institutional reports to the Department include all correctional facilities where IHEs offer PEPs. The proposed amendment to the definition of ''additional location'' also would ensure proper reporting under the proposed addition to § 600.21(a)(14) regarding updates to an institution's PPA (see the discussion of § 600.21 for more information).

Including PEPs as additional locations would also provide related benefits to students and taxpayers, as it would ensure greater oversight of the PEP, including oversight of the academic quality of the program by the accrediting agency, and would provide potential financial aid benefits in the event the IHE ceases to provide educational offerings at the correctional facility. The additional oversight that would be conducted for additional locations would help to protect the integrity of taxpayer-financed title IV, HEA dollars, by ensuring that such locations are not eligible for Federal aid unless and until they have met other conditions. Under § 602.22, for example, which governs accrediting agencies, the establishment of additional locations is considered to be a ''substantive change,'' triggering an agency's obligation to assess whether such change adversely affects the institution's ability to meet accreditation standards. In most cases, an agency's review of a new location must include an assessment of the institution's fiscal and administrative capabilities, academic controls, faculty, facilities, resources, support systems, and financial stability. In addition, as discussed further below, proposed § 668.237 would require an accrediting agency to conduct a site visit no later than one year after the institution has initiated a PEP at its first two additional locations at correctional facilities. The Department believes that these additional steps would help to ensure education quality, oversight of the programming at the facility, and minimum standards for the services provided to students.

Additionally, under section 437(b)(3) of the HEA, a student whose institution closes may be eligible for restoration of their Pell Grant lifetime eligibility used (Pell LEU) for the period of a student's attendance at the institution, providing a benefit to affected students. Similar to the Department's interpretation of this statute for other program types, the Department has interpreted the statute to mean that, if a postsecondary institution closes, all students enrolled in an impacted PEP may be eligible for Pell LEU restoration. By requiring PEPs to be reported as additional locations, the Department could ensure that confined or incarcerated individuals enrolled in those programs are protected in the event the institution ceases to operate in the correctional facility by restoring their lifetime Pell Grant eligibility.

Confined or Incarcerated Individual

Statute: As amended by the Consolidated Appropriations Act, 2021, section 484(t)(1)(A) of the HEA defines a ''confined or incarcerated individual'' for purposes of title IV programs as ''an individual who is serving a criminal sentence in a Federal, State, or local penal institution, prison, jail, reformatory, work farm, or other similar correctional institution,'' and excludes ''an individual who is in a halfway house or home detention or is sentenced to serve only weekends.'' Individuals falling within the definition are eligible for Pell Grants if they attend an eligible PEP, which, among other requirements, must be operated in a State or Federal correctional facility.[13]

[13] See section 484(t)(1)(B) of the HEA.

Current Regulations: The current regulations in § 600.2 use the phrase ''incarcerated student,'' which is defined as ''a student who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution. A student is not considered incarcerated if that student is in a half-way house or home detention or is sentenced to serve only weekends. For purposes of Pell Grant eligibility under § 668.32(c)(2)(ii), a student who is incarcerated in a juvenile justice facility, or in a local or county facility, is not considered to be incarcerated in a Federal or State penal institution, regardless of which governmental entity operates or has jurisdiction over the facility, including the Federal Government or a State, but is considered incarcerated for the purposes of determining costs of attendance under section 472 of the HEA in determining eligibility for and the amount of the Pell Grant.''

Proposed Regulations: We propose to update the defined term to ''confined or incarcerated individual'' and to define the phrase as ''an individual who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution. An individual would not be considered incarcerated if that individual is subject to or serving an involuntary civil commitment, in a half-way house or home detention, or is sentenced to serve only weekends.''

Reasons: We propose to change the term from ''incarcerated student'' to ''confined or incarcerated individual'' to reflect the statute as amended more accurately. We also propose to specifically include ''juvenile justice facilities'' in the list of eligible locations where a criminal sentence is served, to ensure that programs offered there would be subject to the same high program standards as programs in other State and Federal correctional facilities. The statute refers to ''other similar correctional facilit[ies],'' which reasonably includes juvenile justice facilities in this context. Students meeting the definition of a confined or incarcerated individual would not be eligible for Direct Loan funds.

Currently, an individual who is incarcerated in any Federal or State correctional facility, or who is subject to an involuntary civil commitment upon completion of a period of incarceration for a forcible or nonforcible sexual offense (as determined in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting

Program), is not eligible to receive a Pell Grant. Recent amendments removed the Pell Grant prohibition for involuntarily civilly committed individuals from Section 401 of the HEA. Based on Congress' change to the relevant statutory language and consistent with a rulemaking subcommittee member's recommendation, we propose clarifying that individuals subject to or serving an involuntary civil commitment are not considered to be incarcerated. As discussed during the rulemaking subcommittee meetings, the statute's exclusion of those subjected to involuntary civil commitment from the definition of ''confined or incarcerated individual'' makes clear they are not prohibited from receiving a Pell Grant on that basis, nor do they need to be enrolled in a PEP in order to qualify.

§ 600.7 Conditions of institutional ineligibility.

Statute: Section 102(a)(3) of the HEA states that an institution will not meet the definition of an institution of higher education for title IV purposes if more than 25 percent of its regular enrolled students are incarcerated. The Secretary may waive this limitation for a nonprofit institution that provides a two- or four-year program of instruction (or both) for which the institution awards a bachelor's degree, associate degree, or postsecondary diploma.

Current Regulations: The current regulations at § 600.7(a)(iii) restate the statutory requirement that a postsecondary institution is ineligible to participate in the title IV, HEA programs if more than 25 percent of its enrolled regular students are incarcerated. Section 600.7(c) permits nonprofit (including public) postsecondary institutions to seek a waiver of the 25 percent enrollment limitation. The waiver is automatic upon request if the postsecondary institution consists solely of four-year or two-year education programs for which it awards a bachelor's degree, associate degree, or postsecondary diploma.

Under § 600.7(c)(3)(ii), nonprofit institutions whose offerings are not limited to four-year and two-year programs but that award the degrees identified above are subject to two different waiver determinations: (1) the waiver is automatic upon request for its two- and four-year programs, but (2) for any other program, the waiver is only available if the incarcerated regular students enrolled in such programs have a completion rate of 50 percent or greater. The formula for calculating the completion rate is set forth in § 600.7(e)(2). Under § 600.7(g), the institution must substantiate the completion rate calculation by having the certified public accountant who prepares its audited financial statements verify the calculation's accuracy.

Under § 600.7(f), the institution maintains the waiver indefinitely if it satisfies the waiver requirements each award year. If the institution fails to satisfy waiver requirements for an award year, it becomes ineligible to participate in title IV programs on June 30 of that award year.

Proposed Regulations: The proposed regulations would enhance the Secretary's ability to monitor PEP enrollment, while allowing eligible institutions with demonstrated program success to expand the number of incarcerated students they serve. Specifically:

- We propose to add a condition to § 600.7(c)(1) that the Secretary will not approve an enrollment cap waiver for a postsecondary institution's PEP until the oversight entity is able to make the ''best interest determination'' described in § 668.241, which would be at least two years after the postsecondary institution has continuously provided a PEP.
- In proposed § 600.7(c)(1)(i), the Secretary would not grant the waiver to a non-degree program at a nonprofit institution unless it meets the current requirement of maintaining a completion rate for its enrolled incarcerated students of at least 50 percent.
- We propose to add § 600.7(c)(1)(ii)(A) and (B) to require that all postsecondary institutions operating a PEP, regardless of program length, satisfy two conditions to obtain and maintain an enrollment cap waiver for incarcerated students. Under the proposed regulations, an institution would be required to: (1) comply with all requirements under proposed part 668 subpart P (Prison Education Programs), and (2) demonstrate they are administratively capable as defined in § 668.16 and financially responsible under part 668 subpart L. Administrative capability requires the institution to show it is capable of adequately administering the title IV programs, including for PEPs. Financial responsibility requires the institution to demonstrate that it provides the services described in its official publications and statements, meets all of its financial obligations, and provides the administrative resources necessary to comply with title IV, HEA program requirements.
- We propose to update paragraphs § 600.7(c)(1) and (2) by clarifying that the Secretary has the discretion to deny an enrollment cap waiver request if the application fails to meet the aforementioned standards, noting instead that the Secretary ''may'' waive the enrollment cap prohibition. This is a change from the current regulations that make the waivers automatic for four-year and two-year programs. The proposed provisions more closely reflect the statute, which states that the Secretary ''may'' approve the waiver.
- Based in part on the recommendation of a rulemaking subcommittee member, we propose to add paragraph (c)(4) to § 600.7, which would set program enrollment limitations on incarcerated students even after a waiver is approved. In paragraph (c)(4)(i)(A), once a postsecondary institution is granted a waiver, for the next five years, up to 50 percent of the institution's regular enrolled students could be incarcerated students. Paragraph (c)(4)(i)(B) would permit that percentage to increase to 75 percent for the five years thereafter. Paragraph (c)(4)(ii) would exempt from these limits a public institution that is chartered for the explicit purpose of educating confined or incarcerated students, as determined by the Secretary. All students in such a PEP must be located in the State in which the postsecondary institution is chartered to serve.
- Proposed § 600.7(c)(5) would allow the Secretary to limit or terminate a postsecondary institution's waiver if it no longer meets the requirements established under paragraph (c)(1).
- Finally, proposed § 600.7(c)(6) provides that revocation of an institution's enrollment cap waiver would render an institution ineligible to participate in title IV, HEA programs, commencing at the end of the award year in which the waiver was revoked so students will not immediately lose eligibility for title IV aid. Paragraph (c)(6)(i) would allow a postsecondary institution to retain its eligibility for title IV aid if it demonstrates that it meets all requirements prior to losing eligibility, including reducing its enrollment of confined or incarcerated students to no more than 25 percent of its regular enrolled students, as required of eligible institutions by the statute, and ceasing to enroll new incarcerated students upon the loss of the waiver.

Reasons: A rulemaking subcommittee member stated that unlimited expansion of incarcerated student enrollment, spurred on by increased access to Pell Grant funds, could potentially compromise the quality of prison education programming. The Department shares the concern that if institutions become too reliant on enrolling incarcerated students, institutions may not have sufficient

incentive to ensure those students are served well; students who enroll in prison education programs have fewer options and thus more limited ability to walk away from programs. The Department proposes strengthening the waiver application process to ensure postsecondary institutions are serving their incarcerated students well and are capable of meeting other Department requirements for the operations and finances of the institution. This would help to prevent circumstances in which institutions not serving incarcerated students well are permitted to enroll such students in very large numbers, potentially harming such students with educational programming that does not meet the requirements of the waiver. We also propose to set the maximum enrollment of confined or incarcerated students depending on the amount of time the institution has offered a PEP, allowing institutions to move from 25 percent of enrollment by incarcerated students, to 50 percent, to 75 percent, over a number of years, to guard against growth of prison education programming that outpaces an institution's ability to support those programs. The Department also believes this additional built-in time would help assure the Department and an institution's accreditors that such programming is appropriate and acceptable and would protect students and taxpayers.

§ 600.10 Date, extent, duration, and consequence of eligibility.

Statute: Section 484(t) of the HEA authorizes Pell Grant eligibility for confined or incarcerated individuals who enroll in an eligible PEP.

Current Regulations: None.

Proposed Regulations: The Department proposes in § 600.10 to require an institution to obtain approval from the Secretary to offer the institution's eligible PEPs at its first two additional locations at correctional facilities. Such locations would include a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution. While an institution's first additional location may have multiple PEPs, this approval process would only apply to the first program at each of the first two locations. The application requirements for the first two locations are prescribed in proposed § 668.238(b).

Reasons: The Department already requires institutions to seek approval from the Secretary before offering certain eligible programs in 600.10(c), including direct assessment programs and comprehensive transition and postsecondary programs, and if otherwise required for the institution's participation in the title IV programs. In these cases, where experience is more limited, the Department believes it is particularly important to ensure an institution satisfies regulatory requirements to offer those programs in advance and is persuaded that this prior approval better protects students and taxpayers. Approval of an institution's initial prison education programming would serve a similar purpose. According to research, quality prison education programming may reduce the likelihood of recidivism, lower unemployment, and increase social mobility for formerly confined or incarcerated individuals.[14] After the approval of the first PEP at each of the first two additional locations, and provided enrollment of incarcerated students does not exceed the presumptive cap of 25 percent, the Department believes (in part based on its experience in reviewing other new programs, such as direct assessment programs, being offered for the first several times) the postsecondary institution would have demonstrated the capacity and capability to effectively maintain or expand the number of eligible PEP(s) it offers. If the postsecondary institution sought to expand the incarcerated student enrollment cap of 25 percent, it would be required to use the procedures outlined in § 600.7.

§ 600.21 Updating application information.

Statute: Section 484(t)(5) of the HEA requires institutions with a PEP to submit annual reports to the Department and requires annual reports from the Department to Congress.

Current Regulations: Sections 600.21(a)(1)–(13) require an institution to update its PPA no later than 10 days after any of the specified events occurs, such as adding a second or subsequent direct assessment program.

Proposed Regulations: The Department proposes to add a new reporting requirement to § 600.21 that would require an institution to also update its PPA no later than 10 days after it establishes or adds an eligible PEP at an additional location as defined under § 600.2, at a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution that was not previously included in the institution's eligibility determination under § 600.10.

Reasons: The Department proposes to increase by one the existing specified events requiring an updated report. Among the items required in the Department's annual reports to Congress by section 484(t)(5) of the HEA are the names and types of postsecondary institutions offering PEPs in which confined or incarcerated individuals are enrolled and receiving Pell Grants. For the Department to provide accurate reports to Congress, postsecondary institutions must notify the Department when they add eligible PEPs.

Further, requiring prompt notice of the addition of an eligible PEP would allow the Department to monitor trends in eligible PEPs in real time and more precisely target oversight as the programs progress. This approach mirrors our oversight of direct assessment programs (§ 668.10), for example, where institutions must notify us of each additional program.

§ 668.8 Eligible program.

Statute: Section 484(t)(1)(b) of the HEA establishes PEPs as eligible programs under title IV of the HEA.

Current Regulations: None related to prison education programs. Current regulations under § 668.8 establish various requirements for eligible programs, including requirements for program length, the number of credit hours in a program for title IV, HEA purposes, and use of distance education.

Proposed Regulations: We propose to update § 668.8(n) to include prison education programs as named ''eligible programs'' for title IV aid.

Reasons: This is a technical update to ensure the regulations would reflect statutory language authorizing PEPs as programs eligible for Federal student aid.

§ 668.11 Severability.

Statute: None.

Current Regulations: None.

Proposed Regulations: We would redesignate § 668.11 as § 668.12 and add a severability provision in proposed § 668.11, to be included in subpart A, which would make clear that, if any part of the proposed regulations is held invalid by a court, the remainder would still be in effect.

Reasons: Each of the proposed provisions discussed in this NPRM serves one or more important, related but distinct purposes. Each of the requirements provides value to students, prospective students, their families, to the public, taxpayers, and the Government, and to institutions separate from, and in addition to, the

[14] *https://www.americanprogress.org/article/education-opportunities-prison-key-reducing-crime/. https://www.justice.gov/opa/pr/justice-and-education-departments-announce-new-research-showing-prison-education-reduces. https://www.rand.org/pubs/research_reports/RR266.html.https://www.vera.org/blog/back-to-school-a-common-sense-strategy-to-lower-recidivism.*

value provided by the other requirements. To best serve these purposes, we would include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder.

§ 668.32 Student eligibility—general.

Statute: Section 484(t)(3) of the HEA establishes Pell Grant eligibility for confined or incarcerated individuals who are enrolled in an eligible PEP.

Current Regulations: Under § 668.32, an individual incarcerated in a Federal or State penal institution is not eligible for a Pell Grant.

Proposed Regulations: We propose to update the regulations to reflect that a confined or incarcerated individual would be eligible for a Pell Grant if enrolled in an eligible PEP.

Reasons: This is a technical update to conform with recent amendments made to the statute.

§ 668.43 Institutional information.

Statute: Section 485(a)(1)(G) of the HEA requires a postsecondary institution to make certain information readily available to enrolled and prospective students, including information that accurately describes the institution's academic program.

Current Regulations: The current regulations at § 668.43(a)(5)(v) require an institution to disclose whether an academic program would fulfill educational requirements for licensure or certification if the program is designed to meet, or advertised as meeting, such requirements. For each State, institutions are required to disclose whether the program does or does not meet such requirements, or whether the institution has not made such a determination.

Proposed Regulations: We propose to add § 668.43(a)(5)(vi), which would apply if an eligible PEP were designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation (as described in proposed § 668.236(g) and (h)). In that case, the postsecondary institution would provide information regarding whether that occupation typically involves State or Federal prohibitions on the licensure or employment of formerly confined or incarcerated individuals. The institution would provide this information for any State for which the institution has made a determination about such State prohibitions, other than the State in which the correctional facility is located or the State where most students are likely to return in the case of a Federal correctional facility where the institution would already be required to meet such requirements under proposed § 668.236(g) and (h).

Reasons: The proposed disclosure would provide students with information that institutions and oversight entities already would have to collect and report to the Department under other existing and proposed provisions. Section 484(t)(1)(B)(vi) of the HEA already requires (and proposed § 668.236(g) would require) that an eligible PEP satisfy any applicable educational requirements for professional licensure or certification, including licensure or certification examinations needed to practice or find employment in the sectors or occupations for which the program prepares the individual. This requirement would apply in the State in which the correctional facility is located or, in the case of a Federal correctional facility, in the State in which most of the individuals confined or incarcerated in such facility will reside upon release. Similarly, section 484(t)(1)(B)(vii) already requires (and proposed § 668.236(h) would require) that an eligible PEP not offer education that is designed to lead to licensure or employment for a specific job or occupation in the State if such job or occupation typically involves prohibitions on the licensure or employment of formerly confined or incarcerated individuals in the State in which the correctional facility is located, or, in the case of a Federal correctional facility, in the State in which most of the individuals confined or incarcerated in such facility will reside upon release.

Disclosure of this information to confined or incarcerated students is critical. According to one analysis of collateral consequences of incarceration, ''The American Bar Association's inventory of penalties against those with a record has documented 27,254 state occupational licensing restrictions.'' [15] In Minnesota, for example, rules bar participation by incarcerated students in careers ranging from dental assistant to server in a restaurant, based on the type of offense.[16] This issue is further complicated by the diversity of offenses among the State or Federal prison population, which means some inmates serving time for the same offense may benefit from a particular PEP, but others may not, depending on applicable State educational requirements. By ensuring that institutions provide clear and timely information on licensure restrictions to students, they would be able to make more informed decisions about whether to enroll in a particular PEP. This is especially important because PEPs would use up some portion of students' lifetime Pell Grant eligibility; if confined or incarcerated individuals enroll in programs that do not meet their needs, they would have less remaining Pell Grant eligibility for another PEP or another postsecondary education program they may wish to enroll in upon release from a correctional facility.

The Department does not propose to require such disclosures for the State in which the correctional facility is located or the State where most students are likely to return, because the program approval process under proposed § 668.236(g) and (h) already ensures the program satisfies educational standards for licensure or employment in those locations. With respect to other States' educational requirements for licensure or employment, institutions would have to provide information to confined or incarcerated individuals only for States for which the institution has made a determination about State prohibitions on the licensure or certification of formerly confined or incarcerated individuals, in recognition that institutions may not be aware of the licensure requirements in every State, particularly where they are not otherwise enrolling students.

§ 668.234 Scope and purpose.

Statute: Section 484(t) of the HEA authorizes Pell Grant eligibility for confined or incarcerated individuals who enroll in a PEP.

Current Regulations: None.

Proposed Regulations: We propose a new subpart P to part 668 that sets forth the mechanics and requirements for PEPs. The scope and purpose in § 668.234 for proposed subpart P confirms that a confined or incarcerated individual is eligible to receive a Pell Grant if that individual enrolls in an eligible PEP. We also propose to clarify that eligible PEPs are subject to proposed subpart P and all other regulations that otherwise apply to title IV programs.

Reasons: Given the Department's enhanced statutory obligation to monitor PEPs in the context of administering Pell Grant funds, the Department proposes to create a new subpart P to part 668. The subpart

[15] Stephen Slivinski, ''Turning Shackles into Bootstraps—Why Occupational Licensing Reform is the Missing Piece of Criminal Justice Reform'', Center for the Study of Economic Liberty at Arizona State University. (2016), *https://csel.asu.edu/sites/default/files/2019-09/csel-policy-report-2016-01-turning-shackles-into-bootstraps.pdf.*

[16] *https://careerwise.minnstate.edu/exoffenders/find-job/jobs-criminal-record.html.*

would provide detail and clarity around the establishment and maintenance of PEPs, as well as applicable operational details and reporting in a single new subpart, which would aid institutions and oversight entities in implementing such programs and confined and incarcerated students in obtaining available benefits.

§ 668.235 Definitions.

Statute: There are no statutory definitions of ''advisory committee,'' ''feedback process,'' ''oversight entity,'' or ''relevant stakeholders.''

Current Regulations: None.

Proposed Regulations: In § 668.235, the Department proposes to define several terms that have specific application in the PEP context. The proposed ''advisory committee'' would be a group established by the oversight entity that provides nonbinding feedback regarding the approval and operation of a PEP within the oversight entity's jurisdiction. We propose to define ''feedback process'' as the process developed by the oversight entity to gather nonbinding input from relevant stakeholders regarding the approval and operation of PEPs. Although the solicitation of input from relevant stakeholders would be required, use of an advisory committee as part of that process would be optional. We propose to define ''oversight entity'' as the Federal Bureau of Prisons or the appropriate State department of corrections or other entity that is responsible for overseeing correctional facilities. Finally, we propose to define ''relevant stakeholders'' as individuals and organizations that provide input to the oversight entity as part of a feedback process regarding approval and operation of PEPs. These stakeholders would include, at minimum, representatives of incarcerated students, organizations representing confined or incarcerated individuals, State higher education executive offices, and accrediting agencies, and may include additional stakeholders as determined by the oversight entity.

Reasons: By statute, an oversight entity is required to determine whether its PEP is operating in the best interest of the students that it oversees (see § 668.241). Without this determination, a postsecondary institution would not be eligible to award a Pell Grant to a confined or incarcerated individual at a correctional facility.

We propose the term ''oversight entity'' to capture in concept the longer phrase in section 484(t) of the HEA (''the appropriate State department of corrections or other entity that is responsible for overseeing correctional facilities, or . . . the Bureau of Prisons'').

During Subcommittee meetings, members urged the Department to mandate a feedback process from relevant stakeholders with expertise in prison education and from confined or incarcerated or formerly confined or incarcerated individuals, to assist the oversight entity in making the best interest determination. One Subcommittee member recommended requiring the oversight entity to engage with a formal advisory committee. While section 484(t)(1)(A)(ii) and (iii) of the HEA vests sole authority over the best interest determination in the oversight entity, the Department and Subcommittee members agreed that input from relevant stakeholders through a feedback process would be a valuable addition to the best interest determination, and the full Committee ultimately reached consensus on this issue. Such feedback would be nonbinding and need not come from a formal advisory committee. The Department was concerned that a formal advisory committee process could introduce delays in the approval of PEPs, particularly because the Federal Bureau of Prisons is subject to certain Federal requirements regarding advisory processes when informal feedback could provide similar value to the oversight entity. For these reasons, the Department recommended that an advisory committee be an optional component of the feedback process.

§ 668.236 Eligible prison education program.

Statute: Section 484(t) of the HEA authorizes Pell Grants for confined or incarcerated individuals enrolled in an eligible PEP.

Current Regulations: None.

Proposed Regulations: We propose new § 668.236, which would establish eligibility, operational, and monitoring requirements for PEPs. Paragraph (a) would limit the ability to offer PEPs to public or private nonprofit institutions of higher education or postsecondary vocational institutions, consistent with the statute. Paragraph (b) would require that the PEP be offered by a postsecondary institution that has been approved to operate in a correctional facility by the oversight entity. Section 484(t)(1)(B)(iii) of the HEA requires the oversight entity to determine that each PEP is operating in the best interest of students (see § 668.241); in paragraph (c), the Department proposes that the oversight entity make this determination after a two-year period of initial approval. Paragraph (d) would require that credits earned while enrolled in an eligible PEP transfer to at least one public, private nonprofit, or vocational institution in the State in which the facility is located or, for Federal facilities, the State in which most of the individuals confined or incarcerated in such facility will reside upon release as determined by the postsecondary institution with input from the oversight entity. Paragraph (e) is from section 484(t)(1)(B)(v) of the HEA and would prohibit an institution from offering a PEP if it has been subject to certain adverse actions by its accrediting agency or association in the last five years; those adverse actions are defined to include any suspension, emergency action, or termination of programs by the Department, any final adverse action by the institution's accrediting agency or association (as defined in § 602.3), or any action by the State to revoke a license or other authority to operate. Paragraph (f) would impose limits on an institution's ability to offer a PEP if it is subject to a current adverse action. Paragraph (g) would require an eligible PEP to satisfy any applicable educational requirements for professional licensure or certification, including licensure or certification examinations needed to practice or find employment in the sectors or occupations for which the program prepares the individual, in the State in which the correctional facility is located or, for a Federal facility, in the State in which most of the individuals will reside upon release. Paragraph (h) would prohibit the eligible PEP from offering education that is designed to lead to licensure or employment for a specific job or occupation in the State, or allowing students to enroll in such programs, if such job or occupation typically involves prohibitions on the licensure or employment of formerly confined or incarcerated individuals in the State in which the correctional facility is located, or, in the case of a Federal correctional facility, in the State in which most of the individuals confined or incarcerated in such facility will reside upon release. For both paragraphs (g) and (h), the institution would be required to make this determination not less than annually, based on information provided by the oversight entity. The prohibition would not extend to local laws; screening requirements for good moral character or similar provisions; State or Federal laws that have been repealed, even if the repeal has not yet taken effect or if the repeal occurs between assessments of the institution of higher education by the oversight entity; or other restrictions as determined by the Secretary.

Reasons: As noted above, many of the PEP requirements are drawn directly from statute. The Department proposes clarifying and operational regulations to support the effective implementation of the statute. For example, while the statute requires the oversight entity to make a ''best interest'' determination, the statute is silent as to when that determination must be made. The Department proposes to give the oversight entity two years to make that determination to allow the oversight entity time to collect the necessary data and make an informed decision. With respect to the statutory requirement, captured in proposed paragraph (d), that a PEP in a Federal facility offer transferability of credit to at least one institution of higher education in the State in which most of the students will reside upon release, clarity is needed as to who determines the appropriate State. A Subcommittee member recommended, and the full Committee 1 agreed, that the postsecondary institution should determine which State this should be, based on information provided by the oversight entity. This is because the postsecondary institution would have the most expertise on its student population. The same is true for the requirements in proposed paragraphs (g) and (h), which require institutions offering programs in Federal facilities to determine whether such programs satisfy educational, licensure and employment requirements in the State in which most of the students will reside upon release. Postsecondary institutions, with input from the oversight entity, would be in the best position to know about, and adapt their programming to, the educational, licensure, and employment requirements of various States. The Department proposes to require institutional decisions under paragraphs (g) and (h) be made not less than annually, to ensure educational programming remains current with frequently changing licensure requirements.

The statute dictates, and the proposed regulations would codify in paragraph (e), that the postsecondary institution offering the eligible PEP has not been subject to various adverse actions by the Department, the accrediting agency, or the State within the last five years. With respect to accrediting agency action, we propose to draw on a familiar definition of ''adverse action'' in § 602.3, which includes the denial, withdrawal, suspension, revocation, or termination of accreditation or pre-accreditation, or any comparable accrediting action an agency may take against an institution or program. Additionally, paragraph (f) would make clear that an institution may not begin offering a new PEP if the institution's accrediting agency initiates such adverse action and must submit a teach-out plan to the accrediting agency after an adverse action is initiated for any PEPs it already operates. Until a significant action like the ones contained in § 602.3 is resolved, it would not be in any stakeholder's best interest for that institution to start a new PEP until the adverse action has been rescinded or otherwise resolved. If the action is not rescinded, for example, the school could ultimately face a loss of accreditation, in which case the PEP would lose eligibility for title IV aid, students may not be able to complete their programs, and taxpayers may be forced to bear the costs of restoring Pell Grant eligibility for the students. The required submission of a teach-out plan in these cases would provide additional protections for students to ensure equitable treatment of confined or incarcerated individuals if the program closes.

Paragraph (h), which outlines prohibitions on enrollment, is based on the statutory requirement in section 484(t)(1)(B)(vii) of the HEA. As noted above, the postsecondary institution would make the determination as to which State most students would reside in upon release. Proposed paragraphs (h)(1) and (2) would add necessary guardrails for confined or incarcerated students. A postsecondary institution should not enroll a student in an eligible PEP if, based on their conviction, the institution knows prior to enrollment that the confined or incarcerated individual would not be able to obtain licensure or employment in the field for which the education is intended to prepare them and in the State the individual is likely to live in upon release. In the interest of ensuring that access to postsecondary education is not overly restricted for confined or incarcerated individuals, however, the Department in proposed paragraph (h)(3) clarifies that not all restrictive provisions would bar enrollment and lists the types of restrictions that would be exempt from the enrollment prohibition (local laws, for example).

§ 668.237 Accreditation requirements.

Statute: Section 484(t) of the HEA authorizes Pell Grants for confined or incarcerated individuals enrolled in an eligible PEP.

Current Regulations: None.

Proposed Regulations: We propose in § 668.237 that an eligible PEP must meet the requirements of the institution's accrediting agency or State approval agency. We further propose that, in order for any PEP to qualify as an eligible program, the accrediting agency would need to undertake the following four measures: (1) evaluate at least the first two additional locations and PEPs being offered there to ensure the institution's ability to offer and implement the program based on the agency's accreditation standards, and include it in the institution's grant of accreditation or pre-accreditation; (2) evaluate the institution's first additional PEP offered using a new mode of delivery to ensure the institution's ability to offer and implement the program based on the agency's standards, and include it in the institution's grant of accreditation or pre-accreditation; (3) perform a site visit as soon as practicable but no later than one year after initiating the PEPs at the first two additional locations; and (4) review and approve the methodology for how the institution, in collaboration with the oversight entity, made the determination that the PEP meets the same standards as substantially similar non-PEP programs at the institution.

Reasons: The requirement that the first PEP at the first two additional locations be evaluated by the institution's accrediting agency or State approval agency mirrors the Department's approval requirement in proposed § 600.10. After the first two programs at the first two additional locations, an institution's subsequent PEPs are generally not required to be evaluated by the accrediting agency or State approval agency unless the accrediting agency or State approval agency itself has a requirement that all PEPs are evaluated, or the institution changes the method of delivery. A Subcommittee member recommended that the Department require that a change in the method of delivery be evaluated by the accrediting agency or State approval agency. The Department agreed with this suggestion, at least with respect to the first such program offered through a different mode of delivery (such as the first distance education program). This would allow the Department and accrediting agency to maintain oversight of PEP program quality in the face of a potentially significant change in the operations of the program, regardless of whether the institution already underwent approval at its first two additional locations.

An accrediting agency would be required to perform a site visit at the first two additional locations offering PEPs, or upon a change in the modality of the program, due to the unique nature of an eligible PEP. It is important to

ensure that programming can be delivered to a confined or incarcerated individual, which may require different capabilities on the part of an institution of higher education, and that the programming would provide a quality education. A site visit would further ensure that the accrediting agency has adequate opportunity to evaluate the realities of the program on the ground and ensure that its initial assessment was appropriate. Under § 602.3(b), site visits required under circumstances other than PEP evaluation must take place within six months. The Department recognizes that this may not be practicable due to the logistics of performing a site visit in a correctional facility; therefore, we propose in § 668.237(b)(3) to provide an extension to one full year for the site visit to be conducted.

Finally, a Committee 1 member recommended that the accrediting agency or State approval agency review and approve the methodology for how the institution, in collaboration with the oversight entity, made the determination that the PEP meets the same standards as substantially similar programs that are not PEPs at the institution. The Department agreed with this recommendation and adopted it in paragraph (b)(4). This would provide an additional backstop for the ''best interest determination'' requirements in proposed § 668.241, some of which would require the oversight entity to ensure that the services provided to confined or incarcerated individuals are the same or substantially similar to services provided to other students who are not confined or incarcerated. Promoting and requiring collaboration between the institution and oversight entity would ensure confined or incarcerated individuals get the services afforded to all other students at the institution, resulting in more equitable access to postsecondary educational opportunities. It would also provide an additional guardrail of accreditor evaluation and approval.

§ 668.238 Application requirements.

Statute: Section 484(t) of the HEA authorizes Pell Grants for confined or incarcerated individuals enrolled in an eligible PEP.

Current Regulations: None.

Proposed Regulations: Proposed § 668.238(a) reiterates that the postsecondary institution would need to seek approval for the first PEP at the first two additional locations as required under § 600.10. Paragraph (b) spells out the application requirements for such PEPs. For all other PEPs not subject to initial approval by the Secretary, postsecondary institutions would simply be required to submit the documentation outlined in § 668.238(c). PEPs at any location, including the first two additional locations, would be required to adhere to enrollment caps described in § 600.7 and reporting requirements in § 600.21. Under § 600.20(c)(1), if a postsecondary institution is provisionally certified to participate in the title IV programs or that has been notified it must apply for approval of new programs or locations, the institution cannot add an additional location or educational program, including a PEP, without prior approval from the Secretary. The same requirements apply to any postsecondary institution that receives title IV, HEA program funds under the reimbursement or cash monitoring payment method, that acquires the assets of another institution that provided educational programs at that location during the preceding year and participated in the title IV, HEA programs during that year, or that would be subject to a loss of eligibility if it adds that location.

Proposed § 668.238(b) outlines the components of the PEP application, which would include: (1) A description of the educational program, including the educational credential offered (degree level or certificate) and the field of study; (2) Documentation from the institution's accrediting agency or State approval agency indicating that the agency has evaluated the institution's offering of one or more PEPs and has included the program(s) in the institution's grant of accreditation and approval documentation from the accrediting agency or State approval agency; (3) The name of the correctional facility and documentation from the oversight entity that the PEP has been approved to operate in the correctional facility; (4) Documentation detailing the methodology including thresholds, benchmarks, standards, metrics, data, or other information the oversight entity used in making its determination that the program is operating in the best interest of students for all indictors under § 668.241, and how such information was collected; (5) Information about the types of services offered to admitted students, including orientation, tutoring, and academic and reentry counseling. If reentry counseling is provided by a community-based organization that has partnered with the eligible PEP, institution, or correctional facility to provide reentry services, then the application would be required to include information about the types of services offered by the community-based organization; (6) Affirmative acknowledgement that the Secretary can limit or terminate approval of an institution to provide a PEP as described in § 668.237; (7) Affirmative agreement to submit the report to the Secretary as described in § 668.239; (8) Documentation that the institution has entered into an agreement with the oversight entity to obtain data about transfer and release dates of confined or incarcerated individuals, which would be reported to the Department; and (9) Such other information as the Secretary deems necessary.

Paragraph (c) would require that, for all PEPs that do not require the Secretary's approval, the postsecondary institution must submit documentation that it has not been subject to any adverse actions by its accrediting agency or any action by the State to revoke a license to operate. The postsecondary institution also would be required to submit documentation that it has entered into an agreement with the oversight entity to obtain data on the transfer and release dates of the confined or incarcerated individuals enrolled in its PEP(s).

Reasons: The Department seeks to ensure that postsecondary institutions that offer eligible PEPs would be able to comply with the various statutory and regulatory requirements laid out in proposed subpart P. Because there likely will not be as many program options for confined or incarcerated individuals, and because, for some institutions, offering programming within the context of correctional facilities will be new, the more extensive up-front review proposed in § 668.238 would allow us to ensure that the first programs offered at the first two additional locations will meet applicable standards. Subsequently, except where the postsecondary institution changes the method of delivery, the institution would only need to submit documentation from the accrediting agency or State approval agency at the State showing that the institution was not subject to various adverse actions (as described in the proposed regulations section) and provide an agreement with the oversight entity to obtain transfer and release data. The latter would be necessary to allow the Department to calculate and provide information to the oversight entity for use in its best interest determination (see § 668.241).

We intend to propose a template to assist postsecondary institutions in submitting applications to the Department. Use of the template would be voluntary and non-binding, but submission of the template would fulfill the requirements of the regulation.

§ 668.239 Reporting requirements.

Statute: Section 484(t)(5) of the HEA requires that the Secretary submit an annual report to Congress regarding PEPs and make that report publicly available on the Department's website.

Current Regulations: None.

Proposed Regulations: Proposed § 668.239 would require a postsecondary institution to submit reports as required by a notice the Secretary publishes in the **Federal Register**. As in § 668.238, proposed § 668.239 reiterates that the institution would report information required by the Secretary regarding transfer and release dates of confined or incarcerated individuals, through an agreement with the oversight entity.

Reasons: Section 484(t)(4) and (5) requires postsecondary institutions and the Secretary to report various information regarding PEPs. In order to fulfill statutory mandates, the Secretary may need to collect additional information not identified in the statute. Rather than dictate these data items through regulation, the Department proposes to notify institutions of data requirements through notices in the **Federal Register**, which would allow the Department to periodically add, subtract, or modify requests for certain information. Our experience with the Second Chance Pell experiment has been that revisions to data collection requirements may be necessary to ensure the collection of current and accurate data reflective of the experiences of incarcerated students, to obtain valuable new types of data that may become available due to statutory or regulatory changes or changes in recordkeeping practices at prison facilities or postsecondary institutions, and to address challenges related to data-sharing or burden that were unanticipated or that have evolved since establishing the data requirements.

Institutions would be required to enter into an agreement with the oversight entity to report the transfer or release date of PEP students so the Department can calculate and provide information to the oversight entity for use in its best interest determination (*see* § 668.241). A data-sharing agreement with the oversight entity would allow the institution, and thus the Department, to calculate data such as labor market outcomes only for students who are released from the facility and to avoid measuring those who are still incarcerated in such measures.

§ 668.240 Limit of termination of approval.

Statute: Section 484(t) of the HEA authorizes Pell Grant eligibility for confined or incarcerated individuals enrolled in an eligible PEP.

Current Regulations: None.

Proposed Regulations: The proposed regulations would allow the Secretary to limit or terminate approval of an institution to provide an eligible PEP if the Secretary determines that the institution violated any terms of proposed subpart P or determines that the information the institution submitted to the Secretary, accrediting agency, State agency, or oversight entity in support of its PEP application was materially inaccurate.

If the Secretary initiates a limitation or termination action with respect to an institution's PEP approval, the regulations would also require the postsecondary institution to submit a teach-out plan as defined under 34 CFR 600.2 and, if practicable, a teach-out agreement(s) to the institution's accrediting agency. A teach-out plan is a written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate, or plans to cease operations, before all enrolled students have completed their program of study. A teach-out agreement is a written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if an institution, or an institutional location that provides 100 percent of at least one program offered, ceases to operate, or plans to cease operations, before all enrolled students have completed their program of study.

Reasons: It is necessary for the Secretary to establish in regulation the ability to remove programs that violate the terms of the regulations if the basis for approval was materially inaccurate. A Subcommittee member recommended that the Department add a teach-out plan requirement and, if practicable, a teach-out agreement(s) for an initiated limitation or termination action, to ensure proper planning in the event of a program closure. Confined or incarcerated individuals should be treated equitably and be provided a reasonable opportunity to complete their programs through a teach-out in the event that such programs lose eligibility for the title IV, HEA programs. Teach-out plans typically include such information as how students should request official transcripts, alternative options for program completion, and may include how students may continue their education after being released from the facility; these elements are critical for students to have access to in the event their programs close.

§ 668.241 Best interest determination.

Statute: Section 484(t) of the HEA authorizes Pell Grant eligibility for confined or incarcerated individuals enrolled in an eligible PEP.

Current Regulations: None.

Proposed Regulations: We propose that an oversight entity's determination that a PEP is operating in the best interest of students must include an assessment of all of the following:

- Whether the rate of confined or incarcerated individuals continuing their education post-release, as determined by the percentage of students who reenroll in higher education reported by the Department, meets thresholds established by the oversight entity with input from relevant stakeholders.
- Whether job placement rates in the relevant field for such individuals meet any applicable standards required by the agency that accredits the institution or program or a State in which the institution is authorized. If no job placement rate standard applies to a PEP offered by the institution, the oversight entity would need to define, and the institution would need to report, a job placement rate with input from relevant stakeholders.
- Whether the earnings for such individuals, or the median earnings for graduates of the same or similar programs at the institution, as measured by the Department, exceed those of a typical high school graduate in the State.
- Whether the experience, credentials, and rates of turnover or departure of PEP instructors are substantially similar to other programs at the institution, accounting for the unique constraints of PEPs.
- Whether the transferability of credits for courses available to confined or incarcerated individuals and the applicability of such credits toward related degree or certificate programs is substantially similar to those at other similar programs at the institution, accounting for constraints of PEPs.
- Whether the PEP's offering of relevant academic and career-advising services to individuals while they are confined or incarcerated, in advance of reentry, and upon release, is substantially similar to offerings to a student who is not a confined or incarcerated individual and who is enrolled in, and may be preparing to transfer from, the same institution, accounting for constraints of PEP.

• Whether the institution ensures that all formerly incarcerated students are able to fully transfer their credits and continue their programs at any location of the institution that offers a comparable program, including by the same mode of instruction, barring exceptional circumstances relating to the student's conviction.

We also propose several other assessment items that are important to assessing program quality, but that would be optional for the oversight entity:

• Whether the rates of recidivism, which do not include any recidivism by the student within a reasonable number of years of release and which only include new felony convictions as defined by United States Sentencing Guideline § 4A1.1(a) as ''each sentence of imprisonment exceeding one year and one month,'' meet thresholds set by the oversight entity.

• Whether the rates of completion reported by the Department, which do not include any students who were transferred across facilities and which account for the status of part-time students, meet thresholds set by the oversight entity with input from relevant stakeholders.

• Other indicators pertinent to program success as determined by the oversight entity.

In addition, we propose the following:

• The oversight entity would make the best interest determination through a feedback process that considers input from relevant stakeholders and considers approval of the eligible PEP given the totality of the circumstances.

• If the oversight entity does not find a program to be operating in the best interest of students, it would allow for the program to re-apply within a reasonable timeframe.

• The oversight entity initially could approve a PEP without the required assessments under this section for two years. After the two years of initial approval under § 668.236, the oversight entity would need to determine that the PEP is operating in the best interest of students pursuant to § 668.241.

• After the oversight entity's initial best interest determination, the institution would be required to obtain subsequent final evaluations of each eligible PEP from the responsible oversight entity not less than 120 calendar days prior to the expiration of each of the institution's PPAs, except that the oversight entity could make a determination between subsequent evaluations based on its regular monitoring and evaluation of program outcomes. Each subsequent evaluation would include the entire period following the prior determination, a review of the best interest factors for all students enrolled in the program, and input from relevant stakeholders through the oversight entity's feedback process. Subsequent evaluations would be submitted to the Secretary no later than 30 days after the evaluation is completed.

• Finally, we propose that postsecondary institutions would obtain and maintain documentation of the methodology by which the oversight entity made each best interest determination, including the initial approval determination, for as long as the program is active or, if the program is discontinued, for three years following the date of discontinuance.

Reasons: The authorizing statute requires the Federal Bureau of Prisons, a State Department of Corrections, or other entity responsible for oversight of the correctional facility (referred to as the ''oversight entity'' throughout the preamble) to determine whether a PEP is operating in the best interest of the students in its correctional facility. PEPs are unlike most other postsecondary institutions and programs, where oversight is managed by the Department, the State, and the institution's accrediting agency, not an external entity such as a correctional agency. Providing a regulatory framework for making the determination about the best interests of students would ensure that the oversight entities, which are generally new to this role, have adequate direction as to how to implement the statute, a concern raised by several Subcommittee members. Without adequate direction, oversight entities may fall short, and students may be left without the critical protection that Congress envisioned to ensure that students with fewer educational options—who cannot easily elect to attend another institution—have access to programs operating in their best interest.

In paragraph (a)(1), the Department would make clear that the oversight entity must assess all of the indicators listed in that section, although the final determination that the program is operating in the best interest of students would be made based on the totality of the circumstances of the program. That is, while each indicator would be assessed, falling short on one or more indicators would not automatically require the oversight entity to determine the PEP is ineligible to operate at a correctional facility. Proposed § 668.238 would require an oversight entity to provide documentation for all of the indicators under § 668.241, detailing its methodology in reaching a determination that the program is operating in the best interest of students. The Department would monitor and enforce the overarching requirement that a PEP operate in the best interest of confined or incarcerated individuals. Toward that end, we would retain the authority to terminate approval of the eligible PEP under proposed § 668.240 if it is determined that the institution violated any terms of subpart P or that the information the institution submitted to the Secretary, accrediting agency, State agency, or oversight entity in support of its application was materially inaccurate.

As required by the statute, paragraph (a)(1)(i) would require an oversight entity to evaluate continuing education post-release. The Department's proposed regulation would codify this indicator with greater specificity and require the oversight entity to establish a threshold for this metric with input from relevant stakeholders (as discussed in § 668.235). Establishing a threshold for this measure upfront would help ensure the oversight entity has adequate processes in place to make fair, informed, and consistent decisions about whether PEPs are operating in the best interests of students and would provide insights to the Department and the public about the processes those oversight entities are employing. In the interest of reducing the data collection burden on institutions and oversight entities, we would provide data on post-release continuation of education by confined or incarcerated individuals to institutions and oversight entities. We would also publish aggregate data on post-release education continuation in our annual report.

The second ''best interest'' determination factor, in paragraph (a)(1)(ii), would require the oversight entity to consider a job placement rate measure. This factor is also named in the statute. While the Department does not currently have an established measure for job placement rates, we are aware that some accrediting agencies or States may have policies and procedures regarding the calculation of job placement rates, and oversight entities could use those existing calculations where applicable. If no applicable requirements exist, however, then the oversight entity would need to establish a job placement rate definition with input from relevant stakeholders, and the institution would report using that definition.

Paragraph (a)(1)(iii) would require the oversight entity to consider data regarding whether the median post-release earnings of graduates of the eligible PEPs are higher than those of a

typical high school graduate in the State, if available. This is consistent with the statutory provision that oversight entities may consider the earnings of formerly confined or incarcerated individuals from the PEP. It also would help ensure that the typical confined or incarcerated individual is financially better off after having completed the PEP than someone with a high school diploma or its equivalent who did not attend such a program. Subcommittee members raised concerns that such data would not be readily available. Accordingly, if the oversight entity does not have data, the Department would provide median earnings for graduates of the same or similar programs in order to conduct the proper assessment. Such data are generally already made available through the College Scorecard, and the Department is committed to continuing to produce and improve upon those data.

Proposed paragraphs (a)(1)(iv), (v), and (vi) outline additional indicators that the oversight entity would be required to assess related to the faculty, credit transfer, and advising and support services for incarcerated students in the PEP. All are listed in the statute. Specifically, we propose to require that the oversight entity assess whether the experience, credentials, and turnover rates of instructors (paragraph (a)(1)(iv)), credit transfer (paragraph (a)(1)(v)), and academic and career advising services (paragraph (a)(1)(vi)) for the confined or incarcerated individuals in the PEP are substantially similar to other students at the institution. A Subcommittee member was concerned that the unique constraints of PEPs may make it challenging to offer ''substantially similar'' experiences to PEP students; for example, instructor turnover may be higher in a correctional facility setting due to background check requirements. The Department agreed and incorporated that concept into the proposed regulations by noting that each of these provisions should account ''for the unique geographic and other constraints of prison education programs.'' As discussed above in connection with proposed § 668.237, the institution's accrediting agency would review and approve the institution's methodology for making its ''substantially similar'' determinations, which the institution would be required to develop in collaboration with the oversight entity.

Paragraph (a)(1)(vii) was added based on a recommendation from a Subcommittee member. There was concern expressed during the Subcommittee meetings that institutions may enroll confined or incarcerated individuals into an eligible PEP, but later deny their eligibility to enroll in an on-campus program post-release, leaving at least some students potentially unable to complete their educational programs. The Department agreed that this presents an academic and equity concern and proposes to require that the oversight entity assess whether formerly incarcerated students are able to fully transfer their credits and continue their programs at any location of the institution that offered the PEP, including by the same mode of instruction, taking into account any exceptional circumstances related to the student's conviction, which are typically outside the institution's control. For example, exceptional circumstances might exist if, as a part of the terms of the individual's release from a correctional facility, the formerly confined or incarcerated individual is not permitted to be within a certain distance of an individual or group of individuals who are likely to be on the campus where the student wishes to enroll. In such circumstances, the Department would encourage institutions to work to identify alternative opportunities for re-enrollment for the student.

The proposed regulations also would provide three optional ''best interest'' factors in paragraphs (a)(2)(i), (ii) and (iii) that the oversight entity may choose to assess in the course of determining whether the program operates in the best interests of students, namely the recidivism rates of formerly confined or incarcerated individuals who attended the PEP; other indicators related to program success that the oversight entity identifies; and completion rates reported by the Department to the oversight entity. The recidivism rate assessment in paragraph (a)(2)(i) is listed in the statute but drew sharp criticism from the Subcommittee as being challenging to measure and less directly related to program quality. The Department accordingly proposes parameters for the consideration of recidivism rates if the oversight entity opts to review that metric. Specifically, the Department proposes to exclude recidivism after ''a reasonable number of years of release,'' and to include only new felony convictions that, as defined by the U.S. Sentencing Guideline § 4A1.1(a), exceed a sentence of one year and one month. Since felony definitions and sentence lengths vary from State to State, we believe that aligning reporting to the U.S. Sentencing Guidelines will ensure more consistent treatment. These protections would also minimize the impact of more minor convictions or sentences, or technical violations such as probation revocations, and ensure greater uniformity in how recidivism is measured, if the oversight entity opts to measure it.

Under proposed paragraph (a)(2)(ii), the oversight entity may opt to assess completion rates as part of the best interest determination. Completion rates are used by many entities in higher education, including for consumer information purposes under the HEA; by States and accrediting agencies in assessing college outcomes; and by institutions themselves in identifying gaps in performance and opportunities for continuous improvement. We provide this information to the public through the College Scorecard, to members of an accreditation advisory committee, and in many other contexts to support practitioners' and policymakers' efforts to understand and improve institutional outcomes. The Federal government also invests billions each year in programs designed to increase postsecondary completion rates. Some subcommittee members were concerned with adding any metrics not explicitly mentioned in the statute as a required consideration for the oversight entity; and noted potential challenges with ensuring completion for incarcerated students who, for instance, are transferred across prison facilities and unable to continue their program. Thus, while the Department continues to feel strongly that this measure would add value to the oversight entity's assessment of prison education programs, we agreed to make it an optional, rather than a required, consideration for the purposes of reaching consensus. With this inclusion, the Department would analyze completion rates of eligible PEPs and provide that information to Congress and the public as required in section 484(t)(5)(A)(viii), which requires the Department to report on the impact of expanding Pell Grant eligibility to confined or incarcerated individuals and which specifically requires reporting on academic outcomes such as credential and degree completion.

In proposed paragraph (a)(2)(iii), the Department would permit oversight entities to identify and consider other measures of program success in the best interest determination, beyond those specified in the statute and regulations. We believe that a collateral benefit of the stakeholder feedback processes that are required of oversight entities may be the suggestion of additional metrics, particularly those important to

incarcerated students and their advocates.

Paragraph (b), which would require the oversight entity to solicit feedback and explain how to make the best interest determination, is already described in this section of the preamble and in § 668.235. As previously stated, these proposed ''best interest'' factors would be part of a holistic assessment of the institution's ability to operate in the best interests of students and would not be pure eligibility requirements.

A Subcommittee member recommended that the regulations establish an appeal process for programs that the oversight entity determines are not operating in the best interest of students. While the Department does not believe it is appropriate to prescribe a specific appeal process for use by external agencies, we incorporated the suggestion by proposing in paragraph (c) that oversight entities permit institutions that were not found to be operating in the best interests of students to reapply within a reasonable timeframe.

The oversight entity would always have to approve the operation of an eligible PEP at a correctional facility that it oversees. However, in paragraph (d), we propose to provide two years before the oversight entity would need to make a formal ''best interest determination.''

As discussed in § 668.236, it would take time for the postsecondary institution, the Department, and the oversight entity to collect the necessary data to make an informed decision based on the indicators. The two-year timeframe would ensure students receive the protections of the best interest framework in a timely manner, while recognizing the need for some time to gather the necessary information to meet the statutory requirement for a data-informed decision by the oversight entity.

In paragraph (e), the Department proposes that any reassessment of an eligible PEP by the oversight entity be conducted at least 120 days prior the expiration of the institution's PPA to ensure the assessment is complete and available by the time we review the institution's application for recertification. Reassessment is important to ensure that eligible PEPs continue to operate in the best interests of confined or incarcerated individuals. This timeframe would ensure that institutions' determination dates are staggered, based to an extent on the risk of the institution (since higher-risk institutions will have shorter recertification timelines than lower-risk institutions), and that determinations are available to the Department when the agency is making its own assessment of the institution for title IV purposes.

The records retention described in paragraph (f) is necessary for oversight and review purposes.

§ 668.242 Transition to a prison education program.

Statute: Section 484(t) of the HEA authorizes Pell Grant for confined or incarcerated individuals enrolled in an eligible PEP.

Current Regulations: None.

Proposed Regulations: The Department proposes that, for institutions operating eligible PEPs in a correctional facility that is not a Federal or State correctional facility, a confined or incarcerated student who otherwise meets the eligibility requirements to receive a Pell Grant and is enrolled in an eligible program that does not meet the requirements under subpart P would continue to receive a Pell Grant until the earlier of July 1, 2029; the date the student reaches the maximum timeframe for program completion as defined under § 668.34; or the date the student exhausts Pell Grant eligibility as defined under § 690.6(e).

We propose that an institution cannot enroll a confined or incarcerated student on or after July 1, 2023, who was not enrolled in an eligible program prior to July 1, 2023, unless the institution first converts the eligible program into an eligible PEP as defined in § 668.236.

Reasons: This proposed regulation does not apply to the Second Chance Pell experiment under the Experimental Sites Initiative, for which an end date has not yet been determined. The Department will release subregulatory guidance for institutions participating in the Second Chance Pell Experiment.

Instead, this section of the proposed regulations is focused on incarcerated students enrolled in educational programming in correctional facilities that is not currently subject to the prohibition on Federal Pell Grants. As previously noted, the statute and regulations currently prohibit students confined or incarcerated in a State or Federal correctional facility from access to Pell Grants (outside of the Second Chance Pell experiment). Programs operating in correctional facilities other than State or Federal correctional facilities are currently eligible, however. For example, currently, a proprietary institution may be operating an eligible program in a local jail or juvenile justice facility, and students may be accessing Pell Grants for that program. On July 1, 2023, the statute will require all confined or incarcerated individuals pursuing postsecondary education to enroll in an eligible PEP at a public, private nonprofit, or vocational institution to access Pell Grants; at that time, therefore, an individual enrolled in any program at a proprietary institution would be ineligible for a Pell Grant.

The Department does not want to interrupt a student's enrollment in a program; therefore, we propose limited flexibility, discussed in the proposed regulations section, to allow current students to finish their programs if those programs do not align with final PEP regulations that may be in effect on July 1, 2023 (or before that time if the regulations are implemented early). Under the proposed regulations, any such flexibility would end on July 1, 2029, which would be the final date a confined or incarcerated individual would be able to receive a Pell Grant in a program that is not an eligible PEP. This provides six years from the effective date of the authorizing statute for current students to either finish their programs or enroll in an eligible PEP, similar to the maximum timeframe to complete a four-year program as defined in § 668.34(b).

§ 690.62 Calculation of a Federal Pell Grant.

Statute: The Consolidated Appropriations Act, 2021 amended section 401(b)(3) of the HEA to require that no Pell Grant exceed the cost of attendance (as defined in section 472 of the HEA) at the postsecondary institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a Pell Grant for that student exceeds the cost of attendance for that year, the amount of the Pell Grant must be reduced until the Pell Grant does not exceed the cost of attendance at such postsecondary institution.

Current Regulations: None.

Proposed Regulations: We propose to add paragraph (b)(1)(i) to § 690.62 to codify in regulation that a Pell Grant cannot exceed the cost of attendance. In proposed § 690.62(b)(1)(ii), we propose that the postsecondary institution must reduce the Pell Grant award if the amount exceeds cost of attendance so that it does not result in a credit balance as defined under § 668.164(h).

The Department is aware that confined or incarcerated individuals may receive other financial assistance in addition to a Pell Grant. In § 690.62(b)(2)(i), we propose that, if the Pell Grant exceeds the student's cost of attendance when combined with other financial assistance, the financial assistance other than the Pell Grant must be reduced by the amount by which the total financial assistance

exceeds the student's cost of attendance. Finally, we propose § 690.62(b)(2)(ii) to require that the Pell Grant be reduced to not exceed the cost of attendance if the confined or incarcerated individual's other financial assistance cannot be reduced.

Below are examples of how the calculation of a student's Pell Grant awards and lifetime eligibility is affected by the proposed regulations. The Pell amounts in the examples are based on the 2021–2022 Federal Pell Grant Payment and Disbursement Schedule.

Jerry, Sam, Amy, Paul, and Eliza are enrolled at the University of ABC in an eligible PEP in General Studies that leads to an associate degree. The eligible PEP is a standard term program with one fall and one spring payment period. Their COA for the program is $6,495.

A. Jerry attends the institution as a full-time student for the full award year. Jerry has an expected family contribution (EFC) of $0. Jerry's Pell Grant scheduled award is $6,495 (maximum award for the 2021–22 award year). Jerry also gets a Veteran's Administration (VA) education and training benefit of $5,495 that, by law, cannot be reduced. Jerry's total award is now $11,990 for the year.

Under current § 690.63(b), if Jerry were not incarcerated, he would receive $3,247.50 for the fall payment period and $3,247.50 for the spring payment period (totaling $6,495). However, under proposed § 690.62(b)(2)(ii), the University of ABC would reduce Jerry's $6,495 Pell award to $1,000 so that the combination of the student's Pell Grant and VA education and training benefit does not exceed Jerry's COA. The University of ABC would determine this by subtracting $11,990–$6,495 (Jerry's COA) which is $5,495 above Jerry's COA. Then University of ABC would subtract the amount above Jerry's Pell award from Jerry's original award ($6,495–$5,495), leaving $1,000 in Pell. The University of ABC would pay Jerry $500 for the fall payment period and $500 for the spring payment period. Jerry begins attendance in all coursework and maintains full-time enrollment status for the entire award year. Jerry's lifetime eligibility used (LEU)—defined in § 690.6(e)—increases by ($1,000/$6,495) = 15.3964 percent.

B. Sam also attends as a full-time student for the full award year. Sam has an EFC of 0. Sam's Pell Grant scheduled award is $6,495 (maximum award for the 2021–22 award year). Sam receives no other financial assistance. Sam receives $3,247.50 for the fall payment period and $3,247.50 for the spring payment period. Sam begins attendance in all coursework and maintains full time status for the entire award year. Sam's LEU increases by ($6,495/$6,495) = 100 percent for the year.

C. Amy attends the institution as a half-time student for the full award year. Amy has an EFC of $3,000. Amy's Pell Grant award is $1,773 because Amy's enrollment status is half-time. Amy's maximum Pell award (the scheduled award) would be $3,545 if she attended full-time for the full year. Amy qualifies for an institutional scholarship from University of ABC for $5,000.

Per the proposed § 690.62(b)(2)(i), the University of ABC decides to reduce Amy's institutional scholarship by $278 so that the combination of the student's Pell Grant and scholarship does not exceed Amy's COA. Because Amy's Pell Grant award was not reduced, Amy would receive $886.50 for the fall payment period and $886.50 for the spring payment period.

Amy begins attendance in all coursework and maintains half-time enrollment status for the entire award year. Amy's LEU would increase by ($1,773/$3,545) = 50.0141 percent. This is because Amy's scheduled award (the amount Amy would have received if Amy attended full-time for the full year) is $3,545.

D. Paul attends as a three-quarter-time student for the full award year. Paul has an EFC of $2,000.

Paul's Pell award is $3,409 for the year because his enrollment is three-quarter time. Paul's maximum Pell award (the scheduled award) would be $4,545 if he attended full-time for the full year. Paul also receives a State grant for $4,000. State law does not permit the State to reduce Paul's grant. This brings Paul's total aid to $7,409 for the year.

Paul would receive $1,704.50 for the fall payment period and $1,704.50 for the spring payment period. However, per the proposed § 690.62(b)(2)(ii), the University of ABC would reduce Paul's Pell award by $914 so that the combined amount of the Pell Grant and State grant would not exceed Paul's COA. The University of ABC would determine this by subtracting $7,409–$6,495 (Paul's COA), which is $914 above Paul's COA. Then University of ABC would subtract the amount above Paul's Pell Grant award from Paul's original award ($3,409–$914) leaving Paul $2,495 in Pell funds. The University of ABC would pay Paul $1,247.50 for the fall payment period and $1,247.50 for the spring payment period.

Paul begins attendance in all coursework and maintains three quarter enrollment status for the entire award year. Paul's LEU would increase by ($2,495/$4,545) = 54.8954 percent.

E. Eliza plans to attend as a half-time student in the fall payment period and full-time in the spring payment period. Eliza has an EFC of $500.

Eliza's Pell Grant disbursement amount for the fall payment period is $1,511.50 and $3,022.50 for the spring payment period. This is because Eliza attended half-time for the fall and full-time for the spring. Eliza's maximum Pell award (the Scheduled Award) would be $6,045 if she attended full-time for the full year. Eliza also receives a scholarship of $3,000 from an outside provider toward Eliza's educational expenses that cannot be reduced. This brings Eliza's total aid to $7,534 for the year.

Per the proposed § 690.62(b)(2)(ii), the University of ABC would reduce Eliza's Pell Grant award by $1,039 so that the combined amount of Pell Grant and other scholarship assistance would not exceed Eliza's COA. The University of ABC would determine this by subtracting $7,534–$6,495 (Eliza's COA), which is $1,039 above Eliza's COA. Then University of ABC would subtract the amount above from Eliza's total award for the year ($4,534–$1,039), leaving Eliza $3,495 in Pell funds. The University of ABC would pay Eliza $992 for the fall payment period and $2,503 for the spring payment period. Eliza's LEU would increase by ($3,495/$6,045) = 57.8163 percent.

Reasons: This is a technical update to ensure that the amount of Pell Grant funds that a confined or incarcerated student receives, combined with other types of educational assistance, would not exceed that student's educational expenses for tuition, fees, books, and supplies, which are the only items that may be included in such a student's cost of attendance under section 472 of the HEA.

§ 690.68 Severability.

Statute: None.

Current Regulations: None.

Proposed Regulations: Proposed § 690.68 would make clear that, if any part of the proposed regulations is held invalid by a court, the remainder would still be in effect.

Reasons: Each of the proposed provisions discussed in this NPRM serves one or more important, related, but distinct, purposes. Each of the requirements provides value to students, prospective students, and their families, to the public, taxpayers, and the Government, and to institutions separate from, and in addition to, the value provided by the other requirements. To best serve these purposes, we would include this administrative provision in the regulations to make clear that the

regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

90/10 Rule (34 CFR 668.28)

§ 668.28 Definition of the revenue requirement for proprietary institutions of higher education.

Statute: Section 487(a)(24) of the HEA, as amended by the ARP, states that proprietary institutions must derive at least 10 percent of their revenue from non-Federal sources, and section 487(d) provides details on how proprietary institutions must calculate the percentage of their revenue from non-Federal sources.

Current Regulations: The current regulations provide that a proprietary institution must derive at least 10 percent of its revenue from sources other than title IV, HEA program funds.

Proposed Regulations: Proposed § 668.28(a)(1) would change the terminology from non-title IV revenue to non-Federal revenue and title IV funds to Federal funds.

Reasons: This proposed change in the regulatory language would reflect the change in the statutory language to ''non-Federal'' sources.

§ 668.28(a)(1) Calculating the revenue percentage.

Statute: Section 487(a)(24) of the HEA states that proprietary institutions must derive no less than 10 percent of their revenue from non-Federal sources as calculated according to section 487(d) of the HEA. Prior to passage of the ARP, the HEA only used title IV revenue from the Department when calculating compliance with the 90/10 rule. The ARP amended these sections to require proprietary institutions to include other sources of Federal revenue, in addition to title IV revenue from the Department, in the calculation that proprietary institutions make to determine if they are in compliance with the 90/10 rule.

Current Regulations: Current § 668.28(a)(1) provides that proprietary institutions must determine if they meet the requirement in § 668.14(b)(16) that at least 10 percent of their revenue is derived from non-title IV sources by using the formula laid out in Appendix C of subpart B.

Proposed Regulations: The Department proposes to add language to § 668.28(a)(1) detailing how proprietary institutions would calculate the revenue percentage. Paragraph (a)(1)(i) would provide that proprietary institutions with fiscal years beginning on or after January 1, 2023, must count title IV, HEA program funds and any other education assistance funds provided by a Federal agency directly to an institution or a student during that fiscal year, including the Federal portion of any grant funds provided or administered by a non-Federal agency, to cover tuition, fees, and other institutional charges as Federal revenue in the revenue calculation. It would also exclude from the revenue percentage calculation Federal funds for that fiscal year that are non-title IV Federal funds that go directly to a student and are specifically designated by the Federal agency providing those funds to cover expenses other than tuition, fees, and other institutional charges. Additionally, it would provide that the Secretary will identify the agency and Federal assistance funds that must be included in the revenue calculation in a **Federal Register** notice that will be updated as needed. Section 668.28(a)(1)(ii) proposes that Federal funds subject to the 90 percent limitation be limited to title IV, HEA program funds for any fiscal years beginning prior to January 1, 2023. Finally, we propose to update Appendix C to reflect the other changes proposed to the 90/10 calculation as additional guidance to accountants and auditors.

Reasons: The Department proposes to differentiate requirements for calculating the revenue percentage for fiscal years beginning before January 1, 2023, and those occurring on or after that date to grandfather in existing calculations in compliance with the ARP modifications to the HEA. The ARP specifies that the earliest the modification to the revenue requirement for proprietary institutions could apply to would be for institutions' fiscal years beginning on or after January 1, 2023.

Similarly, the Department proposes to include any Federal funds distributed directly to a student or proprietary institution to cover the cost of tuition, fees, and other institutional charges in the calculation of Federal funds in fiscal years beginning on or after January 1, 2023. This proposed change would implement the new statutory language in section 487(a)(24) of the HEA, which provides that the revenue percentage must count Federal funds that are disbursed or delivered to or on behalf of a student to be used to attend such institution. The Department proposes to only count Federal education assistance funds that are designated by a Federal agency to be used to pay tuition, fees, and other institutional charges as Federal revenue to reflect the statutory language related to funds that are ''used to attend the institution.''

During the negotiated rulemaking sessions, some non-Federal negotiators raised the concern that it would be difficult for proprietary institutions to include Federal funds that go directly to students, as the institutions may not be aware of what funds to include in the revenue calculation. Nonetheless, most non-Federal negotiators agreed that proprietary institutions should include these funds in the calculation. In the proposed regulations, the Department expects that proprietary institutions would report any Federal revenue that they are aware of in their 90/10 calculation, unless those funds were provided to a student who did not pay any institutional charges. To address the concern that proprietary institutions may not be aware of all sources of Federal revenue, the Department proposes to publish in the **Federal Register** a list of Federal education assistance programs that proprietary institutions must include as Federal revenue, and proprietary institutions would be considered to be aware of any Federal funds included on this list when determining the Federal sources of revenue they receive. The Department expects that proprietary institutions would make a good-faith effort to collect information about Federal funds distributed to students in instances where agencies do not provide this information or make it readily available to institutions. The Department would publish subsequent **Federal Register** notices if it identified additional Federal education assistance programs to add to the list in subsequent years or if it needs to remove defunct programs. During negotiations, some non-Federal negotiators advocated for the Department to publish a list of programs to the **Federal Register** annually to ensure that the list was kept up-to-date. However, the Department has observed that, generally, the sources of Federal funds for proprietary institutions do not vary much from year to year. Thus, the Department believes it would be more appropriate to publish one list and update as necessary.

One negotiator raised a concern about how proprietary institutions would count funds from programs that the Secretary added to the notice midway through a proprietary institution's fiscal year. To be responsive to this concern, proprietary institutions would only need to include revenues from new Federal sources when those funds paid for institutional costs for the fiscal year starting after the Federal program has been identified on the published list.

§ 668.28(a)(2) Disbursement rule.

Statute: Section 487(d) of the HEA provides that proprietary institutions must perform the 90/10 revenue calculation using cash basis accounting,

with the exception of certain institutional loans issued between 2008 and 2012 as described in section 487(d)(1)(D)(i) of the HEA.

Current Regulations: Current § 668.28(a)(2) is titled ''Cash basis accounting'' and mandates that proprietary institutions use cash basis accounting to calculate their 90/10 percentage, with the exception of certain institutional loans issued between 2008 and 2012 as described in § 668.28(a)(5)(i).

Proposed Regulations: Proposed § 668.28(a)(2) would maintain existing regulations regarding proprietary institutions' use of cash basis accounting to calculate their revenue percentage and would also specify that proprietary institutions must include Federal funds used to pay tuition, fees, and other institutional charges that were provided either directly to the institution or paid by a student who received Federal funds.

The Department also proposes to add regulatory language creating a disbursement rule and change the name of the section to ''Disbursement rule.'' The disbursement rule would create a deadline for title IV, HEA program disbursements for a proprietary institution's 90/10 calculation. Specifically, the proposed regulations would require proprietary institutions requesting title IV, HEA funds using the advanced payment method (§ 668.162(b)(2)) or the heightened cash monitoring method (§ 668.162(d)(1)) to request and disburse any funds to an eligible student before the end of the proprietary institution's fiscal year. In the proposed regulations, proprietary institutions requesting title IV, HEA program funds under the reimbursement or heightened cash monitoring methods in § 668.162(c) or (d)(2) would be required to make timely disbursements pursuant to § 668.164 to student accounts before the end of their fiscal years and report the funds that were disbursed to the student accounts as Federal funds in the 90/10 calculations.

Reasons: The Department proposes to maintain the current requirement that proprietary institutions use cash-basis accounting to match statutory requirements. The Department also proposes that proprietary institutions consistently and accurately count the amount of Federal funds they receive in a fiscal year through a requirement recognizing the timely disbursements to student accounts as the payment of title IV funds, even when it is the institution advancing those funds to later be reimbursed by the Department. The intent, in part, is to clearly outline how proprietary institutions would implement the changes to the Federal revenue calculation. We believe this additional clarity would be needed given that calculating the Federal revenue portion of the 90/10 calculation would require the inclusion of more sources of Federal funds than proprietary institutions may be accustomed to tracking in their financial accounting systems.

Additionally, the Department proposes to define title IV, HEA program funds and Federal funds that count as Federal revenue in the 90/10 calculation as funds ''used to pay tuition, fees, and other institutional charges.'' Some non-Federal negotiators suggested that the Department include Federal funds for housing, while other non-Federal negotiators supported defining Federal funds as we have proposed. The Department proposes to use this definition to align with the statutory language that Federal funds ''will be used to pay the student's tuition, fees, or other institutional charges.'' [17] We propose to clarify here that, to the extent another Federal agency has designated payments to a student for housing and the student is not paying the institution for housing, those funds would not count as payments to an institution.

Finally, the Department proposes to require proprietary institutions to make timely disbursements of title IV, HEA program funds to eligible students by the end of the fiscal year to prevent proprietary institutions from delaying disbursements to the next fiscal year as a means of reducing the Federal funds that would be included in the 90/10 calculation for the earlier fiscal year. Per the HEA, proprietary institutions must use cash basis accounting to calculate 90/10. Because this form of accounting counts revenues when the institution actually receives the funds, proprietary institutions can reduce their Federal revenue percentages for one fiscal year by delaying the requests and disbursements of title IV, HEA program funds to students until after the start of the next fiscal year. Through reviews of some 90/10 calculations and audit workpapers, the Department has found that some proprietary institutions have delayed disbursements at the end of one fiscal year until the next as a way to avoid failing 90/10 for a second consecutive year, which failure could result in losing title IV, HEA program eligibility. Under this maneuver, the delayed disbursements were instead counted in the next fiscal year, where the proprietary institution might fail the 90/10 requirement but remained eligible due to the passing 90/10 score for the intervening fiscal year. To preserve the statutory intent of the 90/10 rule, the Department believes that it is necessary to create guardrails preventing proprietary institutions from gaming the revenue calculation.

Proprietary institutions currently have the discretion to set up disbursement timelines that are consistent with regulatory requirements. These proposed regulations are not intended to—and would not—limit a proprietary institution's flexibility in this area.[18] One negotiator raised the concern that the end of a fiscal year could coincide with the beginning of a semester or term, creating a situation in which it is impossible for a proprietary institution to disburse all funds before the end of the fiscal year. The Department does not intend for these proposed regulations to change proprietary institutions' timely disbursement policies in this situation. In these instances, the Department would evaluate whether a proprietary institution made timely disbursements and consider whether the proprietary institution deviated from its standing disbursement policies or created disbursement policies for the purpose of impacting the 90/10 revenue calculation.

§ 668.28(a)(3) Revenue generated from programs and activities.

Statute: Section 487(d) of the HEA provides that proprietary institutions may count in their 90/10 calculation funds generated from activities conducted by the institution that are necessary for the education and training of the institution's students as non-Federal revenue.

Current Regulations: Current § 668.28(a)(3) provides that institutions must count as non-Federal revenue funds generated from: (1) tuition, fees, and other institutional charges for students enrolled in eligible programs; (2) activities conducted by the institution that are necessary for the education and training of its students; and (3) funds paid by a student, or on behalf of a student by a party other than the institution, for an ineligible program as long as the program meets certain criteria.

Proposed Regulations: The regulations in proposed § 668.28(a)(3) would add a requirement that activities conducted by the institution necessary for the education and training of its students must be related directly to services performed by students for the revenue to be counted in 90/10. Additionally, the proposed regulations would modify the criteria for revenue

[17] Public Law 89–329.

[18] 34 CFR 668.164.

generated from programs ineligible for title IV, HEA program funds required to be included as non-Federal revenues. Specifically, the proposed regulations would add a requirement that these funds be paid by a student or on behalf of a student by a party unrelated to the institution, an institution's owners, or affiliates. Additionally, for a proprietary institution to count revenue generated from an ineligible program, the proposed regulations would require that the ineligible program: (1) not include any courses offered in a program eligible for title IV, HEA program funds; (2) be provided by the institution and taught by one of its instructors of an eligible program; and (3) be located at its main campus, one of its approved additional locations, a location approved by the appropriate State agency or accrediting agency, or an employer facility. Furthermore, the proposed regulations would provide that the proprietary institution may not count revenue generated from an ineligible program where it only ''provides facilities or test preparation courses, acts as a proctor, or oversees a course of self-study.'' Finally, the proposed regulations would no longer include funds generated from an ineligible program that simply prepares students to take an examination for an industry-recognized credential or certification issued by an independent third party as allowable non-Federal revenue; such programs must provide the industry-recognized credential or certification in order to be included as revenue.

Reasons: The Department proposes to require funds generated from activities conducted by the institution that are necessary for the education and training of its students to also be related directly to services performed by students in order to be counted as non-Federal funds in the 90/10 calculation. The Department understands that certain programs require students to undertake specific activities to complete their program, such as providing hair-styling services for a cosmetology program, and those activities may generate allowable non-Federal funds. However, the Department wants to ensure that the revenue generated from these activities would be directly related to the services the students perform and that proprietary institutions are not including revenues from tangential activities indirectly related to the services the students provide, such as the proceeds from the sale of beauty products to customers receiving services from students in a cosmetology program.

Further, the Department also believes it is necessary to provide additional guardrails for which funds generated from ineligible title IV, HEA programs can count as non-Federal aid for the purposes of 90/10, as proposed in § 668.28(a)(3)(iii). Title IV, HEA eligible programs have built-in consumer protection mechanisms, including accreditation by an accrediting agency and State authorizing agency. Ineligible programs do not have any of these protections and may not have any guarantee of value for the student. Given the other proposed changes to the 90/10 calculation, the Department is concerned that proprietary institutions may have an increased incentive to create ineligible programs, with little oversight and that may not serve students well, to generate non-Federal revenue for 90/10. By establishing minimum benchmarks for the revenue from non-eligible programs that institutions may include in the calculation, the Department wishes to discourage such activity.

As a guardrail, the proposed § 668.28(a)(3)(iii) would clarify that for a proprietary institution to count the funds as non-Federal revenue in 90/10, funds paid on behalf of a student must come from a source unrelated to the institution, its owners, or affiliates. Funds coming from the institution, its owners, or its affiliates are not sources ''other than the institution.'' [19] For this reason, the Department proposes to clarify that funds from these sources do not count as non-Federal revenue for purposes of 90/10.

As an additional guardrail, proposed § 668.28(a)(3)(iii) would allow proprietary institutions to count funds as non-Federal revenue only for programs that: (1) do not include any courses offered in an eligible program that is provided by the institution; (2) are taught by one of its instructors of an eligible program; and (3) are located at its main campus, one of its approved additional locations, a location approved by the State agency or accrediting agency, or at an employer facility. As mentioned, the Department is interested in ensuring that proprietary institutions are not creating programs that are not aligned with the institution or programs the proprietary institution offers and that have little to no oversight to boost its non-Federal revenue in its 90/10 calculation. The Department worked with negotiators to develop consensus language in proposed § 668.28(a)(3)(iii) that allows proprietary institutions flexibility to offer programs more likely to provide value to students due to built-in consumer protection mechanisms—such as those that have been approved by an accreditor or the relevant State agency, those leading to an industry-recognized credential or certification, or those needed for students to maintain or meet additional State licensing requirements—while limiting non-Federal funds included in the 90/10 calculation that are generated from programs with little oversight or consumer protection mechanisms.

The guardrails in § 668.28(a)(3)(iii) were created based on negotiations with non-Federal negotiators and are intended to provide proprietary institutions with the flexibility to count funds from ineligible programs that help students, such as those provided specifically for employees at an employer facility, while balancing protections for students against incentivizing proprietary institutions from creating programs with little oversight to generate non-Federal funds. However, the Department continues to have concerns that allowing institutions to count funds from these programs may serve as an incentive for proprietary institutions to create and market ineligible programs—which lack oversight or consumer protections or may be unrelated to preparing students for gainful employment—to increase the amount of non-Federal funds institutions receive for gainful employment programs in a fiscal year. The Department seeks feedback about how to provide flexibility to proprietary institutions to offer ineligible programs that provide value to students while ensuring that revenues from those programs is related to the institution's eligible programs that are subject to the 90/10 revenue requirement. The Department also seeks feedback on appropriate mechanisms to ensure that these opportunities to generate non-Federal funds are adequately monitored to identify institutions that may be passing the 90/10 requirements as a result of such programs.

Additionally, proposed § 668.28(a)(3)(iii) would disallow revenue from ineligible programs where the proprietary institution primarily provides facilities for test preparation courses, acts as a proctor, or oversees a course of self-study or prepares students to take an examination for an industry-recognized credential or certification issued by an independent third party. The Department does not believe that the institution providing facilities, acting as a proctor, or overseeing a course of self-study represents the proprietary institution providing training or education. Additionally, the Department proposes to disallow revenue from programs where the proprietary institution prepares students

[19] Public Law 89–329, as amended.

to take an examination for an industry-recognized credential or certification issued by an independent third party because the Department does not believe that these programs represent new education and training, but rather review material. Further, the Department believes that high-quality programs of study generally prepare students to take an examination for the relevant credential or certification. It therefore does not want to inadvertently incent institutions to lower the quality of these programs by the institution requiring students to take an additional test preparation course in addition to the original program of study to be able to pass the exam for a relevant certification or credential in order to increase its non-Federal revenue.

§ 668.28(a)(4) Application of funds.

Statute: Section 487(d)(1)(C) of the HEA, as amended, provides that proprietary institutions will presume that any Federal education assistance funds that are disbursed or delivered to, or on behalf of, a student will be used to pay the student's tuition, fees, or other institutional charges. It provides exceptions in instances where a student's charges are satisfied by other payments, including: (1) grant funds provided by non-Federal public agencies or private sources independent of the institution; (2) funds provided under a contractual arrangement with a Federal, State, or local government agency to provide job training to low-income individuals; (3) funds used by a student that come from a savings plan for education expenses that qualify for special tax treatment under the Internal Revenue Code of 1986; or (4) institutional scholarships from outside sources.

Current Regulations: Current § 668.28(a)(4) provides that a proprietary institution must presume that any title IV, HEA program funds it disburses, or delivers to or on behalf of a student, will be used to pay the student's tuition, fees, or institutional charges, except to the extent that those charges are covered by: (1) grant funds provided by non-Federal public agencies or private sources independent of the institution; (2) funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals; (3) funds used by a student from a savings plan for education expenses established by or on behalf of the student if the plan qualifies for special tax treatment under the Internal Revenue Code of 1986; or (4) institutional scholarships that meet specific requirements and are counted as revenue generated from institutional aid for the purposes of the 90/10 calculation.

Proposed Regulations: Proposed § 668.28(a)(4) would maintain the presumption that Federal funds the institution disburses, or delivers to a student, will be used to pay the student's tuition, fees, or institutional charges. The proposal would also add a requirement that the presumption applies if the institution determines Federal funds were provided to a student and the student makes a payment to the proprietary institution within the same fiscal year to pay tuition, fees, and other institutional charges.

Proposed § 668.28(a)(4)(i) and (ii) would modify the treatment of other Federal and non-Federal funds used to pay a student's tuition, fees, or other charges to: (1) clarify that grant funds from non-Federal public agencies can be counted as satisfying a student's tuition, fees, or institutional charges as long as those grant funds do not include Federal or institutional funds. If a portion of those grant funds are Federal, the proposal would allow the non-Federal portion of the grant to be counted as satisfying a student's tuition, fees, or institutional charges as long as the Federal portion is included as Federal funds under this section; (2) clarify that private sources must be unrelated to the institution, its owners, or affiliates; and (3) clarify that any contractual arrangement to provide job training must be between the proprietary institution and a Federal, State, or local government agency.

Reasons: In § 668.28(a)(4), the Department proposes to require proprietary institutions to presume that any Federal funds disbursed to a student by the proprietary institution, or Federal funds the institution determines were provided to a student by another Federal source, will be used to pay the student's tuition, fees, or other institutional charges as long as the institution receives a payment from the student during the same fiscal year. Proposed § 668.28(a)(4) aligns with amendments to the statutory requirements implemented in the ARP. If a student receives funds from a Federal source but does not make a payment to the proprietary institution, then the Department does not believe it would be reasonable for the institution to presume that these Federal funds paid for tuition, fees, or other institutional charges since the institution did not receive any payments from said student. Thus, the Department proposes to clarify that the proprietary institution makes the presumption that the Federal funds the student received in the same fiscal year were used to make any payments received from a student during the year only if the institution received a payment from the student.

The Department proposes to clarify in § 668.28(a)(4)(i)(A) that the Federal portion of grants provided by non-Federal public agencies cannot be counted as a non-Federal payment of a student's tuition, fees, and other institutional charges. However, the non-Federal portion of the grant may be counted in these instances provided that the Federal portion of the grant is counted as Federal revenue. Without this clarification, a proprietary institution could use Federal funds from such a grant to reduce the amount of Federal funds from another source included in a proprietary institution's 90/10 calculation, which would not align with the statutory intent. During negotiations, most non-Federal negotiators supported this inclusion and stated that non-Federal public agencies are required to strictly track how Federal funds are spent in accordance with Federal funding requirements. Thus, the Department believes that proprietary institutions could work with the non-Federal agency to obtain the Federal/non-Federal breakdown of grant funds.[20] In the limited instances where a proprietary institution cannot determine the breakdown of grant funds, the Department proposes that no amount of the funds may be included as paying the student's institutional charges. The Department believes that it is necessary to exclude the entirety of the grants in these situations to prevent the Federal portion of the combined grants from being treated as non-Federal funds in a proprietary institution's 90/10 calculation. The Department also believes, in most instances, a proprietary institution would be able to determine the portion of Federal funds included in these grants and allocate them properly by source.

The Department also proposes to clarify in § 668.28(a)(4)(i)(B) that grant funds from private sources used to satisfy a student's tuition, fees, and other institutional charges to reduce the amount of Federal funds counted in the 90/10 calculation must come from a source unrelated to the institution, its owners, or affiliates. The Department interprets ''independent of the institution'' [21] to also be independent of an institution's owners and affiliates,

[20] OMB Circular A–87, revised May 10, 2004: *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A87/a87_2004.pdf.*

[21] Public Law 89–329, as amended.

and thus this proposal would clarify the Department's standing expectation.

The Department's proposed change in § 668.28(a)(4)(ii), which addresses funds provided through contractual arrangements for job training between an institution and a Federal, State, or local government agency, is not believed to change the meaning of the current regulations in this area. The Department is simply proposing to add the words ''the institution and'' before the reference to the applicable government agency, which will clarify that the proprietary institution is the entity entering into an agreement with a Federal, State, or local government agency, already the implied meaning of the regulations.

§ 668.28(a)(5) Revenue generated from institutional aid.

Statute: Section 487(d)(1)(D) of the HEA outlines allowable institutional revenue that can be counted as non-Federal revenue in the 90/10 calculation.

Current Regulations: Current § 668.28(a)(5) provides that a proprietary institution must include certain institutional aid as revenue: (1) the net present value of loans made to students on or after July 1, 2008, and prior to July 1, 2012, as long as the loans are bona fide, issued at intervals related to the institution's enrollment periods, are subject to regular repayment and collections, and are separate from enrollment contracts; (2) payments that the proprietary institution received for loans made to students before July 1, 2008, and after July 1, 2012; and (3) the amount disbursed to students for scholarships made to students on the basis of academic achievement or financial need as long as the scholarships are disbursed from an established restricted account and represent designated funds from an outside source or income earned on those funds.

Proposed Regulations: Proposed § 668.28(a)(5) would:

(1) Change ''must'' to ''may'' include institutional aid as allowable non-Federal revenue in a proprietary institution's 90/10 calculation;

(2) Consolidate, simplify, and codify accounting practices in the regulations to provide that allowable revenue from institutional loans be treated as the amount of principal payments made on those loans, as long as those loans meet the same criteria as the current regulations;

(3) Create clear guidelines for allowing proprietary institutions to count payments representing principal payments on ISAs or other alternative financing agreements as non-Federal revenue in its 90/10 calculation;

(4) Prohibit the sale of ISAs or other financing agreements owned by an institution from being included as non-Federal revenue; and

(5) Maintain current regulations in § 668.28(a)(5)(iv) allowing certain qualifying scholarships for academic achievement or financial need to be counted as non-Federal revenue but clarifying what the term ''outside sources'' means in the regulation.

Reasons: The Department proposes to allow, but not require, that proprietary institutions include revenue generated from institutional aid in their 90/10 calculations. This is current practice, as the Department's interest is ensuring that a proprietary institution obtains at least 10 percent of its revenue from non-title IV sources. If the institution meets this standard but does not wish to include other revenue generated from institutional aid in its calculation, perhaps to reduce burden or for other reasons, this is less relevant to the Department's interest in the institution's calculation. Additionally, maintaining ''must'' here would imply that the Department would reject an institution's calculation if it did not include all revenue generated from institutional aid, even if the calculation indicates that the institution already met the 90/10 requirement, which the Department does not believe is necessary if it can establish that the institution is compliant with the 90/10 requirements. The Department believes that this proposed change would clarify the reporting expectations for institutions when they submit their 90/10 calculation, while remaining consistent with current treatment of institutional aid in the calculation.

The Department proposes to remove current § 668.28(a)(5)(ii) and (iii) and move those provisions on how proprietary institutions may count payments made on institutional loans as non-Federal revenue to § 668.28(a)(5)(i). The Department proposes to remove from § 668.28(a)(5)(i) the net present value calculation language for loans made to students in a given fiscal year between July 1, 2008, and July 1, 2012, because this requirement no longer applies.

Additionally, proposed § 668.28(a)(5)(i) would codify that only the amount of principal payments made on institutional loans count as non-Federal revenue. This is already how the Department treats 90/10 calculations in practice because the interest portion of the payments does not represent revenue the institution receives for tuition, fees, and other permitted charges. The Department believes that the proposed regulations would clarify expectations and the Department's current practice.

Some non-Federal negotiators raised concerns that proprietary institutions may be incentivized to offer predatory ISAs and recommended that the Department add a section to § 668.28(a)(5) stating that ISAs are institutional loans since the Consumer and Financial Protection Bureau (CFPB) issued a consent order on September 7, 2021, finding that a student loan originator's ISAs are private education loans under the Truth in Lending Act (TILA) and the CFPB's implementing regulations Regulation Z.[22] The negotiators also pointed to the Department's electronic announcement on March 2, 2022, stating that ''any product, including an ISA, that meets the TILA and Regulation Z definitions of a private education loan also meets the definition of that term under the HEA and the Department's regulations.'' [23] The Department agrees with negotiators that it is prudent not to incentivize this behavior. However, the Department believes that having a separate section in the regulations pertaining to these products will help promote consistency in how these products are included in the 90/10 calculation. Thus, the Department proposes to add § 668.28(a)(5)(ii) and § 668.28(a)(5)(iii) pertaining to ISAs and alternative financing agreements, limiting the proposed language to those agreements meeting particular requirements.

Proposed § 668.28(a)(5)(ii)(A) and (B) include specific information about what would be required to be included in an ISA or other alternative financing agreement if it comes from the institution or a related party—including clear information about the payments that are required and the charges covered, the maximum time and amount a student would be required to pay, and a reasonable imputed or implied interest rate—for that agreement to qualify for the purposes of inclusion in 90/10. With this proposal, the Department aims to

[22] United States of America Consumer Financial Protection Bureau Consent Order against Better Future Forward, Inc.; Better Future Forward Manager, LLC; Better Future Forward Opportunity ISA Fund, LLC; and Better Future Forward Opportunity ISA Fund, LLC, September 7, 2021. *https://files.consumerfinance.gov/f/documents/cfpb_better-future-forward-inc_consent-order_2021-09.pdf.*

[23] (GENERAL–22–12) ''Income Share Agreements and Private Education Loan Requirements'', March 2, 2022, *https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-03-02/income-share-agreements-and-private-education-loan-requirements.*

avoid an incentive for proprietary institutions to encourage students to take out certain credit products, particularly where those products are unclear in their implications for students who may be comparing the products to more traditional funding options.

The Department proposes in § 668.28(a)(5)(ii)(C) that a proprietary institution may only count the payments made by the recipient of the ISA or other alternative financing agreement as revenue instead of counting the ISA as revenue when applied to a student's account if the agreement is between the student and the institution only or with a related party to include any entity in the ownership tree, any common ownership, or any other contractual agreement or continuing financial relationship. Only counting payments made on the ISA or alternative financing agreement mirrors how payments on private loans are treated in the 90/10 calculation under § 668.28(a)(5)(i). Additionally, the Department proposes this regulation to encompass the range of actors that may be connected to the interests of the proprietary institution and to reflect that the funding for the ISA may be directly or indirectly paid or subsidized from the institution or related party rather than from a private source.

Proposed § 668.28(a)(5)(ii)(D) would require ISAs or other alternative financing agreements between the student and the institution or related party to have an implied or imputed interest rate equal to or less than the Federal Direct Unsubsidized Loan interest rate for the same borrower type at the time the agreement was signed for a proprietary institution to count payments made on the product for purposes of 90/10. Given that high interest rates can cause balances to balloon beyond a borrower's ability to repay, the Department believes it is prudent to avoid incentives for proprietary institutions or entities associated with them to encourage students to take ISAs or other alternative financing products with higher interest rates, especially given that private loans or other private credit products do not have the same consumer protection measures as Federal loans. The Department proposes that the implied or imputed interest rate not be higher than the Federal Direct Loan interest rate at the time the agreement is signed, given that that type of loan is the most common type of Federal loan that students take out.[24] The Department proposes to use the rate at the time of signing the agreement, since the rate is set by Congress and can fluctuate year to year. The Federal Direct Loan interest rate is different for undergraduate and graduate students; thus, to have a comparable product, the Department proposes to differentiate the allowable interest rate based on borrower type.

As with private loans, proposed § 668.28(a)(5)(iii) would disallow proceeds from the sale of the ISA or other alternative financing agreement and would count as non-Federal revenue only cash payments on the ISA or other alternative financing agreement. Like our rationale for adding the sale of private loans as an excluded source of funds, we do not believe that proceeds from the sale of ISAs or other alternative financing agreements represent non-Federal funds paid to an institution for tuition, fees, or other permitted costs.

Proposed § 668.28(a)(5)(iv) would clarify how proprietary institutions can count institutional scholarships as revenue generated from institutional aid. We propose to clarify that scholarships must be designated funds from an outside source that is unrelated to the institution, its owners, or affiliates. The Department interprets current § 668.28(a)(5)(iv), which provides that funds must come from ''an outside source,'' to exclude funds from an institution's owners or affiliates, as those are not outside sources. The proposed regulations simply codify and more clearly explain how the Department interprets ''outside sources.''

§ 668.28(a)(6) Revenue generated from loan funds in excess of loan limits prior to the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA).

Statute: Section 487(d)(1)(E) of the HEA allows proprietary institutions to count as non-Federal revenue loan disbursements in excess of the loan limit before the enactment of ECASLA in their 90/10 calculation for each student who received a loan on or after July 1, 2009, and prior to July 1, 2011.

Current Regulations: Current § 668.28(a)(6) provides that proprietary institutions may count the amount of a loan disbursement for a payment period that exceeds the amount of a disbursement that a student would have been eligible for before the enactment of ECASLA as non-title IV revenue, as long as the excess amount pays for tuition, fees, or institutional charges remaining on a student's account after other title IV, HEA program funds are applied.

Proposed Regulations: The Department proposes to remove this provision.

Reasons: The Department proposes to remove current § 668.28(a)(6) because it is outdated, and this provision of the regulations is no longer applicable. Presently, the loan disbursements in excess of the pre-ECASLA amount would only count as revenue in the fiscal years that the loan was disbursed between July 1, 2008, and June 30, 2011, and so it is not relevant to an institution's current calculation. The Department believes that removing this provision will help proprietary institutions more clearly understand how the regulations apply to their current revenue calculations.

Revised § 668.28(a)(6) Funds excluded from revenues.

Statute: Section 487(d)(1)(F) of the HEA directs proprietary institutions to exclude from its 90/10 calculation certain revenues received from States: (1) Federal Work Study (FWS) funds, unless the proprietary institution uses those funds to pay a student's institutional charges; (2) the amount of funds a proprietary institution receives for the Leveraging Educational Assistance Partnership program (LEAP), Grants for Access and Persistence program (GAP), and Special Leveraging Educational Assistance Partnership program (SLEAP); (3) the amount of matching funds a proprietary institution provides for a title, IV HEA program; (4) the amount of title IV, HEA program funds a proprietary institution is required to return or refund; and (5) the amount charged for books, supplies, and equipment, unless those are included in a student's tuition, fees, or other institutional charges.

Current Regulations: Current § 668.28(a)(7) restates the statutory exclusions. The regulations also provide additional requirements for proprietary institutions that must return title IV, HEA program funds due to a student withdrawing if that student received a FFEL or Direct Loan where some of that funding counted as non-title IV, HEA aid in the 90/10 calculation due to the ECASLA statutory allowance. In that situation, current § 668.28(a)(7)(iv) provides that the amount that the proprietary institution returns is considered to consist of pre-ECASLA loan amounts and loan amounts in excess of the loan limits prior to ECASLA in the same proportion to the loan disbursement.

[24] As of quarter 1 of fiscal year 2022, nearly 86 percent of borrowers with loans in the Federal Student Aid loan portfolio was Direct Loans. Of those borrowers, nearly 81 percent held Direct Unsubsidized Loans. See Federal Student Aid's data center: *https://studentaid.gov/data-center/student/portfolio.*

Proposed Regulations: The proposed regulations would redesignate § 668.28(a)(7) as § 668.28(a)(6). Furthermore, the proposed regulations would remove the second sentence of current § 668.28(a)(7)(iv) governing how proprietary institutions must account for title IV, HEA program funds returned to the Department that are subject to the ECASLA allowance. Finally, proposed § 668.28(a)(6)(vi) and (vii), respectively, would add two new sources of revenue that must be excluded from the 90/10 calculation: any amount from the proceeds of the factoring or sale of accounts receivable or institutional loans, regardless of whether the loans were sold with or without recourse; and any funds, including loans, provided by a third party related to the institution owners or affiliates to a student in any form.

Reasons: The Department proposes to remove the provision of the regulations governing how proprietary institutions must treat the return of title IV, HEA program funds because these regulations are no longer relevant.

The Department proposes the § 668.28(a)(6)(vi) prohibition on counting the proceeds of the factoring or sale of accounts receivable or institutional loans, regardless of whether the loans were sold with or without recourse, because the Department believes that excluding the proceeds of these sales is necessary to implement the intent of the 90/10 revenue requirement. One non-Federal negotiator raised concerns about prohibiting this source of revenue when loans are sold with recourse, because the institution is responsible for non-performing loans. Through program reviews and other oversight activities, the Department has observed instances where sales of institutional loans were made at inflated prices to entities that were later identified as being parties to other business relationships with the institution. Even when sales of these accounts are made to unrelated parties, the revenue to the institution is for an asset sale and not a payment by that party for the education provided by the institution, as intended under the statutory 90/10 revenue requirement.

The proposed addition of § 668.28(a)(6)(vii) would restate that an institution, its owners, or its affiliates cannot provide any funds, including loans, that are counted as non-Federal revenue for 90/10. This proposed addition aligns with section 487(d)(1)(C)(i) and (d)(1)(D)(iii) of the HEA, respectively, which provide that only grants and scholarships from ''private sources independent of the institution'' and ''an outside source,'' [25] can count as non-Federal revenue for purposes of 90/10. The Department's proposed and current regulations align with these statutory requirements.

§ 668.28(c) Sanctions.

Statute: Under section 487(a)(24) of the HEA, proprietary institutions that do not meet the 90/10 revenue requirements will be subject to sanctions described in section 487(d)(2). Section 487(d)(2)(A) of the HEA provides that proprietary institutions will be ineligible to participate in title IV, HEA programs after two consecutive years of failing to meet 90/10 revenue requirements. Additionally, section 487(d)(2)(B) of the HEA provides that the Secretary can implement other additional means to enforce the 90/10 requirements.

Current Regulations: Current § 668.28(c) provides that a proprietary institution will lose eligibility to participate in the title IV, HEA programs for at least two fiscal years if it fails to derive at least 10 percent of its revenue from non-title IV, HEA program funds for two consecutive fiscal years. To regain access, it must demonstrate that it complied with State licensure and accreditation requirements and financial responsibility requirements for a minimum of two fiscal years after the fiscal year it became ineligible. Additionally, if a proprietary institution fails to meet the 90/10 revenue requirement for one year, it becomes provisionally certified for at least the two fiscal years after the fiscal year in which it failed. The provisional certification terminates on either the expiration date of the proprietary institution's PPA or the date that the proprietary institution loses its eligibility to participate due to failing the 90/10 revenue requirement for two consecutive fiscal years. Current § 668.28(c)(3) also provides that the proprietary institution must notify the Secretary no later than 45 days after the end of its fiscal year that it failed to meet the requirement.

Proposed Regulations: Proposed § 668.28(c)(3) and (c)(5), respectively, would add two requirements in cases where a proprietary institution fails the 90/10 revenue requirement: (1) the institution must notify students that if it fails to meet the 90/10 revenue requires at the end of the current fiscal year, it could potentially lose title IV, HEA program eligibility at the end of the current fiscal year if it failed to meet the 90/10 revenue requirements for the prior fiscal year; and (2) the institution would be liable to repay any title IV, HEA program funds that it disburses after the fiscal year it becomes ineligible to participate in the title IV, HEA program due to failing the 90/10 revenue requirements for two fiscal years, excluding funds the institution was entitled to disburse under the regulations.

Additionally, proposed § 668.28(c)(4) would continue to require a proprietary institution report if it failed 90/10 for the prior year no later than 45 days after the end of the fiscal year. It would further provide that a proprietary institution must immediately report a 90/10 failure if it determines after the 45-day reporting period that it failed the 90/10 requirement for the prior fiscal year.

Reasons: The Department proposes to add a requirement that proprietary institutions that fail 90/10 revenue requirements must notify students of the institution's failure and potential implications of that failure in § 668.28(c)(3). During negotiations, several non-Federal negotiators suggested that the Department add this disclosure requirement due to the potentially deleterious impacts on students if the institution loses access to title IV, HEA funds. The Department agrees with negotiators that notifying students of the potential loss of student aid is an important consumer protection mechanism. As negotiators stated, students may no longer be able to attend the institution without access to title IV, HEA funds. Additionally, losing access to title IV, HEA funds may cause a proprietary institution to abruptly close, leaving students in the lurch, and thus students should be made aware that that the institution is at-risk of becoming ineligible to participate in the title IV, HEA programs.

Multiple negotiators raised the possibility that there may be instances where proprietary institutions obtain additional information pertaining to the amount of Federal aid awarded to students during the previous fiscal year after the required 45-day reporting window. The Department believes it is important for proprietary institutions to disclose if they meet the 90/10 revenue requirements in a timely manner because the Department believes it is prudent to quickly stop the flow of title IV, HEA program funds to institutions that lose eligibility for title IV, HEA funds to prevent improper payments. Thus, the Department proposes to maintain the 45-day reporting requirement. To address the concerns that negotiators raised, the Department proposes to add a requirement that a proprietary institution notify the Secretary immediately if it obtains

[25] Public Law 89–329, as amended.

additional information indicating that it did not pass the 90/10 revenue requirement for the prior fiscal year in § 668.28(c)(4).

The Department also proposes to add a requirement in § 668.28(c)(5) that proprietary institutions are liable for title IV, HEA program funds they disburse after the fiscal year they become ineligible due to failing 90/10, with the exception of funds they are entitled to disburse under § 668.26. This liability for grant and loan funds disbursed after an institution loses eligibility due to the 90/10 rule remains unchanged, but the Department previously established repayment liabilities only for the portion of ineligible loan funds made to students that the Department estimated would default. Through audit reviews, the Department has observed cases where institutions delayed notifying the Department of their 90/10 failure in order to delay their loss of eligibility for title IV, HEA funds. The Department believes that limiting the liability of funds disbursed to only a portion of disbursements may create incentives for such behavior. Thus, the Department proposes to require the proprietary institution to repay all grant and loan funds disbursed to students under these circumstances. The Department also believes that this proposal is more equitable to students because previously students were responsible for repaying loans disbursed after the institution was not eligible to disburse, even where the students may not have known the institution was ineligible. This proposal will shift responsibility for these funds to institutions, avoiding unnecessary and disallowed borrowing by students.

The Department believes that this proposed change would likely minimally impact institutions. The Department has observed that losing eligibility for title IV, HEA funds, which would always happen in these instances, is what has the largest impact on institutions. Additionally, the Department believes that this proposed change would discourage institutions from delaying reporting their 90/10 failure or disbursing funds when they are not eligible to do so.

Appendix C to subpart B of 34 CFR 668.

Statute: Section 487(a)(24) of the HEA, as amended by the ARP, provides that proprietary institutions must derive at least 10 percent of their revenue from non-Federal sources as outlined in section 487(d) of the HEA.

Current Regulations: Appendix C to subpart B of part 668 currently provides a sample student ledger and step-by-step directions for how proprietary institutions calculate 90/10.

Proposed Regulations: The proposed revisions to Appendix C would revise the sample student ledger and steps for how to report the institution's 90/10 calculation to the Department. The revised ledger and steps would incorporate regulatory changes previously discussed, including by adding examples of Federal funds counted as Federal revenue, examples of how to disaggregate Federal and non-Federal funds in grants from public agencies, and ISAs. Additionally, the proposed revisions would remove references to net present value of loans and ECASLA.

Reasons: The proposed revisions to Appendix C would align the exemplar and reporting formula with the proposed changes to the 90/10 calculation discussed throughout the preamble, including by modifying funds counted in the numerator, modifying how grant funds from public agencies would be calculated, adding an example of how ISAs would be categorized in the calculation, and removing references to net present value and ECASLA. Appendix C provides an example for proprietary institutions on how to implement the regulations and report 90/10 calculation in alignment with the regulations. The Department believes that revising the appendix is necessary to provide guidance for proprietary institutions to implement the regulatory changes in § 668.28.

Changes in Ownership (§§ 600.2, 600.4, 600.20, 600.21, 600.31) (HEA Sections 101, 102, 103, 410, 498)

§ 600.2 Definitions

Additional Location

Statute: Section 410 of the General Education Provisions Act (20 U.S.C. 1221e–3) provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. Furthermore, under section 414 of the Department of Education Organization Act (20 U.S.C. 3474), the Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department. These authorities, together with the provisions in the HEA, thus include promulgating regulations that, in this case amend the definition of ''additional location''.

Current Regulations: The current definition of an ''additional location'' in § 600.2 is a ''facility that is geographically apart from the main campus of the institution and at which the institution offers at least 50 percent of a program and may qualify as a branch campus.''

Proposed Regulations: The proposed changes to this definition in § 600.2 would specify that an additional location is a physical facility that is separate from the main campus and within the same ownership structure of the institution. They would also specify that an additional location participates in the title IV, HEA programs only through the certification of the main campus.

Reasons: The proposed revisions would allow for greater alignment with other related proposed regulatory changes. The proposed changes to the definition of an additional location should be considered alongside the proposed changes to the definition of a branch campus. By providing more specificity to both definitions, the Department hopes to resolve confusion about how institutions should classify and report their locations and campuses to the Department.

Branch Campus

Statute: Section 498(j) of the HEA refers to branch campuses and provides that they are to be defined by the Department through regulation. This section also provides that branch campuses must be certified under the certification procedures of Section 498 of the HEA before being able to participate as part of the institution in the title IV programs.

Current Regulations: Branch campuses are defined as additional locations that are geographically apart and independent from the main campus and are independent by virtue of being permanent; offering degrees, certificates, or recognized credentials; and having their own faculty, administration, and budgetary and hiring authority.

Proposed Regulations: The proposed amendments to the definition of a ''branch campus'' in § 600.2 would retain the existing requirements in modified language, but also specify that branch campuses are physical facilities that are in the same ownership structure of the institution and that are approved by the Department as branch campuses.

Reasons: As with additional locations, the proposed changes would address existing confusion and add clarity to a postsecondary environment that consists increasingly of institutions that provide hybrid instruction and institutions with virtual classrooms only. These proposed changes, which would codify the Department's

longstanding interpretations, are intended to clearly delineate between an institution's main campus, additional locations, and branch campuses in the regulations—all physical locations. In this section of the proposed regulations, we separately propose to clarify that distance education programs be reported through the main campus of the institution.

Distance Education

Statute: Section 103 of the HEA defines distance education as instruction that occurs between students and instructors who are separated and that provides regular and substantive interaction between them via methods such as the internet, other electronic transmissions, audio conferencing, and videos.

Current Regulations: The current regulations in § 600.2 reiterate the elements of the statutory definition and supplement it by clarifying who instructors are, what constitutes substantive interaction between students and instructors, and how an institution shall ensure regular interaction between them.

Proposed Regulations: The only proposed change is the addition of proposed paragraph (6), which provides that, except for an additional location at a correctional institution, for institutions that offer on-campus and distance education programs, the distance education programs are associated with the main campus. For an institution that offers only distance education, the institution is located where its administrative offices are located and approved by its accrediting agency.

Reasons: This addition clarifies how an institution's programs offered through distance education or correspondence courses should be considered in the context of reporting students' locations and where a distance education-only institution should be reported as located, which is a necessary clarification as remote instruction has become more prevalent. In addition to improving consistency in data reporting to the Department, this change should aid in providing equitable treatment to students enrolled in distance education, when compared to those at a physical location, for the purposes of closed school discharges and related policies.

This proposal reflects an existing policy that requires the distance education programs of an institution to be associated with the main campus of the institution. In general, the vast majority of institutions that offer distance education programs are already associated with the institution's main campus. However, one negotiator raised concerns that the policy was not consistent with some institutions' current practice. The Department is committed to working with institutions to implement any needed changes to ensure they can comply with the Department's proposed definition of additional locations and distance education. The Department would also provide a reasonable period of implementation time to ensure institutions are able to come into compliance with these proposed provisions, should they be finalized. We seek comment from the public about what period of time would be reasonable for full implementation of this requirement as proposed.

Main Campus

Statute: Section 498(j) of the HEA refers to main campus in connection with branch campuses; it does not define ''main campus.''

Current Regulations: None.

Proposed Regulations: We propose to define ''main campus'' in § 600.2 as the primary physical location where the institution offers programs, that is within the same ownership structure, and that is certified as the main campus by the accrediting agency and the Department.

Reasons: This definition would provide needed clarification of a widely used term and of the role the main campus has in relation to the proposed definitions of additional location, branch campus, and distance education. We propose a definition that reflects a common understanding of how the term ''main campus'' is generally used by institutions, accreditors, and the Department.

Nonprofit Institution

Statute: Sections 101 and 102 of the HEA define institutions of higher education and postsecondary vocational institutions as being public or other nonprofit institutions, in addition to meeting other criteria.

Current Regulations: A nonprofit institution is specified as being owned and operated by a nonprofit corporation or association, having no part of its net earnings benefitting a private party, being authorized to operate as a nonprofit organization by each State where it is located, and having been determined by the IRS to be a 501(c)(3) entity.

Proposed Regulations: While not a substantive change from current regulations, the proposed definition in § 600.2 would provide greater precision to the language of the current requirement that no part of an institution's net earnings benefits any private entity or person, rather than the existing reference to ''any private shareholder or individual.'' As in current regulations, private nonprofit institutions would continue to be required to be owned and operated by a nonprofit corporation(s) or association(s), legally authorized to operate as a nonprofit in the State where the institution is located and determined by the U.S. Internal Revenue Service to be described in section 501(c)(3) of the Internal Revenue Code. Also, the Department proposes to clarify its current policy that, in general, an institution does not meet the definition of a nonprofit (public or private) if it is an obligor on debt owed to a former owner of the institution; holds a revenue-sharing agreement or any other agreement with a former owner or a current or former employee or board member or an affiliated person or entity related to the former owner, except where the Secretary determines that payments and terms under the agreement are reasonable based on the market price for the services or agreements; or engages in excess benefit transactions with a natural person or entity. We proposed to include foreign institutions in this portion of the definition.

Reasons: As GAO described in its report regarding conversions of proprietary institutions, the Department did not generally conduct comprehensive reviews of conversions of proprietary institutions prior to 2016.[26] The Department is concerned that not all institutions classified as a nonprofit institution may be complying with the expectations of the HEA for such an institution, especially where an institution has converted from proprietary status to public or nonprofit status. These concerns are especially significant as the Department expects to see additional institutions seeking to convert from proprietary status in the future. These proposed changes are intended to address those concerns, which have also been raised by outside stakeholders, including the Government Accountability Office (GAO). According to GAO, in several earlier cases the Department ''did not focus on assessing the risk of improper benefit,'' and did not ''request or review independent appraisal reports or thoroughly assess purchase and sale agreements to

[26] GAO Report, GAO–21–89, ''Higher Education: IRS and Education Could Better Address Risks Associated with Some For-Profit College Conversions'', Dec. 31, 2020. Accessed at *https://www.gao.gov/assets/gao-21-89.pdf.*

determine whether former owners were paid more than fair market value.''

However, in 2016, a new process began that substantially strengthened the Department's review. For conversions reviewed after that time, the Department has carefully reviewed the terms of the transaction, including ongoing agreements or relationships with former owners to determine whether such former owners improperly benefitted. The Department's stronger review process more reliably assesses whether the institutions that underwent such reviews met the requirements for a nonprofit institution than did earlier reviews. As the Department's approach has evolved, in more recent cases the Department has correctly interpreted the current language in 600.2 to encompass a more detailed analysis in order for the Secretary to make a determination about whether any part of a school's 'net earnings benefits any private shareholder or individual,' which is required by the HEA. These regulations propose to clarify the definition of a nonprofit institution in furtherance of the Department's efforts to address inappropriate requests for conversion to nonprofit status. This is consistent with the Department's current treatment of nonprofit institutions, and by including it in the regulations, we seek to provide more clarity to the field about the Department's existing policy.

The Department would clarify that it considers these types of transactions and agreements when it reviews an application for a change in ownership resulting in a change of control in which the institution seeks to convert from proprietary status to nonprofit or public status. The Department may also consider such agreements or transactions at recertification of the institution's eligibility to participate in the title IV, HEA programs, or when information otherwise becomes available to the Department, including as a result of action taken by, or information received from, the IRS or a State. In general, the Department considers, and would clarify that it will continue to consider under these proposed rules, an institution to meet the definition of a nonprofit institution if it has undergone a comprehensive review by the Department of its revenue-based or other agreements, its debts owed to a former owner of the institution, and other relevant information; if the Department approved such agreements; and if those agreements remain largely unchanged since the latest review.

Some members of the negotiating committee raised concerns that the proposed definition of a nonprofit, which prohibits the net earnings of the institution from benefitting any private entity or natural person, would prevent an institution from engaging in business relationships with other types of vendors. However, the Department notes that the purpose of this proposed clarification is not to encompass traditional vendor relationships an institution engages in with an unrelated party, such as a contract with a campus bookstore or with a company providing food preparation services. Rather, the Department's proposed language would codify existing requirements for nonprofit organizations, and (through the examples the Department proposes to explain how it considers the net earnings calculation) would seek to address contractual relationships, particularly with the former owner of an institution, that are overpriced according to the market for associated goods and services in that sector. Accordingly, we are committed to requiring and assessing independent valuation reports that meaningfully address the reasonable relationship between a price charged to an institution for a revenue-sharing or other agreement and the market price for that service or agreement, along with any restrictions on an institution's ability to obtain similar services from independent providers. A valuation report would be closely scrutinized to ensure it meets the Department's high standards for independence and methodology. The Department seeks feedback about whether the proposed language is sufficient to ensure that nonprofit institutions are operating in ways consistent with the principles and expectations for nonprofit organizations.

The Department also considered whether improvements are needed to the definition of a foreign nonprofit institution, including to ensure such institutions meet the definition under the Higher Education Act to require that no part of the net earnings benefits any private entity or natural person, and proposed to include such institutions within that requirement. We seek feedback from commenters about the appropriate documentation that the Department should require from foreign institutions in evaluating their consistency with the requirements of a nonprofit institution.

Finally, the Department considered the concerns that negotiators raised that the process would be too onerous for the Department to effectively demonstrate a revenue-sharing or other agreement with a former owner is not consistent with reasonable market value for such services. We note that the Department has more experience in recent years with evaluating such agreements and reviewing valuation reports to inform our analysis. Moreover, the Department's expertise in administering the title IV, HEA programs provides specific and important context for assessing questions as to whether revenue-sharing and other agreements, particularly with a former owner of the institution, have unique impacts in the context of educational programs and title IV in particular. As such the Department is uniquely situated to conduct this important analysis in the context of the HEA and specifically in the context of title IV participation. The Department is confident that we can continue to maintain high standards for these evaluations, and we are committed to doing so. We also believe the proposed regulations would retain sufficient flexibility for the Department to assess these types of agreements, determine whether they are appropriate and compliant with the intent of the proposed regulations, and enforce the new provisions of the proposed rules. We invite feedback on ways to codify these processes.

§ 600.20 Notice and application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

Application for provisional extension of certification.

Statute: Section 498(h) of the HEA discusses provisional certification of institutional eligibility to participate in the title IV programs. This can occur for up to one year if the institution is seeking initial certification, and for up to three years if the institution's administrative capability and financial responsibility are being determined for the first time, there is a change of ownership, or the Department determines that an institution seeking to renew its certification is in an administrative or financial condition that may jeopardize its ability to perform its financial responsibilities. Section 498(i)(4) further explains that the Secretary may provisionally certify an institution seeking approval of a change in ownership based on the review of a materially complete application that is received by the Secretary within 10 business days of the transaction for which the approval is sought. Such a provisional certification expires at the end of the month following the month in which the transaction occurred, unless the Secretary has not issued a decision in that time, in which case the provisional certification may continue on a month-to-month basis.

Current Regulations: Current § 600.20(g) explains that an institution may continue to participate in the title IV programs on a provisional basis after undergoing a change in ownership resulting in a change of control if it submits a materially complete application. Such an application is defined as one that has a completed application (as designated by the Department) that is supplemented by a copy of the institution's State license authorizing it to provide postsecondary education, a copy of its accreditation document, audited financial statements of its two most recently completed fiscal years, and audited financial statements of the new owner's two most recently completed fiscal years.

Proposed Regulations: We are proposing to add a requirement in § 600.20(g)(1)(i) that institutions must apprise the Department at least 90 days in advance of a proposed change in ownership. This includes submission of a completed form, State authorization and accrediting documents, and copies of audited financial statements. It would also include reporting any subsequent changes to the proposed ownership structure at least 90 days prior to the date the change in ownership is to occur. The institution would also need to notify enrolled and prospective students of the proposed change in ownership at least 90 days in advance and submit evidence to the Department that such disclosure was made. The institution would have to meet this proposed 90-day deadline or risk having its title IV participation interrupted upon the change of ownership.

The proposed regulations would add in § 600.20(g)(2) that, even with the submission of the above items, the Department may determine that the participation of the institution should not be continued following the change in ownership. The proposed rules also add that the institution would need to include, with the submission of its State license to operate and the document showing its accreditation, documentation that, as of the day before the change in ownership, both the State license and accreditation remained in effect.

When a new owner does not have any acceptable audited financial statements, the new owner would be required to provide financial protection in the amount of at least 25 percent of the institution's prior year volume of title IV aid. When a new owner does not have two years of acceptable audited financial statements but has one year, the new owner would be required to provide financial protection in the amount of at least 10 percent of the institution's prior year volume of title IV aid. This proposal is similar to existing requirements for participating institutions that fail the composite score under the financial responsibility regulations.

Financial protection in the amount of an additional 10 percent (or more) of the institution's prior year volume of title IV aid may also be required under the proposed rules in § 600.20(g)(3)(v) if deemed necessary by the Department. If any entity in the new ownership structure holds a 50 percent or greater voting or equity interest in another institution or institutions, the financial protection may also include the prior year volume of title IV aid (or more) for all institutions under such common ownership.

Reasons: These proposed changes would ensure that the Department receives adequate notice of impending changes in ownership, and that institutions have adequate time to prepare for the transaction without an interruption to title IV aid for their students. Often, the Department receives notices from institutions of impending changes in ownership with too little time to review the application to ensure the institution can meet the regulatory requirements for a change of ownership. In some cases, the Department reviews the materials and determines the application is not materially complete, or a letter of credit will be required due to insufficient audited financial statements, and the institution undergoing the change in ownership is forced to abandon or alter the transaction at the last minute to continue to meet the Department's requirements for title IV participation. Based on the Department's experience in working with institutions and reviewing applications for changes in ownership, we believe that advance notice of 90 days will be adequate for the Department to ensure staff will be available to review the materially complete application when it is submitted within 10 days of the transaction. Also, students are rarely, if ever, given notice of this significant transaction; the Department proposes that institutions disclose the transaction to students in advance to provide them with adequate notice and information about the operations of their institution. The Department similarly believes that, once institutions have provided notice to the Department regarding the transaction, students deserve to receive the same information. Accordingly, we propose to align the timeframes between notice to students and the Department of the transaction. We invite comment regarding whether these timeframes are appropriate or sufficient.

The Department has proposed to retain additional flexibility in the review and approval of a change in ownership application. Under § 600.20(g)(2), the Department preserves the ability to deny an institution's application to continue participating in the title IV programs following the change in ownership. This recognizes that some transactions have proven extremely risky for students and taxpayers, particularly as documented by the GAO report on college conversions.[27] In such cases where the Department is concerned about imminent or excessive risk to students and taxpayers as a result of the change, it is prudent for the agency to ensure it has the ability to end the institution's participation in the Federal aid programs.

To better inform the Department's decision about whether to approve the application for the change of ownership or to approve it with conditions, § 600.20(g)(3) would further specify the types of documentation that must be submitted to support the change in ownership application. Specifically, the proposed regulations would capture existing practice related to the submission of a new owner's audited financial statements, along with the state authorization and accreditation documentation that is required under current regulations. The proposed language specifies that the institution must submit documentation that confirms that, as of the day prior to the change in ownership, the institution's State license to operate and accreditation remained in effect. This would ensure that the documents the Department receives to evaluate the institution's standing are not ''stale,'' and accurately reflect the institution's current standing. The proposed change would also add a regulatory provision resembling the existing practice of requiring financial surety if the new owner cannot provide one or two years of audited financial statements. In such cases, the Department's practice is to require the new owner to post at least a 10 percent letter of credit if only one year of audited financial statements are unavailable or at least 25 percent if two years of audited financial statements are unavailable. This practice was designed to recognize that the Department is taking a chance on a new owner who has not met the requisite documentation

[27] GAO Report, GAO–21–89, ''Higher Education: IRS and Education Could Better Address Risks Associated with Some For-Profit College Conversions'', Dec. 31, 2020. Accessed at *https://www.gao.gov/assets/gao-21-89.pdf.*

requirements, while affording some protection to students and taxpayers in the event that the transaction leads to other liabilities. Generally speaking, a 10 percent letter of credit provides about one month's worth of title IV, HEA volume in an award year; and a 25 percent letter of credit provides about three months' worth. This larger letter of credit requirement for institutions whose new owners are missing both years of financial statements affords taxpayers greater protections in the event of closed school discharge or other liabilities that may be incurred following a transaction, which is inherently riskier because the new owner does not have the required financial statements.

The proposed regulations would also provide that the Department may require additional financial surety as needed to ameliorate financial or administrative risk on a case-by-case basis. This financial surety may be based on the title IV volume received in the prior year by the institution or—in the case of an entity in the new ownership structure that has at least a 50 percent interest in another institution(s)—by all institutions that fall under that common ownership. This is intended to allow setting the size of the financial surety provided to be commensurate with the level of financial risk that the institution may present to taxpayers, a concern raised by non-Federal negotiators at the table. The Department is particularly concerned about surety levels where, for instance, a smaller institution acquires a much larger one. In such cases, a letter of credit requirement based only on the title IV volume of the smaller institution would severely underestimate the financial risk that the transaction presents.

Terms of the extension.

Statute: Section 498(i) of the HEA indicates that for an institution seeking approval of a change in ownership, a Department review of a materially complete application may result in a provisional certification that expires by the end of the month following the month in which the transaction occurred unless the Secretary has not issued a decision in that time, in which case the provisional certification may continue on a month-to-month basis.

Current Regulations: Current § 600.20(h) provides that, when a materially complete application is approved, an institution will receive a provisional PPA expiring the earlier of: the day the Department approves a new PPA, the day the school's application is denied, or the last day of the month following the month that the change in ownership occurred. The Department currently calls this provisional PPA a ''temporary provisional PPA'' (TPPPA). If the TPPPA will expire under the latter provision, the Department will extend the PPA on a month-to-month basis if the institution provides a ''same-day'' balance sheet showing the financial position of the institution, a default management plan unless the institution is exempt from providing it under § 668.14(b)(15), and, if not already provided, the State approval and the accrediting agency's approval of the change of ownership.

Proposed Regulations: The Department proposes to amend § 600.20(h) by replacing ''provisional PPA'' with ''temporary provisional PPA (TPPPA)'' and removing the language extending the terms of the PPA in effect for the institution before its change of ownership.

Among the items needed for the Department to extend the TPPPA on a month-to-month basis following expiration, the proposed amendments would specify that the ''same-day'' audited balance sheet is for proprietary institutions and the audited statement of financial position is for nonprofit institutions. For the State approval of the change of ownership, the proposed regulation would require approval of all States in which the institution is physically located, or for distance education-only institutions, approval of the relevant State as determined under the revised definition of distance education in § 600.2.

Reasons: The proposed changes would add clarity to the process for extension of title IV aid following a change in ownership and would better recognize that the Department may need to take additional steps to protect students and taxpayers in light of a particular change in ownership, depending on the circumstances. For instance, the Department proposes in § 600.20(h)(1) to remove the requirement that any TPPPA include the same terms and conditions of the institution's PPA prior to a change in ownership. This would provide the Department with additional leeway to add appropriate terms and conditions to the institution's TPPPA with respect to the change in ownership, regardless of the conditions that were applied to the institution prior to the change. The proposed technical adjustment clarifying that following a change in ownership, an institution is place on a TPPPA and not a ''provisional PPA'' is designed to align the terminology in the regulations with the actual terminology already employed by the Department.

The Department proposes to retain the requirements in current § 600.20(h)(3) that specify the institution must provide a ''same-day'' balance sheet, approval of change in ownership from the State, approval of change in ownership from the accrediting agency, and a default management plan. However, the Department proposes several clarifying changes to those requirements. In response to a suggestion from a non-Federal negotiator, we propose clarifying that proprietary institutions must provide a ''same-day'' audited balance sheet. As proposed, nonprofit institutions would instead submit an audited statement of financial position. These proposed changes would align terminology with the appropriate accounting terminology in those sectors. Additionally, the Department has further clarified that the approval of the change in ownership would apply to any State in which the institution is physically located and that, for institutions that offer only distance education, the approval should be provided for the State in which the institution is authorized to provide postsecondary education. These are proposed technical changes to clarify how institutions are expected to obtain and submit the appropriate approvals. With more institutions growing to operate across many states and more institutions operating entirely online, we are seeking to provide clarity to the field about the Department's expectations.

§ 600.21 Updating application information.

Reporting requirements.

Statute: Section 498(i) of the HEA discusses when a change in ownership results in a change in control and requires that, to maintain title IV eligibility, the institution shall establish that it meets the requirements of sections 102 and 498 of the HEA after the change in control.

Current Regulations: Section 600.21(a) lists all of the reporting requirements for events in which an institution must notify the Department of a given change. Paragraph (a)(6) applies to changes of a person's ability to substantially affect the actions of the institution if that person did not have the ability before and explains when the Department considers a person to have this ability. Such control of the institution is generally defined as when the person is a general partner, CEO, or CFO of the institution or when the person, alone or with others, has at least a 25 percent ownership interest in the institution.

Proposed Regulations: The proposed amendments to § 600.21(a)(6) would

distinguish between reportable changes in ownership and changes of control as well as between natural persons and legal entities. Reportable changes in ownership would occur when a natural person or entity acquires at least a 5 percent direct or indirect ownership interest of the institution but where that change does not result in a change of control as described in § 600.31. For reportable changes of control, the existing 25 percent threshold would generally apply to several criteria: the person, alone or with other members of the person's family, or the entity, alone or with affiliated persons or entities, acquires at least 25 percent ownership interest in the institution (as defined in § 600.31(b)); the person or entity acquires, alone or with another person or entity, under a voting trust, power of attorney, proxy, or similar agreement, at least a 25 percent ownership interest; the natural person becomes a general partner, managing member, trustee or co-trustee of a trust, chief executive officer, chief financial officer, director, or other officer of the institution or of an entity that has at least a 25 percent ownership interest in the institution; or the entity becomes a general partner or managing member of an entity that has at least a 25 percent ownership interest in the institution.

We propose to add a new paragraph (a)(15), which would require that any change in the ownership of the institution would be reportable if it does not result in a change of control under proposed § 600.31 and is not addressed under proposed § 600.21(a)(6), including the addition or elimination of any entities in the ownership structure, a change of entity from one type of business structure to another, and any excluded transactions under the proposed revisions to § 600.31(e).

Reasons: The proposed amendments would clarify the reporting requirements for a change in ownership to better reflect the many types of ownership reforms that may occur and that must be reported to the Department, including clarifying when a ''person'' (defined in current § 600.31) refers to a natural person or also includes an entity. As part of these changes, the Department proposes to increase reporting, generally by moving from reporting only at a 25 percent change in ownership to reporting at a 5 percent change in ownership, to ensure that the Department has greater visibility into voting blocs and other types of corporate ownership changes that may warrant greater scrutiny. As described in proposed § 600.21(a)(15), this would also include reporting on changes in ownership that do not result in a change of control and that are not otherwise specified on the list of types of changes in ownership that must be reported, to ensure that novel ownership structures are covered under the regulations and to anticipate the possibility that, without this provision, owners could seek to avoid reporting requirements by terming their arrangement in a way not explicitly covered by the scenarios in § 600.21(6). In selecting a proposed reporting requirement for a change in ownership of at least 5 percent of the interest in the institution, the Department sought to balance the burden of reporting all such changes with the need for the Secretary to evaluate the terms of those arrangements. We also considered how institutions might seek to evade Department oversight. We selected 5 percent to establish a threshold low enough to capture the likeliest of those scenarios, without requiring reporting of every such change even where it is very unlikely to provide relevant information to the Department. Concerns were raised during negotiated rulemaking that this reporting threshold of 5 percent would result in an excessive burden to institutions and the Department. The Department believes that because it is a reporting requirement that will not occur often, and because the burden of reporting itself is small, the overall increased burden would not be excessive and the benefits of the reporting requirement would outweigh the burden.

§ 600.22 Severability.

Statute: None.

Current Regulations: None.

Proposed Regulations: Proposed § 600.22 would make clear that if any provision of subpart B of the proposed regulations is held invalid by a court, the remainder would still be in effect.

Reasons: We believe that each of the proposed provisions discussed in this NPRM serves one or more important, related, but distinct, purposes. Each of the requirements provides value to students, prospective students, and their families, to the public, taxpayers, and the Government, and to institutions separate from, and in addition to, the value provided by the other requirements. To best serve these purposes, we would include this severability provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision would not affect the remainder of the provisions.

§ 600.31(b) Change in ownership resulting in a change in control for private nonprofit, private for-profit, and public institutions.

Definition of ownership or ownership interest.

Statute: Section 498(e)(3) of the HEA defines ownership interest as a share of the ownership or control of, or a right to share in the proceeds of, an institution or its parent corporation. An ownership interest may include, for example, a sole proprietorship, a partnership, or an interest in a trust.

Current Regulations: The definition in § 600.31(b) refers to an ownership or ownership interest as a legal or beneficial interest in an institution or its corporate parent or a right to share in the profits derived from it. It does not include an ownership interest held by a mutual fund that is regularly and publicly traded, a U.S. institutional investor, a profit-sharing plan of the institution or its corporate parent in which all of the full-time permanent employees are included, or an employee stock ownership plan.

Proposed Regulations: The proposed amendments would remove the language about a corporate parent and define ownership or ownership interest as a direct or indirect legal or beneficial interest in an institution or legal entity, which may include a voting interest or a right to share in the profits.

Reasons: These changes would ensure that it is clearer when a change in ownership has and has not occurred. The removal of the term ''institution or its corporate parent'' in favor of a reference to an ''institution or legal entity'' is intended to cover a broader range of corporate structures than under the current rule and reflect the terminology used elsewhere in the regulation related to institutions.

Definition of person.

Statute: Section 498(e)(2) of the HEA provides that the Secretary may determinate an individual has substantial control over an institution, including one or more persons with a substantial ownership interest.

Current Regulations: The current regulations at § 600.31(b) define a person as including a legal entity or natural person.

Proposed Regulations: The proposed regulations would specifically add a trust to the definition of a person.

Reasons: The Department proposes to include trusts in the definition of a person to provide greater clarity elsewhere in the regulations, including to the types of ''other entities'' that would be subject to the definition of ownership or ownership interest in § 600.31(b), the standards for identifying changes of ownership and control in § 600.31(c), and to the types of excluded

transactions in § 600.31(e). The Department has received numerous questions about trusts from institutions and owners and has proposed changes to the language that will provide greater clarity about the Department's treatment of such arrangements.

§ 600.31(c) Standards for identifying changes of ownership and control.

Other entities.

Statute: Section 498(i) paragraphs (2) and (3) of the HEA provide that an action resulting in a change in control may include the sale of the institution or the majority of its assets, the transfer of the controlling interest of stock of the institution or its parent corporation, the merger or division of institutions, or the transfer of the liabilities or the controlling interest of stock of the institution to its parent corporation.

An action that may be treated as not resulting in a change in control includes a routine business practice, as determined by the Secretary, or the sale or transfer of the ownership interest in the institution of a person who dies to a family member or to a person already holding an ownership interest.

Current Regulations: Under § 600.31(c)(3) other entities include limited liability companies and partnerships, limited partnerships, and similar types of legal entities. They experience a change in control either when a person acquires both control of at least 25 percent of the outstanding voting stock of the corporation and control of the corporation or when a person ceases to own or control that proportion of the stock of the corporation or to control the corporation.

Proposed Regulations: The proposed revisions would remove the 25 percent threshold criteria for determining when a change of control occurs for other entities and replace them with a more substantial list of criteria that observe a proposed 50 percent threshold. This list includes—

- When a person, a combination of persons, or a partner in a general partnership acquires or loses at least 50 percent of the total outstanding voting interests in the entity or partnership or otherwise acquires or loses 50 percent control;
- Any change of a general partner of a limited partnership or a managing member of a limited liability company if that person also holds an equity interest;
- A person becomes or is replaced as the sole member or shareholder of an entity that has a 100 percent or equivalent direct or indirect interest in the institution;
- An entity that has a member or members ceases to have any, or one that has no members becomes an entity with a member or members;
- The addition or removal of any entity that provides or will provide the audited financial statements to meet any of the requirements in § 600.20(g) or (h) or part 668, subpart L;
- The transfer of 50 percent or more of the voting interests in the institution or an entity to an irrevocable trust, except where it meets the proposed definition of an excluded transaction under § 600.31(e); and
- Upon the death of an owner who previously transferred 50 percent or more of the voting interests in an institution or an entity to a revocable trust, except where it meets the proposed definition of an excluded transaction under § 600.31(e).

Proposed § 600.31(c)(3)(iii) would also provide what the Department considers circumstances that meet the new 50 percent threshold: family members who individually hold less than 50 percent ownership interest in an entity but together hold a combined ownership interest of at least 50 percent or, similarly, a group of persons who individually hold less than 50 percent ownership interest in an entity have a combined ownership interest of at least 50 percent either as a result of common ownership, management, or control of that entity, either directly or indirectly, or as a result of proxy agreements, voting agreements, or other agreements (whether or not the agreement is set forth in a written document), or by operation of State law.

Irrespective of proposed § 600.31(c)(3)(ii) and (iii), proposed § 600.31(c)(iv) would also provide that: (1) any person is deemed to have control who alone or in combination with others has the right to appoint a majority of any class of board members of an entity or an institution, and (2) when a person who alone or in combination with others holds less than a 50 percent ownership interest in an entity, the Secretary may yet determine that the person, alone or with the others, has actual control over that entity and is subject to the requirements of § 600.31.

Reasons: These amendments would allow the Department to address the kinds of legal arrangements that it has seen during its reviews and that are not clearly addressed in the current regulations. Many of the reported changes in ownership of at least 25 percent do not result in a change in control and therefore do not require the heightened scrutiny that a full Department review entails for continued participation in the title IV, HEA programs. As a result, with the proposed regulations the Department intends to focus its reviews of changes in ownership on those that historically more commonly result in changes in control, to include changes of at least 50 percent in control or voting interest, changes in a general partner or managing member, and the addition or removal of any person who provides the financial statements to satisfy financial responsibility requirements in the regulations. By noting these types of transactions in the proposed regulations, the Department hopes to address deficiencies in the current rules that have created confusion or a lack of clarity.

Some negotiators raised concerns that the Department would not adequately capture persons with control of an institution but who hold less than a 50 percent ownership interest because the 50 percent threshold would allow higher levels of ownership and more room to operate by those seeking to avoid scrutiny than the 25 percent level currently in regulations. The Department shares the concern of negotiators about institutions or their owners seeking to evade the Department's rules and therefore proposes to both lower the threshold for requiring reporting on changes in ownership interest under § 600.21(a)(6)(i) for increased transparency and to preserve sufficient discretion to assess changes of control below the proposed 50 percent threshold in § 600.31(c)(3)(iv). Specifically, the Department proposed defining language in § 600.31(c)(3)(iv) to provide that where a change in ownership results in a change of control, the Secretary would have authority to determine that there has been a change in control if a person holds less than a 50 percent interest in the institution but has actual control over the entity. Such control may be either alone or in combination with other individuals, such as through the establishment of voting agreements among multiple individuals, each with less than a 50 percent ownership interest. Control would also be identified where a person or combination of persons has the right to appoint a majority of any class of board members of an entity or institution—a clear-cut case of control. We believe these proposed revisions would improve the Department's ability to identify cases of changes in control below the 50 percent level without drawing unnecessary Department resources to reviewing changes in

ownership where a change in control is less likely. Because the resulting cases that the Department identifies for a change in control review would be fewer than the number that the current rules require, the overall burden on schools—and on the Department—would be reduced.

Covered and excluded transactions.

Statute: Section 498(i), in paragraphs (2) and (3), of the HEA provide that an action resulting in a change in control may include the sale of the institution or the majority of its assets, the transfer of the controlling interest of stock of the institution or its parent corporation, the merger or division of institutions, or the transfer of the liabilities or the controlling interest of stock of the institution to its parent corporation.

An action that may be treated as not resulting in a change in control includes a routine business practice, as determined by the Secretary, or the sale or transfer of the ownership interest in the institution of a person who dies to a family member or to a person already holding an ownership interest.

Current Regulations: Sections 600.31(d) and (e) explain which types of transactions are covered and excluded, respectively, under a change in control. Changes in ownership that result in a change of control may include the sale of the institution; the transfer of the controlling interest of stock of the institution or its parent corporation; the merger or division of eligible institutions; the transfer of the liabilities of an institution to its parent corporation; a transfer of assets that comprise a substantial portion of the educational business of the institution, except where the transfer consists exclusively in the granting of a security interest in those assets; or a change in status as a for-profit, nonprofit, or public institution.

Ownership changes that do not result in a change of control occur when there is a transfer of ownership and control of an owner's equity or partnership interest in an institution, its parent, or another entity that has signed the PPA either from an owner to a family member or, upon the retirement or death of the owner, to a person with an ownership interest in the institution who, for at least two years prior to the transfer, has been involved in the institution's management and has established and retained the ownership interest.

Proposed Regulations: Proposed § 600.31(d)(8) would add a new type of covered transaction: the acquisition of an institution to become an additional location of another institution, excluding situations where the acquired institution closed or ceased to provide educational instruction.

Among the excluded transactions, proposed § 600.31(e)(2) and (3), respectively, would add irrevocable trusts in which the transfer of the owner's interest is to a trust and the trustee includes only the owner and/or a family member, as defined in current § 600.21(f), and revocable trusts in which an owner has transferred an interest to the trust and then dies. The trust transaction is proposed to be excluded so long as the trustee at the time of death and any successor trustees are only family members of the former owner, as defined in current § 600.21(f). Finally, proposed § 600.31(e)(4) would add to excluded transactions a transfer to an individual owner who has retained an ownership interest and has been involved in the management and ownership of the institution for at least two years preceding the transfer, either as a result of the death of another owner, or as a result of the resignation of another individual owner who has been involved in the management of the institution for at least two years and who has established and retained an ownership interest for at least two years prior to the transfer.

Reasons: These proposed amendments would aid the Department and institutions to more easily determine whether a particular type of transaction qualifies as excluded or not. These covered and excluded transactions are types the Department has seen in its reviews of institutional changes in ownership and where the Department believes additional clarity in the regulations would provide better information to the field. The proposal to address acquisition of institutions as additional locations, added as a new covered transaction in proposed § 600.31(d)(8), addresses a type of change in ownership upon which the current regulations are silent but which the Department considers to be a covered transaction. Additionally, the Department proposes to clarify that transfers of an owner's interest to an irrevocable or revocable trust are excluded transactions in proposed § 600.31(e)(2) and (3), provided the trustees include only the owner and/or family members of that owner. This is consistent with the Department's treatment of transfers of ownership among family members under the current regulations and reflects the Department's recognition that many of these transfers occur not from individual to individual but into family trusts which are commonly used for estate planning purposes. Proposed § 600.31(e)(4) also clarifies an existing type of excluded transaction, which addresses the transfer of ownership from an owner who retires or dies; rather than referring to ''retirement,'' the Department proposes to refer to the ''resignation'' of the owner because it is more straightforwardly determined. The Department receives many questions about these types of transactions, particularly about the types of irrevocable and revocable trusts that are considered excluded transactions, and believes that including them in the regulations will help to clarify many questions and allow owners to structure their transactions appropriately to avoid a loss of eligibility.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create 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 stated in the Executive Order.

The Department estimates the quantified annualized economic and net budget impacts to be $835 million, consisting of an $879 million net increase in Pell Grant transfers and $−44.3 million reduction in loan transfers among students, institutions, and the Federal Government, including annualized transfers of $82.7 million at 3 percent discounting and $81.9 million at 7 percent discounting. Additionally, we estimate annualized quantified costs of $3.4 million related to paperwork burden and $1.1 million of administrative costs to the government. Therefore, this proposed action is ''economically significant'' and subject

to review by OMB under section 3(f) of Executive Order 12866. Notwithstanding this determination, based on our assessment of the potential costs and benefits (quantitative and qualitative), we have determined that the benefits of this proposed regulatory action would justify the costs.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select 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 the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

As required by OMB Circular A–4, we compare the proposed regulations to the current regulations. In this regulatory impact analysis, we discuss the need for regulatory action, potential costs and benefits, net budget impacts, and the regulatory alternatives we considered.

1. *Need for Regulatory Action*:

The Department has identified a significant need for regulatory action to address inadequate protections for students and taxpayers in the current regulations and to implement recent changes to the HEA statute.

Pell Grants for Confined or Incarcerated Individuals

In the Consolidated Appropriations Act, 2021, Congress added a new provision allowing confined or incarcerated individuals to access Pell Grants for enrollment in approved Prison Education Programs (PEPs). Regulatory changes are necessary to implement the law and to ensure access to high-quality postsecondary programs for incarcerated individuals. Among existing higher education programs in prisons, there is considerable variation among programs related to their available resources, the requirements they follow to operate the facilities, and the depth of stakeholder partnerships they have established.[28] Research shows that high-quality prison education programs increase learning and skills among incarcerated students, and increase the likelihood of stable employment post-incarceration.[29] Individuals who were formerly incarcerated face significant challenges in finding employment when returning to their communities. Many lack vocational skills and have little or no employment history, leading to high rates of unemployment and low wages for these individuals.[30] In a study funded by the Bureau of Justice Assistance of the U.S. Department of Justice, researchers found that postsecondary correctional education programs are highly cost effective, and can help incarcerated individuals reenter the employment arena and reduce recidivism.[31]

The Department has explored postsecondary education for incarcerated individuals through its Second Chance Pell experiment, first announced in 2015.[32] The goal of the experiment has been to learn about how Federal Pell Grant funding expands postsecondary educational opportunities for incarcerated individuals and explore how such funding fosters other positive outcomes.[33] Data reported to the Department indicates that recipients of Second Chance Pell Grants successfully completed a high percentage of the credits they attempted.[34] The institutions participating in the Second Chance Pell experiment reported that their programs had positive effects related to public safety and safe working and living conditions in their carceral facilities. Further research has illustrated that correctional education programs contribute to successful rehabilitation and subsequent reentry for those who were incarcerated, thereby improving safety within the facilities that offer postsecondary programming and recidivism and public safety outcomes overall.[35]

Correctional education can offer rehabilitation to incarcerated individuals, because the programs are able to capitalize on acquired education and skills. Soft skills in particular, such as communication and interaction with others, are a significant benefit of correctional education.[36] In one study of correctional education in Delaware, the surveyed participants noted that the program provided ''credentialing and a

[28] Castro, E.L., Hunter, R.K., Hardison, T., & Johnson-Ojeda, V. (2018). ''The Landscape of Postsecondary Education in Prison and the Influence of Second Chance Pell: An Analysis of Transferability, Credit-Bearing Status, and Accreditation.'' *The Prison Journal, 98*(4), 405–26. *https://doi.org/10.1177/0032885518776376.*

[29] Ibid.

[30] Coady, N. M. (2021). A Qualitative Evaluation of Prison Education Programs in Delaware: Perceptions of Adult Male Returning Citizens. *ProQuest Dissertations Publishing.* Retrieved from *https://www.proquest.com/openview/af55946da2d8d2213f500ffaa89a3102/1.pdf.*

[31] Davis, L., et al. ''How Effective is Correctional Education, and Where Do We Go From Here?'' Rand Corp. (2014). *https://www.rand.org/pubs/research_reports/RR564.html.*

[32] Department of Education Experimental Sites Initiative site, Updated June 8, 2022, *https://www2.ed.gov/about/offices/list/ope/pell-secondchance.pdf.*

[33] Second Chance Pell Fact Sheet. (n.d.). In *U.S. Department of Education. https://www2.ed.gov/about/offices/list/ope/pell-secondchance.pdf*

[34] U.S. Department of Education. (2020, August). *Experimental Sites Initiative Second Chance Pell: Evaluation Report for Award Years 2016–2017 and 2017–2018.* Federal Student Aid. Retrieved from *https://experimentalsites.ed.gov/exp/pdf/20162018SecondChancePellESIReport.pdf.*

[35] Chesnut, K., & Wachendorfer, A. (2021, April). *Second Chance Pell: Four Years of Expanding Access to Education in Prison.* Vera Institute of Justice. Retrieved from *https://www.vera.org/publications/second-chance-pell-four-years-of-expanding-access-to-education-in-prison.*

[36] Bennett, B. (2015). ''An Offender's Perspective of Correctional Education Programs in a Southeastern State.'' *Walden Dissertations and Doctoral Studies.* 457. *https://scholarworks.waldenu.edu/dissertations/457.*

variety of skills . . . that they may not otherwise have obtained due to lack of confidence, missing opportunities to participate in educational programs offered in the community, and/or incapability of making time to commit to such programs outside of incarceration.'' [37]

The Department proposes a framework for PEPs that would clarify and implement statutory requirements for the benefit of incarcerated individuals and other stakeholders, including correctional agencies and institutions, postsecondary institutions, accrediting agencies, and related organizations. Our proposed regulations include clarified definitions of confined or incarcerated individuals and prison education programs that align with the statute. The Department also proposes to provide greater clarity on the processes that the oversight entity (including the State Department of Corrections or the Bureau of Prisons) would follow in determining whether a prison education program is operating in the best interests of the students. Consistent with the statute, the proposed regulations would prevent proprietary institutions or institutions subject to certain adverse actions from offering PEPs. We also propose protections for incarcerated students against programs that do not satisfy applicable licensure or certification requirements or where such students are typically prohibited under Federal or State law from employment in the field due to the specific conviction of the student. Under the proposed rules, institutions would also be required to provide disclosures for students if their program is designed to lead to occupations in which formerly incarcerated individuals typically face barriers in other States. These proposed regulations are designed to clarify how oversight entities can meet the requirements of the statute, and to guide PEP educational institutions and practitioners on access to, and eligibility for, Federal Pell Grants.

90/10 Rule

The ARP amended section 487 of the HEA to require that proprietary institutions count all Federal funds used to attend the institution as Federal revenue in the 90/10 calculation, rather than only counting title IV, HEA program funds. In FY 2021, proprietary institutions were eligible to receive funding from at least 26 non-title IV Federal programs. The largest two non-title IV, Federal programs with documented funding provided to proprietary institutions were Post-9/11 GI Bill education benefits, which accounted for approximately $1.3 billion in FY 2021, and the Department of Defense (DOD) Tuition Assistance program, which accounted for $185 million in that year. Some proprietary institutions have aggressively recruited service members and veterans in order to use funds from GI Bill education benefits and DOD Tuition Assistance to comply with the current 90/10 requirement since these funds helped offset title IV, HEA program funds in the calculation.[38]

In addition, the proposed revisions to § 668.28 would modify allowable non-Federal revenue in the 90/10 calculation to better align the regulations with statutory intent and address practices proprietary institutions have employed to alter their 90/10 calculation or inflate their non-Federal revenue percentage. These combined changes include:

(1) Creating a new requirement for when proprietary institutions must request and disburse title IV, HEA program funds to prevent delaying disbursements to the subsequent fiscal year in order to reduce their Federal revenue percentage for the preceding fiscal year. The proposed changes to the disbursement rules in § 668.28(a)(2) would prevent such practices.

(2) Clarifying the requirements that ineligible programs must meet in order to be included in the 90/10 calculation under current regulations. The Department is concerned that these sources of non-Federal revenue may provide an incentive for institutions to create, offer, and market programs with little oversight or few consumer protections, or to create programs that bear little, if any, relationship to eligible programs subject to the 90/10 revenue requirement in order to increase the amount of non-Federal funds proprietary institutions received in a fiscal year to comply with 90/10. The proposed changes to § 668.28(a)(3) would prevent such revenue from being included to inflate the amount of non-Federal funds.

(3) Creating guardrails for ISAs and other financing agreements between students and proprietary institutions. Payments made by students or former students on institutional loans or alternative financing agreements currently count as non-Federal revenue in a proprietary institution's 90/10 calculation, and thus some proprietary institutions may have an incentive to encourage students to utilize these products.[39] The proposed addition of § 668.28(a)(5)(ii) will provide guardrails.

(4) Modifying revenue that must be excluded from the 90/10 calculation. The Department proposes to modify allowable revenue generated from institutional aid and funds that cannot be included in the 90/10 calculation to prohibit proprietary institutions from including revenue from the sale of ISAs, alternative financing agreements, or institutional loans in their 90/10 calculation. The revenue to the institution from these transactions is for an asset sale and not a payment by that party for the education provided by the institution as intended under the 90/10 revenue requirement. Thus, the Department does not consider funds generated from these sales as representative of funds paid to the institution for the purposes of education and training. The proposed addition of § 668.28(a)(5)(iii) and § 668.28(a)(6)(vi) would explicitly exclude proceeds from such sales from being counted as non-Federal revenue in the 90/10 calculation.

Finally, the revisions would also delete several outdated provisions, such as those related to the ECASLA of 2008.

Changes in Ownership

The Department has received a growing number of applications for CIO in recent years. While most did not involve a conversion from proprietary status, over 150 transactions were processed in the three years following October 2018; dozens more remain pending. Moreover, the CIO applications that the Department has received and reviewed are increasingly complex and require significant effort and expertise to review, particularly given that the current regulations are

[37] Coady, N. M. (2021). A Qualitative Evaluation of Prison Education Programs in Delaware: Perceptions of Adult Male Returning Citizens. *ProQuest Dissertations Publishing.* Retrieved from *https://www.proquest.com/openview/af55946da2d8d2213f500ffaa89a3102/1.pdf.*

[38] See, for example, Hollister K. Petraeus, ''For-Profit Colleges, Vulnerable G.I.'s,'' *The New York Times* (Sept. 21, 2011), *https://www.nytimes.com/2011/09/22/opinion/for-profit-colleges-vulnerable-gis.html;* and For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, U.S. Senate, Health, Education, Labor and Pensions Committee, Majority Committee Staff Report (Jul. 30, 2012), *https://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf.*

[39] See, for example, Loonin, D. (2011). Piling On: The Growth of Proprietary School Loans and the Consequences for Students. Student Loan Borrower Assistance Program at the National Consumer Law Center. Received from *https://www.studentloanborrowerassistance.org/wp-content/uploads/File/proprietary-schools-loans.pdf* and Consumer Financial Protection Bureau (Jan 20, 2022). Consumer Financial Protection Bureau to Examine Colleges' In-House Lending Practices. Retrieved from *https://www.consumerfinance.gov/aboutus/newsroom/consumer-financial-protection-bureau-to-examine-colleges-in-house-lending-practices/.*

not always clear for institutions or the Department. Some of these CIOs include institutions converting from proprietary to nonprofit status, which further complicates the Department's review and presents a greater risk to students and taxpayers. Given this changing landscape of CIO applications undergoing review, the Department needs to further clarify and define the CIO process to better protect students and taxpayers from potentially risky transactions, and to provide the Department and institutions with clearer processes and regulations to mitigate loss and noncompliance. These improvements would enable the Department to identify high-risk transactions and require financial protection as needed.

The Department is also proposing new regulations to clarify the requirements for institutions undergoing CIOs, including to require adequate advance notice of such transactions to ensure the Department can assess the requirements of continued participation in the title IV, HEA programs prior to the transaction being completed. Further proposed regulations would increase transparency into CIOs to better enable the Department to identify individuals with control over the institution, while reducing the burden of reviewing transactions in which a change in ownership is unlikely to result in a change in control. The proposed rules would also clarify that the Department may apply the necessary terms for continued participation in the federal financial aid programs to ensure that we are able to take appropriate steps to protect students and taxpayers from risky transactions. Proposed changes to the definition of a nonprofit institution would clarify the requirements for operating such institutions to prohibit enrichments to private parties, ensuring that proprietary institutions are not able to receive approval as nonprofit institutions without sufficiently addressing their business practices and the profit interests of former owners.[40]

To provide additional clarity to institutions and ensure consistency in the application of the regulations, the Department is also proposing some technical changes to adjust the definitions of additional locations and branch campuses of the institution to conform with current practice and clarify how the Department views such locations.

2. *Summary:*

Provision	Regulatory section	Description of proposed provision
Pell Grants for Confined or Incarcerated Individuals		
Amend key definitions	§ 600.2	Would amend definitions of ''additional location'' and ''incarcerated student.''
Amend waiver requirements for enrollment of incarcerated students.	§ 600.7	Would amend requirements for an institution to obtain and maintain a waiver from the Secretary to allow students who are confined or incarcerated to exceed 25 percent of regular student enrollment.
Approval of additional locations	§ 600.10	Would amend language to require a postsecondary institution to obtain the Secretary's approval of the institution's first prison education program at the first two additional locations at correctional facilities.
Report new programs to the Secretary	§ 600.21	Would amend language to require that institutions report the addition of any other prison education program to the Secretary within 10 days of the program's establishment.
Establish Pell Grant eligibility for prison education programs.	§ 668.8	Would amend language to include PEPs in the list of eligible programs for purposes of title IV.
Establish Pell Grant eligibility for incarcerated students.	§ 668.32	Would amend language to allow Pell Grant eligibility for a confined or incarcerated individual who enrolls in a PEP.
Outline requirements for programs that lead to licensure.	§ 668.43	Would amend language to require disclosure of typical State or Federal prohibitions on the licensure or employment of formerly incarcerated individuals for a prison education program that is designed to meet educational requirements for a specific professional license or certification.
Establish regulations for the approval and oversight of PEPs.	Subpart P—Prison Education Programs.	Would create a new subpart that houses regulations for PEPs.
Scope for Subpart P	§ 668.234	Would create a section that describes the scope and purpose for the new subpart P, governing prison education programs.
Establish key definitions	§ 668.235	Would create a section that defines ''advisory committee'', ''feedback process'', ''oversight entity'', and ''relevant stakeholders''.
Outline requirements for eligible PEPs	§ 668.236	Would create a section that defines and sets forth the requirements for an ''eligible prison education program.'' An eligible PEP would be required to ensure transferability of credits, satisfy applicable educational requirements for professional licensure or certification, and prohibit PEPs from enrolling when a Federal or State law would prevent a program graduate from obtaining licensure or employment in the relevant field. The proposed regulation would prohibit an institution from offering a PEP if it was subject to certain adverse actions in the last 5 years. Two years after initial approval, proposed § 668.236 would require the oversight entity to determine that the PEP is in the best interest of confined or incarcerated individuals, using the factors set forth in proposed § 668.241.

[40] Shireman, R. (2020). How For-Profits Masquerade as Nonprofit Colleges, The Century Foundation.*https://tcf.org/content/report/how-for-profits-masquerade-as-nonprofit-colleges/.*

Provision	Regulatory section	Description of proposed provision
Outline PEP evaluation and review requirements.	§ 668.237	Would create a section that prescribes program evaluation and review requirements for the institution's accrediting agency or State approval agency. Proposed § 668.237 would require such accrediting or approval agency to evaluate an institution's first prison education program at the first two additional locations, evaluate any additional programs offered through a new mode of delivery, conduct a site visit within 1 year of program initiation, and review and approve the methodology for how the institution and oversight entity determined that the prison education program meets the same standards as substantially similar non-prison education programs offered by the institution.
Secretary's PEP Approval	§ 668.238	Would create a section that requires the Secretary's approval of an institution's first PEP at the first two additional locations for purposes of title IV programs. Applications for approval of subsequent programs would be subject to fewer requirements.
Outline reporting requirements	§ 668.239	Would create a section that requires a postsecondary institution to submit required reports to the Secretary and to establish an agreement with the oversight entity to report information to the Secretary about the transfer and release of confined or incarcerated individuals.
Establish the authority to terminate approval of a PEP.	§ 668.240	Would create a section that sets forth the Secretary's authority to limit or terminate approval of an institution's eligible PEP.
Outline the requirements for an oversight entity's ''best interest'' determination of a PEP.	§ 668.241	Would create a section that defines the ''best interest'' program assessment that must be conducted by the oversight entity. Such assessment must include a holistic assessment of the rates at which confined or incarcerated individuals continue their education post-release, job placement rates, and earnings for program participants; establishing confirmation that the PEP offerings are substantially similar to those in other programs offered by the institution; and ensuring confirmation that PEP students are able to fully transfer their credits and continue their education at any of the institution's other locations that offers a comparable program upon release. The proposed regulations also outline additional indicators that may be included as part of the assessment, and would require the institution offering the program to obtain and maintain documentation of the methodology by which the oversight entity initially approved the PEP and how, after 2 years, it made the ''best interest' determination. After the initial ''best interest'' determination, subsequent assessments would be conducted not less than 120 calendar days prior to the expiration of an institution's Program Participation Agreement.
Wind-down of currently eligible programs.	§ 668.242	Would prescribe the process for the wind-down of eligible programs operating at a correctional facility that is not a Federal or State correctional facility.
Amend cost of attendance limitations ..	§ 690.62	Would amend the relevant section to codify a statutory requirement that the Pell Grant award not exceed cost of attendance.
		90/10
Amend non-Federal revenue provisions.	§ 668.28	Would change terminology of ''non-title IV revenue'' to ''non-Federal revenue'', and ''title IV revenue'' to ''Federal revenue'', as amended in ARP.
Clarify definition of Federal funds	§ 668.28(a)(1)	Would provide that Federal funds issued directly to the proprietary institution or to the student count as Federal funds when calculating the revenue percentages in annual audit submissions for a proprietary institution's fiscal year beginning on or after January 1, 2023, excluding non-title IV Federal funds provided directly to a student to cover expenses other than tuition, fees, and other institutional charges. Would also provide that the Department will publish the list of Federal funds that should be included in the 90/10 calculation in the **Federal Register**. Federal funds would be limited to title IV, HEA program funds for any fiscal year beginning prior to January 1, 2023.
Create disbursement rule for 90/10 calculation.	§ 668.28(a)(2)	Would clarify that proprietary institutions must include Federal funds used to pay tuition, fees, and other institutional charges in the 90/10 calculation. Would require proprietary institutions to request and disburse title IV, HEA funds to eligible students before the end of the proprietary institution's fiscal year if operating under the advanced payment method in § 668.162(b)(2) or the heightened cash monitoring method in § 668.162(d)(1). The proposed regulations would also require institutions operating under the reimbursement or heightened cash monitoring methods in § 668.162(c) or (d)(2) to make disbursements to eligible students by the end of the fiscal year and report these funds as Federal funds in the 90/10 calculations before requesting funds.
Clarify rules around services performed by students.	§ 668.28(a)(3)(ii)(D)	Would add the requirement that activities be related directly to the services performed by students for the revenue to be counted in 90/10 calculations.

Provision	Regulatory section	Description of proposed provision
Clarify treatment of revenue from ineligible programs.	§ 668.28(a)(3)(iii)	Would modify the criteria for revenue generated from ineligible programs to be allowable non-Federal funds. These programs: (1) must not include any courses offered in an eligible program; (2) be provided by the institution and taught by one of its instructors of an eligible program; and (3) be located at its main campus or one of its approved additional locations, at another school facility approved by the appropriate State agency or accrediting agency, or at an employer facility. The funds for these programs would have to be paid by a student, or on behalf of a student by a party unrelated to the institution, its owners, or affiliates. Programs cannot be included if they solely prepare students to take an examination for an industry recognized credential or certification issued by an independent third party.
Clarify application of funds in 90/10 calculation.	§ 668.28(a)(4)	Would clarify that a proprietary institution must presume that any Federal funds will be used to pay the student's tuition, fees, or institutional charges up to the amount of those Federal funds, and presume that funds it determines were provided by another Federal source will be used to pay the student's tuition, fees, or other institutional charges up to the amount of those Federal funds if a student makes a payment to the institution.
Clarify grant fund exception	§ 668.28(a)(4)(i)	Would clarify that grant funds from non-Federal public agencies can be counted as satisfying a student's tuition, fees, or institutional charges as long as those grant funds do not include Federal funds, unless the Federal portion of those grant funds can be determined. The portion of Federal funds must be included as Federal funds under this section. It also would clarify that grant funds from private sources must be unrelated to the institution, its owners, or affiliates.
Clarify revenue generated from institutional aid.	§ 668.28(a)(5)	Would change the requirement that revenue from institutional aid "must" be included to instead say it "may" be included in order to conform with existing practices how institutional aid is included as revenue. Would delete outdated paragraphs that governed loans made before July 1, 2012.
Clarify treatment of institutional loans in 90/10 calculation.	§ 668.28(a)(5)(i)	Would codify current practice by providing that the allowable revenue for purposes of 90/10 from institutional loans is the amount of principal payments made on those loans, as long as the loans meet the criteria established in current regulations.
Clarify treatment of income share agreements (ISAs) and other financing agreements issued by the institution or related entity.	§ 668.28(a)(5)(ii), (iii)	Would establish guardrails that must be included in income share agreements or any other alternative financing agreements if the institution wants to include revenue from these agreements as non-Federal revenue for purposes of 90/10; only cash payments representing principal payments that were used to satisfy tuition, fees, and other institutional charges could be included as non-Federal revenue for purposes of 90/10. Would prohibit the sales of ISAs or other financing agreements from being included as non-Federal revenue.
Clarify treatment of institutional scholarships.	§ 668.28(a)(5)(iv)	Would clarify that institutional scholarship funds that are allowed to be counted as non-Federal revenue must be from an outside source that is unrelated to the institution, its owners, or affiliates.
Eliminate outdated regulations related to loans issued prior to July 1, 2011.	§ 668.28(a)(6)	Would remove outdated regulations in current § 668.28(a)(6) governing revenue generated from loan funds in excess of loan limits prior to ECASLA.
Clarify funds excluded from revenues	§ 668.28(a)(6)	Would redesignate current § 668.28(a)(7) as § 668.28(a)(6) and would eliminate regulations governing how proprietary institutions should account for title IV, HEA program funds returned to the Department that are subject to the ECASLA allowance in subpart (iv). Would add subparts (vi) and (vii) to exclude any amount from the proceeds of the factoring or sale of accounts receivable or institutional loans and any funds, including loans, provided by a third party related to the institution, its owners, or affiliates to a student in any form.
Modify sanctions for institutions that fail the 90/10 calculation.	§ 668.28(c)	Would require the proprietary institution to notify students of the institution's possible loss of title IV eligibility for any fiscal year that the proprietary institution fails to meet the 90/10 requirements. Would also provide that the proprietary institution is liable for any title IV, HEA program funds that it disburses after the fiscal year it becomes ineligible to participate in the title IV, HEA program due to failing the 90/10 revenue requirements for 2 fiscal years, excluding funds the proprietary institution was entitled to disburse.
Establish reporting requirements	§ 668.28(c)(4)	Would require a proprietary institution to report no later than 45 days if it failed 90/10, and to report immediately thereafter if it obtained additional information indicating that it failed 90/10.
Modify Appendix C	§ 668 Subpart B	Would revise the sample student ledger and steps to reflect the regulatory changes in § 668.28 Non-Federal revenue (90/10).

Provision	Regulatory section	Description of proposed provision
Change in Ownership		
Revise key definitions	§ 600.2	Would clarify that an additional location is a physical facility separate from the main campus and within the same ownership structure of the institution; that branch campuses are physical facilities that are in the same ownership structure of the institution and that are approved by the Department as branch campuses; that except for an additional location at a correctional institution, for institutions that offer on-campus and distance education programs, the distance education programs are associated with the main campus; and that a main campus is the primary physical location where the institution offers programs, that is within the same organizational structure, and that is certified as the main campus by the accrediting agency and the Department.
Revise definition of a nonprofit institution.	§ 600.2	Would clarify that nonprofit institutions generally do not hold a revenue-sharing or other agreement with a former owner and are generally not an obligor on debt owed to a former owner of the institution.
Establish requirements for notice of impending changes in ownership.	§ 600.20(g)	Would establish a requirement that an institution must notify the Department within 90 days prior to a proposed change in ownership. An institution would need to submit a completed form, State authorization and accrediting documents, and copies of financial statements. In addition, the institution would need to notify enrolled and prospective students of the proposed change in ownership at least 90 days in advance, as well as submit evidence that the disclosure was made to students.
Codify requirements for financial protection.	§ 600.20(g)	Would establish that when the two most recent years of financial statements are unavailable, the new owner would be able to provide financial protection of at least 25 percent of the institution's prior year volume of title IV aid (if both years of financial statements are unavailable) or at least 10 percent of prior year title IV volume (if one year is unavailable). The Department may also require additional financial protection if the Secretary deems it necessary.
Clarify requirements for a Temporary Provisional PPA (TPPPA) following a change in ownership.	§ 600.20(h)	Would allow the Secretary to determine the appropriate terms for a TPPPA following a change in ownership; and would clarify the financial and other documentation requirements for proprietary and nonprofit institutions undergoing a change in ownership.
Modify reporting requirements for changes in ownership.	§ 600.21(a)(6)	Would distinguish between reportable changes in ownership and changes of control between natural persons and legal entities. Would establish reportable changes in ownership occur when a natural person or entity acquires or changes at least 5 percent of ownership interest.
Revise definition of ownership or ownership interest.	§ 600.31(b)	Would modify the definition of ownership or ownership interest as a direct or indirect legal or beneficial interest in an institution or legal entity, which may include a voting interest or a right to share in the profits.
Revise definition of "other entities" for changes in ownership.	§ 600.31(c)	Would revise the threshold for a change in ownership resulting in a change in control to be at 50 percent ownership interest, with increased reporting beginning at 5 percent of a change in ownership, with a provision that would permit the Secretary to determine a change in control has occurred at a lower level of ownership interest.
Covered and excluded transactions	§ 600.31(d); § 600.31(e)	Would establish as a covered transaction the acquisition of an institution to become an additional location of another institution unless the acquired institution closed or ceased to provide educational instruction. Would establish as excluded transactions certain irrevocable or revocable trusts in which the trustee includes only the owner or a family member of the former owner, and certain cases of the transfer or ownership interests as a result of the death or resignation of an owner.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

3. *Discussion of Costs and Benefits:*

3.1 *Pell Grants for Confined or Incarcerated Individuals:*

In its current form, the HEA prohibits students who are incarcerated in a Federal or State penal institution from participating in the Federal Pell Grant program, which provides need-based grants to low-income undergraduate and certain post-baccalaureate students to promote access to postsecondary education. This restriction prevents many otherwise eligible incarcerated individuals from accessing financial aid and benefiting from the postsecondary education and training that can be crucial to their successful reentry into society and their communities upon the completion of their sentences. The HEA was amended to eliminate this restriction for students who meet the definition of confined or incarcerated individuals and who enroll in eligible PEPs. The Department is seeking to implement the statutory requirement to extend Federal Pell Grant eligibility to incarcerated students and to increase their participation in high-quality educational opportunities.

Costs of the Regulatory Changes:

The proposed regulatory changes would impose some additional costs on the Department, educational institutions, oversight entities, and accrediting agencies.

First, adding eligible Pell Grant recipients as provided for by Congress would expand the costs of the Pell Grant program for the Federal government. The Department expects these costs to be more than offset by the benefits noted in the benefits section, however, especially in the form of lower

recidivism rates and increased employment opportunities. Research has found that the average cost to incarcerate an inmate per year totals more than $33,000 in the U.S.[41] However, participation in correctional postsecondary education programs have been demonstrated to reduce recidivism by 48 percent.[42]

Second, the educational institutions offering in-prison instruction would face some additional costs of achieving and maintaining compliance with new, higher standards. Thus far, correctional education programs have not had to comply with the same requirements as programs that receive title IV and Federal Pell Grant funding, although institutions that participate in the Second Chance Pell experiment have already met some of these requirements for the programs for incarcerated individuals. Additional costs of meeting the higher standards may include the cost of seeking and obtaining approval of initial PEP offerings from the accrediting agency and the Secretary, as well as the costs of providing the data necessary for the oversight entity to determine whether the PEP is operating in the best interests of students. Correctional facilities may also face some increased costs related to providing appropriate facilities and resources, including staffing, to support the prison education program as they partner with higher education institutions. Both institutions and correctional facilities would also face increased costs associated with required support services for their students, including appropriate academic and career counseling, as well as support to help prospective students complete the Free Application for Federal Student Aid®. The Department invites the public to provide comment on the potential compliance costs associated with these proposed regulations for each of the above-mentioned stakeholders to inform the final regulations.

Additionally, oversight entities may incur additional costs to oversee the development and operation of eligible PEPs. For example, as required by proposed §§ 668.236 and 668.241, the oversight entity would be required to develop an appropriate process to approve PEPs and determine if they are operating in the best interest of students. The ''best interest'' determination would require assessment of several identified inputs and outcomes and would require collaboration with relevant stakeholders. All of these would represent an increase in costs for the oversight entity.

Accrediting agencies may also face associated costs related to the approval of PEPs and the required site visit. However, the accrediting agency may, in turn, require the institution of higher education to cover the additional costs associated with the proposed regulations. This would represent a transfer of these costs from institutions to the accrediting agencies.

Finally, the Department would incur some additional burden and cost associated with its obligation to oversee PEPs and to support oversight entities and institutions. For instance, the Department has offered to provide a significant amount of data to the oversight entities to assist them in making the best interest determination. The Department is also committed to providing needed technical assistance to the field. The Department estimates that the costs of systems changes to reflect the requirements outlined in the regulations, oversight to ensure institutions comply with these rules, and training support to provide technical assistance to the field will total approximately $1.1 million for implementation of these proposed regulations.

Benefits of the Regulatory Changes:

Many of the individuals in the growing prison population have lower levels of educational attainment compared to the general population. This research finds that incarcerated adults have a postsecondary educational attainment level of just 15 percent, compared with nearly half of the general public. About two-thirds of incarcerated adults have a high school diploma or equivalent.[43] This creates an opportunity for significant expansion of correctional education programs, including postsecondary educational programs, which would begin to address those unmet needs.

Extending Pell Grants to eligible PEPs would provide numerous economic and public safety benefits to incarcerated individuals, to their communities when they return, and to states and the Federal government in the form of more successful rehabilitation of imprisoned individuals, lower recidivism rates, higher employment rates, greater contribution to the economy, and ultimately cost savings for the government. These effects and benefits are enabled through increased educational attainment.

Numerous studies have shown that providing education programs to incarcerated individuals is a significant factor in successful rehabilitation and subsequent reentry. First, research demonstrates that correctional education boosts self-confidence and self-worth for confined or incarcerated individuals, which leads confined or incarcerated individuals who attend college eduacation to engage in fewer instances of misconduct than those who did not attend.[44] Postsecondary education programs in prisons also improve incarcerated individuals' cognitive skills, especially for individuals with learning disabilities, by teaching critical thinking skills, encouraging debate, and helping students apply course lessons to their own lives, all of which may help them better adjust to social values and expectations upon reentry.[45] This is a critical benefit, given that an estimated 30 to 50 percent of the adult prison population has a learning disability.[46] Correctional education programs also improve literacy levels for the incarcerated individuals with limited past educational experience, which increases their post-release chances of furthering their studies and securing employment.[47] One of the most critical benefits correctional education programs provide to incarcerated individuals is the development of skills necessary for post-release employment. Those adults who participate in postsecondary education or job training programs while incarcerated are more likely to have higher literacy and numeracy proficiency than their peers who do not participate in such programs, helping to close the gaps in literacy and numeracy skills gaps between the incarcerated population and the general public.[48] A study

[41] *https://www.vera.org/downloads/publications/the-price-of-prisons-2015-state-spending-trends.pdf.*

[42] *https://www.rand.org/pubs/external_publications/EP67650.html#:~:text=Conclusion,program%20is%20to%20reduce%20recidivism.*

[43] Ositelu, Monique, Equipping Individuals for Life Beyond Bars, New America (November 2019), *https://www.newamerica.org/education-policy/reports/equipping-individuals-life-beyond-bars/.*

[44] Lahm, K.F. (2009). Educational participation and inmate misconduct. *Journal of Offender Rehabilitation,* 48, 37–52. *https://www.tandfonline.com/doi/abs/10.1080/10509670802572235.*

[45] Vandala, N.G. (2019). The transformative effect of correctional education: A global perspective. *Cogent Social Sciences,* 5(1). *https://doi.org/10.1080/23311886.2019.1677122.*

[46] Koo, A., ''Correctional Education Can Make a Greater Impact on Recidivism by Supporting Adult Inmates with Learning Disabilities,'' 105 *J. Crim. L. & Criminology* (2015). *https://scholarlycommons.law.northwestern.edu/jclc/vol105/iss1/6.*

[47] Jones Young, N.C., & Powell, G.N. (2015). Hiring ex-offenders: A theoretical model. *Human Resource Management Review,* 25(3), 298–312. *https://www.sciencedirect.com/science/article/abs/pii/S1053482214000692?via%3Dihub.*

[48] Ositelu, Monique O. ''Equipping Individuals for Life Beyond Bars.'' *New America,* 4 Nov. 2019,

conducted by the Education Division of the Indiana Department of Correction (IDOC) comparing the outcomes of incarcerated individuals who did participate in a postsecondary education program in the correctional facility with those who did not found that employment rates—and time employed—following release was much higher for those who participated in the program. Their incomes were also higher.[49]

In addition to the benefits provided to PEP participants, there are also significant public safety benefits for their communities. Over the last 2 decades, numerous studies have been conducted on the impact of prison education on post-release outcomes for previously incarcerated individuals.[50] The recidivism rate, represents the rate at which individuals who were previously incarcerated re-offend and are re-admitted to correctional facilities and is often used as a measure of success for correctional education programs. Aggregating the findings from 57 studies published or released between 1980 and 2017, one study found that confined or incarcerated individuals participating in correctional postsecondary education programs are 28 percent less likely to recidivate when compared with confined or incarcerated individuals who did not participate in correctional education programs.[51]

Reducing recidivism also reduces economic, public safety, and personal costs, and correspondingly increases benefits in those categories, for correctional facilities, governments, and our nation as a whole. Additionally, individuals who complete college courses may be eligible for a greater number of higher-paying jobs than those without a college education. Using a hypothetical pool of 100 inmates, a 2014 RAND study illustrated the powerful economic benefit of correctional education programs by comparing the direct costs of such correctional education programs with the costs of reincarceration. The study found that the direct costs of reincarceration were far greater than the direct costs of providing correctional education. For a correctional education program to be cost-effective or ''break-even,'' it would need to reduce the 3-year reincarceration rate by between 1.9 and 2.6 percentage points. The study's findings indicate that participation in correctional education programs is associated with a 13-percentage-point reduction in the risk of reincarceration in the 3 years following release, demonstrating that correctional education programs appear to far exceed the break-even point in reducing to greatly reduce the risk of reincarceration.[52]

3.2 *90/10:*

The American Rescue Plan Act of 2021 amended section 487 of the HEA by modifying which Federal funds proprietary institutions must count in the numerator when calculating the percentage of their revenue that is non-Federal revenue, *i.e.,* the 90/10 calculation. The proposed regulations would revise § 668.28 to reflect statutory requirements implemented in the ARP.

Additionally, these proposed regulations modify allowable non-Federal revenue in the 90/10 calculation to better align the regulations with statutory intent and address practices proprietary institutions have employed or may be incentivized to use to alter their 90/10 calculation or inflate their non-Federal revenue percentage. Examples of such practices include: delaying disbursements to avoid failing 90/10 in 2 consecutive years, offering programs with little or no oversight or programs unnecessary to the education or training of students, and selling institutional loans to count the proceeds from the sale in their 90/10 calculation. These proposed regulations would also create guardrails and disclosure requirements. For instance, the regulations require proprietary institutions to notify students if they fail the 90/10 calculation in a fiscal year and may lose title IV eligibility after another year of failing the calculation and promote consumer protection measures and close potential loopholes related to ISAs and other alternative financing agreements. These proposed changes would mainly result in costs to certain proprietary institutions. Institutions unable to generate sufficient non-Federal revenues may seek to generate revenue to meet 90/10 requirements, such as by creating programs that are not title IV eligible, a permissible source of revenue under the proposed regulations. Students at proprietary institutions that fail the 90/10 calculation may no longer be able to enroll at those institutions; however, research has identified that most students affected by such sanctions on their colleges enroll at other institutions, often community colleges, which are typically lower cost.[53] It is anticipated that most students, proprietary institutions that provide high quality programs, public and nonprofit institutions, taxpayers and the Department would benefit from these new regulations.

Costs of the Regulatory Changes:

We expect the proposed revisions to the 90/10 regulations would result in extra costs to the Department and to proprietary institutions in several areas.

First, the proposed regulations would result in some additional burden and compliance costs for proprietary institutions. For example, proprietary institutions would be responsible for identifying and counting more sources of Federal funds in the 90/10 calculation, including Federal funds delivered directly to students, and for adjusting their 90/10 revenue sources and measures based upon the changes in the proposed regulations. Additionally, institutions may need to make changes to programs to align with the new regulations, which would result in extra compliance costs for proprietary institutions. The Department expects that proprietary institutions seeking to meet the 90/10 requirements may improve the overall quality of their programs to attract and enroll more students who pay for courses with sources other than Federal funds including by making any necessary changes to improve the quality and visibility of their programs; partner with employers willing to pay institutions with their own funds, ensuring alignment with labor market needs; and/or create programs that are not eligible for title IV, HEA funds or other Federal funds to generate revenue to meet the proposed 90/10 rule. Such ineligible programs may not have the same level of oversight and may result in courses and educational programs that are of lower quality but enable proprietary institutions to meet the proposed 90/10 requirements. As noted in the Summary of Proposed Changes section, the Department is concerned that allowing institutions to count funds from these ineligible programs may serve as an

https://www.newamerica.org/education-policy/reports/equipping-individuals-life-beyond-bars/.

[49] Nally, J., Lockwood, S., Knutson, K., & Ho, T. (2012). An Evaluation of the Effect of Correctional Education Programs on Post-Release Recidivism and Employment: An Empirical Study in Indiana. Journal of Correctional Education (1974-), 63(1), 69–89. *http://www.jstor.org/stable/26507622.*

[50] Bozick, R., Steele, J., Davis, L., & Turner, S. ''Does providing inmates with education improve postrelease outcomes? A meta-analysis of correctional education programs in the United States.'' *J. Experimental Criminology* 14, 389–428 (2018). *https://doi.org/10.1007/s11292-018-9334-6.*

[51] Ibid, 389–428.

[52] Davis, L.M., et al., ''How Effective Is Correctional Education, and Where Do We Go from Here? The Results of a Comprehensive Evaluation.'' Santa Monica, CA: RAND Corporation, 2014. *https://www.rand.org/pubs/research_reports/RR564.html.*

[53] Stephanie R. Cellini & Rajeev Darolia & Lesley J. Turner, 2020. ''Where Do Students Go When For-Profit Colleges Lose Federal Aid?,'' American Economic Journal: Economic Policy, vol 12(2), pages 46–83, *http://doi.org/10.1257/pol.20180265.*

incentive for proprietary institutions to create and market low-quality ineligible programs, and we seek feedback about how to monitor such programs and how to provide flexibility to proprietary institutions to offer ineligible programs that provide value to students while ensuring that revenues from those programs are related to the institution's ability to prepare students for gainful employment in recognized occupations and are aligned with the statutory intent of the 90/10 Rule in the HEA.

Second proprietary institutions that are unable to meet the proposed 90/10 requirements would lose eligibility for Federal aid after failing for two consecutive years. This may mean that some students have their studies disrupted, and may incur additional costs and burdens associated with identifying other educational opportunities and transferring across institutions. However, the Department believes that—as in other cases where institutional accountability rules were strengthened—students may transfer to higher-quality programs at other institutions, which may also be more affordable.[54] Additionally, if proprietary institutions create new programs that are of lower quality to meet the proposed 90/10 regulations, prospective students who opt to enroll in such programs could also see suboptimal outcomes as compared with higher-quality programs they might have attended, or in some cases as compared with not having enrolled in the first place.

Last, the proposed regulation would include other sources of Federal funds in addition to title IV, HEA funds as Federal sources of revenue for the purposes of calculating 90/10. Rather than specifying all Federal funding sources in the proposed regulations, the Department opts to identify non-title IV, HEA Federal education assistance funds that must be included in the 90/10 calculation in a notice published in the **Federal Register**, with updates as needed. The Department and the Secretary would bear additional administrative costs arising from identifying these Federal funds and updating the **Federal Register**, but we expect these implementation costs would be minimal.

Benefits of the Regulatory Changes: The proposed 90/10 rule would benefit multiple groups of stakeholders, particularly military-connected students, proprietary institutions that provide programs that generate greater private market demand, public and non-profit institutions, as well as taxpayers.

First, military-connected students would receive the most significant and immediate benefits from the proposed regulations. Some proprietary institutions have allegedly engaged in predatory recruiting practices to recruit service members and veterans because their GI Bill and DOD Tuition Assistance education benefits could help the institution meet the non-Federal revenue requirements in the current 90/10 regulations.[55] The amendment in the ARP aimed to address this concern. Approximately 33 institutions would have failed the 90/10 rate in 2018–19 if DOD and VA dollars were included, and 17 would have failed for two years in 2019–20, risking eligibility; the vast majority (about 1,600) would have passed in both years. Under the proposed rule, proprietary institutions at risk of failing the calculation would no longer have an incentive to aggressively target GI Bill and DOD Tuition Assistance recipients because these programs would be counted as Federal funds for purposes of 90/10. This proposed revision would also provide service members and veterans greater opportunity to consider enrollment options at colleges that are higher quality and more affordable without undue influence or aggressive recruiting from proprietary institutions.

Students who are considering enrolling in proprietary institutions would also benefit from other potential loopholes that we are proposing to close. For example, proprietary institutions would not be able to hide their inability to receive revenue from sources other than Federal education funding if they are not permitted to count revenue sources from certain types of ineligible programs or to delay disbursements to avoid losing eligibility following a failure of the 90/10 calculation during the fiscal year. Like service members and veterans, all such students would also face fewer informational barriers in identifying enrollment options at colleges that are higher quality and more affordable, with fewer failing programs enrolling students using title IV, HEA aid.

Next, the proposed regulations would decrease proprietary institutions' incentive to rely on potentially costly student financing options to meet 90/10 requirements. Some of these student financing options may be harmful to students and result in debt that students cannot pay, such as expensive institutional loans or ISAs. In cases where students do rely on an ISA or alternative financing agreement provided by the institution or a related party, and the proprietary institution wishes to count payments from these arrangements in its 90/10 calculation, the proposed regulations would require that the terms of the agreement be transparent and that the interest rate not be higher than a comparable Direct Unsubsidized Loan to reduce the risk that the balance balloons beyond what the student can afford to repay. This would provide additional protections for students accessing these alternative financing arrangements by increasing transparency about the terms of the arrangement and, in some cases, resulting in better terms offered by the institution, while ensuring minimum standards for the revenue types counted in the 90/10 calculation.

Lastly, there is a benefit to students and taxpayers by more closely aligning allowable non-Federal revenue with the statutory intent of the HEA requiring that institutions demonstrate a willing market beyond taxpayer-financed Federal education assistance by requiring proprietary institutions to bring in at least 10 percent of their revenue from non-Federal sources, such as tuition revenue. Federal funds that go to institutions unable to obtain at least 10 percent of their revenue from non-Federal sources are expected to decrease modestly, as institutions that could not meet the proposed 90/10 rule lose eligibility for title IV, HEA funds. These proprietary institutions would then need to operate without access to title IV, HEA financial dollars provided by taxpayers; identify and enroll students who pay with sources other than Federal funds, including by making any necessary changes to improve the quality and visibility of their programs; or partner with employers willing to pay institutions with their own funds, ensuring alignment with labor market needs and reducing the reliance on taxpayer dollars.

3.3 *Change in Ownership:* With the growing complexity of the landscape of changes in ownership in recent years, the Department is proposing to ensure a clearer, more streamlined process for CIOs that

[54] Stephanie R. Cellini & Rajeev Darolia & Lesley J. Turner, 2020. ''Where Do Students Go When For-Profit Colleges Lose Federal Aid?,'' American Economic Journal: Economic Policy, vol 12(2), pages 46–83, *http://doi.org/10.1257/pol.20180265.*

[55] See, for example, *https://www.nytimes.com/2011/09/22/opinion/for-profit-colleges-vulnerable-gis.html*; *https://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf*; *https://www.chronicle.com/article/for-profit-college-marketer-settles-allegations-of-preying-on-veterans/*; *https://www.insidehighered.com/quicktakes/2015/10/09/defense-department-puts-u-phoenix-probation*; *https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-settlement-itt-tech-lender-illegal-student*; and *https://files.eric.ed.gov/fulltext/ED614219.pdf.*

ensures compliance with the HEA and related regulations. Among the riskiest of those transactions for students and taxpayers are conversions from proprietary status. There have been 59 conversions to nonprofit status, involving 20 separate transactions, between 2011 and 2020.[56] Of these, three-fourths were sold to an entity that had not previously operated an institution of higher education; and one entire chain (including 13 institutions) closed before the Department was even able to make a determination about the request for the conversion.

A full, comprehensive CIO review is a significant administrative burden to both the Department and institution, which can take between 7 months and 1 year, on average, for a change in ownership that includes a conversion, and 6 months for a change in ownership that does not. Some institutions close transactions but are unprepared to meet the regulatory requirements for a change of ownership, resulting in burdening the Department with emergency situations where there is a potential loss of institutional eligibility and precipitous closure. The proposed regulations would seek to reduce that risk by ensuring adequate notice is given prior to the closing of a transaction so that the Department can ensure that the institution can meet the regulatory requirements under the time constraints of 600.20(g) and (h), and in particular, that the Department can determine whether a letter of credit is required because the new owner does not have acceptable audited financial statements to meet the requirements of 600.20(g)(3)(iv); clarifying the requirements for approval of a change in ownership application; and establishing appropriate documentation requirements in the regulations.

The Department proposes to clarify definitions related to distance education and campus locations such as the main campus, branch campus, and additional locations. In recent years, educational institutions often operate beyond a single location. Distance education, in particular, has significantly expanded and become increasingly popular in recent years, and higher education institutions that have adapted to meet distance education requirements throughout COVID–19 are often choosing to continue those educational offerings.[57]

Costs of the Regulatory Changes:

Costs associated with this proposed rule primarily relate to increased burden for institutions from provisions that would enhance the Department's review of institutional changes in ownership and their participation in the Federal aid programs, provide for increased oversight of proprietary institutions seeking to convert to nonprofit status, and increase reporting requirements for CIOs.

Some provisions of the proposed rules could be implemented without additional burden to affected institutions. For instance, institutions would not need to expend additional resources to meet the requirement to submit a basic notice to the Department at least 90 days in advance of the transaction, since the same information would be required under current regulations—just earlier. Instead, the Department believes that providing earlier notice would enable us to provide faster determinations related to any potential letter of credit requirement, and to avoid losses of eligibility for institutions failing to meet the requirements of 600.20(g) and (h) immediately after the transaction, as required by regulations. Other aspects of the proposed regulations simplify and codify existing practice by the Department, which would not increase burden to the institution relative to that current practice.

However, other provisions of the proposed regulations could require institutions undergoing CIOs after the rules take effect to meet new requirements and submit additional documentation to meet the Department's requirements. For instance, institutions would be required to provide notice to their students of a forthcoming CIO at least 90 days in advance, requiring the development of communications and resources for students. The Department proposes to lower the reporting threshold for changes in ownership to cover all changes of at least 5 percent ownership interest. A greater number of institutions would need to meet these proposed reporting requirements, which would carry some cost for affected institutions, since the Department currently requires transactions to be reported only if the transaction affects at least a 25 percent ownership interest. However, the Department also proposed to limit reviews of changes in control, which are more burdensome for the institution, generally to those involving a transfer of at least 50 percent control, rather than the current 25 percent. The Department believes that this would provide additional transparency benefits to the Department, while reducing the burden of institutions where a change in control likely has not occurred from more onerous changes in control reviews, which we believe would outweigh the expense from the increased burden of additional reporting. The Department anticipates the reporting burden cost range will be minimal. Additionally, any costs from these proposed rules would only be associated with those institutions undergoing a CIO, which are relatively uncommon. The Department anticipates that the administrative costs to the agency of implementing these changes would be very limited, given the relatively small number of such transactions and the fact that many of these requirements confirm current practice.

Benefits of the Regulatory Changes:

The Department believes that the benefits and burden reduction that would result from these proposed regulations would outweigh these new costs. The Department anticipates the proposed regulations would significantly benefit students, taxpayers, institutions, and the Department.

Students, taxpayers, institutions, and the Department would all benefit from increased oversight of proprietary institutions converting to nonprofit status. Historically, these transactions have proven to be a significant risk, resulting in some cases in college closures (and associated closed school discharges), requiring the investment of enforcement and oversight resources by States and the Federal government, and exempting some institutions from regulations governing proprietary institutions—such as the 90/10 rule—improperly. Students, taxpayers, and the Department would all benefit from increased transparency around a proposed transaction, providing more time for the Department to conduct oversight and ensure the transaction is properly conducted and does not result in an interruption of title IV, HEA benefits. Institutions would also benefit from an earlier submission that allows the Department to provide feedback on the proposed transaction before it occurs, since such feedback—for example, regarding whether a letter of credit will be required as part of the transaction—can be critical to ensuring

[56] Government Accountability Office, (GAO), Higher Education, IRS and Education Could Better Address Risks Associated with Some For-Profit College Conversions, December 2020. *https://www.gao.gov/products/gao-21-89.*

[57] Ewing, L.—National Council for State Authorization Reciprocity Agreements. (October 20, 2021). NC–SARA Institution Survey: Perspectives on the Pandemic. *https://nc-sara.org/sites/default/files/files/2021-10/Perspectives_PUBLISH_18Oct2021.pdf*; and Ewing, L.-A. (2020). Rethinking Higher Education Post COVID–19: Asian University Leaders' Perspectives. In Han, H.S., & Lee, J. (eds.), *COVID–19 and the Future of the Service Industry Post-Pandemic: Insights and Resources.* Singapore: Springer.

the institution's compliance with Federal rules.

Students and taxpayers would also benefit from greater assurances that schools are complying with regulatory requirements in CIO transactions and meeting the definition of a nonprofit institution. Current and prospective students would benefit from the requirement that the institution provide notice at least 90 days prior to a change in ownership because the requirement would ensure that students receive important information that would impact their education in a timely manner, and that they are able to make future education decisions (including obtaining copies of their transcripts) based on that knowledge. Students and taxpayers would also benefit from increased oversight of proprietary institutions converting to nonprofit status, including requiring that proprietary institutions continue to comply with regulatory requirements such as gainful employment or the 90/10 rule unless and until they have met the requirements to be approved as a nonprofit institution by the Department. Taxpayers benefit from additional financial protection when the required audited financial statements of a new owner are not available (consistent with current practice), as well as from any additional financial protections that may be deemed necessary by the Secretary pursuant to the risk of the transaction.

Educational institutions would benefit from clearer requirements in the regulations as to how the rules apply to CIO transactions. The revised definition of nonprofit institutions would ensure that institutions seeking such a designation are not using business arrangements that improperly benefit related parties. This clarification would better ensure that institutions know how to comply, and are compliant, with the Department's expectations.

The proposed regulations would also enable a proprietary institution that seeks to convert to nonprofit status to more clearly understand, prior to submitting a CIO application, the CIO process and how the Department would review CIO applications. As these institutions assess potential transactions, they would more easily be able to identify permissible and impermissible contracts and agreements with prior owners. The streamlined process and 90-day advanced notice would also benefit institutions by ensuring that their audited financial statements can be reviewed to determine whether a letter of credit is required prior to the transaction closing. This would also provide notice that the Department may require additional financial surety to ameliorate financial or administrative risk that the institution may present to taxpayers on a case-by-case basis.

The Department would also benefit from clearer regulations and processes that are more easily interpreted and applied. Clearer definitions related to distance learning, as well as main campuses, branch campuses, and additional locations, would simplify and reduce the Department's reviews of institutions and of change in ownership transactions by ensuring greater consistency. The Department would also benefit from the clarifications made to reporting requirements, as lowering the threshold to 5 percent will increase transparency and enable more stringent oversight of changes in control. This greater visibility into voting blocs and lower-level ownership changes will enable the Department to determine where institutions may have undergone a change in control, warranting greater scrutiny by the Department, and to prevent institutions from evading our regulations through corporate changes that skirt the threshold for an automatic change in control review. These CIOs do not occur often, limiting the frequency of added burden from the reporting. The Department would also experience less burden from the proposed change to set the threshold for a change in control review at a 50 percent or greater change in ownership and control or where the Department has reason to believe a change in control has occurred, rather than all changes in ownership over 25 percent.

4. *Net Budget Impacts:*

These proposed regulations are estimated to have a net Federal budget impact in savings of $-44.3 million for loan cohorts 2025 to 2032, and $879 million in net changes to Pell Grants. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans.

The provisions most responsible for the costs of the proposed regulations are in providing Pell Grants for confined or incarcerated individuals in qualifying prison education programs. The Department does not anticipate significant costs related to the change in ownership provisions; and anticipates a small savings due to the 90/10 provisions. The specific costs for each provision are described in the following subsections covering the relevant topics.

Pell Grants for Confined or Incarcerated Individuals

The proposed revisions to the Pell Grants for confined or incarcerated individuals provisions are expected to increase educational opportunities for confined or incarcerated students, as provided for by Congress, while maintaining appropriate guidelines for program quality and requiring reporting for tracking the extent and performance of these programs.

To estimate the potential increase in Pell Grant awards related to these changes, the Department assumed based on current figures and previous experience with Pell Grant availability for incarcerated individuals that 2 percent of the incarcerated population of approximately 1.6 million individuals will participate in eligible PEPs. The size of the incarcerated population fluctuates and there are differing estimates of the number of incarcerated individuals, which is also affected by the pandemic. For example, the Department of Justice's Bureau of Justice Statistics estimates a population of 1.4 million as of year-end 2019 with a decline to 1.2 million as of year-end 2020,[58] while the Vera Institute of Justice estimates there are 1.8 million in prisons and jails as of mid-2020 and 1.77 million as of mid-2021.[59] Given the uncertainty, the Department chose 1.6 million as a midpoint between estimates. Due to enrollment intensity constraints, incarcerated Pell recipients are unlikely to receive the maximum grant available. Based on experience from the Second Chance Pell experiment, where average awards were nearly 60 percent of the maximum award, the average award used to develop the estimate was prorated to approximately $3,800 in the first year, generating the estimated costs in Table 1.

[58] Bureau of Justice Statistics, Prisoners in 2020—Statistical Tables, December 2021 available at Prisoners in 2020—Statistical Tables (*ojp.gov.*)

[59] Vera Institute of Justice, People in Jail and Prison, Spring 2021, available at *https://www.vera.org/downloads/publications/people-in-jail-and-prison-in-spring-2021.pdf.*

TABLE 1—ESTIMATED COST OF PEPS [60]

Cost of Expanding Pell Eligibility to Incarcerated Students (PB23 Assumptions)						
	AY 2023–24	AY 2024–25	AY 2025–26	AY 2026–27	AY 2027–28	AY 2028–29
Discretionary Program Cost	96	100	101	101	102	103
Mandatory Program Cost	23	22	22	22	22	23
Total Program Cost	119	122	123	123	124	126
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Discretionary Outlays	32	63	99	101	101	102
Mandatory Outlays	11	23	22	22	22	22
Total Outlays	43	86	121	123	123	124
		AY 2029–30	AY 2030–31	AY 2031–32	AY 2032–33	10-year total
Discretionary Program Cost		104	104	105	104	1,020
Mandatory Program Cost		23	23	23	23	226
Total Program Cost		127	127	128	127	1,246
		FY 2029	FY 2030	FY 2031	FY 2032	10-year total
Discretionary Outlays		103	104	104	104	913
Mandatory Outlays		23	23	23	23	214
Total Outlays		126	127	127	127	1,127

Based on these assumptions, the estimated cost of the Pell Grants for confined or incarcerated individuals provisions is approximately $1.1 billion over 10 years. This amount of Pell Grants awarded from these changes will depend heavily on the institutions that choose to participate and the number of students that they enroll. Another factor that will affect the increase in transfers is how quickly institutions begin to offer these programs using Pell Grants. We assume a fast roll-out since these changes have been known for several years before the proposed regulations take effect, but the ramp-up could be more gradual, shifting the timing back and reducing the overall number of additional transfers. The Department welcomes comments on the assumptions used for this estimate—particularly related to how quickly programs will obtain approval as qualifying prison education programs, how many students will enroll, and whether the average award will differ from programs under the Second Chance Pell experiment—and will consider them in development of cost estimates for the final rule.

[60] The Federal Pell Grant program has discretionary costs associated with the maximum award set in the annual appropriation and mandatory costs associated with the additional award amount determined by statute. These changes affect both mandatory and discretionary costs.

90/10 Rule

To help estimate the effect of the proposed changes, the Department analyzed information about additional Federal aid received by institutions subject to the 90/10 requirements and found that an additional 92 institutions with $524.8 million in Pell grants and $1.09 billion in loan volume in AY 2019–20 would be above the 90 percent threshold, and 49 institutions would be above the 90 percent threshold for both 2018–19 and 2019–20, risking eligibility.

However, the Department recognizes that institutions have historically managed to meet the 90/10 threshold in order to operate, and we expect the majority would be able to adapt to the new requirements. Additionally, students would still qualify for similar levels of aid even if they choose to attend a different institution or shift sectors. Therefore, we do not expect a 100 percent loss of volume and aid awarded. The proposed change to include additional types of Federal aid in the 90/10 calculation are estimated to decrease Pell Grants awarded by −$248 million from AY2024–24 25 to AY2032–33 and have a net budget impact of $−44.3 million from reduced loan volumes for cohorts 2025–2032.

The following tables demonstrate the expected change in Pell Grants awarded and loan volumes that resulted in the estimated net budget impact of $−292 million. Our estimates are based on institutional data, including Post-9/11 GI Bill benefits and DOD Tuition Assistance programs. They do not account for funds that go directly to students to cover tuition, fees, or other institutional charges, and they do not include other sources of Federal funds disbursed by state or local entities. The Department welcomes feedback on how to account for these funds.

To estimate the reduction in volume related to the change in the 90/10 regulations, the Department assumed that institutions with a revised 90/10 rate over 95 percent would not be able to reduce their rate below 90. While institutions in the 2018–19 and 2019–20 90/10 files used for this revised estimate did not have the same motivations that would exist under the proposed regulations because the 90/10 calculation was different for them than it would be under the proposed regulations, no institution with a 90/10 rate above 95 in the first year was under 90 in the second year in the Department's analysis. Seventeen institutions with $94.9 million in Pell Grants and $194.1 million in loans were above the 95 percent rate, representing between 0.2 percent to 3.3 percent of proprietary volume depending on level and Grant or loan type. Student choice would affect the potential reduction as well as they would be eligible to receive similar title IV amounts in attending a different institution. For this estimate, we assume that 60 percent of students would pursue their education elsewhere if their initial choice were not available

as a result of the proposed changes to the 90/10 regulations. Finally, we anticipate that the reduction in volume will decrease over the years as institutions over the threshold no longer participate and others adapt to the new threshold. To account for this, we reduced the percentage applied to the Pell Grant and loan volume by 30 percent in 2027–28 and 2028–29, 40 percent in 2029–30 and 2030–31, and 50 percent in 2031–32 and 2032–33. Table 2 shows the effect on Pell Grants of the proposed changes.

TABLE 2—ESTIMATED EFFECT ON PELL GRANTS

	AY 2023–24	AY 2024–25	AY 2025–26	AY 2026–27	AY 2027–28	AY 2028–29
PB23 Baseline Total Cost	29,652	33,251	33,795	34,349	34,928	36,631
% over 95 with 60% student adj	.....	0.000%	0.134%	0.134%	0.094%	0.094%
Total Policy Cost	.....	.....	(45)	(46)	(33)	(34)
Discretionary Policy Cost	.....	.....	(38)	(38)	(27)	(29)
Mandatory Policy Cost	.....	.....	(8)	(8)	(6)	(6)
	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Discretionary Outlays	.....	.....	(13)	(24)	(34)	(32)
Mandatory Outlays	.....	.....	(4)	(8)	(7)	(6)
Total Outlays	.....	.....	(17)	(32)	(41)	(38)
		AY2029–30	AY2030–31	AY 2031–32	AY 2032–33	10-Year Total
PB23 Baseline Total Cost		37,202	37,810	38,450	38,931	354,999
% over 95 with 60% student adj		0.080%	0.080%	0.067%	0.067%	.....
Total Policy Cost		(30)	(30)	(26)	(26)	(271)
Discretionary Policy Cost		(25)	(25)	(21)	(22)	(225)
Mandatory Policy Cost		(5)	(5)	(4)	(4)	(46)
		FY 2029	FY 2030	FY 2031	FY 2032	10-Year Total
Discretionary Outlays		(27)	(26)	(24)	(23)	(203)
Mandatory Outlays		(6)	(5)	(5)	(4)	(45)
Total Outlays		(33)	(31)	(29)	(27)	(248)

The reduction in loan volume was processed as a reduction in the baseline volumes by loan type and risk group. In assigning the volume associated with 4-year programs to a risk group, we assumed 66 percent would be in the 4-year first year/sophomore risk group and 34 percent to the 4-year junior/senior risk group. Application of the adjustment factors shown in Table 3 resulted in the $-44.32 million loan estimate shown in Table 4.

TABLE 3—LOAN VOLUME ADJUSTMENT FACTORS

Cohort Range	2025–2026 %	2027–2028 %	2029–2030 %	2031–2032 %
2-year proprietary:				
Subsidized	0.645	0.452	0.387	0.323
Unsubsidized	0.632	0.443	0.379	0.316
PLUS	0.265	0.185	0.159	0.132
4-year FR/SO:	.....	.....	.....	.....
Subsidized	0.112	0.078	0.067	0.056
Unsubsidized	0.144	0.101	0.086	0.072
PLUS	0.004	0.002	0.002	0.002
4-year JR/SR:	.....	.....	.....	.....
Subsidized	0.112	0.078	0.067	0.056
Unsubsidized	0.144	0.101	0.086	0.072
PLUS	0.004	0.002	0.002	0.002
GRAD:	.....	.....	.....	.....
Unsubsidized	0.075	0.053	0.045	0.038
Grad Plus	0.008	0.005	0.005	0.004

TABLE 4—ESTIMATED 90/10 EFFECT ON LOANS

$ millions	2025	2026	2027	2028	2029	2030	2031	2032	Total
Subsidized	−2.35	−3.18	−2.63	−2.50	−2.28	−2.21	−1.96	−1.89	−18.99
Unsubsidized	−2.58	−4.31	−3.76	−3.60	−3.30	−3.15	−2.81	−2.72	−26.22
PLUS	0.13	0.18	0.13	0.11	0.10	0.09	0.08	0.08	0.90
Total	−4.79	−7.31	−6.26	−5.99	−5.48	−5.26	−4.69	−4.54	−44.32

These reductions in transfers depend on institutional and student responses that are uncertain. Students' decision to continue their education would depend on the availability of programs of interest at other institutions that fit their commuting or other constraints. Fewer institutions may be able to get their rate below 90 or more students may decide not to pursue their education if the institution they would have chosen is not available. Both of those scenarios would further reduce Pell Grant and loan transfers. For example, if the 49 institutions with revised rates above 90 in both years were assumed to not be able to get below the threshold, the estimated savings in Pell would be −$521 million and in loans −$84 million for a total of $605 million in reduced transfers to students. The mix of institutions and the volume they represent means the assumption about what rate or which institutions could adapt and get below the threshold does have a significant effect on the net budget impact.

Change in Ownership

The proposed regulations would provide greater clarity about the definition of additional locations and branch campuses for clearer reporting and clarity of ownership structures within postsecondary education. The proposed rules would also increase reporting to ensure greater transparency into change in ownership transactions and strengthen the Department's review of changes in control. Increased oversight of changes in ownership and proposed provisions related to the definition of a nonprofit institution may affect the distribution of title IV aid across sectors, including by approving requested conversions from for-profit status to non-profit status only when institutions have met the requirements of a nonprofit institution, and some students' choice of institution may be affected. However, the Department does not expect a significant cost from the change in ownership provisions and would not estimate one without additional data demonstrating a clear effect.

5. *Accounting Statement:*

As required by OMB Circular A–4, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these proposed regulations. Expenditures are classified as transfers from the Federal government to affected student loan borrowers.

TABLE 5—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Benefits	
Increased access to educational opportunities for incarcerated individuals	Not quantified.	
Improved information about changes in ownership	Not quantified.	
Category	**Costs**	
	7%	3%
Costs of compliance with paperwork requirements	$3.4	$3.4
Increased administrative costs to Federal government to update systems to implement the proposed regulations	$11.1	$11.1
Category	**Transfers**	
	7%	3%
Reduced Pell Grants and loan transfers to students as some institutions lose eligibility from revised 90/10	$−27.1	$−28.3
Increased Pell Grant transfers to institutions providing educational opportunities to incarcerated individuals	$109	$111

6. *Alternatives Considered:*

As part of the development of these proposed regulations, the Department engaged in a negotiated rulemaking process in which we received comments and proposals from non-Federal negotiators representing numerous impacted constituencies. These included higher education institutions, consumer advocates, students, financial aid administrators, accrediting agencies, and State attorneys general. Non-Federal negotiators submitted a variety of proposals relating to the issues under discussion. Information about these proposals is available on our negotiated rulemaking website at *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.*

6.1. *Pell Grants for Confined or Incarcerated Individuals:*

The Department considered establishing only implementing regulations that restated the requirements in the statute. We were concerned, however, that because the requirements were new to institutions, oversight entities, and other stakeholders, the field would benefit from greater clarity and technicality in the regulations. As a result, we opted to negotiate on the specific requirements in the regulations and were pleased to reach consensus on those items.

With regard to an oversight entity's holistic determination that a PEP is operating in the best interest of students, the Department considered a variety of metrics, both within the statute and those more widely used within the higher education system. We decided that the list on which the negotiators reached consensus appropriately balanced the high-quality data that are available to programs and oversight entities, measures of program success used throughout higher education, and the statutory requirements for such a determination. The Department also considered making use of the ''best determination'' metrics voluntary, or allowing oversight entities additional discretion as to which metrics they consider, but we determined that making the bulk of the metrics mandatory would establish consistency across states, ensure oversight entities' consideration of relevant information and benchmarks, and provide enough information for the Department to determine whether an oversight entity's process was sufficient.

The Department also considered allowing the PEPs to enroll students in eligible prison education programs that lead to occupations that typically involve prohibitions on licensure and employment for formerly incarcerated individuals, if the affected individuals attest that they are aware of the restrictions. We are concerned, however, that such programs would not

generally be the most productive use of students' limited Pell Grant eligibility or time, or of taxpayer dollars. While we acknowledge that some individuals may be able to meet such restrictive licensure requirements, if the typical student in such a program would not be able to find employment or obtain licensure, we are concerned that students may enroll in programs that exhaust their Pell Grant lifetime eligibility before they are able to complete a credential that would allow them to earn a job in the field. The Department is aware that many states have engaged in efforts to reduce barriers to employment for formerly incarcerated individuals, which we strongly encourage. Our proposed language ensures that institutions must regularly re-review these requirements to ensure they keep up with any such changes and make potential students aware.

6.2. *90/10 Rule:*

To address the statutory changes in the ARP, the Department considered including only DOD and Department of Veteran Affairs (VA) funds as additional Federal funds considered for 90/10 calculations, since these are the two largest programs with data that demonstrates a significant amount of funds flow to some proprietary institutions outside of title IV, HEA funds, and because military-connected students have been targeted by some proprietary institutions in the past. The Department also considered including other large sources of Federal funds, such as funds authorized under the Workforce Innovation and Opportunity Act of 2014 (WIOA) but excluding smaller sources. However, the Department determined that its proposal would include all Federal education assistance programs, with the exception of funds that go directly to students to cover costs outside of tuition, fees, and other institutional charges, because Federal appropriations for education assistance programs and disbursements to institutions may change from year to year, and the Department does not want to inadvertently create a new loophole where proprietary institutions identify a large source of Federal funds and target students that receive this source of funding, such as WIOA. The broader inclusion is also consistent with the statutory language in the ARP, which refers to ''Federal education assistance funds.''

The Department considered including only Federal funds that go directly to proprietary institutions, as it may be difficult for proprietary institutions to obtain timely information about funds that go directly to students, especially if a student needs to pay back an agency for funds received due to dropping a class, enrollment intensity decreasing, or other reasons. The Department also considered including all student funds, including those earmarked for purposes other than tuition and fees, such as housing. However, to be consistent with the statutory language in the ARP and HEA, the Department decided to include funds that go directly to students. The Department did not include funds that go directly to students that are earmarked for purposes other than tuition, fees, and other institutional charges because this funding does not apply to institutional charges, as required by the HEA.

The Department considered listing all Federal educational assistance programs in the proposed regulations. However, these programs and institutional eligibility may change over time, so the Department instead decided to identify sources of funds that are to be included in a **Federal Register** notice, which gives greater flexibility to account for changes over time and can be updated as needed.

6.3. *Change in Ownership:*

The Department considered establishing a definition of nonprofit institutions that closed off all revenue-based or other agreements with a former owner, as opposed to just those that exceed reasonable market value. However, we determined that there could be appropriate agreements with a former owner that our language would preclude. We invite feedback from stakeholders on this question in the public comment period.

The Department considered maintaining the current definitions that require ED to evaluate whether there has been a change of control at 25 percent of a change in ownership interest, rather than the proposed 50 percent. However, in general we have found that control is much more common at 50 percent and that control below 50 percent is relatively rare. To accommodate concerns that institutions might begin to establish changes of control at, for example, 49 percent to evade the regulations, we propose to lower the threshold for reporting changes in ownership to 5 percent from 25 percent and propose to retain discretion for the Secretary to review and determine a change of control based on information available to the Secretary. While the Department also considered requiring reporting of all changes in ownership at any level, we instead proposed 5 percent to avoid unnecessary reporting on extremely minor changes and to limit inappropriate burden on institutions.

The Department considered whether to maintain the provision that requires the Secretary to continue an institution's participation after a CIO with the same terms and conditions as it held in its participation before the CIO. However, we are concerned that such terms may not adequately account for the added risk the institution may present to students and taxpayers as a result of the transaction. Based on past review of CIO applications by the Department, we are aware of numerous cases in which the transaction fundamentally altered the operations of the institution. We believe that additional conditions and new terms are more appropriate for institutions undergoing a CIO and are accordingly proposing language that allows the Department to establish such appropriate terms.

7. *Regulatory Flexibility Act:*

The Secretary certifies, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this proposed regulatory action would not have a significant economic impact on a substantial number of ''small entities.''

The Small Business Administration (SBA) defines ''small institution'' using data on revenue, market dominance, tax filing status, governing body, and population. The majority of entities to which the Office of Postsecondary Education's (OPE) regulations apply are postsecondary institutions, however, which do not report such data to the Department. As a result, for purposes of this NPRM, the Department proposes to continue defining ''small entities'' by reference to enrollment, to allow meaningful comparison of regulatory impact across all types of higher education institutions.[61]

[61] In previous regulations, the Department categorized small businesses based on tax status. Those regulations defined ''non-profit organizations'' as ''small organizations'' if they were independently owned and operated and not dominant in their field of operation, or as ''small entities'' if they were institutions controlled by governmental entities with populations below 50,000. Those definitions resulted in the categorization of all private nonprofit organization as small and no public institutions as small. Under the previous definition, proprietary institutions were considered small if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. Using FY 2017 IPEDs finance data for proprietary institutions, 50 percent of 4-year and 90 percent of 2-year or less proprietary institutions would be considered small. By contrast, an enrollment-based definition applies the same metric to all types of institutions, allowing consistent comparison across all types.

TABLE 6—SMALL INSTITUTIONS UNDER ENROLLMENT–BASED DEFINITION

Level	Type	Small	Total	Percent
2-year	Public	328	1182	27.75
2-year	Private	182	199	91.46
2-year	Proprietary	1777	1952	91.03
4-year	Public	56	747	7.50
4-year	Private	789	1602	49.25
4-year	Proprietary	249	331	75.23
Total		3381	6013	56.23

Source: 2018–19 data reported to the Department.

Table 7 summarizes the number of institutions affected by these proposed regulations.

TABLE 7—ESTIMATED COUNT OF SMALL INSTITUTIONS AFFECTED BY THE PROPOSED REGULATIONS

	Small institutions affected	As percent of small institutions
Pell Grants for Confined or Incarcerated Individuals	136	4.02
90/10	1,650	17.00
Change in Ownership	203	10.00

The Department has determined that the economic impact on small entities affected by the regulations would not be significant. As seen in Table 8, the average total revenue at small institutions ranges from $2.3 million for proprietary institutions to $21.3 million at private institutions. These amounts are significantly higher than the $2,953 to $4,593 in estimated costs per small institution for the proposed regulations presented in Table 9.

TABLE 8—TOTAL REVENUES AT SMALL INSTITUTIONS

Control	Average total revenues for small institutions	Total revenues for all small institutions
Private	21,288,171	20,670,814,269
Proprietary	2,343,565	4,748,063,617
Public	15,398,329	5,912,958,512

Note: Based on analysis of IPEDS enrollment and revenue data for 2018–19.

The impact of the PEP proposed regulations would be minimal to small institutions and would involve meeting disclosure requirements and complying with requirements of the oversight entity and the Department.

The changes proposed to 90/10 would have a minor impact on proprietary institutions. These impacts include calculating the non-Federal revenue and providing a notification to students and the Department if an institution fails to comply with the 90/10 requirement.

While the CIO-proposed regulations have the potential to impact small entities, the number of prior CIO applications indicates that such changes in ownership do not often occur. There will be a minor burden on institutions that undergo a CIO to notify students at least 90 days prior to a proposed CIO. We believe this burden notification will be minor and can be disseminated electronically. The reduction in the reporting threshold for changes in ownership from 25 to 5 percent will impact more small entities than in the past; however, the burden associated with this increase in reporting is minimal and relatively uncommon.

TABLE 9—ESTIMATED COSTS FOR SMALL INSTITUTIONS

Compliance area	Number of small institutions affected	Cost range per institution ($)	Estimated overall cost range for small institutions affected ($)
Pell Grants for Confined or Incarcerated Individuals disclosure requirement	44	749.92–1,124.88	32,996.48–49,494.72
90/10 non-Federal revenue calculation	1,650	749.92–1,499.84	1,237,368–2,474,736
90/10 failure student notification	11	140.61–187.48	1,546.71–2062.28
CIO notification to students	71	187.50–281.22	13,312.50–19,966.62
CIO increased reporting burden	203	1,124.88–1,499.84	228,350.64–304,467.52

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps 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.

Sections 600.7, 600.10, 600.20, 600.21, 668.28, 668.43, 668.237, and 668.238 of this proposed rule contain information collection requirements. These proposed regulations include requirements for institutions to obtain a waiver allowing them to enroll more than 25 percent of their students as incarcerated students; obtaining approval to offer prison education programs; submit an application seeking continued title IV participation for a change in ownership; reporting changes in ownership and/or control; and for proprietary institutions to demonstrate compliance with the 90/10 rule. Under the PRA, the Department has or will at the required time submit a copy of these sections and an Information Collection Request to OMB for its review. For some of the regulatory sections, including those relating to PEPs, PRA approval will be sought via a separate information collection process. Specifically, the Department will publish notices in the **Federal Register** to seek public comment on and review of these collections when they are published.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Section 600.7—Conditions of institutional eligibility.;

Section 600.10—Date, extent, duration, and consequences of eligibility;

Section 600.20—Notice and application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.; and

Section 600.21—Updating application information.

Section 668.238—Application requirements.

Requirements: The proposed regulations at § 600.7(c)(1) allow that the Secretary would not approve an enrollment cap waiver for a postsecondary institution's Prison Education Program (PEP) until the oversight entity is able to make the ''best interest determination'' described in § 668.241, which would be at least 2 years after the postsecondary institution has continuously provided a PEP.

The proposed regulations at § 600.10(c)(1)(iv) require an institution to obtain approval from the Secretary to offer the institution's first eligible PEP at its first two additional locations at correctional facilities.

The proposed regulations at § 600.20(g)(1)(i) would require that institutions must notify the Department at least 90 days in advance of a proposed change in ownership. This includes submission of a completed form, State authorization and accrediting documents, and copies of audited financial statements. It also includes reporting any subsequent changes to the proposed ownership structure at least 90 days prior to the date the change in ownership is to occur.

The proposed regulations at § 600.21(a)(6) would amend reporting requirements to distinguish between reportable changes in ownership and changes of control and between natural persons and legal entities.

The proposed regulations at § 600.21(a)(14) would amend the reporting requirements for an institution to include the reporting of initial or additional PEPs and locations for PEPs.

The proposed regulations at § 600.21(a)(15) would also include reporting on changes in ownership that do not result in a change of control and that are not otherwise specified on the list of types of changes in ownership that must be reported, to ensure that novel ownership structures are covered under the regulations.

The proposed regulations at § 668.238(a) would specify that the postsecondary institution must seek approval for the first PEP at the first two additional locations as required under § 600.10. Proposed § 668.238 (b) would identify the application requirements for such PEPs. For all other PEPs and locations not subject to initial approval by the Secretary, postsecondary institutions would be required to submit the documentation outlined in proposed § 668.238(c).

Burden Calculation: All of these proposed regulatory changes would require an update to the current institutional application form, 1845–0012. The form update would be completed and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations. The burden changes would be assessed to OMB Control Number 1845–0012, Application for Approval to Participate in Federal Student Aid Programs.

Section 600.20—Notice and application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

Requirements: The proposed regulations at § 600.20(g)(4) would require institutions to notify enrolled and prospective students at least 90 days prior to a proposed change in ownership.

Burden Calculation: We believe that this would result in burden for the institution. Based on the GAO report cited earlier, using the 59 institutional changes of ownership over a period of 9 years, we anticipate that an estimate of 7 institutions annually would require 4 hours to develop and post the required notice on the institution's intra- and internet sites for a total of 28 hours (7 × 4 hours = 28 hours). The burden change would be assessed to OMB Control Number 1845–NEW, Change of Ownership Notification to Students.

CHANGE OF OWNERSHIP NOTIFICATION TO STUDENTS—OMB CONTROL NUMBER: 1845–NEW

Affected entity	Respondent	Responses	Burden hours	Cost at $46.59 per hour for institutions
Proprietary	7	7	28	$1,305
Total	7	7	28	1,305

Section 668.28—Non-Federal revenue (90/10).

Requirements: The proposed regulations would amend § 668.28(a)(2) to create a disbursement rule that outlines how proprietary institutions calculate the percentage of their revenue that is Federal revenue and would create an end-of-fiscal-year deadline for proprietary institutions to request and disburse title IV funds to students. Additionally, proposed § 668.28(c)(3) would establish disclosures for proprietary institutions that fail to derive at least 10 percent of their fiscal-year revenues from allowable non-Federal funds.

Burden Calculation: We believe that this proposed change to § 668.28(a)(2) would result in burden for the institution. As of April 2022, there were 1,650 proprietary institutions eligible to participate in the title IV, HEA funded programs. We believe that all proprietary institutions would be required to perform this calculation. We believe that it will take 1,650 institutions an estimated 24 hours each to gather information about the eligible students and payment information to perform the required calculations and request any required disbursements for a total of 39,600 hours (1,650 institutions × 24 hours = 39,600 hours). The estimated costs for institutions to meet this requirement would be $1,844,964.

We believe that the proposed change to § 668.28(c)(3), which would require institutions to notify students when the institution fails the 90/10 revenue test, would result in a burden for the institution. For the 2019–2020 Award Year there were 33 institutions that failed to meet the 90/10 revenue test when adding in Post 9–11 GI Bill and DOD Tuition Assistance funds. Using this number of institutions as representative of the number of institutions that would annually fail the 90/10 revenue test, we estimate that 33 institutions would require 4 hours to develop and post the required notice on the institution's intranet and internet sites for a total of 132 hours (33 institutions × 4 hours = 132 hours). The estimated costs for institutions to meet this requirement would be $6,150.

The total burden assessed to OMB Control Number 1845–0096 is estimated at 39,732 hours and estimated costs of $1,851,114.

STUDENT ASSISTANCE GENERAL PROVISIONS—NON-TITLE IV REVENUE REQUIREMENTS (90/10)—OMB CONTROL NUMBER: 1845–0096

Affected entity	Respondent	Responses	Burden hours	Cost at $46.59 per hour for institutions
Proprietary	1,650	1,683	39,732	$1,851,114
Total	1,650	1,683	39,732	1,851,114

Section 668.43—Institutional Information.

Requirements: Proposed § 668.43(a)(5)(vi), would require a new disclosure if an eligible Prison Education Program (PEP) is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation (as described in proposed § 668.236(g) and (h)). In that case, the postsecondary institution must provide information regarding whether that occupation typically involves State or Federal prohibitions on the licensure or employment of formerly confined or incarcerated individuals. This requirement applies in the State in which the correctional facility is located or, in the case of a Federal correctional facility, in the State in which most of the individuals confined or incarcerated in such facility will reside upon release.

Burden Calculation: We believe that of an estimated 400 institutions who would participate in PEPs, 20 percent or 80 institutions would have programs that would be required to perform such research and disclosure development. We further believe that of an estimated 800 programs at those institutions, 20 percent or 160 programs would require such research. We anticipate that to fully research the licensure requirements in the required State or States and prepare documentation for students in the eligible PEP, an institution would need 25 hours per program for an estimate total burden of 4,000 hours (160 × 25 = 4,000). The burden of 4,000 hours would be assessed to OMB Control Number 1845–0156 with an estimated cost of $186,360.

ACCREDITATION PARTICIPATION AND DISCLOSURES—OMB CONTROL NUMBER: 1845–0156

Affected entity	Respondent	Responses	Burden hours	Cost at $46.59 per hour for institutions
Private, not-for-profit	14	28	700	$32,613
Public	66	132	3,300	153,747

ACCREDITATION PARTICIPATION AND DISCLOSURES—OMB CONTROL NUMBER: 1845–0156—Continued

Affected entity	Respondent	Responses	Burden hours	Cost at $46.59 per hour for institutions
Total	80	160	4,000	186,360

Section 668.237—Accreditation requirements.

Requirements: Proposed regulations at § 668.237, would prescribe program evaluation at the first two additional locations to ensure institutional ability to offer and implement the Prison Education Program (PEP) in accordance with the accrediting agency's standards. The proposed regulations would require the accrediting agency to conduct a site visit no later than one year after the institution has initiated a PEP at its first two additional locations at correctional facilities. Additionally, the proposed regulations would require accrediting agencies to review the methodology used by an institution in determining the PEP meets the same standards for substantially similar non-PEP programs.

Burden Calculation: Of the current 54 recognized accrediting agencies, it is estimated that 18 accrediting agencies may be called upon to perform such required reviews for institutions under their oversight. It is estimated that each of these accrediting agencies will require 8 hours per institution to evaluate the written applications for the first two programs offered by PEP or any change in methodology review. With an estimated 400 institutions participating in the PEP program, accrediting agencies would require 3,200 hours to complete this initial review (400 institutions × 8 hours = 3,200 burden hours).

It is estimated that to perform the site visits as required under the proposed regulations would require an estimated 50 hours to prepare for, perform the site visit and report the findings. With an estimated 400 institutions participating in the PEP program, accrediting agencies would require 20,000 hours to complete this initial review (400 institutions × 50 hours = 20,000 burden hours).

It is estimated that to perform the methodology review as required under the proposed regulations would require an estimated 8 hours. With an estimated 400 institutions participating in the PEP program, accrediting agencies would require 3,200 hours to complete this initial review (400 institutions × 8 hours = 3,200 burden hours).

The total estimated burden for accrediting agencies to perform these proposed tasks for the PEP evaluations is 42,400 hours under the OMB Control Number 1840–NEW.

PRISON EDUCATION PROGRAM ACCREDITATION REQUIREMENTS—OMB CONTROL NUMBER 1840–NEW

Affected entity	Respondent	Responses	Burden hours	Cost $46.59 per hour for institutions
Not-For-Profit Private	18	12,000	26,400	$1,229,976
Total	18	12,000	26,400	1,229,976

Consistent with the discussions above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net cost of the increased burden for institutions and students was calculated using wage data developed using Bureau of Labor Statistics (BLS) data. For institutions we have used the median hourly wage for Education Administrators, Postsecondary, $46.59 per hour according to BLS as of May 2021. *https://www.bls.gov/oes/current/oes119033.htm.*

TABLE 10—COLLECTION OF INFORMATION

Regulatory section	Information collection	OMB control No. and estimated burden	Estimated cost $46.59 institutional unless otherwise noted
§§ 600.7, 600.10, 600.20, 600.21, and 668.238.	The proposed regulations at § 600.7(c)(1) provide for procedures for the Secretary to approve an enrollment cap waiver for incarcerated students at a post-secondary institution. The proposed regulations at §§ 600.10(c)(1)(iv) and 668.238(a) require an institution to obtain approval from the Secretary to offer the institution's first eligible PEP at its first two additional locations at correctional facilities. The proposed regulations at § 600.20(g)(1)(i) would require that institutions notify the Department at least 90 days in advance of a proposed change in ownership. The proposed regulations at § 600.21(a)(6) would amend reporting requirements to clarify reportable changes in ownership and changes of control.	1845–0012; Burden will be cleared at a later date through a separate information collection for the form.	Costs will be cleared through separate information collection for the form.

TABLE 10—COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB control No. and estimated burden	Estimated cost $46.59 institutional unless otherwise noted
	The proposed regulation at § 600.21(a)(14) would amend the reporting requirements for an institution to include the reporting of PEPs. The proposed regulations at § 600.21(a)(15), would also include reporting on changes in ownership that do not result in a change of control and that are not otherwise specified in the regulations. § 668.238 (b) would identify the application requirements for PEPs. For all other PEPs not subject to initial approval by the Secretary, postsecondary institutions would be required to submit the documentation outlined in § 668.238(c).		
§ 600.20	The proposed regulations at § 600.20(g)(4), would require institutions to notify enrolled and prospective students at least 90 days prior to a proposed change in ownership.	1845–NEW; 28 hours	$1,305.
§ 668.28	The proposed regulations would amend § 668.28(a)(2) to clarify how proprietary institutions calculate the percentage of their revenue from Federal education assistance programs. § 668.28(c)(3) is amended to establish disclosures for proprietary institutions that fail the 90/10 calculation.	1845–0096; 39,732 hours.	1,844,964.
§ 668.43	The proposed regulations at § 668.43(a)(5)(vi) would require a new disclosure if an eligible Prison Education Program (PEP) is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation.	1845–0156; 4,000 hours	186,360.
§ 668.237	The proposed regulations at § 668.237 specify how accrediting agencies will review PEPs.	1840–NEW; 26,400 hours	1,229,976.

The total burden hours and change in burden hours associated with each OMB Control number affected by the proposed regulations follows:

Control No.	Total proposed burden hours	Proposed change in burden hours
1840–NEW	26,400	+26,400
1845–0096	39,737	+39,732
1845–0156	583,171	+4,000
1845–NEW	28	+28
Total	649, 336	+70,160

We have prepared Information Collection Requests for these information collection requirements. If you wish to review and comment on the Information Collection Requests, please follow the instructions in the **ADDRESSES** section of this notification. *Note:* The Office of Information and Regulatory Affairs in OMB and the Department review all comments posted at *www.regulations.gov.*

In preparing your comments, you may want to review the Information Collection Requests, including the supporting materials, in *www.regulations.gov* by using the Docket ID number specified in this notification Docket ID ED–2022–OPE–0062. These proposed collections are identified as proposed collections 1840–xxxx, 1845–0096, 1845–0156, 1845–NEW.

If you want to review and comment on the ICRs, please follow the instructions listed below in this section of this notice. Please note that the Office of Information and Regulatory Affairs (OIRA) and the Department of Education review all comments posted at *www.regulations.gov.*

When commenting on the information collection requirements, we consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond.

Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov* by selecting Docket ID Number ED 2022–OPE–0062. Please specify the Docket ID number and indicate ''Information Collection

Comments'' if your comment(s) relate to the information collection for this proposed rule. **FOR FURTHER INFORMATION CONTACT:** Electronically mail *ICDocketMgr@ed.gov.*

Consistent with 5 CFR 1320.8(d), the Department is soliciting comments on the information collection through this document. OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by August 26, 2022. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means 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 proposed regulations do not have federalism implications.

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

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

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

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective service system, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

Miguel A. Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 600, 685, 668 and 690 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.2 is amended by:
■ a. Revising the definitions of ''additional location'' and ''branch campus'';
■ b. Adding in alphabetical order a definition of ''confined or incarcerated individual''.
■ c. In the definition of ''distance education'' adding paragraph (6).
■ d. Removing the definition of ''incarcerated student'';
■ e. Adding the definition of ''main campus''.
■ f. Revising the definition of ''nonprofit institution''.

The additions and revisions read as follows:

§ 600.2 Definitions.

* * * * *

Additional location: A physical facility that is separate from the main campus of the institution and within the same ownership structure of the institution, at which the institution offers at least 50 percent of an educational program. An additional location participates in the title IV, HEA programs only through the certification of the main campus. A Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution is considered to be an additional location as defined under § 600.2 even if a student receives instruction primarily through distance education or correspondence courses at that location.

* * * * *

Branch campus: A physical facility that is separate from the main campus of the institution and within the same ownership structure of the institution, and that also—

(1) Is approved by the Secretary as a branch campus; and

(2) Is independent from the main campus, meaning the location—

(i) Is permanent in nature;

(ii) Offers courses in educational programs leading to a degree, certificate, or other recognized education credential;

(iii) Has its own faculty and administrative or supervisory organization; and

(iv) Has its own budgetary and hiring authority.

* * * * *

Confined or incarcerated individual: An individual who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or

other similar correctional institution. An individual is not considered incarcerated if that individual is subject to or serving an involuntary civil commitment, in a half-way house or home detention, or is sentenced to serve only weekends.

* * * * *

Distance education * * *

* * * * *

(6) Except for an additional location at a correctional institution as described in the definition of an additional location in this section, for an institution that offers on-campus programs and programs through distance education or correspondence courses, the programs offered through distance education or correspondence courses are associated with the main campus of the institution. For an institution that only offers distance education programs, the institution is located where its administrative offices are located and approved by its accrediting agency.

* * * * *

Main campus: The primary physical facility at which the institution offers eligible programs, within the same ownership structure of the institution, and certified as the main campus by the Department and the institution's accrediting agency.

* * * * *

Nonprofit institution: (1) A nonprofit institution is a domestic public or private institution or foreign institution as to which the Secretary determines that no part of the net earnings of the institution benefits any private entity or natural person and that meets the requirements of paragraphs (2) through (4) of this definition, as applicable.

(2) When making the determination under paragraph (1) of this definition, the Secretary considers the entirety of the relationship between the institution, the entities in its ownership structure, and other parties. For example, a nonprofit institution is generally not an institution that—

(i) Is an obligor (either directly or through any entity in its ownership chain) on a debt owed to a former owner of the institution or a natural person or entity related to or affiliated with the former owner of the institution;

(ii) Either directly or through any entity in its ownership chain, enters into, or maintains, a revenue-sharing agreement with—

(A) A former owner or current or former employee of the institution or member of its board; or

(B) A natural person or entity related to or affiliated with the former owner or current or former employee of the institution or member of its board, unless the Secretary determines that the payments and the terms under the revenue-sharing agreement are reasonable, based on the market price and terms for such services or materials, and the price bears a reasonable relationship to the cost of the services or materials provided;

(iii) Is a party (either directly or indirectly) to any other agreements (including lease agreements) with—

(A) A former owner or current or former employee of the institution or member of its board; or

(B) A natural person or entity related to or affiliated with the former owner or current or former employee of the institution or member of its board under which the institution is obligated to make any payments, unless the Secretary determines that the payments and terms under the agreement are comparable to payments in an arm's-length transaction at fair market value; or

(iv) Engages in an excess benefit transaction with any natural person or entity.

(3) A private institution is a ''nonprofit institution'' only if it meets the requirements in paragraph (1) of this definition and is—

(i) Owned and operated by one or more nonprofit corporations or associations;

(ii) Legally authorized to operate as a nonprofit organization by each State in which it is physically located; and

(iii) Determined by the U.S. Internal Revenue Service to be an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

(4) A foreign institution is a ''nonprofit institution'' only if it meets the requirements in paragraph (1) of this definition and is—

(i) An institution that is owned and operated only by one or more nonprofit corporations or associations; and

(ii)(A) If a recognized tax authority of the institution's home country is recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for title IV purposes, is determined by that tax authority to be a nonprofit educational institution; or

(B) If no recognized tax authority of the institution's home country is recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for title IV purposes, the foreign institution demonstrates to the satisfaction of the Secretary that it is a nonprofit educational institution.

* * * * *

■ 3. Section 600.4 is amended by revising paragraph (a) introductory text as follows:

§ 600.4 Institution of higher education.

(a) An institution of higher education is a public or other nonprofit educational institution that—

* * * * *

■ 4. Section 600.7 is amended by revising paragraph (c) to read as follows:

§ 600.7 Conditions of institutional eligibility.

* * * * *

(c) *Special provisions regarding incarcerated students*—(1) *Waiver Exception.* The Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section, upon the application of an institution, if the institution is a nonprofit institution that provides four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma and has continuously provided an eligible prison education program approved by the Department under subpart P of part 668 for at least two years. The Secretary does not grant the waiver if—

(i) For a program described under paragraph (c)(3)(ii) of this section, the program does not maintain a completion rate of 50 percent or greater; or

(ii) For an institution described under paragraphs (c)(2) or (3) of this section—

(A) The institution provides one or more eligible prison education programs that is not compliant with the requirements of part 668 subpart P; or

(B) The institution is not administratively capable under § 668.16 or financially responsible under part 668 subpart L.

(2) *Waiver for entire institution.* If the nonprofit institution that applies for a waiver consists solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section for the entire institution.

(3) *Other waivers.* If the nonprofit institution that applies for a waiver does not consist solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section on a program-by-program basis—

(i) For the four-year and two-year programs for which it awards a

bachelor's degree, an associate degree, or a postsecondary diploma; and

(ii) For the other programs the institution provides, if the incarcerated regular students enrolled in those other programs have a completion rate of 50 percent or greater.

(4) *Waiver Limitations.* (i)(A) For five years after the Secretary grants the waiver, the institution may not enroll more than fifty percent of the institution's regular enrolled students as incarcerated students; and

(B) For the five years following the period described in paragraph (c)(4)(i)(A) of this section, the institution may not enroll more than seventy-five percent of the institution's regular enrolled students as incarcerated students.

(ii) The limitations in paragraph (c)(4)(i) of this section do not apply if the institution is a public institution chartered for the explicit purpose of educating incarcerated students, as determined by the Secretary, and all students enrolled in a prison education program for the institution are located in the state in which the institution is chartered to serve.

(5) The Secretary limits or terminates the waiver described in this subsection if the Secretary determines the institution no longer meets the requirements established under paragraph (c)(1) of this section.

(6) If the Secretary limits or terminates an institution's waiver under paragraph (c)(4) of this section, the institution ceases to be eligible for the title IV, HEA programs at the end of the award year that begins after the Secretary's action unless the institution, by that time—

(i) Demonstrates to the satisfaction of the Secretary that it meets the requirements under paragraph (c)(1) of this section; and

(ii) The institution does not enroll any additional incarcerated students upon the limitation or termination of the waiver and reduces its enrollment of incarcerated students to no more than 25 percent of its regular enrolled students.

* * * * *

■ 5. Section 600.10 is amended by revising paragraph (c)(1) to read as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) * * * (1) An eligible institution that seeks to establish the eligibility of an educational program must obtain the Secretary's approval—

(i) Pursuant to a requirement regarding additional programs included in the institution's PPA under § 668.14;

(ii) For a direct assessment program under § 668.10, and for a comprehensive transition and postsecondary program under § 668.232;

(iii) For a first direct assessment program under § 668.10, the first direct assessment program offered at each credential level, and for a comprehensive transition and postsecondary program under § 668.232;

(iv) For the first eligible prison education program under subpart P of part 668 offered at the first two additional locations as defined under § 600.2 at a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution.

* * * * *

■ 6. Section 600.20 is amended by revising paragraphs (g) and (h) as follows:

§ 600.20 Notice and application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

* * * * *

(g) *Application for provisional extension of certification.* (1) If a private nonprofit institution, a private for-profit institution, or a public institution participating in the title IV, HEA programs undergoes a change in ownership that results in a change of control as described in § 600.31, the Secretary may continue the institution's participation in those programs on a provisional basis if—

(i) No later than 90 days prior to the change in ownership, the institution provides the Secretary notice of the proposed change on a fully completed form designated by the Secretary and supported by the State authorization and accrediting documents identified in paragraph (g)(3)(i) and (ii) of this section, and supported by copies of the financial statements identified in paragraph (g)(3)(iii) and (iv) of this section;

(ii) The institution promptly reports to the Secretary any changes to the proposed ownership structure identified under paragraph (g)(1)(i) of this section, provided that the change in ownership cannot occur earlier than 90 days following the date the change is reported to the Secretary; and

(iii) The institution under the new ownership submits a ''materially complete application'' that is received by the Secretary no later than 10 business days after the day the change occurs.

(2) Notwithstanding the submission of the items under paragraph (g)(1) of this section, the Secretary may determine that the participation of the institution should not be continued following the change in ownership.

(3) For purposes of this section, a private nonprofit institution, a private for-profit institution, or a public institution submits a materially complete application if it submits a fully completed application form designated by the Secretary supported by—

(i) A copy of the institution's State license or equivalent document that authorized or will authorize the institution to provide a program ofpostsecondary educationin the State in which it is physically located, supplemented with documentation that, as of the day before the change in ownership, the State license remained in effect;

(ii) A copy of the document from the institution's accrediting association that granted or will grant the institutionaccreditationstatus, including approval of any non-degree programs it offers, supplemented with documentation that, as of the day before the change in ownership, the accreditation remained in effect;

(iii) Audited financial statements for the institution's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of34 CFR 668.23;

(iv)(A) Audited financial statements for the institution's new owner's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 34 CFR 668.23, or equivalent financial statements for that owner that are acceptable to the Secretary; or

(B) If such financial statements are not available, financial protection in the amount of—

(*1*) At least 25 percent of the institution's prior year volume of title IV aid if the institution's new owner does not have two years of acceptable audited financial statements; or

(*2*) At least 10 percent of the institution's prior year volume of title IV aid if the institution's new owner has only one year of acceptable audited financial statements; and

(v) If deemed necessary by the Secretary, financial protection in the amount of an additional 10 percent of the institution's prior year volume of title IV aid, or a larger amount as determined by the Secretary. If any entity in the new ownership structure holds a 50 percent or greater direct or indirect voting or equity interest in another institution or institutions, the

financial protection may also include the prior year volume of title IV aid, or a larger amount as determined by the Secretary, for all institutions under such common ownership.

(4) The institution must notify enrolled and prospective students of the proposed change in ownership, and submit evidence that such disclosure was made, no later than 90 days prior to the change.

(h) *Terms of the extension.* (1) If the Secretary approves the institution's materially complete application, the Secretary provides the institution with a temporary provisional Program Participation Agreement (TPPPA).

(2) The TPPPA expires on the earlier of—

(i) The last day of the month following the month in which the change of ownership occurred, unless the provisions of paragraph (h)(3) of this section apply;

(ii) The date on which the Secretary notifies the institution that its application is denied; or

(iii) The date on which the Secretary co-signs a new provisional program participation agreement (PPPA).

(3) If the TPPPA will expire under the provisions of paragraph (h)(2)(i) of this section, the Secretary extends the provisional TPPPA on a month-to-month basis after the expiration date described in paragraph (h)(2)(i) of this section if, prior to that expiration date, the institution provides the Secretary with—

(i) An audited ''same-day'' balance sheet for a proprietary institution or an audited statement of financial position for a nonprofit institution;

(ii) If not already provided, approval of the change of ownership from each State in which the institution is physically located or for an institution that offers only distance education in accordance with paragraph (6) of the definition of ''distance education'' in § 600.2, from the agency that authorizes the institution to legally providepostsecondary educationin that State;

(iii) If not already provided, approval of the change of ownership from the institution's accrediting agency; and

(iv) A default management plan unless the institution is exempt from providing that plan under 34 CFR 668.14(b)(15).

* * * * *

■ 7. Section 600.21 is amended by
■ a. Revising paragraphs (a) introductory text and (a)(6);
■ b. Adding paragraphs (a)(14) and (a)(15); and
■ c. Revising paragraph (b).

The revisions and additions read as follows:

§ 600.21 Updating application information.

(a) *Reporting requirements.* Except as provided in paragraph (b) of this section, an eligible institution must report to the Secretary, in a manner prescribed by the Secretary no later than 10 days after the change occurs, any change in the following:

* * * * *

(6)(i) *Changes in ownership.* Any change in the ownership of the institution, whereby a natural person or entity acquires at least a 5 percent ownership interest (direct or indirect) of the institution but that does not result in a change of control as described in § 600.31.

(ii) *Changes in control.* A natural person or legal entity's ability to affect substantially the actions of the institution if that natural person or legal entity did not previously have this ability. The Secretary considers a natural person or legal entity to have this ability if—

(A) The natural person acquires, alone or together with another member or members of their family, at least a 25 percent ownership interest (as defined in § 600.31(b)) in the institution;

(B) The entity acquires, alone or together with an affiliated natural person or entity, at least a 25 percent ownership interest (as defined in § 600.31(b)) in the institution;

(C) The natural person or entity acquires, alone or together with another natural person or entity, under a voting trust, power of attorney, proxy, or similar agreement, at least a 25 percent ''ownership interest'' (as defined in § 600.31(b)) in the institution;

(D) The natural person becomes a general partner, managing member, chief executive officer, trustee or co-trustee of a trust, chief financial officer, director, or other officer of the institution or of an entity that has at least a 25 percent ''ownership interest'' (as defined in § 600.31(b)) in the institution; or

(E) The entity becomes a general partner or managing member of an entity that has at least a 25 percent ''ownership interest'' (as defined in § 600.31(b)) in the institution.

* * * * *

(14) Its establishment or addition of an eligible prison education program at an additional location as defined under § 600.2 at a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, juvenile justice facility, or other similar correctional institution that was not previously included in the institution's application for approval as described under § 600.10.

(15) Any change in the ownership of the institution that does not result in a change of control as described in § 600.31 and is not addressed under paragraph (a)(6) of this section, including the addition or elimination of any entities in the ownership structure, a change of entity from one type of business structure to another, and any excluded transactions under § 600.31(e).

(b) *Additional reporting from institutions owned by publicly-traded corporations.* An institution that is owned by a publicly-traded corporation must report to the Secretary any change in the information described in paragraph (a)(6) or (15) of this section when it notifies its accrediting agency, but no later than 10 days after the institution learns of the change.

* * * * *

■ 8. Add § 600.22 to read as follows:

§ 600.22 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

■ 9. Section 600.31 is amended by:
■ a. In paragraph (b) revising the definitions of ''closely-held corporation'', ''ownership or ownership interest'', and ''parent'';
■ b. Revising paragraph (c)(3);
■ c. Removing paragraph (c)(4);
■ d. Redesignating paragraphs (c)(5) through (7) as paragraphs (c)(4) through (6), respectively;
■ e. In newly redesignated paragraph (c)(5) removing the phrase ''paragraph (d)'' and adding, in its place, the phrase ''paragraphs (c)(3) and (d)'';
■ f. Revising paragraphs (d)(6) and (7);
■ g. Adding paragraph (d)(8); and
■ h. Revising paragraph(e).

The revisions and addition read as follows:

§ 600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.

* * * * *

(b) * * *

Closely-held corporation. Closely-held corporation (including the term ''close corporation'') means—

(i) A corporation that qualifies under the law of the State of its incorporation or organization as astatutory close corporation; or

(ii) If the State of incorporation or organization has no statutory close corporation provision, a corporation the stock of which—

(A) Is held by no more than 30 persons; and

(B) Has not been and is not planned to be publicly offered.

* * * * *

Ownership or ownership interest. (i) Ownership or ownership interest means a direct or indirect legal or beneficial interest in an institution or legal entity, which may include a voting interest or a right to share in profits.

(ii) For the purpose of determining whether a change in ownership has occurred, changes in the ownership of the following are not included:

(A) A mutual fund that is regularly and publicly traded.

(B) A U.S. institutional investor, as defined in17 CFR 240.15a–6(b)(7).

(C) A profit-sharing plan of the institution or its corporate parent, provided that all full-time permanent employees of the institution or its corporate parent are included in the plan.

(D) An employee stock ownership plan (ESOP).

Parent. The legal entity that controls the institution or a legal entity directly or indirectly through one or more intermediate entities.

Person. Person includes a natural person or a legal entity, including a trust.

* * * * *

(c) Standards for identifying changes of ownership and control—

* * * * *

(3) *Other entities.* (i) The term ''other entities'' means any entity that is not closely held nor required to be registered with the SEC, and includes limited liability companies, limited liability partnerships, limited partnerships, and similar types of legal entities.

(ii) The Secretary deems the following changes to constitute a change in ownership resulting in a change of control of such an entity:

(A) A person (or combination of persons) acquires at least 50 percent of the total outstanding voting interests in the entity, or otherwise acquires 50 percent control.

(B) A person (or combination of persons) who holds less than a 50 percent voting interest in an entity acquires at least 50 percent of the outstanding voting interests in the entity, or otherwise acquires 50 percent control.

(C) A person (or combination of persons) who holds at least 50 percent of the voting interests in the entity ceases to hold at least 50 percent voting interest in the entity, or otherwise ceases to hold 50 percent control.

(D) A partner in a general partnership acquires or ceases to own at least 50 percent of the voting interests in the general partnership, or otherwise acquires or ceases to hold 50 percent control.

(E) Any change of a general partner of a limited partnership (or similar entity) if that general partner also holds an equity interest.

(F) Any change in a managing member of a limited liability company (or similar entity) if that managing member also holds an equity interest.

(G) Notwithstanding its voting interests, a person becomes the sole member or shareholder of a limited liability company or other entity that has a 100 percent or equivalent direct or indirect interest in the institution.

(H) An entity that has a member or members ceases to have any members.

(I) An entity that has no members becomes an entity with a member or members.

(J) A person is replaced as the sole member or shareholder of a limited liability company or other entity that has a 100 percent or equivalent direct or indirect interest in the institution.

(K) The addition or removal of any entity that provides or will provide the audited financial statements to meet any of the requirements in § 600.20(g) or (h) or part 668, subpart L.

(L) Except as provided in paragraph (e) of this section, the transfer by an owner of 50 percent or more of the voting interests in the institution or an entity to an irrevocable trust.

(M) Except as provided in paragraph (e) of this section, upon the death of an owner who previously transferred 50 percent or more of the voting interests in an institution or an entity to a revocable trust.

(iii) The Secretary deems the following interests to satisfy the 50 percent thresholds described above:

(A) A combination of persons, each of whom holds less than 50 percent ownership interest in an entity, holds a combined ownership interest of at least 50 percent as a result of proxy agreements, voting agreements, or other agreements (whether or not the agreement is set forth in a written document), or by operation of State law.

(B) A combination of persons, each of whom holds less than 50 percent ownership interest in an entity, holds a combined ownership interest of at least 50 percent as a result of common ownership, management, or control of that entity, either directly or indirectly.

(C) A combination of individuals who are family members as defined in § 600.21, each of whom holds less than 50 percent ownership interest in an entity, holds a combined ownership interest of at least 50 percent.

(iv) Notwithstanding paragraphs (c)(3)(ii) and (iii) of this section—

(A) If a person who alone or in combination with other persons holds less than a 50 percent ownership interest in an entity, the Secretary may determine that the person, either alone or in combination with other persons, has actual control over that entity and is subject to the requirements of this section;

(B) Any person who alone or in combination with other persons has the right to appoint a majority of any class of board members of an entity or an institution is deemed to have control.

* * * * *

(d) * * *

(6) A transfer of assets that comprise a substantial portion of the educational business of the institution, except where the transfer consists exclusively in the granting of a security interest in those assets;

(7) A change in status as a for-profit, nonprofit, or public institution; or

(8) The acquisition of an institution to become an additional location of another institution, unless the acquired institution closed or ceased to provide educational instruction.

(e) *Excluded transactions.* A change in ownership and control timely reported under § 600.21 and otherwise subject to this section does not include a transfer of ownership and control of all or part of an owner's equity or partnership interest in an institution, the institution's parent corporation, or other legal entity that has signed the institution's PPA—

(1) From an owner to a ''family member'' of that owner as defined in § 600.21(f);

(2) As a result of a transfer of an owner's interest in the institution or an entity to an irrevocable trust, so long as the trustees only include the owner and/or a family member as defined in § 600.21(f). Upon the appointment of any non-family member as trustee for an irrevocable trust (or successor trust), the transaction is no longer excluded and is subject to the requirements of §§ 600.20(g) and (h);

(3) Upon the death of a former owner who previously transferred an interest in the institution or an entity to a revocable trust, so long as the trustees include only family members of that former owner, as defined in § 600.21(f). Upon the appointment of any non-family member as trustee for the trust (or a successor trust) following the death of the former owner, the transaction is no longer excluded and is subject to the requirements of §§ 600.20(g) and (h); or

(4) A transfer to an individual owner with a direct or indirect ownership

interest in the institution who has been involved in the management of the institution for at least two years preceding the transfer and who has established and retained the ownership interest for at least two years prior to the transfer, either upon the death of another owner or by transfer from another individual owner who has been involved in the management of the institution for at least two years preceding the transfer and who has established and retained the ownership interest for at least two years prior to the transfer, upon the resignation of that owner from the management of the institution.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 10. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, and 1231a, unless otherwise noted.

Section 668.14 also issued under 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c, and 1141.

Section 668.41 also issued under 20 U.S.C. 1092, 1094, 1099c.

Section 668.91 also issued under 20 U.S.C. 1082, 1094.

Section 668.171 also issued under 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109.

Section 668.172 also issued under 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109.

Section 668.175 also issued under 20 U.S.C. 1094 and 1099c.

■ 11. Section 668.8 is amended by revising paragraph (n) to read as follows:

§ 668.8 Eligible program.

* * * * *

(n) For Title IV, HEA program purposes, *eligible program* includes a direct assessment program approved by the Secretary under § 668.10, a comprehensive transition and postsecondary program approved by the Secretary under § 668.232, and an eligible prison education program under subpart P of this part.

■ 12. Redesignate § 668.11 as § 668.12 and add a new § 668.11 to read as follows:

§ 668.11 Severability.

If any provision of this part 668 or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

■ 14. Section 668.14 is amended by revising paragraph (b)(16) to read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(16) For a proprietary institution, the institution will derive at least 10 percent of its revenues for each fiscal year from sources other than Federal funds, as provided in § 668.28(a), or be subject to sanctions described in § 668.28(c);

* * * * *

■ 15. Amend § 668.23 by revising paragraph (d)(3) to read as follows:

§ 668.23 Compliance audits and audited financial statements.

* * * * *

(d) * * *

(3) *Disclosure of Federal revenue.* A proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenues derived from Federal funds that the institution received during the fiscal year covered by that audit. The revenue percentage must be calculated in accordance with § 668.28. The institution must also report in the footnote the dollar amount of the numerator and denominator of its 90/10 ratio as well as the individual revenue amounts identified in section 2 of appendix C to subpart B of part 668.

* * * * *

■ 16. Section 668.28 is revised to read as follows:

§ 668.28 Non-Federal revenue (90/10).

(a) *General*—(1) *Calculating the revenue percentage.* A proprietary institution meets the requirement in § 668.14(b)(16) that at least 10 percent of its revenue is derived from sources other than Federal funds by using the formula in appendix C of this subpart to calculate its revenue percentage for its latest complete fiscal year. For purposes of this section—

(i) For any annual audit submission for a proprietary institutional fiscal year beginning on or after January 1, 2023, Federal funds used to calculate the revenue percentage include title IV, HEA program funds and any other educational assistance funds provided by a Federal agency directly to an institution or a student including the Federal portion of any grant funds provided by or administered by a non-Federal agency, except for non-title IV Federal funds provided directly to a student to cover expenses other than tuition, fees, and other institutional charges. The Secretary identifies the Federal agency and the other educational assistance funds provided by that agency in a notice published in the **Federal Register**, with updates to that list published as needed.

(ii) For any fiscal year beginning prior to January 1, 2023, Federal funds are limited to title IV, HEA program funds.

(2) *Disbursement rule.* An institution must use the cash basis of accounting in calculating its revenue percentage by—

(i) For each eligible student, counting the amount of Federal funds that were used to pay tuition, fees, and other institutional charges the institution received during its fiscal year—

(A) Directly from an agency identified under paragraph (a)(1)(i) of this section; and

(B) Paid by a student who received Federal funds.

(ii) For each eligible student, counting the amount of title IV, HEA program funds the institution received to pay tuition, fees, and other institutional charges during its fiscal year. However, before the end of its fiscal year, the institution must—

(A) Request funds under the advanced payment method in § 668.162(b)(2) or the heightened cash monitoring method in § 668.162(d)(1) that the students are eligible to receive and make any disbursements to those students by the end of the fiscal year; or

(B) For institutions under the reimbursement or heightened cash monitoring methods in § 668.162(c) or (d)(2), make disbursements to those students by the end of the fiscal year and report as Federal funds in the revenue calculations the funds that the students are eligible to receive before requesting funds.

(3) *Revenue generated from programs and activities.* The institution must consider as revenue only those funds it generates from—

(i) Tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in § 668.8;

(ii) Activities conducted by the institution that are necessary for the education and training of its students provided those activities are—

(A) Conducted on campus or at a facility under the institution's control;

(B) Performed under the supervision of a member of the institution's faculty; and

(C) Required to be performed by all students in a specific educational program at the institution; and

(D) Related directly to services performed by students; and

(iii) Funds paid by a student, or on behalf of a student by a party unrelated to the institution, its owners, or affiliates, for an education or training program that is not eligible under § 668.8 and that does not include any courses offered in an eligible program. The non-eligible education or training

program must be provided by the institution, and taught by one of its instructors, at its main campus or one of its approved additional locations, at another school facility approved by the appropriate State agency or accrediting agency, or at an employer facility. The institution may not count revenue from a non-eligible education or training program where it merely provides facilities for test preparation courses, acts as a proctor, or oversees a course of self-study. The program must—

(A) Be approved or licensed by the appropriate State agency;

(B) Be accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602;

(C) Provide an industry-recognized credential or certification;

(D) Provide training needed for students to maintain State licensing requirements; or

(E) Provide training needed for students to meet additional licensing requirements for specialized training for practitioners that already meet the general licensing requirements in that field.

(4) *Application of funds.* The institution must presume that any Federal funds it disburses, or delivers to a student, or determines was provided to a student by another Federal source, will be used to pay the student's tuition, fees, or institutional charges up to the amount of those Federal funds if a student makes a payment to the institution, except to the extent that the student's tuition, fees, or other charges are satisfied by—

(i) Grant funds provided by—

(A) Non-Federal public agencies, provided that those grant funds do not include Federal or institutional funds unless the Federal portion of those grant funds can be determined and that portion of Federal funds must be included as Federal funds under this section. If the Federal funds cannot be determined no amount of the grant funds may be included under this section; or

(B) Private sources unrelated to the institution, its owners, or affiliates;

(ii) Funds provided under a contractual arrangement with the institution and a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who need that training;

(iii) Funds used by a student from a savings plan for educational expenses established by or on behalf of the student if the savings plan qualifies for special tax treatment under the Internal Revenue Code of 1986; or

(iv) Institutional scholarships that meet the requirements in paragraph (a)(5)(iv) of this section.

(5) *Revenue generated from institutional aid.* The institution may include the following institutional aid as revenue:

(i) For loans made to students and credited in full to the students' accounts at the institution and used to satisfy tuition, fees, and other institutional charges, the number of principal payments made on those loans by current or former students that the institution received during the fiscal year, if the loans—

(A) Are bona fide as evidenced by standalone repayment agreements between the students and the institution that are enforceable promissory notes;

(B) Are issued at intervals related to the institution's enrollment periods;

(C) Are subject to regular loan repayments and collections by the institution; and

(D) Are separate from the enrollment contracts signed by the students.

(ii) If an institution wants to include an income share agreement or any other alternative financing agreement as cash in its attestations in which the agreement is with the institution only or with a related party, to include any entity in the ownership tree, any common ownership, and any other contractual agreement or continuous financial relationship for this section, then the following must be included in the agreement:

(A) The institution must clearly identify the institutional charges that are being covered by the agreement, and the charges must be the same or less than the stated rate for institutional charges.

(B) The maximum time and amount a student would be required to pay is clearly identified including the implied or imputed interest rate and any fees.

(C) All payments must be applied in accordance with debt repayment regulations. Interest and fees would not be included in the attestation.

(D) The imputed or implied interest rate cannot be more than the Federal Direct Unsubsidized Loan interest rate for the same borrower type at the time the agreement was signed.

(iii) Only cash payments representing principal payments on the income share agreement or other financing agreement that were used to satisfy tuition, fees, and other institutional charges may be included in the attestation. No amounts from the sale of the income share agreement or other financing agreement may be included in the attestation.

(iv) For scholarships provided by the institution in the form of monetary aid and based on the academic achievement or financial need of its students, the amount disbursed to students during the fiscal year. The scholarships must be disbursed from an established restricted account and may be included as revenue only to the extent that the funds in that account represent—

(A) Designated funds from an outside source that is unrelated to the institution, its owners, or affiliates; or

(B) Income earned on those funds.

(6) *Funds excluded from revenues.* For the fiscal year, the institution does not include—

(i) The amount of Federal Work Study (FWS) wages paid directly to the student. However, if the institution credits the student's account with FWS funds, those funds are included as revenue;

(ii) The amount of funds received by the institution from a State under the LEAP, SLEAP, or GAP programs;

(iii) The amount of institutional funds used to match title IV, HEA program funds;

(iv) The amount of title IV, HEA program funds refunded to students or returned to the Secretary under § 668.22;

(v) The amount the student is charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges;

(vi) Any amount from the proceeds of the factoring or sale of accounts receivable or institutional loans, regardless of whether the loans were sold with or without recourse; or

(vii) Any funds, including loans, provided by a third party related to the institution, its owners, or affiliates to a student in any form.

(b) [Reserved]

(c) *Sanctions.* If an institution does not derive at least 10 percent of its revenue from sources other than Federal funds—

(1) For two consecutive fiscal years, it loses its eligibility to participate in the title IV, HEA programs for at least two fiscal years. To regain eligibility, the institution must demonstrate that it complied with the State licensure and accreditation requirements under 34 CFR 600.5(a)(4) and (a)(6), and the financial responsibility requirements under subpart L of this part, for a minimum of two fiscal years after the fiscal year it became ineligible;

(2) For any fiscal year, it becomes provisionally certified under § 668.13(c)(1)(ii) for the two fiscal years after the fiscal year it failed to satisfy the revenue requirement. However, the institution's provisional certification terminates on—

(i) The expiration date of the institution's program participation agreement that was in effect on the date the Secretary determined the institution failed this requirement; or

(ii) The date the institution loses its eligibility to participate under paragraph (c)(1) of this section;

(3) For any fiscal year that it fails to meet the requirements of this section, it must notify students of the possibility of loss of title IV eligibility;

(4) It must determine whether it passed the revenue requirement and report a failure no later than 45 days after the end of its fiscal year, or immediately thereafter if subsequent information is obtained that shows an institution incorrectly determined that it passed the revenue requirement for the prior fiscal year; and

(5) It is liable for any title IV, HEA program funds it disburses after the fiscal year it becomes ineligible to participate in the title IV, HEA program under paragraph (c)(1) of this section, excluding any funds the institution was entitled to disburse under § 668.26.

(Approved by Office of Management and Budget under control number 1845–0096)

■ 17. Appendix C to subpart B of part 668 is revised to read:

BILLING CODE 4000–01–P

APPENDIX C TO SUBPART B OF PART 668 - 90/10 REVENUE CALCULATION

Section 1: Sample Student Account at the Institution / Funds Applied in Priority Order

Sample Student Account Ledger

Line	Date	Charge/Payment	Memo	Debit	Credit	Balance
1	12/31/2021	Federal Direct Loan			1,000.00	(1,000.00)
2	1/1/2022	Tuition and Fees		17,000.00		16,000.00
3	2/1/2022	Cash Payment			175.00	15,825.00
4	2/1/2022	Federal Funds 1			2,000.00	13,825.00
5	2/1/2022	FSEOG	(Fed. 375/Inst. 125)		500.00	13,325.00
6	5/1/2022	Cash Payment	(Federal funds 3)		500.00	12,825.00
7	7/1/2022	Federal Pell Grant			1,700.00	11,125.00
8	7/1/2022	Institutional Scholarship			500.00	10,625.00
9	7/1/2022	Federal Direct Loan			1,500.00	9,125.00
10	7/1/2022	Cash Payment	(Federal funds 4)		3,700.00	5,425.00
11	8/1/2022	Federal Funds 2			3,725.00	1,700.00
12	9/1/2022	City Grant			2,200.00	(500.00)
13	9/1/2022	Refund Check		500.00		-

Line item in the sample		Amount in the sample
	Funds Applied First	
12	Grant funds for the student from non-Federal public agencies orprivate sources independent of the institution	2,200.00
	Funds provided for the student under a contractual arrangement with a Federal, State, or local government agency for the purpose ofproviding job training to low-income individuals	
	Funds used by a student from savings plans for educational expenses established by or on behalf of the student that qualify forspecial tax treatment under the Internal Revenue Code	
8	Qualified institutional scholarships disbursed to the student	500.00

	Adjustment: If the amount of Total Funds Applied First is more thanTuition and Fees, then Adjusted Total Funds Applied First is reduced by the amount over Tuition and Fees	
	Total Funds Applied First	**2,700.00**
	Title IV Aid	
1	Prior Year Title IV Carried Over Credit Balance	1,000.00
9	Federal Direct Loan	1,500.00
7	Federal Pell Grant	1,700.00
5	FSEOG (subject less matching reduction) ($500 - $375 FSEOG and $125 Institutional Match)	500.00
	Federal Work Study Applied to Tuition and Fees (subject to matching reduction)	
5	Adjustment: The amount of FSEOG funds disbursed to a student and the amount of FWS funds credited to the student's account arereduced by the amount of the institutional matching funds	-125.00
	Adjustment: If the amount of Adjusted Total Funds Applied First +Total Student Title IV Revenue is more than Tuition and Fees, thenAdjusted Total Student Title IV Revenue is reduced by the amount over Tuition and Fees	
	Adjustment: If Title IV funds are returned for a student under § 668.22, then Student Title IV Revenue is reduced by the amount returned	
	Adjusted Total Title IV Aid	**4,575.00**

	Other Federal Funds Paid Directly to the Institution	
4	Federal Funds 1	2,000.00
11	Federal Funds 2	3,725.00
	Adjustment: If the amount of Adjusted Total Funds Applied First + Adjusted Total Student Title IV Revenue + Total Other Federal Funds Paid Directly to the Institution is more than Tuition and Fees,then Adjusted Total Other Federal Funds Paid Directly to the Institution is reduced by the amount over Tuition and Fees	
	Adjusted Total Other Federal Funds Paid Directly to theInstitution	**5,725.00**

	Other Federal Funds Paid to Student	
6	Federal Funds 3	500.00
10	Federal Funds 4	3,700.00
	Adjustment: If the amount of Adjusted Funds Applied First + Adjusted Student Title IV Revenue + Adjusted Total Other FederalFunds Paid Directly to the Institution + Total Other Federal FundsPaid Directly to Student is more than Tuition and Fees, then Adjusted Federal Funds Paid Directly to Student is reduced by theamount over Tuition and Fees	-200.00
	Adjusted Total Other Federal Funds Paid Directly to Student	**4,000.00**

	Cash Payments	
3	Student payments	175.00
5	Adjustment: The amount of FSEOG funds disbursed to a student and the amount of FWS funds credited to the student's account areadded to cash for the institutional matching funds	125.00

	Adjustment: If the amount of Adjusted Total Funds Applied First + Adjusted Total Student Title IV Revenue + Adjusted Total Other Federal Funds Paid Directly to the Institution + Adjusted Total Other Federal Funds Paid to Student + Total Cash and Other Non- Title Payments are more than Tuition and Fees, then Adjusted TotalCash and Other Non-Title Payments is reduced by the amount over Tuition and Fees.	-300.00
	Adjusted Total Cash and Other Non-Title IV Aid	0

	Adjusted Total All Federal and Cash Payments	**17,000.00**

Section 2: Revenue by Source One Student Example

Line item in the sample		Amount Disbursed	Adjusted Amount
	Student Title IV Revenue		
1	Title IV Credit Balance Carried Over from Prior Year	1,000.00	1,000.00
9	Federal Direct Loan	1,500.00	1,500.00
7	Federal Pell Grant	1,700.00	1,700.00
5	FSEOG (subject to matching reduction)	500.00	375.00
	Total Student Title IV Revenue	**4,700.00**	**4,525.00**

	Federal Funds Paid Directly to the Institution		
6	Federal Funds 1	2,000.00	2,000.00
10	Federal Funds 2	3,725.00	3,725.00
	Total Student Federal Funds Paid Directly to the Institution	**5,725.00**	**5,725.00**

	Student Federal Funds Paid Directly to the Student		
4	Federal funds 3	500.00	500.00
11	Federal funds 4	3,700.00	3,700.00
13	Refunds Paid to Student		-200.00
	Adjusted Student Federal Funds Paid Directly to Student	**4,200.00**	**4,000.00**
	Adjusted Student Federal Revenue	**14,825.00**	**14,500.00**

	Student Non-Federal Revenue		
12	Grant funds for the student from non-Federal public agencies or private sources independent of the institution	2,200.00	2,200.00
8	Institutional scholarships disbursed to the student	500.00	500.00
3,5,13	Student payments	300.00	0
	Student Non-Title IV Revenue	**3,000.00**	**2,700.00**

	Total Federal and Non-Federal Revenue	**17,500.00**	**17,000.00**

Section 2: Revenue by Source - Attestation

	Amount Disbursed	AdjustedAmount
Student Title IV Revenue		
Title IV Credit Balance Carried Over from Prior Year	45,000.00	45,0000.00
Federal Direct Loan	1,500,000.00	1,500,000.00
Federal Pell Grant	400,700.00	400,700.00
FSEOG (subject to matching reduction)	11,500.00	8,625.00
Total Student Title IV Revenue	**1,957,200.00**	**1,954,325.00**
Refunds Paid to Students		-35,500.00
Adjusted Student Title IV Revenue	**1,957,200.00**	**1,918,825.00**

Federal Funds Paid Directly to the Institution		
Federal Funds 1	200,000.00	200,000.00
Federal Funds 2	1,355,725.00	1,355,725.00
Federal Portion of Other Funds	9,000.00	9,000.00
Total Student Federal Funds Paid Directly to theInstitution	**1,564,725.00**	**1,564,725.00**
Refunds Paid to Students		-20,000.00
Adjust Student Title Federal Funds Paid Directly to the Institution	**1,564,725.00**	**1,544,725.00**

Student Federal Funds Paid Directly to Student		
Federal funds 3	50,000.00	50,000.00
Federal funds 4	3,700.00	3,700.00
Total Student Federal Funds Paid Directly to Student	**53,700.00**	**53,700.00**
Refunds Paid to Student		-200.00
Adjusted Student Federal Funds Paid Directly to Student	**53,700.00**	**53,500.00**

Adjusted Student Federal Revenue	**3,575,625.00**	**3,517,050.00**

Student Non-Federal Revenue	**Amount**	**Adjusted Amount**
Grant funds for the student from non-Federal public agencies orprivate sources independent of the institution		
---State Grant (9.0451% Federal Funds)	99,500.00	90,500.00
---ABC Scholarship	500.00	500.00
Funds provided for the student under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals		
Funds used by a student from Savings plan for educational expenses established by or on behalf of the student that qualify for special tax treatment under the Internal Revenue Code		
Qualified Institutional scholarships disbursed to the student	500.00	500.00
Student payments		
---Third Party Loans	50,000.00	50,000.00
---Third Party Loans- Related Party/Institutional Loans	100,000.00	100,000.00
---ISA Institutional or Related Party	25,000.00	25,000.00
---ISA	75,000.00	75,000.00
--- Student Cash	50,300.00	50,300.00
Student Non-Title IV Revenue	**400,800.00**	**391,800.00**
Refunds Paid to Student		-300.00
Adjusted Non-Federal Revenue	**400,800.00**	**391,500.00**

Revenue From Other Sources (Totals for the Fiscal Year)		
Activities conducted by the institution that are necessary foreducation and training	25,000.000	25,000.00
Funds paid to the institution by, or on behalf of, students foreducation and training in qualified non-Title IV eligible programs	143,000.00	143,000.00
Revenue from Other Sources	**168,000.00**	**168,000.00**
Adjusted Non-Federal Revenue and Revenue from Other Sources	**568,800.00**	**559,500.00**

Total Federal and Non-Federal Revenue	**4,144,425.00**	**4,076,550.00**

Numerator 3,517,050
Denominator 4,076,550 =
86.27%

Section 3: Calculating the Revenue Percentage

$$\frac{\sum \text{Adjusted Student Federal Revenue*}}{\sum \text{Adjusted Student Federal Revenue} + \sum \text{Adjusted Non-Federal Revenue and Revenue from Other Sources}} = 90/10 \text{ Revenue Percentage}$$

*Adjusted Student Federal Revenue + Adjusted Student Title IV Revenue + Adjusted Other Federal Funds Paid Directly to the Institution + Adjusted Other Federal Paid Directly to Student

∑ Adjusted Student Title IV Revenue = The sum of the amounts of all Federal funds, as adjusted, for each student at the institution during the fiscal year to whom the institution disbursed Title IV Aid and Other Federal Funds

∑ Student Non-Federal Revenue = The sum of the amounts of items applied first and adjusted cash payments for each student at the institution during the fiscal year whose Non-Title IV funds were used to pay all or some of those student's Tuition and Fee charges

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■ 18. Section 668.32 is amended by revising paragraph (c)(2)(ii) as follows:

§ 668.32 Student eligibility.

* * * * *

(c) * * *

(2) * * *

(ii) If the student is a confined or incarcerated individual as defined in 34 CFR 600.2, is enrolled in an eligible prison education program as defined in § 668.236;

* * * * *

■ 19. Section 668.43 is amended by adding paragraph (a)(5)(vi) as follows:

§ 668.43 Institutional information.

(a) * * *

(5) * * *

(vi) If a prison education program, as defined in § 668.236, is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation (as described in § 668.236(g) and (h)), information regarding whether that occupation typically involves State or Federal prohibitions on the licensure or employment of formerly incarcerated individuals in any other State for which the institution has made a determination about State prohibitions on the licensure or certification of formerly incarcerated individuals;

* * * * *

■ 20. Section 668.171 is amended by revising paragraphs (d)(4) and paragraph (f)(1)(vii) to read as follows:

§ 668.171 General.

* * * * *

(d) * * *

(4) For its most recently completed fiscal year, a proprietary institution did not receive at least 10 percent of its revenue from sources other than Federal funds, as provided under § 668.28(c);

* * * * *

(f) * * *

(1) * * *

(vii) For the non-Federal revenue provision in paragraph (d)(4) of this section, no later than 45 days after the end of the institution's fiscal year, as provided in § 668.28(c)(4).

* * * * *

■ 21. Add subpart P to read as follows:

Subpart P—Prison Education Programs

Sec.

668.234 Scope and purpose.
668.235 Definitions.
668.236 Eligible prison education program.
668.237 Accreditation requirements.
668.238 Application requirements.
668.239 Reporting requirements.
668.240 Limit or termination of approval.
668.241 Best interest determination.
668.242 Transition to a prison education program.

§ 668.234 Scope and purpose.

This subpart establishes regulations that apply to an institution that offers prison education programs to confined or incarcerated individuals. A confined or incarcerated individual enrolled in an eligible prison education program is eligible for Federal financial assistance under the Federal Pell Grant program. Unless provided in this subpart, confined or incarcerated individuals and institutions that offer prison education programs are subject to the same regulations and procedures that otherwise apply to title IV, HEA program participants.

§ 668.235 Definitions.

The following definitions apply to this subpart:

Additional location has the meaning given in 34 CFR 600.2.

Advisory Committee is a group established by the oversight entity that provides nonbinding feedback to the

oversight entity regarding the approval and operation of a prison education program within the oversight entity's jurisdiction.

Confined or incarcerated individual has the meaning given in 34 CFR 600.2.

Feedback Process is the process developed by the oversight entity to gather nonbinding input from relevant stakeholders regarding the approval and operation of a prison education program within the oversight entity's jurisdiction. A feedback process may include an advisory committee.

Oversight entity means—

(1) The appropriate State department of corrections or other entity that is responsible for overseeing correctional facilities; or

(2) The Federal Bureau of Prisons.

Relevant stakeholders are individuals and organizations that provide input as part of a feedback process to the oversight entity regarding the approval and operation of a prison education program within the oversight entity's jurisdiction. These stakeholders must include representatives of incarcerated students, organizations representing incarcerated individuals, state higher education executive offices, and accrediting agencies and may include additional stakeholders as determined by the oversight entity.

§ 668.236 Eligible prison education program.

An *eligible prison education program* means an education or training program that—

(a) Is an eligible program under § 668.8 offered by an institution of higher education as defined in 34 CFR 600.4, or a postsecondary vocational institution as defined in 34 CFR 600.6;

(b) Is offered by an eligible institution that has been approved to operate in a correctional facility by the oversight entity;

(c) After an initial two-year approval, is determined by the oversight entity to be operating in the best interest of students as described by § 668.241;

(d) Offers transferability of credits to at least one institution of higher education (as defined in 34 CFR 600.4 and 600.6) in the State in which the correctional facility is located, or, in the case of a Federal correctional facility, in the State in which most of the individuals confined or incarcerated in such facility will reside upon release as determined by the institution based on information provided by the oversight entity;

(e) Is offered by an institution that has not been subject, during the five years preceding the date of the determination, to—

(1) Any suspension, emergency action, or termination of programs under this title;

(2) Any final accrediting action that is an adverse action as defined in 34 CFR 602.3 by the institution's accrediting agency or association; or

(3) Any action by the State to revoke a license or other authority to operate;

(f) Is offered by an institution that is not subject to a current initiated adverse action—

(1) If an accrediting agency initiates an adverse action, the institution cannot begin its first or a subsequent prison education program unless and until the initiated adverse action has been rescinded; and

(2) If the institution currently offers one or more prison education programs and is subject to an initiated adverse action, the institution must submit a teach-out plan, as defined in 34 CFR 600.2, to the institution's accrediting agency.

(g) Satisfies any applicable educational requirements for professional licensure or certification, including licensure or certification examinations needed to practice or find employment in the sectors or occupations for which the program prepares the individual, in the State in which the correctional facility is located or, in the case of a Federal correctional facility, in the State in which most of the individuals confined or incarcerated in such facility will reside upon release as determined by the institution not less than annually based on information provided by the oversight entity; and

(h) Does not offer education that is designed to lead to licensure or employment for a specific job or occupation in the State if such job or occupation typically involves prohibitions on the licensure or employment of formerly incarcerated individuals in the State in which the correctional facility is located, or, in the case of a Federal correctional facility, in the State in which most of the individuals confined or incarcerated in such facility will reside upon release as determined by the institution not less than annually based on information provided by the oversight entity.

(1) In the case of State and local correctional facilities, the postsecondary institution does not enroll any student in a prison education program that any Federal law, or State law in which the correctional facility is located, bans, bars, or prohibits licensure or employment based on any criminal conviction or specific types of criminal convictions; or

(2) In the case of a Federal correctional facility, the postsecondary institution does not enroll any student in a prison education program that any Federal law or State law in which more than half of the individuals confined or incarcerated in such facility will reside upon release, bans, bars, or prohibits licensure or employment based on any criminal conviction or specific types of criminal convictions.

(3) Prohibitions on offering education to a confined or incarcerated individual do not include local laws, screening requirements for good moral character or similar provisions; State or Federal laws that have been repealed, even if the repeal has not yet taken effect or if the repeal occurs between assessments of the institution of higher education by the oversight entity; or other restrictions as determined by the Secretary.

§ 668.237 Accreditation requirements.

(a) A prison education program must meet the requirements of the institution's accrediting agency or State approval agency.

(b) In order for any prison education program to qualify as an eligible program, the accrediting agency must have—

(1) Evaluated at least the first prison education program at the first two additional locations to ensure the institution's ability to offer and implement the program based on the agency's accreditation standards, and included it in the institution's grant of accreditation or pre-accreditation;

(2) Evaluated the first additional prison education program offered by a new method of delivery to ensure the institution's ability to offer and implement the program based on the agency's standards, and included it in the institution's grant of accreditation or pre-accreditation;

(3) Performed a site visit as soon as practicable but no later than one year after initiating the prison education program at the first two additional locations; and

(4) Reviewed and approved the methodology for how the institution, in collaboration with the oversight entity, made the determination that the prison education program meets the same standards as substantially similar programs that are not prison education programs at the institution.

(c) A prison education program that does not meet the requirements of the institution's accrediting agency or State approval agency is not an eligible program under § 668.236.

§ 668.238 Application requirements.

(a) An institution that seeks to offer a prison education program must apply to the Secretary to have its first prison

education program at the first two additional locations determined to be eligible programs for title IV, HEA program purposes. Following the Secretary's initial approval of a prison education program, additional prison education programs at the same location may be determined to be eligible without further approvals from the Secretary except as required by 34 CFR 600.7, 600.10, 600.20(c)(1), or 600.21(a), as applicable, if such programs are consistent with the institution's accreditation or its State approval agency.

(b) The institution's prison education program application must provide information satisfactory to the Secretary that includes—

(1) A description of the educational program, including the educational credential offered (degree level or certificate) and the field of study;

(2) Documentation from the institution's accrediting agency or State approval agency indicating that the agency has evaluated the institution's offering of prison education program(s) and has included the program(s) in the institution's grant of accreditation and approval documentation from the accrediting agency or State approval agency;

(3) The name of the correctional facility and documentation from the oversight entity that the prison education program has been approved to operate in the correctional facility;

(4) Documentation detailing the methodology including thresholds, benchmarks, standards, metrics, data, or other information the oversight entity used in making the determination that the program is in the best interest of students for all indictors under § 668.241 and how all the information was collected;

(5) Information about the types of services offered to admitted students, including: orientation, tutoring and academic and reentry counseling. If reentry counseling is provided by a community-based organization that has partnered with the eligible prison education program, institution, or correctional facility to provide reentry services, then information about the types of services that the community-based organization offers;

(6) Affirmative acknowledgement that the Secretary can limit or terminate approval of an institution to provide a prison education program as described in § 668.237;

(7) Affirmative agreement to submit the report to the Secretary as described in § 668.239;

(8) Documentation that the institution has entered into an agreement with the oversight entity to obtain data about transfer and release dates of incarcerated individuals, which will be reported to the Department of Education; and

(9) Such other information as the Secretary deems necessary.

(c) For the second or subsequent eligible prison education program at a location, to fulfill requirements under 34 CFR 600.21, an institution submits—

(1) Documentation from the institution's accrediting agency noting that the institution complies with § 668.236(f) and was not subject to any final accrediting action that is an adverse action by the institution's accrediting agency or association in the last five years;

(2) Documentation from the institution noting that the institution was not subject to any action by the State to revoke a license or other authority to operate in the last five years; and

(3) Documentation that the institution has entered into an agreement with the oversight entity to obtain data about transfer and release dates of incarcerated individuals, which will be reported to the Department of Education pursuant to § 668.239.

§ 668.239 Reporting requirements.

(a) An institution must submit reports, in accordance with deadlines established and published by the Secretary in the **Federal Register**.

(b) The institution reports such information as the Secretary requires, in compliance with procedures the Secretary describes.

(c) The institution reports information about transfer and release dates of incarcerated individuals, as required by the Secretary, through an agreement with the oversight entity.

§ 668.240 Limit or termination of approval.

(a) The Secretary limits or terminates approval of an institution to provide an eligible prison education program if the Secretary determines that the institution violated any terms of this subpart or that the information that the institution submitted as a basis for approval to the Secretary, accrediting agency, State agency, or oversight entity was materially inaccurate.

(b) If the Secretary initiates a limitation or termination action of an institution's approval to operate an eligible prison education program, the institution must submit a teach-out plan and, if practicable, a teach-out agreement(s) (as defined in 34 CFR 600.2) to its accrediting agency upon occurrence of the event.

§ 668.241 Best interest determination.

(a) An oversight entity's determination that a prison education program is operating in the best interest of students—

(1) Must include an assessment of all the following—

(i) Whether the rate of confined or incarcerated individuals continuing their education post-release, as determined by the percentage of students who reenroll in higher education reported by the Department, meets thresholds established by the oversight entity with input from relevant stakeholders;

(ii) Whether job placement rates in the relevant field for such individuals meet any applicable standards required by the accrediting agency for the institution or program or a State in which the institution is authorized. If no job placement rate standard applies to prison education programs offered by the institution, the oversight entity must define, and the institution must report, a job placement rate, with input from relevant stakeholders;

(iii) Whether the earnings for such individuals, or the median earnings for graduates of the same or similar programs at the institution, as measured by the Department, exceed those of a typical high school graduate in the State;

(iv) Whether the experience, credentials, and rates of turnover or departure of instructors for a prison education program are substantially similar to other programs at the institution, accounting for the unique geographic and other constraints of prison education programs;

(v) Whether the transferability of credits for courses available to confined or incarcerated individuals and the applicability of such credits toward related degree or certificate programs is substantially similar to those at other similar programs at the institution, accounting for the unique geographic and other constraints of prison education programs;

(vi) Whether the prison education program's offering of relevant academic and career advising services to participating confined or incarcerated individuals while they are confined or incarcerated, in advance of reentry, and upon release, is substantially similar to offerings to a student who is not a confined or incarcerated individual and who is enrolled in, and may be preparing to transfer from, the same institution, accounting for the unique geographic and other constraints of prison education programs;

(vii) Whether the institution ensures that all formerly incarcerated students

are able to fully transfer their credits and continue their programs at any location of the institution that offers a comparable program, including by the same mode of instruction, barring exceptional circumstances surrounding the student's conviction; and

(2) May include an assessment of all the following—

(i) Whether the rates of recidivism, which do not include any recidivism by the student within a reasonable number of years of release and which only include new felony convictions as defined by United States Sentencing Guideline § 4A1.1(a) as ''each sentence of imprisonment exceeding one year and one month,'' meet thresholds set by the oversight entity;

(ii) Whether the rates of completion reported by the Department, which does not include any students who were transferred across facilities and which accounts for the status of part-time students, meet thresholds set by the oversight entity with input from relevant stakeholders; and

(iii) Other indicators pertinent to program success as determined by the oversight entity.

(b) An oversight entity makes the best interest determination—

(1) Through a feedback process that considers input from relevant stakeholders; and

(2) In light of the totality of the circumstances.

(c) If the oversight entity does not find a program to be in the best interest of students, it must allow for programs to re-apply within a reasonable timeframe.

(d) After the two years of initial approval under § 668.236, the institution must be determined by the oversight entity to be operating in the best interest of students, as defined in paragraph (a), of this section.

(e)(1) After its initial determination that a program is operating in the best interest of students under paragraph (c) of this section, the institution must obtain subsequent final evaluations of each eligible prison education program from the responsible oversight entity not less than 120 calendar days prior to the expiration of each of the institution's Program Participation Agreements, except that the oversight entity may make a determination between subsequent evaluations based on the oversight entity's regular monitoring and evaluation of program outcomes.

(2) Each subsequent evaluation must—

(i) Include the entire period following the prior determination and be based on the factors described under paragraph (a) of this section for all students enrolled in the program since the prior determination;

(ii) Include input from relevant stakeholders through the oversight entity's feedback process; and

(iii) Be submitted to the Secretary no later than 30 days following completion of the evaluation.

(f)(1) The institution must obtain and maintain documentation of the methodology by which the oversight entity made each determination under paragraph (a) of this section and § 668.236(b) for review by the institution's accrediting agency, submission of the application to the Department for the approval of the first program at the first two additional locations, the input of relevant stakeholders through the oversight entity's feedback process described in paragraphs (b)(1) and (e)(2)(ii) of the section, reporting to the Department, and for public disclosure.

(2) The institution must maintain the documentation described in (1) for as long as the program is active or, if the program is discontinued, for three years following the date of discontinuance.

§ 668.242 Transition to a prison education program.

For institutions operating eligible prison education programs in a correctional facility that is not a Federal or State penal institution:

(a) A confined or incarcerated student who otherwise meets the eligibility requirements to receive a Federal Pell Grant and is enrolled in an eligible program that does not meet the requirements under subpart P of this part may continue to receive a Federal Pell Grant until the earlier of:

(1) July 1, 2029;

(2) The student reaches the maximum timeframe for program completion as defined under § 668.34; or

(3) The student has exhausted Pell Grant eligibility as defined under 34 CFR 690.6(e).

(b) An institution is not permitted to enroll a confined or incarcerated student on or after July 1, 2023, who was not enrolled in an eligible program prior to July 1, 2023, unless the institution first converts the eligible program into an eligible prison education program as defined in § 668.236.

PART 690—FEDERAL PELL GRANT PROGRAM

■ 22. The authority citation for part 90 continues to read as follows:

Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted.

■ 23. Section 690.62 is revised to read as follows:

§ 690.62 Calculation of a Federal Pell Grant.

(a) The amount of a student's Pell Grant for an academic year is based upon the payment and disbursement schedules published by the Secretary for each award year.

(b)(1)(i) For a confined or incarcerated individual enrolled in an eligible prison education program, no Federal Pell Grant shall exceed the cost of attendance (as defined in section 472 of the HEA) at the institution at which that student is in attendance.

(ii) If an institution determines that the amount of a Federal Pell Grant for that student exceeds the cost of attendance for that year, the amount of the Federal Pell Grant shall be reduced until the Federal Pell Grant does not exceed the cost of attendance at such institution and does not result in a title IV credit balance under 34 CFR 668.164(h).

(2)(i) If a confined or incarcerated student's Pell Grant, combined with any other financial assistance, exceeds the student's cost of attendance, the financial assistance other than the Pell Grant must be reduced by the amount that the total financial assistance exceeds the student's cost of attendance.

(ii) If the student's other financial assistance cannot be reduced, the student's Pell Grant must be reduced by the amount that the student's total financial assistance exceeds the student's cost of attendance.

■ 24. Add Section 690.68 to read as follows:

§ 690.68 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

[FR Doc. 2022–15890 Filed 7–26–22; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program in Refrigeration, Air Conditioning, and Fire Suppression; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2021–0836; FRL–6399–01–OAR]

RIN 2060–AT78

Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program in Refrigeration, Air Conditioning, and Fire Suppression

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the U.S. Environmental Protection Agency's Significant New Alternatives Policy program, this action proposes to list certain substances as acceptable subject to use conditions in the refrigeration and air conditioning sector for chillers—comfort cooling, residential dehumidifiers, non-residential dehumidifiers, residential and light commercial air conditioning and heat pumps, and a substance as acceptable subject to use conditions and narrowed used limits in very low temperature refrigeration. Through this action, EPA is proposing to incorporate by reference standards which establish requirements for electrical air conditioners, heat pumps, and dehumidifiers, laboratory equipment containing refrigerant, safe use of flammable refrigerants, and safe design, construction, installation, and operation of refrigeration systems. Additionally, this action proposes to list certain substances as acceptable subject to use conditions in the fire suppression sector for certain streaming and total flooding uses. Finally, EPA requests advance comment on potential approaches to SNAP listing decisions for very short-lived substances that have ozone depletion potentials similar to those of ozone-depleting substances scheduled to be phased out.

DATES: Comments must be received on or before September 12, 2022. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Daylight Time on August 2, 2022. If a virtual public hearing is held, it will take place on or before August 12, 2022 and further information will be provided on EPA's Stratospheric Ozone website at *https://www.epa.gov/snap.*

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2021–0836. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20460. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays). For further information on EPA Docket Center services and the current status, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Holly Tapani, Stratospheric Protection Division, Office of Atmospheric Programs (Mail Code 6205T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–0679; email address: *tapani.holly@epa.gov.* Notices and rulemakings under EPA's Significant New Alternatives Policy program are available on EPA's SNAP website at *https://www.epa.gov/snap/snap-regulations.*

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I. General Information

A. Executive Summary and Background

This action proposes to list new alternatives for the refrigeration and air conditioning (AC) and fire suppression sectors. Specifically, EPA is:

- Listing hydrofluoroolefin (HFO)-1234yf, R–454A, R–454B, and R–454C as acceptable, subject to use conditions, for use in chillers used in comfort cooling, including commercial and industrial process AC;
- Listing hydrofluorocarbon (HFC)–32 and R–452B as acceptable, subject to use conditions, for use in scroll and rotary chillers used in comfort cooling, including commercial and industrial process AC;
- Listing HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C as acceptable, subject to use conditions, for use in residential dehumidifiers;
- Listing HFC–32 as acceptable, subject to use conditions, for use in non-residential dehumidifiers;
- Listing HFC–32 as acceptable, subject to use conditions, for use in self-contained room air conditioners (ACs) and heat pumps (HPs);
- Listing R–1150 as acceptable, subject to use conditions and narrowed use limits, for use in very low temperature refrigeration (VLTR);
- Listing 2-bromo-3,3,3-trifluoropropene (2–BTP) as acceptable, subject to use conditions, in streaming—for non-residential use, except home offices and boats—and total flooding—in normally unoccupied spaces under 500 ft^3;
- Listing of EXXFIRE® as acceptable, subject to use conditions, in total flooding—for normally unoccupied areas; and
- Listing of Powdered Aerosol H, also known as Pyroquench-α™, as acceptable, subject to use conditions, in total flooding—for normally unoccupied areas.

EPA is proposing these new listings after its evaluation of human health and environmental information for these substitutes under the Significant New Alternatives Policy (SNAP) program. The Agency is proposing action on these new listings in the refrigeration and AC sector and the fire suppression sector based on the information that EPA has included in the docket. This proposed action provides additional flexibility for industry by providing new options in specific uses.

Additionally, EPA requests advance comment on potential approaches to SNAP listing decisions for very short-lived substances (VSLS) that have ozone depletion potentials (ODPs) similar to those of class II ozone-depleting substances (ODS) that are currently being phased out, in particular trifluoroiodomethane (CF_3I) and blends containing CF_3I. EPA is not proposing to include any regulatory requirements with respect to such VSLS in this rulemaking.

EPA is not requesting comment on the republication of the first six entries of the table titled ''Substitutes That Are Acceptable Subject to Use Conditions''. Those entries are being republished to bring the table in line with the Office of the Federal Register's general requirement for orderly codification by: adding entry numbers, replacing prohibited language, and properly formatting the footnotes.

SNAP Program Background

The SNAP program implements section 612 of the Clean Air Act (CAA). Several major provisions of section 612 are:

1. Rulemaking

Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon (CFC), halon, carbon tetrachloride, methyl chloroform, methyl bromide, hydrobromofluorocarbon, and chlorobromomethane) or class II (hydrochlorofluorocarbon (HCFC)) ODS with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment and (2) is currently or potentially available.

2. Listing of Unacceptable/Acceptable Substitutes

Section 612(c) requires EPA to publish a list of the substitutes that it finds to be unacceptable for specific uses and to publish a corresponding list

of acceptable substitutes for specific uses.

3. Petition Process

Section 612(d) grants the right to any person to petition EPA to add a substance to, or delete a substance from, the lists published in accordance with section 612(c).

4. 90-Day Notification

Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before a new or existing chemical is introduced into interstate commerce for significant new use as a substitute for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

The regulations for the SNAP program are promulgated at 40 Code of Federal Regulations (CFR) part 82, subpart G, and the Agency's process for reviewing SNAP submissions is described in regulations at 40 CFR 82.180. Under these rules, the Agency has identified five types of listing decisions: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending (40 CFR 82.180(b)). Use conditions and narrowed use limits are both considered ''use restrictions,'' as described below. Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant end-uses in the sector. After reviewing a substitute, the Agency may determine that a substitute is acceptable only if certain conditions in the way that the substitute is used are met to minimize risks to human health and the environment. EPA describes such substitutes as ''acceptable subject to use conditions'' (40 CFR 82.180(b)(2)). For some substitutes, the Agency may permit a narrowed range of use within an end-use or sector. For example, the Agency may limit the use of a substitute to certain end-uses or specific applications within an industry sector. EPA describes these substitutes as ''acceptable subject to narrowed use limits.'' Under the narrowed use limit, users intending to adopt these substitutes ''must ascertain that other alternatives are not technically feasible.'' (40 CFR 82.180(b)(3)).

In making decisions regarding whether a substitute is acceptable or unacceptable, and whether substitutes present risks that are lower than or comparable to risks from other substitutes that are currently or potentially available in the end-uses under consideration, EPA examines the criteria in 40 CFR 82.180(a)(7): (i) atmospheric effects and related health and environmental impacts; (ii) general population risks from ambient exposure to compounds with direct toxicity and to increased ground-level ozone; (iii) ecosystem risks; (iv) occupational risks; (v) consumer risks; (vi) flammability; and (vii) cost and availability of the substitute.

Many SNAP listings include ''comments'' or ''further information'' to provide additional information on substitutes. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. However, regulatory requirements so listed are binding under other regulatory programs (*e.g.,* worker protection regulations promulgated by the U.S. Occupational Safety and Health Administration (OSHA)). The ''further information'' classification does not necessarily include all other legal obligations pertaining to the use of the substitute. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building codes or standards. Thus, many of the statements, if adopted, would not require the affected user to make significant changes in existing operating practices.

For additional information on the SNAP program, visit the SNAP website at *https://www.epa.gov/snap.* The full lists of acceptable substitutes for ODS in all industrial sectors are available at *https://www.epa.gov/snap/snap-substitutes-sector.* For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the initial SNAP rulemaking published March 18, 1994 (59 FR 13044), codified at 40 CFR part 82, subpart G. SNAP decisions and the appropriate **Federal Register** citations can be found at: *https://www.epa.gov/snap/snap-regulations.* Substitutes listed as unacceptable; acceptable, subject to narrowed use limits; or acceptable, subject to use conditions, are also listed in the appendices to 40 CFR part 82, subpart G.

B. Does this action apply to me?

The following list identifies regulated entities that may be affected by this rule and their respective North American Industrial Classification System (NAICS) codes:

- Plumbing, Heating, and Air Conditioning Contractors (NAICS 238220)
- All Other Basic Organic Chemical Manufacturing (NAICS 325199)
- Pharmaceutical Preparations (*e.g.,* Capsules, Liniments, Ointments, Tablets) Manufacturing (NAICS 325412)
- Air Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (NAICS 333415)
- Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers (NAICS 423620)
- Refrigeration Equipment and Supplies Merchant Wholesalers (NAICS 423740)
- Recyclable Material Merchant Wholesalers (NAICS 423930)
- Appliance Repair and Maintenance (NAICS 811412)
- Fire Protection (NAICS 922160)

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. To determine whether your facility, company, business, or organization could be affected by this action, you should carefully examine the regulations at 40 CFR part 82, subpart G and the revisions below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. What acronyms and abbreviations are used in the preamble?

Below is a list of acronyms and abbreviations used in the preamble of this document:

2-BTP—2-bromo-3,3,3-trifluoropropene
AC—Air Conditioning or Air Conditioner
ACCA—Air Conditioning Contractors of America
ACGIH—American Conference of Governmental Industrial Hygienists
AEL—Acceptable Exposure Limit
AIHA—American Industrial Hygiene Association
AHRI—Air-Conditioning, Heating, and Refrigeration Institute
ANSI—American National Standards Institute
ASHRAE—American Society of Heating, Refrigerating and Air-Conditioning Engineers
ASTM—American Society for Testing and Materials

CAA—Clean Air Act
CAS Reg. No.—Chemical Abstracts Service Registry Identification Number
CBI—Confidential Business Information
CFC—Chlorofluorocarbon
CFR—Code of Federal Regulations
CO_2—Carbon Dioxide
EPA—United States Environmental Protection Agency
FR—**Federal Register**
GWP—Global Warming Potential
HCFC—Hydrochlorofluorocarbon
HCFO—Hydrochlorofluoroolefin
HFC—Hydrofluorocarbon
HFO—Hydrofluoroolefin
HP—Heat Pump
ICF—ICF International, Inc.
IPCC—Intergovernmental Panel on Climate Change
LFL—Lower Flammability Limit
LOAEL—Lowest Observed Adverse Effect Level
NAAQS—National Ambient Air Quality Standards
NAICS—North American Industrial Classification System
NARA—National Archives and Records Administration
NFPA—National Fire Protection Association
NIOSH—National Institute for Occupational Safety and Health
NPRM—Notice of Proposed Rulemaking
ODP—Ozone Depletion Potential
ODS—Ozone Depleting Substances
OMB—United States Office of Management and Budget
OSHA—United States Occupational Safety and Health Administration
PMS—Pantone® Matching System
ppm—Parts Per Million
PRA—Paperwork Reduction Act
PTAC—Packaged Terminal Air Conditioner
PTHP—Packaged Terminal Heat Pump
RAL—''Reichs-Ausschuß für Lieferbedingungen und Gütesicherung,'' Germany's National Commission for Delivery Terms and Quality Assurance
RCRA—Resource Conservation and Recovery Act
RFA—Regulatory Flexibility Act
SCBA—Self-Contained Breathing Apparatus
SDS—Safety Data Sheet
SIP—State Implementation Plan
SNAP—Significant New Alternatives Policy
TLV–TWA—Threshold Limit Value-Time-Weighted Average
TSCA—Toxic Substances Control Act
TWA—Time Weighted Average
UL—UL, formerly known as Underwriters Laboratories, Inc.
UMRA—Unfunded Mandates Reform Act
VOC—Volatile Organic Compound, Volatile Organic Compounds
VSLS—Very Short-Lived Substances
VLTR—Very Low Temperature Refrigeration
WEEL—Workplace Environmental Exposure Limit
WMO—World Meteorological Organization

II. What is EPA proposing in this action?

A. Chillers—Proposed Listing of HFO–1234yf, R–454A, R–454B, and R–454C as Acceptable, Subject to Use Conditions, for Use in New Chiller Equipment, and Proposed Listing of HFC–32 and R–452B as Acceptable, Subject to Use Conditions, for Use in New Rotary and Scroll Chiller Equipment, for Chillers Used in Comfort Cooling, Including Both Commercial and Industrial Process AC

EPA previously listed HFO–1234yf as acceptable subject to use conditions in motor vehicle AC in light-duty vehicles (74 FR 53445; October 19, 2009), in heavy-duty pickup trucks and complete heavy-duty vans (81 FR 86778; December 1, 2016) and in nonroad vehicles and service fittings for small refrigerant cans (87 FR 26276; May 4, 2022). EPA previously listed HFC–32 as acceptable subject to use conditions as a substitute in residential and light commercial AC and HPs (80 FR 19454; April 10, 2015) (86 FR 24444; May 6, 2021) and previously listed R–452B, R–454A, R–454B, and R–454C, (hereafter called ''the four refrigerant blends''), as acceptable subject to use conditions as substitutes in residential and light commercial AC and HPs (86 FR 24444; May 6, 2021).[1]

Today's proposed rulemaking is proposing to find HFC–32, HFO–1234yf, and the four refrigerant blends acceptable subject to use conditions as substitutes in certain types of chillers. This proposed listing for HFO–1234yf, R–454A, R–454B, and R–454C applies to all compressor types of chillers, *i.e.,* centrifugal and positive displacement (including reciprocating, screw, scroll and rotary) chillers, while the proposed listing for HFC–32 and R–452B applies to only scroll and rotary chillers. The proposed listings are for comfort cooling applications of such chillers under EPA's proposed use conditions, including but not limited to use in commercial AC and industrial process AC.

Several use conditions proposed for chillers are identical to those proposed for other end-uses (residential dehumidifiers, non-residential dehumidifiers, and residential and light commercial AC and HPs) proposed in sections II.B, II.C, and II.D. below. Because of this similarity, EPA discusses the use conditions that would apply to all three end-uses in section II.E below. For chillers, EPA is also proposing an additional use condition related to adherence to the ASHRAE 15–2019 standard. In summary, the common use conditions proposed are:

(1) New equipment only—These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant, *i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment.

(2) UL Standard—These refrigerants may be used only in chillers that meet all requirements listed in the 3rd edition, dated November 1, 2019, of UL Standard 60335–2–40, ''Household and Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers'' (hereafter in this section, ''UL Standard''). If this rule is finalized as proposed, in cases where the final rule would include requirements different than those of the 3rd edition of UL Standard 60335–2–40, EPA is proposing that the appliance would need to meet the requirements of the final rule in place of the requirements in the UL Standard. See section II.E below for further discussion on the requirements of this standard that EPA is proposing to incorporate by reference.

(3) Warning labels—Several warning labels are proposed as use conditions as detailed in section II.E below. These labels are similar or verbatim in language to those required by the UL Standard. The warning labels must be provided in letters no less than 6.4 mm (¼ inch) high and must be permanent.

(4) Markings—Equipment must have distinguishing red (Pantone® Matching System (PMS) #185 or Reichs-Ausschuß für Lieferbedingungen und Gütesicherung[2] (RAL) 3020) color-coded hoses and piping to indicate use of a flammable refrigerant. The chiller shall have marked service ports, pipes, hoses and other devices through which the refrigerant is serviced. Markings shall extend at least 1 inch (25 millimeters) from the servicing port and shall be replaced if removed.

For chillers, EPA is also proposing a use condition related to adherence to the ASHRAE 15–2019 standard in addition to those common proposed use conditions. Specifically, we are proposing that these refrigerants may only be used in chillers that meet all

[1] In this proposed rule, we use the term ''air conditioner'' and ''AC'' to cover equipment that cools air, heats air, or has the function to do both (typically referred to as a ''heat pump''). While such equipment might humidify or dehumidify the air, the term does not include equipment whose purpose is for latent cooling only (*i.e.,* dehumidifiers), which are a separate end-use under SNAP and are addressed in section II.B of this proposed rule.

[2] Germany's National Commission for Delivery Terms and Quality Assurance.

requirements listed in the American National Standards Institute (ANSI)/ ASHRAE Standard 15–2019 (hereafter ''ASHRAE Standard''). If this rule is finalized as proposed, in cases where the final rule would include requirements different than those of ASHRAE Standard 15–2019,[3] EPA is proposing that the appliance would need to meet the requirements of the final rule in place of the requirements in the ASHRAE Standard. EPA is also proposing that if this rule is finalized as proposed, in cases where similar requirements of ASHRAE Standard 15 and UL Standard 60335–2–40 differ, the more stringent or conservative condition shall apply unless superseded by the final rule. This additional use condition is discussed further in section II.A.4 below.

The regulatory text of the proposed decisions appears in tables at the end of this document. If finalized as proposed, this text would be codified in appendix X of 40 CFR part 82, subpart G. The proposed regulatory text contains listing decisions for the end-uses discussed above. EPA notes that there may be other legal obligations pertaining to the manufacture, use, handling, and disposal of the proposed refrigerants that are not included in the information listed in the tables (*e.g.,* the CAA section 608(c)(2) prohibition on knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration or Department of Transportation requirements for transport of flammable gases). Flammable refrigerants being recovered or otherwise disposed of from chillers are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260–270).

1. Background on Chillers—Commercial AC and Industrial Process AC

This proposal applies to chillers that are covered by the UL 60335–2–40 standard ''Household and Similar Electrical Appliances—Safety—Part 2–40: Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers'' and ASHRAE Standard 15–2019, ''Safety Standard for Refrigeration Systems.'' EPA understands that the UL Standard applies to chillers used for comfort cooling.

In the initial rule establishing the SNAP program (59 FR 13044; March 18, 1994), EPA included within the refrigeration and AC sector the end-use ''commercial comfort air conditioning'' and then elaborated on that end-use by saying that ''CFCs are used in several different types of mechanical commercial comfort AC systems, known as chillers.'' EPA indicated ''that over time, existing cooling capacity [from chillers] will be either retrofitted or replaced by systems using non-CFC refrigerants in a vapor compression cycle or by alternative technologies.'' We also explained in that rule that vapor compression chillers can be categorized by the type of compressor used, including centrifugal, rotary, screw, scroll and reciprocating compressors. These compressor types are also divided into centrifugal and positive displacement chillers, the latter of which includes those with reciprocating, screw, scroll or rotary compressors.

Centrifugal chillers are equipment that utilize a centrifugal compressor in a vapor-compression refrigeration cycle. Centrifugal chillers are typically used for commercial comfort AC, although other uses, that we are not proposing here, do exist. Centrifugal chillers can be found in office buildings, hotels, arenas, convention halls, airport terminals and other buildings. Centrifugal chillers tend to be used in larger buildings.

Positive displacement chillers are those that utilize positive displacement compressors such as reciprocating, screw, scroll or rotary types. Positive displacement chillers are applied in similar situations as centrifugal chillers, again primarily for commercial comfort AC, except that positive displacement chillers tend to be used for smaller capacity needs such as in mid- and low-rise buildings.

A chiller is a type of equipment using refrigerant that typically cools water or a brine solution, which is then pumped to fan coil units or other air handlers to cool the air that is supplied to the occupied spaces transferring the heat to the water. The heat absorbed by the water can then be used for heating purposes, and/or can be transferred directly to the air (''air-cooled''), to a cooling tower or body of water (''water-cooled''), or through evaporative coolers (''evaporative-cooled''). A chiller or a group of chillers could similarly be used for district cooling where the chiller plant cools water or another fluid that is then pumped to multiple locations being served such as several different buildings within the same complex. Chillers may also be used to maintain operating temperatures in various types of buildings, for example, in data centers, server farms, and agricultural/ food operations. Chillers are used in other applications, for example, to cool process streams in industrial applications. Chillers are also used for comfort cooling of operators or climate control and protecting process equipment in industrial buildings, for example, in industrial processes when ambient temperatures could approach 200 °F (93 °C) and corrosive conditions could exist. The listings proposed today would apply to all types of chillers in comfort cooling applications.

2. What are the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) classifications for refrigerant flammability?

The ANSI/ASHRAE Standard 34–2019 assigns a safety group classification for each refrigerant which consists of two to three alphanumeric characters (*e.g.,* A2L or B1). The initial capital letter indicates the toxicity, and the numeral denotes the flammability. ASHRAE classifies Class A refrigerants as refrigerants for which toxicity has not been identified at concentrations less than or equal to 400 parts per million (ppm) by volume, based on data used to determine threshold limit value-time-weighted average (TLV–TWA) or consistent indices. Class B signifies refrigerants for which there is evidence of toxicity at concentrations below 400 ppm by volume, based on data used to determine TLV–TWA or consistent indices.

The refrigerants are also assigned a flammability classification of 1, 2, 2L, or 3. Tests for flammability are conducted in accordance with American Society for Testing and Materials (ASTM) E681 using a spark ignition source at 140 °F (60 °C) and 14.7 psia (101.3 kPa).[4] The flammability classification ''1'' is given to refrigerants that, when tested, show no flame propagation. The flammability classification ''2'' is given to refrigerants that, when tested, exhibit flame propagation, have a heat of combustion less than 19,000 kJ/kg (8,169 Btu/lb), and have a lower flammability limit (LFL) greater than 0.10 kg/m^3. The flammability classification ''2L'' is given to refrigerants that, when tested, exhibit flame propagation, have a heat of combustion less than 19,000 kJ/kg (8,169 BTU/lb), have an LFL greater than 0.10 kg/m^3, and have a maximum burning velocity of 10 cm/s or lower

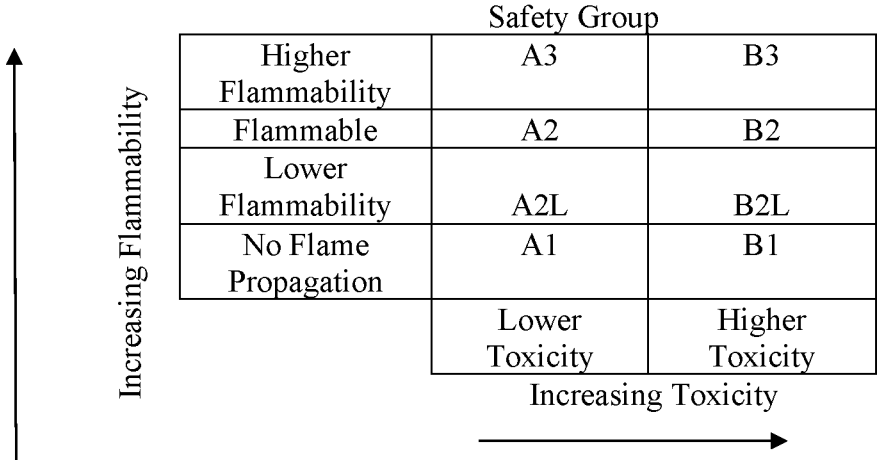
[3] ASHRAE, 2019b. American National Standards Institute (ANSI)/American Society for Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 15. Safety Standard for Refrigeration Systems. 2019.

[4] ASHRAE, 2019a. ANSI/ASHRAE Standard 34–2019: Designation and Safety Classification of Refrigerants.

when tested in dry air at 73.4 °F (23.0 °C) and 14.7 psi (101.3 kPa). The flammability classification ''3'' is given to refrigerants that, when tested, exhibit flame propagation and that either have a heat of combustion of 19,000 kJ/kg (8,169 BTU/lb) or greater or have an LFL of 0.10 kg/m^3 or lower.

For flammability classifications, refrigerant blends are designated based on the worst case of formulation for flammability and the worst case of fractionation for flammability determined for the blend.

Figure 1. Refrigerant Safety Group Classification



Using these safety group classifications, ANSI/ASHRAE Standard 34–2019 categorizes HFO–1234yf, HFC–32 and the four refrigerant blends in this section of the proposed rulemaking in the A2L Safety Group.

3. What are HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C and how do they compare to other refrigerants in the same end-use?

HFO–1234yf and HFC–32 are lower flammability refrigerants, and the four refrigerant blends are lower flammability refrigerant blends, all with an ASHRAE safety classification of A2L. The respective Chemical Abstracts Service Registry Identification Numbers (CAS Reg. Nos.) of HFO–1234yf, HFC–32 and the components of the four refrigerant blends are listed below.

HFO–1234yf, also known by the trade names ''Solstice® yf'' and ''Opteon ™ YF,'' is also known as 2,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 754–12–1). HFC–32 is also known as R–32 or difluoromethane (CAS Reg. No. 75–10–5). R–452B, also known by the trade names ''Opteon ™ XL 55'' and ''Solstice® L41y,'' is a blend consisting of 67 percent by weight HFC–32; seven percent HFC–125, also known as 1,1,1,2,2-pentafluoroethane (CAS Reg. No. 354–33–6); and 26 percent HFO–1234yf. R–454A, also known by the trade name ''Opteon™ XL 40,'' is a blend consisting of 35 percent HFC–32 and 65 percent HFO–1234yf. R–454B, also known by the trade names ''Opteon™ XL 41'' and ''Puron Advance™,'' is a blend consisting of 68.9 percent HFC–32 and 31.1 percent HFO–1234yf. R–454C, also known by the trade name ''Opteon™ XL 20,'' is a blend consisting of 21.5 percent HFC–32 and 78.5 percent HFO–1234yf.

Redacted submissions and supporting documentation for HFO–1234yf, HFC–32 and the four refrigerant blends are provided in the docket for this proposed rule (EPA–HQ–OAR–2021–0836) at *https://www.regulations.gov.* EPA performed an assessment to examine the health and environmental risks of each of these substitutes. These assessments are available in the docket for this proposed rule.[5] [6] [7] [8] [9] [10]

Environmental information: HFO–1234yf, HFC–32 and the four refrigerant blends have ODPs of zero.

HFO–1234yf has a 100-year integrated global warming potential (GWP) of less than one to four. [11] [12] [13] HFC–32 has a GWP of 675. The four refrigerant blends are made up of the components HFC–32, HFC–125, and HFO–1234yf, which have GWPs of 675, 3,500, and one to four, respectively.[14] If these values are weighted by mass percentage, then R–452B, R–454A, R–454B, and R–454C have GWPs of about 700, 240, 470, and 150, respectively.

HFC–32, HFO–1234yf, and the other component of one of the four refrigerant

[5] ICF, 2022a. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–32.

[6] ICF, 2022b. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: HFO–123yf.

[7] ICF, 2022c. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–452B.

[8] ICF, 2022d. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–454A.

[9] ICF, 2022e. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–454B.

[10] ICF, 2022f. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–454C.

[11] World Meteorological Organization (2018). Burkholder *et al.* Appendix A, Table A–1 in *Scientific Assessment of Ozone Depletion: 2018, Global Ozone Research and Monitoring Project,* Report No. 58, World Meteorological Organization, Geneva, Switzerland, *http://ozone.unep.org/science/assessment/sap.* (WMO, 2018).

[12] Nielsen et al., 2007. Nielsen, O.J., Javadi, M.S., Sulbaek Andersen, M.P., Hurley, M.D., Wallington, T.J., Singh, R. 2007. Atmospheric chemistry of CF3CF=CH2: Kinetics and mechanisms of gas-phase reactions with Cl atoms, OH radicals, and O3. Chemical Physics Letters 439, 18–22. Available online at *http://www.cogci.dk/network/OJN_174_CF3CF=CH2.pdf.*

[13] Hodnebrog Ø;. et al., 2013. Hodnebrog Ø;., Etminan, M., Fuglestvedt, J.S., Marston, G., Myhre, G., Nielsen, C.J., Shine, K.P., Wallington, T.J.: Global Warming Potentials and Radiative Efficiencies of Halocarbons and Related Compounds: A Comprehensive Review, *Reviews of Geophysics, 51, 300–378, doi:10.1002/rog.20013,* 2013.

[14] Unless otherwise specified, GWP values are 100-year values from Intergovernmental Panel on Climate Change (IPCC) (2007) Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. S. Solomon, D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.). Cambridge University Press. Cambridge, United Kingdom 996 pp.

blends, HFC–125, are excluded from EPA's regulatory definition of volatile organic compounds (VOC) (see 40 CFR 51.100(s)) addressing the development of State Implementation Plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS). That definition provides that ''any compound of carbon'' which ''participates in atmospheric photochemical reactions'' is considered a VOC unless expressly excluded in that provision based on a determination of ''negligible photochemical reactivity.'' Knowingly venting or otherwise knowingly releasing or disposing of these refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration is prohibited as provided in section 608(c)(2) of the CAA and EPA's regulations at 40 CFR 82.154(a)(1).

Flammability information: HFO–1234yf, HFC–32 and the four refrigerant blends have lower flammability. All have an ASHRAE flammability classification of 2L.

Toxicity and exposure data: HFO–1234yf, HFC–32 and the four refrigerant blends have an ASHRAE toxicity classification of A. Potential health effects of exposure to these substitutes include drowsiness or dizziness. The substitutes may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, the substitutes may cause irregular heartbeat. The substitutes could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many refrigerants.

The American Industrial Hygiene Association (AIHA) has established Workplace Environmental Exposure Limits (WEELs) of 1,000 ppm as an eight-hour time-weighted average (8-hr TWA) for HFC–32 and the component refrigerant HFC–125; the AIHA has established a WEEL of 500 ppm as an 8-hr TWA for HFO–1234yf. The manufacturer of R–452B, R–454A, R–454B, and R–454C recommends AELs, respectively, of 874, 690, 854, and 615 ppm on an 8-hr TWA for these blends. EPA anticipates that users will be able to meet the AIHA WEELs and manufacturers' AELs and address potential health risks by following requirements and recommendations in the manufacturers' safety data sheet (SDS), the use conditions proposed (including adherence to ASHRAE Standard 15), and other safety precautions common to the refrigeration and AC industry.

Comparison to other substitutes in this end-use: HFO–1234yf, HFC–32 and the four refrigerant blends all have an ODP of zero, comparable to or lower than some of the acceptable substitutes in these end-uses, such as HFO–1234ze(E) with an ODP of zero. Although HCFC–123 and R–406A (with components HCFC–22 and HCFC–142b) have been listed acceptable in this end-use with ODPs of 0.02 and 0.057, respectively, HCFC–123 (unless used, recovered, and recycled) may not be used as a refrigerant in equipment manufactured on or after January 1, 2020, under 40 CFR 82.15(g)(5)(i).[15] Similarly, components of R–406A (HCFC–22 and HCFC–142b) (unless used, recovered, and recycled) may not be used as a refrigerant for use in chillers manufactured on or after January 1, 2010, under 40 CFR 82.15(g)(2)(i).[16] Under 40 CFR 82.16, EPA has not issued any production and consumption allowances for HCFC–22 and HCFC–142b since 2019.

HFC–32 and the four refrigerant blends' GWPs, ranging from about 150 to 700, are higher than those of some of the acceptable substitutes for new centrifugal and positive displacement chillers, including HCFO–1233zd(E), HFO–1336mzz(Z) and R–515B, with GWPs of 3.7, 9 and 287, respectively. The GWPs of HFO–1234yf, R–454A, R–454B, and R–454C are lower than some of the acceptable substitutes for new centrifugal and positive displacement chillers, such as R–450A and R–513A, with GWPs of approximately 600 and 630, respectively. For scroll and rotary chillers, HFC–32's and R–452B's GWPs of 675 and about 700 are higher than the GWPs of those refrigerants. The GWPs of HFC–32 and R–452B are, however, lower than R–410A, with a GWP of approximately 2,090, which is the refrigerant that has typically been employed in such systems. EPA listed R–410A as unacceptable for chillers as of January 1, 2024. Our initial evaluation is that the characteristics of these two alternatives meet the technical needs of scroll and rotary chillers while lower-GWP alternatives do not. For instance, under the Air-Conditioning, Heating, and Refrigeration Institute's (AHRI) Low-GWP Alternative Refrigerants Evaluation Program, manufacturers specifically chose HFC–32 amongst others to test in scroll chillers [17] but not in screw chillers.[18] EPA understands that the decision to investigate this refrigerant in scroll chillers was made because it has the higher volumetric capacity that is needed for this type of compressor. This thermodynamic property is important to achieve the cooling capacity needed without increasing equipment sizes, which could lead to weights exceeding code requirements, for instance, when a chiller on top of an existing building is replaced with a new one. In contrast, for other types of compressors, such as centrifugal, reciprocating, and screw, the higher volumetric capacity is not required; lower-GWP refrigerants, such as HCFO–1233zd(E), R–450A, and R–513A, with GWPs ranging from less than one to 630, are available and meet technical needs for those compressor types.

HFC–32's and the four refrigerant blends' GWPs, ranging from about 150 to 700, are higher than those of some of the acceptable substitutes for new industrial process AC, including carbon dioxide (CO_2), HFO–1336mzz(Z) and R–515B with GWPs of 1, 9 and 287 respectively. Their GWPs are lower than some of the acceptable substitutes for new industrial process AC, such as HFC–134a, R–410A, and R–507A with GWPs of 1,430, 2,090 and 3,990 respectively. HFO–1234yf's GWP of one to four is comparable to or lower than that of other acceptable substitutes for new industrial process AC, such as CO_2, HFO–1336mzz(Z) and R–515B with GWPs of 1, 9 and 287, respectively.

Information regarding the toxicity of other available alternatives is provided in the listing decisions previously made (see *https://www.epa.gov/snap/substitutes-chillers*). Toxicity risks of use, determined by the likelihood of exceeding the exposure limit, of HFO–1234yf, HFC–32, and the four refrigerant blends in these end-uses are evaluated in the risk screens referenced above. The toxicity risks of using HFO–1234yf, HFC–32, and the four refrigerant blends in chillers and industrial process AC are comparable to or lower than toxicity risks of other available substitutes in the same end-uses. Toxicity risks of the

[15] The regulations at 40 CFR 82.15(g)(5)(iii) provide a limited exception to the prohibition on use in 82.15(g)(5)(i), for use of HCFC–123 as a refrigerant in equipment manufactured on or after January 1, 2020 but before January 1, 2021 if the conditions of 40 CFR 82.15(g)(5)(iii) are met.

[16] The regulations at 40 CFR 82.15(g)(2)(ii) provide limited exceptions to the prohibitions in 82.15(g)(2)(i), including for HCFC–22 ''for use as a refrigerant in appliances manufactured before January 1, 2012, provided that the components are manufactured prior to January 1, 2010, and are specified in a building permit or a contract dated before January 1, 2010, for use on a particular project.''

[17] For example, test report #46 (*https://ahrinet.org/App_Content/ahri/files/RESEARCH/AREP_Final_Reports/AHRI%20Low-GWP%20AREP-Rpt-046.pdf*).

[18] For example, test report #7 (*https://ahrinet.org/App_Content/ahri/files/RESEARCH/AREP_Final_Reports/AHRI%20Low-GWP%20AREP-Rpt-024.pdf*) and test report #25 (*https://ahrinet.org/App_Content/ahri/files/RESEARCH/AREP_Final_Reports/AHRI%20Low-GWP%20AREP-Rpt-025.pdf*).

proposed refrigerants can be minimized by use consistent with ASHRAE 15—which would be required by our proposed use conditions—and other industry standards, recommendations in the manufacturers' SDS, and other safety precautions common in the refrigeration and AC industry.

The flammability risk with HFO–1234yf, HFC–32, and the four refrigerant blends in these end-uses, determined by the likelihood of exceeding their respective lower flammability limits, are evaluated in the risk screens referenced above. In conclusion, while these refrigerants may pose greater flammability risk than other available substitutes in the same end-uses, this risk can be minimized by use consistent with ASHRAE 15—which would be required by our proposed use conditions—and other industry standards such as UL 60335–2–40—which is also required by our proposed use conditions—as well as recommendations in the manufacturers' SDS and other safety precautions common in the refrigeration and AC industry. EPA is proposing use conditions to reduce the potential risk associated with the flammability of these alternatives so that they will not pose significantly greater risk than other acceptable substitutes in this end-use.

4. Why is EPA proposing these specific use conditions?

The UL Standard 60335–2–40 discussed in section II.E indicates that refrigerant charges greater than a specific amount (called ''m_3'' in the UL Standard and based on the refrigerant's LFL) are beyond its scope and that national standards might apply, such as for instance ANSI/ASHRAE 15–2019. Hence, EPA is including adherence to both standards as use conditions for chillers, broadening the coverage under this proposed rule.

EPA is proposing that ANSI/ASHRAE Standard 15–2019, with all addenda published to date of this proposal, including addenda a, b, c, d, e, f, i, j, k, n, o, q, and r apply specifically to chillers. Where the requirements specified in this proposed rule (if finalized) and ASHRAE Standard 15 are different, the requirements of this proposed rule (if finalized) would apply. In cases where similar requirements of ASHRAE Standard 15 and UL Standard 60335–2–40 differ, EPA proposes that the more stringent or conservative condition would apply.

A summary of certain aspects of ASHRAE Standard 15 is provided here for information only. This is not meant to be a full explanation of the Standard or how it is applied. ASHRAE Standard 15 specifies requirements for refrigeration systems,[19] including chillers, based on the safety group classification of the refrigerant used, the type of occupancy in the location for which the system is used, and whether refrigerant-containing parts of the system enter the space or ductwork and so leakage in the space is deemed ''probable.'' ''High-Probability'' installations are those such that leaks or failures will result in refrigerant entering the occupied space. As explained above, HFO–1234yf, HFC–32 and the four refrigerant blends are all classified as A2L refrigerants. Occupancies are divided into six classifications: institutional, public assembly, residential, commercial, large mercantile, and industrial. Examples of these include jails, theaters, apartment buildings, office buildings, shopping malls, and chemical plants, respectively.

Sections 7.2 and 7.3 of ASHRAE Standard 15 determine the maximum amount of refrigerant allowed in the system, while section 7.4 provides an option to locate equipment outdoors or in a machinery room constructed and maintained under conditions specified in the standard. Section 7.6 of ASHRAE Standard 15 addresses the refrigerants in this proposal when used for human comfort in ''high-probability'' systems, including requirements for nameplates, labels, refrigerant detectors (under certain conditions), airflow initiation and other actions (if a rise in refrigerant concentration is detected), and other restrictions.

EPA recognizes that ASHRAE Standard 15 is undergoing revisions and is typically updated and republished every three years. While this proposed rule incorporates all addenda published by the date of this proposal, the 2022 version of the standard may incorporate additional changes. ASHRAE standards are open for public comment and participation following ANSI requirements.

5. What additional information is EPA including in these proposed listings?

EPA is providing additional information related to these proposed listings. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.E.2 below for further discussion on what additional information EPA is including in these proposed listings. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes.

6. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed listing decision above for use of HFC–32 and R–452B in scroll and rotary chillers. EPA is also requesting comment on the proposal to list HFO–1234yf, R–454A, R–454B, and R–454C acceptable in all chillers. We request comment on our initial evaluation and our proposal to find HFC–32 and R–452B acceptable, subject to use conditions, for use only in scroll and rotary chillers. EPA also seeks specific comments on the use conditions including the proposed requirements to comply with both the third edition of UL Standard 60335–2–40 and ASHRAE 15–2019 including published addenda. With respect to these standards, EPA is requesting comment on the risk mitigation offered by compliance with the current version of the standards proposed as use conditions, the nature of updates proposed for these standards, and the expected timeline for those updates. EPA is requesting comment on the applicability of UL Standard 60335–2–40, 3rd Edition to chillers, including which chillers and under which applications the standard applies, as well as on the applicability of ASHRAE Standard 15–2019 with the addenda published to date.

EPA recognizes that these standards are undergoing revision. Both UL and ASHRAE standards are open for public comment and participation following ANSI requirements. UL opened for comment a proposed 4th edition of this standard as an update to the 3rd Edition to which comments were due March 1, 2022. If the final 4th edition is published before EPA takes final action on today's proposed listings that would incorporate the 3rd edition by reference, EPA may incorporate the 4th Edition by reference into those listings in lieu of the 3rd Edition. Similarly, ASHRAE has opened for comment a 2022 version of ANSI/ASHRAE 15. If the final 2022 edition of ASHRAE 15 is published before EPA takes final action on today's proposed listings that would incorporate the 2019 edition by reference, EPA may incorporate the 2022 edition by reference into those listings in lieu of the 2019 edition. If either revised standard becomes final before EPA takes final action on these

[19] We note that while the ASHRAE 15–2019 purpose indicates ''refrigeration systems,'' EPA believes this includes applications that are typically called ''air conditioning.''

listings, EPA anticipates reopening or extending the public comment period to provide an opportunity for public comment on incorporating the final 4th edition of UL 60335–2–40 or the final 2022 edition of ASHRAE 15 by reference into those listings.

B. Residential Dehumidifiers—Proposed Listing of HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C as Acceptable, Subject to Use Conditions, for Use in New Residential Dehumidifiers End-Use

EPA previously listed HFO–1234yf as acceptable subject to use conditions in motor vehicle AC in light-duty vehicles (74 FR 53445; October 19, 2009), in heavy-duty pickup trucks and complete heavy-duty vans (81 FR 86778; December 1, 2016) and in nonroad vehicles and service fittings for small refrigerant cans (87 FR 26276; May 4, 2022). EPA previously listed HFC–32 as acceptable subject to use conditions as a substitute in residential and light commercial AC and HPs (80 FR 19454; April 10, 2015 and 86 FR 24444, May 6, 2021) and previously listed R–452B, R–454A, R–454B, and R–454C (hereafter called ''the four refrigerant blends'') as acceptable subject to use conditions as substitutes in residential and light commercial AC and HPs (86 FR 24444; May 6, 2021).

Several use conditions proposed for residential dehumidifiers are common to those proposed for other end-uses in section II.A, above, and II.C and II.D, below. Because of this similarity, EPA discusses the use conditions that would apply to all four end-uses in section II.E. For residential dehumidifiers, those are the only use conditions EPA is proposing. In summary the use conditions proposed are:

(1) New equipment only—These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant, *i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment.

(2) UL Standard—These refrigerants may be used only in residential dehumidifiers that meet all requirements listed in the 3rd edition, dated November 1, 2019, of Underwriters Laboratories (UL) Standard 60335–2–40, ''Household and Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers'' (UL Standard). If this rule is finalized as proposed, in cases where the final rule would include requirements different from those of the 3rd edition of UL Standard 60335–2–40, EPA is proposing that the appliance would need to meet the requirements of the final rule in place of the requirements in the UL Standard. See section II.E below for further discussion on the requirements of this standard that EPA is proposing to incorporate by reference.

(3) Warning labels—Several warning labels are proposed as use conditions as detailed in section II.E below. These labels are similar or verbatim in language to those required by the UL Standard. The warning labels must be provided in letters no less than 6.4 mm (¼ inch) high and must be permanent.

(4) Markings—Equipment must have distinguishing red (PMS #185 or RAL 3020) color-coded hoses and piping to indicate use of a flammable refrigerant. The residential dehumidifier shall have marked service ports, pipes, hoses and other devices through which the refrigerant is serviced. Markings shall extend at least 1 inch (25mm) from the servicing port and shall be replaced if removed.

The regulatory text of the proposed decisions appears in tables at the end of this document. If finalized as proposed, this text would be codified in appendix X of 40 CFR part 82, subpart G. The proposed regulatory text contains listing decisions for the end-use discussed above. EPA notes that there may be other legal obligations pertaining to the manufacture, use, handling, and disposal of the proposed refrigerants that are not included in the information listed in the tables (*e.g.,* the CAA section 608(c)(2) prohibition on knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration, or Department of Transportation requirements for transport of flammable gases). Flammable refrigerants being recovered or otherwise disposed of from residential dehumidifiers are likely to be hazardous waste under RCRA (see 40 CFR parts 260–270).

1. Background on Residential Dehumidifiers

Residential dehumidifiers are primarily used to remove water vapor from ambient air or directly from indoor air for comfort or material preservation purposes in the context of the home.[20] While AC systems often combine cooling and dehumidification, this end-use only serves the latter purpose and is often used in homes for comfort purposes. This equipment is self-contained and circulates air from a room, passes it through a cooling coil, and collects condensed water for disposal. Residential dehumidifiers fall under the scope of the UL 60335–2–40 standard ''Household and Similar Electrical Appliances—Safety—Part 2–40: Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers.''

Some dehumidifiers for residential or light commercial use are integrated with the space air conditioning equipment, for instance via a separate bypass in the duct through which air is dehumidified, a dehumidifying heat pipe across the indoor coil, or other types of energy recovery devices that move sensible and/or latent heat between air streams (*e.g.,* between incoming air and air vented to the outside). EPA classifies this application as a component of a residential or light commercial AC system or HP. As such, EPA has already listed HFC–32 as acceptable for such uses, subject to the use conditions specified in SNAP Rule 23 (86 FR 24444; May 6, 2021).

Today's proposal, if finalized, would find HFO–1234yf, HFC–32, and the four refrigerant blends acceptable, subject to use conditions, in self-contained residential dehumidifiers. Note that dehumidifiers for residential or light commercial use that are integrated with air conditioning equipment (*i.e.,* not self-contained), are not addressed in this listing because EPA classifies that type of equipment as residential or light commercial AC and HP.

2. What are the ASHRAE classifications for refrigerant flammability?

HFO–1234yf and HFC–32 are lower flammability refrigerants, and the four refrigerant blends are lower flammability refrigerant blends, all with an ASHRAE safety classification of A2L. See section II.A.2 above for further discussion on ASHRAE classifications.

3. What are HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C and how do they compare to other refrigerants in the same end-use?

See section II.A.3 above for further discussion on the environmental, flammability, toxicity, and exposure information for these refrigerants.

Redacted submissions and supporting documentation for HFO–1234yf, HFC–32 and the four refrigerant blends are provided in the docket for this proposed rule (EPA–HQ–OAR–2021–0836) at

[20] SNAP regulations (see 40 CFR 82.172) define residential use as use by a private individual of a chemical substance or any product containing the chemical substance in or around a permanent or temporary household, during recreation, or for any personal use or enjoyment. Use within a household for commercial or medical applications is not included in this definition, nor is use in automobiles, watercraft, or aircraft.

https://www.regulations.gov. EPA performed an assessment to examine the health and environmental risks of each of these substitutes. These assessments are available in the docket for this proposed rule.[21] [22] [23] [24] [25] [26]

Comparison to other substitutes in this end-use: HFO–1234yf, HFC–32 and the four refrigerant blends all have an ODP of zero, comparable to or lower than some of the acceptable substitutes in new residential dehumidifiers, such as HFC–134a, R–410A, and R–513A, with ODPs of zero. HCFC–22 and R–406A (a blend of HCFC–22 and HCFC–142b) have ODPs of 0.055 and 0.057, respectively, and are listed as acceptable in new residential dehumidifiers. However, HCFC–22 and HCFC–142b are controlled substances under Title VI of the CAA and (unless used, recovered, and recycled) may not be used as a refrigerant in equipment manufactured on or after January 1, 2010, under 40 CFR 82.15(g)(2)(i).[27] Under 40 CFR 82.16, EPA has not issued any production and consumption allowances for HCFC–22 and HCFC–142b (which is a component of R–406A, along with HCFC–22) since 2019.

HFO–1234yf, R–454A, R–454B, and R–454C have GWPs ranging up to about 470, lower than all the acceptable substitutes for new residential dehumidifiers, including R–513A and R–410A with GWPs of 630 and 2,090, respectively. HFC–32 and R–452B have GWPs of 675 and 700, respectively, which are lower than some of the other acceptable substitutes for new residential dehumidifiers, such as HFC–134a, R–410A, and R–507A with GWPs of 1,430, 2,090 and 3,990 respectively, but higher than R–513A, with a GWP of about 630.

[21] ICF, 2022g. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: HFC–32.

[22] ICF, 2022h. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: R–452B.

[23] ICF, 2022i. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: R–454A.

[24] ICF, 2022j. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: R–454B.

[25] ICF, 2022k. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: R–454C.

[26] ICF, 2022l. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: HFO–1234yf.

[27] The regulations at 40 CFR 82.15(g)(2)(ii) provide limited exceptions to the prohibitions in 82.15(g)(2)(i), including for HCFC–22 ''for use as a refrigerant in appliances manufactured before January 1, 2012, provided that the components are manufactured prior to January 1, 2010, and are specified in a building permit or a contract dated before January 1, 2010, for use on a particular project.''

Information regarding the toxicity of other available alternatives is provided in the previous listing decisions for new residential dehumidifiers (*https://www.epa.gov/snap/substitutes-residential-dehumidifiers*). Toxicity risks of use, determined by the likelihood of exceeding the exposure limit, of HFO–1234yf, HFC–32, and the four refrigerant blends in these end-uses are evaluated in the risk screens referenced above. The toxicity risks of using HFO–1234yf, HFC–32, and the four refrigerant blends in new residential dehumidifiers are comparable to or lower than toxicity risks of other available substitutes in the same end-use. Toxicity risks of the proposed refrigerants can be mitigated by use consistent with ASHRAE 15 and other industry standards, recommendations in the manufacturers' SDS, and other safety precautions common in the refrigeration and AC industry.

The flammability risk with HFO–1234yf, HFC–32, and the four refrigerant blends in the new residential dehumidifiers end-use, determined by the likelihood of exceeding their respective lower flammability limits, are evaluated in the risk screens referenced in this section above. While these refrigerants may pose greater flammability risk than other available substitutes in the new residential dehumidifiers end-use, this risk can be mitigated by use consistent with ASHRAE 15 and UL 60335–2–40, required by our proposed use conditions, as well as recommendations in the manufacturers' SDS and other safety precautions common in the refrigeration and AC industry. EPA is proposing use conditions to reduce the potential risk associated with the flammability of these alternatives so that they will not pose significantly greater risk than other acceptable substitutes in the new residential dehumidifiers end-use.

4. Why is EPA proposing these specific use conditions?

EPA is proposing to list HFO–1234yf, HFC–32 and the four refrigerant blends as acceptable, subject to use conditions, for use in residential dehumidifiers for new equipment. The use conditions identified in the listing above are explained below in section II.E.1 in greater detail.

5. What additional information is EPA including in these proposed listings?

EPA is providing additional information related to these proposed listings. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.E.2 below for further discussion on what additional information EPA is including in these proposed listings. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes.

6. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed listing decision in section II.B above, proposing to find HFO–1234yf, HFC–32, and the four refrigerant blends acceptable, subject to use conditions, in new residential dehumidifiers. EPA seeks comment on the risk mitigation offered by the use conditions proposed, including requiring compliance with the third edition of UL Standard 60335–2–40, except to the extent the proposed rule conflicts with the UL Standard, in which case we propose that the conditions specified in the proposed rule would apply if finalized. We also request comment on whether EPA should consider other use conditions to further mitigate potential risk from refrigerants. EPA requests comment on whether residential dehumidifiers have been designed for the refrigerants proposed and any information on the safety of such equipment in other countries, and if and how such experience would translate to safe use in the United States. EPA also requests comment on our description of different types of dehumidifiers and how EPA classifies different types in different end-uses.

C. Non-Residential Dehumidifiers—Proposed Listing of HFC–32 as Acceptable, Subject to Use Conditions, for Use in New Non-Residential Dehumidifiers End-Use

EPA is proposing to list HFC–32 as acceptable, subject to use conditions for use in new non-residential dehumidifiers. EPA previously listed HFC–32 as acceptable subject to use conditions as a substitute in residential and light commercial AC and HPs (80 FR 19454; April 10, 2015 and 86 FR 24444, May 6, 2021).

The use conditions proposed for non-residential dehumidifiers are the same as those proposed for residential dehumidifiers. The use conditions are common to those proposed for other end-uses in section II.A and II.B, above, and II.D, below. Because of this similarity, EPA discusses the use

conditions that would apply to all four end-uses in section II.DE. In summary, the use conditions proposed are:

(1) New equipment only—These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant, *i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment.

(2) UL Standard—These refrigerants may be used only in non-residential dehumidifiers that meet all requirements for dehumidifiers listed in the 3rd edition, dated November 1, 2019, of Underwriters Laboratories (UL) Standard 60335–2–40, ''Household and Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers'' (UL Standard). If this rule is finalized as proposed, in cases where the final rule would include requirements different from those of the 3rd edition of UL Standard 60335–2–40, EPA is proposing that the appliance would need to meet the requirements of the final rule in place of the requirements in the UL Standard. See section II.E below for further discussion on the requirements of this standard that EPA is proposing to incorporate by reference.

(3) Warning labels—Several warning labels are proposed as use conditions as detailed in section II.E below. These labels are similar or verbatim in language to those required by the UL Standard. The warning labels must be provided in letters no less than 6.4 mm (¼ inch) high and must be permanent.

(4) Markings—Equipment must have distinguishing red (PMS #185 or RAL 3020) color-coded hoses and piping to indicate use of a flammable refrigerant. The non-residential dehumidifier shall have marked service ports, pipes, hoses and other devices through which the refrigerant is serviced. Markings shall extend at least 1 inch (25mm) from the servicing port and shall be replaced if removed.

The regulatory text of the proposed decisions appears in tables at the end of this document. If finalized as proposed, this text would be codified in appendix X of 40 CFR part 82, subpart G. The proposed regulatory text contains listing decisions for the end-use discussed above. EPA notes that there may be other legal obligations pertaining to the manufacture, use, handling, and disposal of the proposed refrigerants that are not included in the information listed in the tables (*e.g.,* the CAA section 608(c)(2) prohibition on knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration, or Department of Transportation requirements for transport of flammable gases). Flammable refrigerants being recovered or otherwise disposed of from non-residential dehumidifiers are likely to be hazardous waste under RCRA (see 40 CFR parts 260–270).

1. Background on Non-Residential Dehumidifiers

Today's proposal would create a new SNAP end-use for non-residential dehumidifiers. As described in section II.B.1 above, while AC systems often combine cooling and dehumidification, the non-residential dehumidifier end-use serves only the latter purpose. This equipment is self-contained and circulates air from a room, passes it through a cooling coil, and collects condensed water for disposal. Non-residential dehumidifiers are similar in function to residential dehumidifiers described in section II.B.1 above, but are used in spaces not covered by residential use (see definition provided in section II.B.1 above). These types of non-residential spaces include commercial, industrial, or agricultural spaces (*e.g.,* grow-rooms for plants) to provide finely controlled environments with temperature and humidity monitored carefully to ensure optimal conditions (*e.g.,* plant growth). Examples of non-residential settings where self-contained dehumidifiers are used include food production and preparation where excessive humidity could damage the product or to manage humidity in greenhouses to protect crops. This type of equipment falls under the scope of the UL 60335–2–40 standard ''Household and Similar Electrical Appliances—Safety—Part 2–40: Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers.''

2. What are the ASHRAE classifications for refrigerant flammability?

HFC–32 is a lower flammability refrigerant with an ASHRAE safety classification of A2L. See section II.A.2 above for further discussion on ASHRAE classifications.

3. What is HFC–32 and how does it compare to other refrigerants in the same end-use?

See section II.A.3 above for further discussion on the environmental, flammability, toxicity and exposure information for HFC–32.

The redacted submission and supporting documentation for HFC–32 is provided in the docket for this proposed rule (EPA–HQ–OAR–2021–0836) at *https://www.regulations.gov.* EPA performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in the docket for this proposed rule.[28]

Because EPA is proposing new non-residential self-contained dehumidifiers as a new end-use, there are no other listed substitutes to compare to HFC–32.

4. Why is EPA proposing these specific use conditions?

The use conditions identified in the listing above are explained below in section II.E.1 in greater detail.

5. What additional information is EPA including in these proposed listings?

EPA is providing additional information related to these proposed listings. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.E.2 below for further discussion on what additional information EPA is including in these proposed listings. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the **FURTHER INFORMATION** column in their use of these substitutes.

6. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed listing decision in section II.C above, proposing to find HFC–32 acceptable, subject to use conditions, in non-residential dehumidifiers. EPA seeks comment on the risk mitigation offered by the use conditions proposed, including requiring compliance with the third edition of UL Standard 60335–2–40, except to the extent the proposed rule conflicts with the UL Standard, in which case we propose that the conditions specified in the proposed rule would apply if finalized. We also request comment on whether other use conditions would offer needed risk mitigation for the flammable refrigerants proposed. EPA requests comment on whether non-residential dehumidifiers have been designed for the refrigerant proposed, HFC–32, any information on the safety of such equipment in other countries, and if and how such experience would translate to safe use in the United States. EPA also requests

[28] ICF, 2022m. Risk Screen on Substitutes in Non-residential Dehumidifiers (New Equipment); Substitute: HFC–32.

comment on our description of different types of dehumidifiers and how EPA classifies different types in different end-uses.

D. Residential and Light Commercial AC and Heat Pumps (HPs)—Proposed Revision of Use Conditions Provided in the Previous Listing of HFC–32 as Acceptable, Subject to Use Conditions, for Use in New Self-Contained Room ACs and HPs

EPA previously listed HFC–32 as acceptable, subject to use conditions, in new self-contained room ACs and HPs in SNAP Rule 19 (80 FR 19461; April 10, 2015). Today we are proposing to update those use conditions to be consistent with use conditions applied to other refrigerants with lower flammability as finalized in SNAP Rule 23 (86 FR 24444; May 6, 2021). The proposed use conditions would be required on all such equipment manufactured on or after the effective date of the final rule and would not apply to or affect equipment manufactured before the effective date of the final action and manufactured in compliance with the SNAP requirements applicable at the time of manufacture.

1. Background on Self-Contained Room ACs and HPs

EPA provided an overview of the residential and light commercial AC and HPs end-use, and the self-contained equipment category within that end-use, in SNAP Rule 19 (80 FR 19461; April 10, 2015) and the Notice of Proposed Rulemaking for SNAP Rule 23 (85 FR 35881–35882; June 12, 2020). We believe the descriptions there adequately describe the end-use category as it exists today.

2. What are the ASHRAE classifications for refrigerant flammability?

See section II.A.2 above for further discussion on ASHRAE classifications.

3. What is HFC–32 and how does it compare to other refrigerants in the same end-use?

See section II.A.3 above for further discussion on the environmental, flammability, toxicity and exposure information for HFC–32.

A redacted submission and supporting documentation for HFC–32 are provided in the docket for this proposed rule (EPA–HQ–OAR–2021–0836) at *https://www.regulations.gov.* EPA performed an assessment to examine the health and environmental risks of this substitute, available in the docket for this proposed rule.[29]

Comparison to other substitutes in this end-use: HFC–32 has an ODP of zero, the same as other acceptable substitutes in this end-use, such as R–290, HFC–134a, R–410A, and R–513A, with ODPs of zero.

HFC–32 has a GWP of 675, higher than some of the acceptable substitutes for residential and light commercial air conditioning and heat pumps, including ammonia absorption, R–290, and R–454B with GWPs of zero, three, and about 470, respectively. HFC–32's GWP is lower than some of the acceptable substitutes for residential and light commercial air conditioning and heat pumps, such as R–452B, HFC–134a, and R–410A, with GWPs of approximately 700, 1,430, and 2,090, respectively.

Information on the toxicity and flammability risk of HFC–32 in this end-use category was provided in SNAP Rule 19. In summary, EPA found the toxicity risks of HFC–32 to be comparable to or lower than other acceptable alternatives. Although we noted that the flammability risk of HFC–32 may be greater than that of other available, nonflammable substitutes in the same end-use, we found that those risks are not significant even under worst-case assumptions. These risks of HFC–32 are similar to the risks of other flammable refrigerants found acceptable for this end-use category in SNAP Rule 23 (*i.e.,* R–452B, R–454A, R–454B, R–454C, and R–457A). We noted there that this risk can be minimized by use consistent with industry standards such as UL 60335–2–40—which would be required by our proposed revision to the use conditions—and other industry standards, such as ASHRAE 15, as well as recommendations in the manufacturers' SDS and other safety precautions common in the refrigeration and air conditioning industry. The updates to the use conditions proposed maintain the low potential risk associated with the flammability of this alternative so that it will not pose significantly greater risk than other acceptable substitutes in this end-use category.

4. What use conditions currently apply to this refrigerant in this end-use category?

EPA previously found HFC–32 acceptable, subject to use conditions, in new residential and light commercial AC for self-contained room AC units, including packaged terminal air conditioner (PTAC) units, packaged terminal heat pumps (PTHPs), window AC and HP units, and portable AC units, designed for use in a single room in SNAP Rule 19 (80 FR 19454; April 10, 2015). Those requirements are codified in appendix R of 40 CFR part 82, subpart G. EPA provided information on the environmental and health properties of HFC–32 and the various substitutes available at that time for use in this end-use. Additionally, EPA's risk screen for this refrigerant is available in the docket for this previous rulemaking (EPA–HQ–OAR–2013–0748).

HFC–32 has an ASHRAE classification of A2L, indicating that it has low toxicity and lower flammability. The flammability risks are of potential concern because residential ACs and HPs traditionally used refrigerants that are not flammable. In the presence of an ignition source (*e.g.,* static electricity, a spark resulting from a closing door, or a cigarette), an explosion or a fire could occur if the concentration of HFC–32 were to exceed the LFL of 144,000 ppm by volume.

To address flammability, EPA listed HFC–32 as acceptable, subject to use conditions, in new self-contained room AC units. The current use conditions address safe use of this flammable refrigerant and include incorporation by reference of Supplement SA to the 8th edition (August 2, 2012) of UL Standard 484, refrigerant charge size limits based on cooling capacity and type of equipment, and requirements for markings and warning labels on equipment using the refrigerant to inform consumers and technicians of potential flammability hazards. Without appropriate use conditions, the flammability risk posed by this refrigerant could be higher than non-flammable refrigerants because individuals may not be aware that their actions could potentially cause a fire, and because the refrigerant could be used in existing equipment that has not been designed specifically to minimize flammability risks. Our assessment and listing decisions in SNAP Rule 19 (80 FR 19454; April 10, 2015) found that with the use conditions, the overall risk of this substitute, including the risk due to flammability, does not present significantly greater risk in the end-use than other substitutes that are currently or potentially available for that same end-use.

5. What updates to the use conditions is EPA proposing?

EPA is proposing to update the use conditions that apply to HFC–32 in new self-contained room ACs and HPs for

[29] ICF, 2022n. Risk Screen on Substitutes in Residential and Light Commercial Air Conditioning and Heat Pumps (New Equipment) Substitute: HFC–32 (Difluoromethane).

equipment manufactured after the effective date of a final rule based on this proposal. Several of the updated use conditions proposed for self-contained room ACs and HPs are common to those proposed for other end-uses in sections II.A, II.B, and II.C above. Because of this similarity, EPA discusses the use conditions that would apply to all four end-uses in section II.E. For HFC–32 in self-contained room ACs and HPs, these are the only use conditions EPA is proposing. In summary, with the updates proposed, the use conditions proposed are the following:

(1) New equipment only—This refrigerant may only be used in new equipment designed specifically and clearly identified for the refrigerant, *i.e.,* this substitute may not be used as a conversion or ''retrofit'' refrigerant for existing equipment. This use condition is the same as what currently exists for HFC–32 in this end-use category.

(2) UL Standard—This refrigerant (*i.e.,* in this case, HFC–32) may be used only in equipment (*i.e.,* in this case, self-contained room ACs and HPs) that meet all requirements listed in the 3rd edition, dated November 1, 2019, of Underwriters Laboratories (UL) Standard 60335–2–40, ''Household and Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers'' (UL Standard). If this rule is finalized as proposed, in cases where the final rule would include requirements different than those of the 3rd edition of UL Standard 60335–2–40, EPA is proposing that the appliance would need to meet the requirements of the final rule in place of the requirements in the UL Standard. See section II.E below for further discussion on the requirements of this standard that EPA is proposing to incorporate by reference. This change in the use condition updates the standard to which the equipment must comply from Supplement SA to the 8th edition, dated August 2, 2012, of UL Standard 484, ''Room Air Conditioners'' to the 3rd edition of UL 60335–2–40.

(3) Warning labels—Several warning labels are proposed as use conditions as detailed in section II.E below. These labels are similar or verbatim in language to those required by the UL Standard. The warning labels must be provided in letters no less than 6.4 mm (¼ inch) high and must be permanent. While the font size is the same as in the use conditions that currently apply, several revisions to the labels and the language in them have changed and are based on the updated UL Standard, the 3rd edition of UL 60335–2–40.

(4) Markings—Equipment must have distinguishing red (PMS #185 or RAL 3020) color-coded hoses and piping to indicate use of a flammable refrigerant. The equipment shall have marked service ports, pipes, hoses and other devices through which the refrigerant is serviced. Markings shall extend at least 1 inch (25mm) from the servicing port and shall be replaced if removed. This use condition is the same as what currently exists for HFC–32 in this end-use category.

The regulatory text of the proposed decisions appears in tables at the end of this document. If finalized as proposed, this text would be codified by amending appendix R. The amendment would be to indicate that the use conditions finalized apply to HFC–32 self-contained room AC units manufactured on or after the effective date of such a final rule (which we anticipate would be 30 days after publication in the **Federal Register**). Equipment manufactured before the effective date of the final rule would not be affected by this action and would hence be subject to the use conditions included in appendix R at the time they were manufactured. The proposed revisions to the current regulatory text update the use conditions as they apply to the previous listing decision for HFC–32 in self-contained room ACs and HPs. EPA notes that there may be other legal obligations pertaining to the manufacture, use, handling, and disposal of the proposed refrigerants that are not included in the information listed in the tables (*e.g.,* the CAA section 608(c)(2) prohibition on knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration, or Department of Transportation requirements for transport of flammable gases). Flammable refrigerants being recovered or otherwise disposed of from residential and light AC appliances are likely to be hazardous waste under RCRA (see 40 CFR parts 260–270).

6. How do the proposed use conditions differ from the existing ones and why is EPA proposing to change the use conditions?

The updated use conditions EPA is proposing are similar to the ones that exist today in appendix R of 40 CFR part 82, subpart G for HFC–32 in this end-use category. The proposed requirements that HFC–32 must be used in new equipment only and must include red markings at service ports are repeated in this proposed listing. Existing room ACs using HFC–32 manufactured before the effective date of a final rule to this proposal would not be affected by these updated use conditions.

Warning labels are required under EPA's current regulations, and EPA is proposing to continue to require them, although with some specific language changes. The warning labels EPA is proposing are identical to those required as use conditions for the use of HFC–32 in residential and light commercial AC and HPs (excluding self-contained room ACs and HPs) and for R–452B, R–454A, R–454B, R–454C, and R–457A in residential and light commercial AC and HPs (including self-contained room ACs and HPs). EPA finds that using a common set of labels, similar to those from UL Standard 60335–2–40, will aid in compliance especially for a manufacturer that uses more than one of these refrigerants or produces both self-contained room ACs and HPs and other types of residential and light commercial AC and HPs. The updated labels EPA is proposing use the opening word ''WARNING'' in lieu of ''DANGER'' or ''CAUTION'' and change ''Risk of Fire or Explosion'' to just ''Risk of Fire.'' EPA is proposing that the labels must be provided in letters no less than 6.4 millimeter (¼ inch) high and must be permanent, which is identical to the current requirement for HFC–32 in self-contained room ACs and HPs.

EPA is proposing to update the standard incorporated by reference in the use conditions, replacing the requirement to follow certain sections of the 2012 version of UL 484 with the proposed requirement to adhere to the 3rd edition of UL Standard 60335–2–40. UL Standard 60335–2–40 was developed in an open and consensus-based approach, with the assistance of experts in the refrigeration and AC industry as well as experts involved in assessing the safety of products. The revision cycle for the 3rd edition, including final recirculation, concluded with its publication on November 1, 2019. The 2019 UL Standard replaces the previously published version of several standards, including UL Standard 484, which had already been revised into a ninth edition by that time. EPA was aware of the continuing progress of UL Standards to address flammable refrigerants more appropriately. In the 2021 SNAP Rule (SNAP Rule 23) listing HFC–32 for other categories within the residential and light commercial AC and HPs end-use, we stated, ''EPA understands that the standard we relied on in [SNAP] Rule 19 might 'sunset' in the future.

Therefore, we will continue to evaluate the market for the equipment addressed in that rule, including HFC–32 in self-contained room ACs, and whether to establish new or revised use conditions that reference UL 60335–2–40'' (86 FR 24463; May 6, 2021). Today, we are proposing such a change knowing that UL is replacing the standard to which such equipment is certified from UL 484 to the newer UL 60335–2–40 standard.

Updating the UL Standard incorporated as a use condition will provide more consistency amongst the products within this end-use and between HFC–32 and the five A2L refrigerants listed as acceptable, subject to use conditions, for this end-use including self-contained room ACs and HPs in SNAP Rule 23. This change will allow the industry to focus on the existing standard. The change will be helpful in implementing any transitions needed or planned for manufacturers, installers, and technicians. A manufacturer, who may offer different products within this end-use with different refrigerants, could use similar processes, such as in developing and applying the warning labels required. Installers and technician, likewise, would not need to reference different standards depending on the type of equipment and the particular A2L refrigerant being used in that equipment, when putting in a new piece of equipment or servicing that equipment.

Another revision to the use conditions is charge sizes. In the 2019 SNAP Rule, charge sizes from both UL 484 (8th edition) and those stipulated by tables within the rule needed to be followed. Rather than requiring examination of both items and determining which charge size was lower, the proposed updated use conditions would rely on a single document, the 3rd edition of UL Standard 60335–2–40.

7. What is the acceptability status of HFC–32 in self-contained room ACs and HPs?

If finalized as proposed, the use conditions in this action would apply to new self-contained room ACs and HPs using HFC–32 manufactured on or after the effective date of the final rule (which we anticipate would be 30 days after publication in the **Federal Register**). The final rule would not apply to or affect equipment manufactured before the effective date of this action and manufactured in compliance with the SNAP requirements applicable at the time of manufacture as stipulated in SNAP Rule 19 and appendix R of 40 CFR part 82, subpart G at that time. EPA views equipment to be manufactured at the date upon which the appliance's refrigerant circuit is complete, the appliance can function, the appliance holds a full refrigerant charge, and the appliance is ready for use for its intended purposes. For self-contained room ACs and HPs, this occurs at the factory. If this rule is finalized as proposed, products manufactured between May 11, 2015, and the effective date of the final rule would be required to meet the use conditions in SNAP Rule 19 (which took effect May 11, 2015) and as listed in appendix R of 40 CFR part 82, subpart G. Such products would be permitted to be warehoused and sold through normal channels, even if they are sold or installed after the effective date of the final rule based on this proposed rule. Self-contained room ACs and HPs using HFC–32 manufactured on or after the effective date of the final rule based on this proposed rule would be required to meet the use conditions so finalized and listed in the revisions to appendix R.

8. What additional information is EPA including in these proposed listings?

EPA is providing additional information related to these proposed listings. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.E.2 below for further discussion on what additional information EPA is including in these proposed listings. EPA notes that the additional information is similar to, but not identical with, the addition information in the listing for HFC–32 in self-contained room ACs and HPs in SNAP Rule 19. EPA is proposing additional information consistent with that included in the other proposed listings for air conditioning equipment in this rule and consistent with that included in the listings for four A2L refrigerant blends listed as acceptable subject to use conditions in self-contained room ACs and HPs in SNAP Rule 23. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the **FURTHER INFORMATION** column in their use of these substitutes.

9. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed updates to the use conditions as discussed in section II.D above. EPA requests comments on the proposed change in use conditions and if and how such change would affect the safety of self-contained room ACs and HPs using HFC–32.

E. Use Conditions and Further Information for Chillers, Residential Dehumidifiers, Non-Residential Dehumidifiers, and HFC–32 Self-Contained Room ACs and HPs

1. What use conditions is EPA proposing and why?

As described above, EPA is proposing to list:

- HFO–1234yf, R–454A, R–454B and R–454C as acceptable, subject to use conditions, for use in centrifugal and positive displacement chillers for new equipment in comfort cooling applications, including commercial AC and industrial process AC
- HFC–32 and R–452B as acceptable, subject to use conditions, for use in scroll and rotary chillers for new equipment in comfort cooling applications, including commercial AC and industrial process AC
- HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C as acceptable, subject to use conditions, for use in residential dehumidifiers for new equipment
- HFC–32 as acceptable, subject to use conditions, for use in non-residential dehumidifiers for new equipment

In addition, EPA is proposing to update the use conditions that apply to the previous listing of:

- HFC–32 as acceptable, subject to use conditions, for use in self-contained room ACs and HPs for new equipment.

These use conditions are summarized in the listings under subheadings II.A, II.B, and II.C, and the revisions to the use conditions are summarized under subheading II.D, above, and are explained here in greater detail. The use conditions EPA proposes (either as new listings or revisions to a previous listing) include conditions requiring use of each refrigerant in new equipment, which can be specifically designed for the refrigerant; use consistent with the UL 60335–2–40 industry standard, 3rd Edition, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and requirements for warning labels and markings on equipment to inform consumers and technicians of potential flammability hazards. The listings with specific use conditions are intended to allow for the use of these lower flammability refrigerants in a manner that will ensure they do not pose a greater overall risk to human health and the environment than other substitutes in these end-uses.

New Equipment Only; Not Intended for Use as a Retrofit Alternative

EPA is proposing that these refrigerants may be used only in new equipment which has been designed to address concerns unique to flammable refrigerants—*i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment. EPA is unaware of information on how to address hazards if these flammable refrigerants were to be used in equipment that was designed for non-flammable refrigerants. Given the flammable nature of these refrigerants, the fact that EPA is unaware of information to assess the risk if such retrofits were allowed, and because the refrigerants were not submitted to the SNAP program for retrofits, EPA has not reviewed them for retrofit applications for this proposal and is only proposing that they may be used in new equipment which can be properly designed for their use. This proposed use condition would not affect the ability to service a system using one of these refrigerants once installed, including the adding of refrigerant or replacing components.

Standards

EPA is proposing that the flammable refrigerants may be used only in equipment that meets all requirements in UL Standard 60335–2–40, 3rd Edition.

Those participating in the UL 60335–2–40 consensus standards process (hereafter ''UL'') have tested equipment for flammability risk and evaluated the relevant scientific studies. Further, UL has developed safety standards including requirements for construction and system design, for markings, and for performance tests concerning refrigerant leakage, ignition of switching components, surface temperature of parts, and component strength after being scratched. Certain aspects of system construction and design, including charge size, ventilation, and installation space, and greater detail on markings, are discussed further below in this section. The UL 60335–2–40 Standard was developed in an open and consensus-based approach, with the assistance of experts in the AC industry as well as experts involved in assessing the safety of products. While similar standards exist from other bodies such as the International Electrotechnical Commission (IEC), we are proposing to rely on specific UL standards that are most applicable and recognized by the U.S. market. This approach is the same as that in our previous rules on flammable refrigerants (*e.g.,* 76 FR 78832; December 20, 2011 and 80 FR 19454; April 10, 2015 and 86 FR 24444; May 6, 2021).

A summary of the requirements of UL 60335–2–40 as they affect the refrigerants and end-use addressed in this section of our proposal follows. This summary is offered for information only and does not provide a complete review of the requirements in this standard.

Among the provisions in UL 60335–2–40 are limits on the amount of refrigerant allowed in each type of appliance based on several factors explained in that standard. The requirements in UL 60335–2–40 would reduce the risk to workers and consumers. Annex GG of the standard provides the charge limits, ventilation requirements and requirements for secondary circuits. The standard specifies requirements for installation space of an appliance (*i.e.,* room floor area) and/or ventilation or other requirements that are determined according to the refrigerant charge used in the appliance, the installation location and the type of ventilation of the location or of the appliance. Within Annex GG, Table GG.1 provides guidance on how to apply the requirements to allow for safe use of flammable refrigerants. UL 60335–2–40, 3rd Edition contains provisions for safety mitigation. These mitigation requirements were developed to ensure the safe use of flammable refrigerants over a range of appliances. In general, as larger charge sizes are used, more stringent mitigation requirements are required. In certain applications refrigerant detection systems (as described in Annex LL, *Refrigerant detection systems for A2L refrigerants*) and refrigerant sensors (as described in Annex MM, *Refrigerant sensor location confirmation tests*) such as safety alarms are required. Where air circulation (*i.e.,* fans) is required in accordance with Annex GG or Annex 101.DVG, it must be initiated by a separate refrigerant detection system either as part of the appliance or installed separately. In a room with no mechanical ventilation, Annex GG provides requirements for openings to rooms based on several factors, including the charge size and the room area. The minimum opening is intended to be sufficient so that natural ventilation would reduce the risk of using a flammable refrigerant. The standard also includes specific requirements covering construction, instruction manuals, allowable charge sizes, mechanical ventilation, safety alarms, and shut off valves for A2L refrigerants.

In addition to Annex GG and Table GG.1 mentioned above, UL 60335–2–40 has a requirement for the maximum charge for an appliance using an A2L refrigerant. Additional requirements exist for charge sizes exceeding three times the LFL.

Table GG.1 of the UL standard indicates that systems with refrigerant charges exceeding certain amounts are outside the scope of the standard, stating that ''National standards apply.'' Specifically, if the refrigeration circuit with the greatest mass of a flammable refrigerant is more than 260 times the lower flammability limit (in kg/m^3), such equipment is outside the scope. For example, HFC–32 has an LFL of approximately 0.307 kg/m^3 (0.0192 lb/ft^3); therefore, equipment with charge sizes of a single circuit exceeding 79.82 kg (176.0 lb) would fall outside the scope of the UL Standard. EPA expects that many chillers could exceed these charge thresholds and therefore is proposing that an additional safety standard would apply for all chillers, as discussed in section II.A above. EPA does not expect this situation to occur for residential dehumidifiers or self-contained room ACs and HPs because of their smaller charge sizes.

EPA recognizes that this standard is undergoing revision. UL opened for comment a proposed 4th edition of this standard as an update to the 3rd Edition to which comments were due March 1, 2022. UL standards are open for public comment and participation following ANSI requirements.

Warning Labels

As a use condition or revision to existing use conditions, EPA is proposing to require labeling of chillers, residential dehumidifiers, non-residential dehumidifiers, and HFC–32 self-contained room ACs and HPs (''equipment'') containing the proposed flammable refrigerants. EPA is proposing that the following markings, or the equivalent, must be provided in letters no less than 6.4 mm (¼ inch) high and must be permanent:

i. On the outside of the equipment: ''WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing''
ii. On the outside of the equipment: ''WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used''
iii. On the inside of the equipment near the compressor: ''WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service

This Product. All Safety Precautions Must Be Followed''

iv. For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: ''WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations''

1. If the equipment is delivered packaged, this label shall be applied on the packaging
2. If the equipment is not delivered packaged, this label shall be applied on the outside of the appliance

EPA expects that all residential dehumidifiers and non-residential dehumidifiers and all self-contained room ACs and HPs would be packaged, and hence this label would be placed as stipulated in item 1 above. EPA expects that chillers could be provided packaged or not, and this label would be placed as stipulated in item 1 or 2, respectively.

v. On the equipment near the nameplate:

1. At the top of the marking: ''Minimum installation height, X m (W ft)''. This marking is only required if the similar marking is required by the 3rd edition of UL 60335–2–40. The terms ''X'' and ''W'' shall be replaced by the numeric height as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the height in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis.
2. Immediately below v.1. above or at the top of the marking if v.1. is not required: ''Minimum room area (operating or storage), Y m^2 (Z ft^2)''. The terms ''Y'' and ''Z'' shall be replaced by the numeric area as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the area in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis.

vi. For non-fixed equipment, including residential dehumidifiers, non-residential dehumidifiers, and self-contained room ACs and HPs, on the outside of the product: ''WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition.'' EPA expects that this label would be required on residential dehumidifiers, non-residential dehumidifiers, and HFC–32 self-contained room ACs (*e.g.,* including portable ACs, window ACs, PTACs and PTHPs).

vii. For fixed equipment that is ducted, including chillers, near the nameplate: ''WARNING—Risk of Fire—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions.'' EPA expects that residential dehumidifiers, non-residential dehumidifiers, and self-contained ACs and HPs would not be ducted, but that chillers used for comfort cooling could be.

The text of the warning labels, above, is exactly the same as that required in UL 60335–2–40, with the exception of the label identified in v., which is similar to that in the UL Standard. The major difference between this proposed requirement and the requirements in Table 101.DVF.1 of UL 60335–2–40 is that the markings for A2L refrigerants, including HFO–1234yf, HFC–32 and the four refrigerant blends, are required to be no less than 3.2 mm (⅛ inch) high in the standard instead of 6.4 mm (¼ inch) as EPA is proposing in this action. EPA believes that it would be difficult to see warning labels with the minimum lettering height requirement for A2L refrigerants of ⅛ inch in the UL Standard. Therefore, as in the requirements in our previous flammable refrigerants rules (*e.g.,* 76 FR 78832; December 20, 2011 and 80 FR 19454; April 10, 2015 and 86 FR 24444; May 6, 2021), EPA is proposing that the minimum height for lettering must be ¼ inch as opposed to ⅛ inch, which will make it easier for technicians, consumers, retail storeowners, first responders, and those disposing the appliance to view the warning labels.

Markings

Our understanding of the UL Standard is that red markings, similar to those EPA has applied as use conditions in past actions for flammable refrigerants (76 FR 78832; December 20, 2011 and 80 FR 19454; April 10, 2015 and 86 FR 24444; May 6, 2021), are required by the UL Standard for A2 and A3 refrigerants but not A2L refrigerants. EPA is proposing that such markings apply to these A2L refrigerants as well to establish a common, familiar and standard means of identifying the use of a flammable refrigerant.

These red markings will help technicians immediately identify the use of a flammable refrigerant, thereby potentially reducing the risk of using sparking equipment or otherwise having an ignition source nearby. The AC and refrigeration industry currently uses red-colored hoses and piping as means for identifying the use of a flammable refrigerant based on previous SNAP listings. Likewise, distinguishing coloring has been used elsewhere to indicate an unusual and potentially dangerous situation, for example in the use of orange-insulated wires in hybrid electric vehicles. Currently in SNAP listings, color-coded hoses or pipes must be used for ethane, HFC–32, R–452B, R–454A, R–454B, R–454C, R–457A, isobutane, propane, and R–441A in certain types of equipment where these are listed acceptable, subject to use conditions. All such tubing must be colored red PMS #185 or RAL 3020 to match the red band displayed on the container of flammable refrigerants AHRI Guideline N, ''2017 Guideline for Assignment of Refrigerant Container Colors.'' The intent of this aspect of the proposal is to provide adequate notice for technicians and others that a flammable refrigerant is being used within a particular piece of equipment or appliance. Another goal is to provide adequate notification of the presence of flammable refrigerants for personnel disposing of appliances containing flammable refrigerants. As explained in a previous SNAP rule, one mechanism to distinguish hoses and pipes is to add a colored plastic sleeve or cap to the service tube. (80 FR 19465; April 10, 2015). Other methods, such as a red-colored tape could be used. The colored plastic sleeve, cap, or tape would have to be forcibly removed in order to access the service tube and would have to be replaced if removed. This would signal to the technician that the refrigeration circuit that she/he was about to access contained a flammable refrigerant, even if all warning labels were somehow removed. This sleeve, cap or tape would be of the same red color (PMS #185 or RAL 3020) and could also be boldly marked with a graphic to indicate the refrigerant was flammable. This could be a cost-effective alternative to painting or dyeing the hose or pipe.

EPA is proposing the use of color-coded hoses or piping as a way for technicians and others to recognize that a flammable refrigerant is used in the equipment. This would be in addition to the proposed use of warning labels discussed above. EPA believes having two such warning methods is reasonable and consistent with other general industry practices. This approach is the same as that adopted in our previous rules on flammable refrigerants (*e.g.,* 76 FR 78832; December 20, 2011 and 80 FR 19454; April 10, 2015 and 86 FR 24444; May 6, 2021).

2. What additional information is EPA including in these proposed listings?

For chillers, residential, dehumidifiers, non-residential dehumidifiers, and self-contained room ACs and HPs, EPA is including recommendations, found in the ''Further Information'' column of the regulatory text at the end of this document, to protect personnel from the risks of using flammable refrigerants. Similar to our previous listings of flammable refrigerants, EPA is including information on the OSHA requirements at 29 CFR part 1910, proper ventilation, personal protective equipment, fire extinguishers, use of spark-proof tools and equipment designed for flammable refrigerants, and training. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the **FURTHER INFORMATION** column in their use of these substitutes.

3. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed use conditions described above and the appropriateness for applying these use conditions to the listings for chillers, residential dehumidifiers, and non-residential dehumidifiers, and the revisions to the listing for self-contained room ACs and HPs described in sections II.A, II.B, II.C, and II.D, respectively.

EPA is requesting comment on the applicability of UL Standard 60335–2–40, 3rd Edition, to chillers, including for which chillers and under which applications the standard applies. We likewise are requesting comment on the applicability of the UL Standard to residential dehumidifiers, non-residential dehumidifiers, and self-contained room ACs and HPs.

With regard to UL Standard 60335–2–40, EPA is requesting comment on the status of the standard, the modifications that are being or have been incorporated in it, how those modifications would change the risk associated with the use of these flammable refrigerants in these end-uses, and the appropriateness of adopting as a use condition the current (3rd) edition of this standard.

EPA recognizes that this standard is undergoing revision. UL opened for comment a proposed 4th edition of this standard as an update to the 3rd Edition to which comments were due March 1, 2022. UL standards are open for public comment and participation following ANSI requirements. If the final 4th edition is published before EPA takes final action on today's proposed listings that would incorporate the 3rd edition by reference, EPA may incorporate the 4th Edition by reference into those listings in lieu of the 3rd Edition. In that situation, EPA anticipates reopening or extending the public comment period to provide an opportunity for public comment on incorporating the final 4th edition by reference into those listings.

EPA is also requesting comment on requiring labeling, the height of the lettering, and the likelihood of labels remaining on a product throughout the lifecycle of the product, including its disposal.

F. Very Low Temperature Refrigeration (VLTR)—Proposed Listing of R–1150 as Acceptable, Subject to Use Conditions and Narrowed Use Limits, for Use in VLTR End-Use

1. Background on VLTR

The very low temperature refrigeration end-use includes a wide range of equipment types. VLTR equipment is intended to maintain temperatures considerably lower than for refrigeration of food (below −62 °C or −80 °F). Examples of very low temperature refrigeration equipment include medical freezers and freeze-dryers, which generally require extremely reliable refrigeration cycles to maintain low temperatures and must meet stringent technical standards. In some cases, VLTR equipment may use a refrigeration system with two stages, each with its own refrigerant loop. This allows a greater range of temperatures and may reduce the overall refrigerant charge.

For this notice of proposed rulemaking, only equipment designed to reach temperatures lower than −80 °C (−112 °F) is addressed. See sections II.E.6 and II.E.7 below for a discussion of the narrowed use limits describing the reasoning for this temperature requirement. Examples of equipment covered by this proposed rule in the VLTR end-use include:

- *Freeze dryers.* This equipment typically includes a two-stage system, with a VLTR stage being addressed by this proposed rule and a warmer stage, usually classified as industrial process refrigeration, not addressed in this proposed rule. The primary application of this equipment is for freeze drying material in a laboratory setting.
- Cold traps required to operate below −80 °C or −112 °F. This equipment is used during laboratory evaporation to condense vapors to prevent them from entering and damaging the pump, or leaking into the environment, ensuring a closed system within the vacuum pump.
- Very low temperature freezers designed to reach temperatures below −80 °C or −112 °F.

Each of these types of laboratory equipment, including other VLTR equipment not mentioned that fit within the narrowed use limits proposed in section II.F.6, would be subject to the listing decision under this rule for R–1150 if this decision were to become final as proposed.

2. What is EPA's proposed listing decision for R–1150?

EPA is proposing to list R–1150 as acceptable, subject to use conditions and narrowed use limits, for use in VLTR equipment, including freeze-dryers, cold traps, and laboratory freezers. This proposed listing would apply to all types of VLTR equipment that meet the requirements of the UL Standard 61010–2–011, 2nd Edition, and for all applications of such equipment under EPA's proposed use conditions and narrowed use limits.

3. What is R–1150 and how does it compare with other refrigerants in the same end-use?

R–1150, also known as ethene or ethylene (CAS Reg. No. 75–85–1), is an unsaturated hydrocarbon (HC). It is a flammable refrigerant with the ASHRAE safety classification A3. You may find a copy of the applicants' submissions, with CBI redacted, providing the required health and environmental information for this substitute in this end-use in Docket EPA–HQ–OAR–2021–0836 at *www.regulations.gov* under the names ''Supporting Materials for Rule 25 Listing of R–1150 in Refrigeration and Air Conditioning. SNAP Submission Received December 3, 2018'' and ''Supporting Materials for Rule 25 Listing of R–1150 in Refrigeration and Air Conditioning. SNAP Submission Received January 21, 2021.'' EPA performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in Docket EPA–HQ–OAR–2021–0836: ''Risk Screen on Substitutes in Very Low Temperature Refrigeration (New Equipment). Substitute: R–1150.'' [30]

Environmental information: R–1150 has an ODP of zero and a GWP of four.

In addition to ODP and GWP, EPA evaluated potential impacts of R–1150

[30] ICF, 2022o. Risk Screen on Substitutes in Very Low Temperature Refrigeration (New Equipment); Substitute: R–1150.

and other HC refrigerants on local air quality. R–1150 is considered a VOC and not excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS. As described below, EPA estimates that potential emissions of HCs do not have a significant impact on local air quality. This includes R–1150 in VLTR, when used in the refrigeration and AC sector as substitute refrigerants in end-uses consistent with their listings under the SNAP program.[31]

In response to the increased market share of HCs, particularly in VLTR applications, EPA conducted additional analysis of various scenarios to consider the potential impacts on local air quality if HC refrigerants were used in further applications.[32] In particular, use of R–1150 in very low temperature freezers, including VLTR equipment with an industrial process refrigeration (IPR) stage using propylene, and R–1150 in retail food refrigeration systems [33] were investigated for ground-level ozone effects. The analysis first considers highly conservative modeling scenarios where a specific HC would be used widely across all end-uses in the refrigeration and AC sector. Scenario 1b** estimates propylene's emissions using EPA's Vintaging Model (VM) and Community Multi-stage Air Quality (CMAQ) model,[34] and Scenario 1b estimates R–1150's emissions using the same VM and CMAQ versions as in Scenario 1b.**

Additionally, the analysis also considers the more realistic scenarios (Scenario 2, Scenario 3a, and Scenario 3b) where HCs are modeled only in the end-uses where the SNAP program has already listed them as acceptable, or for which SNAP submissions or international market trends indicate HCs soon could be used. Scenario 2 examines the likely emissions of lower maximum incremental reactivity (MIR) HCs, propane, isobutane, and ethane, in the residential and light commercial AC, residential dehumidifiers, retail refrigeration, and household refrigeration end-uses. Scenarios 3a and 3b also consider the use of higher MIR refrigerants propylene and R–1150 in laboratory equipment (IPR and VLTR end-uses, respectively) and R–1150 in small retail food refrigeration equipment (*e.g.,* stand-alone units) in addition to the HCs used in Scenario 2. Scenarios 3a and 3b differentiate based on whether propylene and R–1150 would be subject to the prohibition under CAA sections 608(c)(1) and (2) against knowingly venting or otherwise knowingly releasing or disposing of any refrigerant substitute for class I or class II substances by any person maintaining, servicing, repairing, or disposing of appliances or IPR. For further information on the specific assumptions, see the docket for this rulemaking.[35]

In highly conservative Scenario 1b, examining widespread R–1150 adoption across the refrigeration and AC sector, modeling predicts that the single 8-hour average ground-level ozone concentration could increase by 11.7 percent in Los Angeles, which is the area with the highest level of ground-level ozone pollution in the United States. However, in the more realistic scenarios 3a and 3b, 8-hour ground-level ozone concentration in Los Angeles was found to increase by a maximum of 0.017 percent relative to the NAAQS on the worst modeled day. For purposes of this SNAP determination, this is not a significant increase in ground-level ozone. The modeling is also conservative by assuming a one-for-one substitution of HCs for current refrigerants because an actual transition would likely introduce less than one kg of HC for each kg replaced. As a result of this analysis, EPA believes that the use of R–1150 consistent with the use conditions and narrowed use limits proposed would not result in significantly greater risk to people's health or the environment than other alternatives available for the same use.

Ecosystem effects from R–1150 are expected to be small, as are the effects of other acceptable substitutes in this end-use. R–1150 is highly volatile and typically evaporates or partitions to air, rather than contaminating ground or surface waters, and thus R–1150's effects on aquatic life are expected to be small. Based on these considerations, R–1150 is not expected to pose a greater risk of ecosystem effects than other alternatives for these uses.

Flammability information: ASHRAE Standard 34 classifies R–1150 as a Class A3 refrigerant.[4] R–1150 is flammable when its concentration in the air is in the range of 2.7 percent to 36 percent by volume (27,000 ppm to 360,000 ppm).[4 30]

Toxicity and exposure data: Exposure to R–1150 may be hazardous if inhalation, skin contact, or eye contact with the proposed substitute occurs at sufficiently high levels. The most likely pathway of exposure is through inhalation, which can cause symptoms of asphyxiation. Exposures of R–1150 to the skin may cause frostbite. Exposures of R–1150 to the eyes could cause eye irritation. These potential health effects are common to many refrigerants.

The American Conference of Governmental Industrial Hygienists (ACGIH) has established a TLV of 200 ppm as an 8-hour TWA for R–1150. EPA anticipates that users will be able to meet the TLV and address potential health risks by following the use condition limiting charge sizes to 150 g and the requirements and recommendations in the manufacturer's SDS, ASHRAE Standard 15, UL Standard 61010–2–011, 2nd Edition, and other safety precautions common to the refrigeration and AC industry.[3 30]

Comparison to other substitutes in this end-use: R–1150 has an ODP of zero, comparable to or less than other listed substitutes in this end-use with ODPs ranging from zero to 0.098. For new VLTR equipment, R–1150's GWP of four is comparable to that of other acceptable substitutes such as ethane and CO_2, with respective GWPs of 5.5 and one, and lower than other acceptable substitutes such as R–410A, R–507A, and HFC–23 with respective GWPs of 1,890, 3,990, and 14,800.

R–1150 is a VOC that is more photochemically reactive and more likely to cause ground-level ozone pollution than acceptable refrigerants in this end-use. For example, R–1150 has a MIR of 9.07 g-O_3/g-substance, which is higher than propane's MIR of 0.56 g-O_3/g-substance or ethane's MIR of 0.28 g-O_3/g-substance.[36] EPA proposes to address this potential risk through a narrowed use limit, restricting use of this refrigerant to VLTR equipment designed to reach temperatures lower than −80 °C (−112 °F). See section

[31] ICF, 2014. Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. February, 2014.

[32] Ibid.

[33] EPA is aware that such refrigeration equipment exists in Europe. Thus, EPA evaluated R–1150 in retail food refrigeration—stand-alone units as well as in VLTR and other hydrocarbon refrigerants, to consider the greatest impact that reasonably could occur when using increasing amounts of such refrigerants.

[34] VM IO file_v5.1_10.01.19 and CMAQ 5.2.1 with carbon bond 06 (CB06) mechanism, as cited in ICF, 2022p. Additional Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. May, 2020.

[35] ICF, 2022p. Additional Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. May, 2020.

[36] In addition to being an acceptable refrigerant in very low temperature refrigeration, ethane's MIR is one threshold that EPA considers in deciding whether a compound makes a negligible contribution to tropospheric ozone formation and should be excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS.

II.F.6 below for a discussion of the proposed narrowed use limits.

Flammability risks of R–1150 are comparable to flammability risks of other available substitutes in the same end-use, such as ethane, while R–1150's flammability risks are higher than those of nonflammable refrigerants such as R–410A, CO_2, or HFC–23. Flammability risks can be addressed by following the proposed use conditions, such as use only in new equipment that is designed and tested to meet the UL Standard 61010–2–011. See section II.F.4 below for a discussion of the proposed use conditions.

Toxicity risks are comparable to or lower than toxicity risks of other available substitutes in the same end-use. Toxicity risks can be minimized by use consistent with the TLV issued by the ACGIH, ASHRAE Standard 15, UL standards, and other industry standards, recommendations in the manufacturer's SDS, and other safety precautions common in the refrigeration and AC industry.

Although R–1150 presents a higher risk to local air quality than other available alternatives for this end-use, other alternatives such as ethane, propane, and most HFOs or HFCs that are less photochemically reactive than R–1150 are not able to attain temperatures as low as R–1150 because of their higher boiling points. Thus, EPA is proposing to list this substitute as acceptable subject to use conditions and narrowed use limits in VLTR.

4. What use conditions is EPA proposing?

EPA proposes the following use conditions to address flammability risks of R–1150:

(1) New equipment only—R–1150 may be used only in new equipment designed specifically and clearly identified for the refrigerant, *i.e.,* the substitute shall not be used as a conversion or ''retrofit'' refrigerant for existing equipment.

(2) UL Standard—R–1150 may be used only in laboratory equipment that meet all requirements listed in the 2nd edition, dated May 13th, 2021, of UL Standard 61010–2–011, ''Safety Requirements for Electrical Equipment for Measurement, Control, and Laboratory Use—Part 011: Particular Requirements for Refrigerating Equipment'' (hereafter in this section, ''UL Standard''). If this rule is finalized as proposed, in cases where the final rule would include requirements different than those of the UL Standard, EPA is proposing that the equipment would need to meet the requirements of the final rule in place of the requirements in the UL Standard. Requirements of note include:

- Warning labels—The following markings, or the equivalent, must be provided in letters no less than 6.4 millimeter (¼ inch) high and must be permanent:

i. Attach near the machine compartment: ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.''

ii. Attach near the machine compartment: ''CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed.''

iii. Attach on the exterior of the refrigeration equipment: ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.''

iv. Attach near all exposed refrigerant tubing: ''CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used.''

v. Attach on the exterior of the refrigeration equipment: ''This equipment is intended for use in commercial, industrial, or institutional occupancies as defined in the Safety Standard for Refrigeration Systems, ANSI/ASHRAE 15''.

vi. Attach on the exterior of the shipping carton: ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations.''

vii. The instructions shall include the following warnings as necessary:

a. ''WARNING: Ensure all ventilation openings are not obstructed.''

b. ''WARNING: Do not use mechanical devices or other means to accelerate the defrosting process, other than those recommended by the manufacturer.''

c. ''WARNING: Do not damage the refrigerant circuit.''

- Markings—Equipment must have distinguishing red (PMS #185 or RAL 3020) color-coded hoses and piping to indicate use of a flammable refrigerant. The laboratory equipment shall have marked service ports, pipes, hoses and other devices through which the refrigerant is serviced. Markings shall extend at least 1 inch (25 millimeter) from the servicing port and shall be replaced if removed.

(3) Charge size—Equipment must use no more than 150 g of R–1150 in each refrigerant circuit using this refrigerant.

The regulatory text of the proposed decisions appears in tables at the end of this document. If finalized as proposed, this text would be codified in appendix X of 40 CFR part 82, subpart G. The proposed regulatory text contains listing decisions for the end-use discussed above. EPA notes that there may be other legal obligations pertaining to the manufacture, use, handling, and disposal of the proposed refrigerant that are not included in the information listed in the tables (*e.g.,* the CAA section 608(c)(2) prohibition on knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration, or Department of Transportation requirements for transport of flammable gases). Flammable refrigerants being recovered or otherwise disposed of from VLTR appliances are likely to be hazardous waste under the RCRA (see 40 CFR parts 260–270).

5. Why is EPA proposing these specific use conditions?

EPA is proposing to list R–1150 as acceptable, subject to use conditions, for use in the VLTR end-use for new equipment reaching temperatures lower than −80 °C (−112 °F). The use conditions are identified in the listing under subheading II.F.4, above, and are explained here in greater detail. The use conditions EPA proposes include conditions requiring use of R–1150 in new equipment, which can be specifically designed for the refrigerant; use consistent with the UL Standard, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and limiting charge size to 150 g of R–1150 per refrigerant circuit. The listings with specific use conditions are intended to allow for the use of this flammable refrigerant in a manner that will ensure it does not pose a greater overall risk to human health and the environment than other substitutes in this end-use.

New Equipment Only; Not Intended for Use as a Retrofit Alternative

EPA is proposing that R–1150 may be used only in new equipment [37] which has been designed to address concerns unique to flammable refrigerants—*i.e.,* this substitute may not be used as a conversion or ''retrofit'' refrigerant for existing equipment. EPA is unaware of

[37] This is intended to mean a completely new refrigeration circuit containing a new compressor, evaporator, and condenser.

information on how to address hazards if this flammable refrigerant were to be used in equipment that was designed for non-flammable refrigerants. Given the flammable nature of the refrigerant, the fact that EPA is unaware of information to assess the risk if such retrofits were allowed, and because the refrigerant was not submitted to the SNAP program for retrofits, EPA has not reviewed it for retrofit applications for this proposal and is only proposing that it may be used in new equipment which can be properly designed for their use. Therefore, EPA is proposing that R–1150 may only be used in new equipment that can be properly designed for its use.

Standards

EPA is proposing that R–1150 may be used only in equipment that meets all requirements in the UL Standard. This UL Standard indicates that refrigerant charges greater than 150 g are beyond its scope and that additional requirements apply, such as for instance ANSI/ASHRAE 15–2019. EPA has only evaluated equipment that fits within the scope of the UL Standard.

UL has developed safety standards including requirements for construction and system design, for markings, and for performance tests concerning refrigerant leakage, ignition of switching components, surface temperature of parts, and component strength after being scratched. Certain aspects of system construction and design, including charge size, ventilation, and installation space, and greater detail on markings, are discussed further below in this section. The UL Standard was developed in an open and consensus-based approach, with the assistance of experts in the laboratory equipment industry as well as experts involved in assessing the safety of products. While similar standards exist from other bodies such as the IEC, we are proposing to rely on a specific UL standard that is most applicable and recognized by the U.S. market. This approach is the same as that in our previous rules on flammable refrigerants (*e.g.,* 76 FR 78832, December 20, 2011; 80 FR 19454, April 10, 2015; 86 FR 24444, May 6, 2021).

A summary of the requirements of the UL Standard as they affect R–1150 and the end-use addressed in this section of our proposal follows. This summary is offered for information only and does not provide a complete review of the requirements in this standard. The UL Standard requires the warning labels on the equipment to contain letters at least ¼ inch high. The label must be permanently affixed to the equipment. Warning label language requirements are described in section II.F.4 of this proposed rule. Additionally, red markings, similar to those EPA has applied as use conditions in past actions for flammable refrigerants (76 FR 78832, December 20, 2011; 80 FR 19454, April 10, 2015; 86 FR 24444, May 6, 2021), are required by the UL Standard for A2 and A3 refrigerants to establish a common, familiar and standard means of identifying the use of a flammable refrigerant.

These red markings will help technicians immediately identify the use of a flammable refrigerant, thereby potentially reducing the risk of using sparking equipment or otherwise having an ignition source nearby. The colored plastic sleeve or cap would have to be forcibly removed in order to access the service port, hose, or pipe. This would signal to the technician that the refrigeration circuit that she/he was about to access contained a flammable refrigerant, even if all warning labels were somehow removed. This sleeve would be of the same red color (PMS #185 or RAL 3020) and could also be boldly marked with a graphic to indicate the refrigerant was flammable. The use of a colored plastic sleeve or cap that is boldly marked with a graphic could be a cost-effective alternative to painting or dyeing the service port, hose, or pipe.

Charge Size Limitation

Among the provisions in the UL Standard are limits on the amount of refrigerant allowed in each appliance. The limitations on refrigerant charge size for VLTR would be consistent with the UL Standard to reduce the risk to workers and consumers. EPA is proposing to require a charge size limit of 150 g for each refrigerant circuit or stage for the proposed refrigerant. Section 1.1.1 of the UL Standard states, ''This document details all the requirements when up to 150 g of FLAMMABLE REFRIGERANT are used per stage of a REFRIGERATING SYSTEM. Additional requirements beyond the current scope of this document apply if a REFRIGERANT charge of FLAMMABLE REFRIGERANT exceeds this amount.'' Thus, in order to ensure the standard's provisions apply and sufficiently address flammability risk, EPA is proposing that each refrigerant circuit must contain no more than 150 g of R–1150.

In addition to the general requirement that each refrigerant circuit must contain no more than 150 g of R–1150, the UL Standard has a requirement for the maximum charge for remote condensing unit using a flammable refrigerant in Annex DD and Table DD.1. Section DD.2.4 of Annex DD sets requirements for the minimum associated room area for a given charge, based on a maximum refrigerant concentration of 0.38 lb/1000 ft^3, 5200 ppm, or 6 g/m^3 for R–1150.

6. What narrowed use limits is EPA proposing?

EPA is proposing the following narrowed use limits for use of R–1150 in VLTR:

(1) Temperature range—R–1150 may only be used in equipment designed specifically to reach temperatures lower than −80 °C (−112 °F).

(2) The manufacturers of new very low temperature equipment would need to demonstrate that other alternatives are not technically feasible. They must document the results of their evaluation that showed the other alternatives to be not technically feasible and maintain that documentation in their files. This documentation, which does not need to be submitted to EPA unless requested to demonstrate compliance, ''shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.,* performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes.'' (40 CFR 82.180(b)(3)).

7. Why is EPA proposing these specific narrowed use limits?

The boiling point (b.p.) of a refrigerant determines the coldest temperature it can reach within its refrigerating capabilities. R–1150 has a b.p. of −104 °C, allowing it to refrigerate as cold as −104 °C. There are a limited number of refrigerants that are capable of reaching temperatures below −80 °C, such as the ODSs CFC–13 (b.p., −81.4 °C) and R–503 (b.p., −88.9 °C), and among the acceptable refrigerants in this end-use, ethane (b.p., −88.3 °C) and the high GWP refrigerants HFC–23 (b.p., −84.4 °C), R–508A (b.p., −87.4 °C) and R–508B (b.p., −87.4 °C).[38] Given the limited refrigerant options available for equipment designed to reach the sub −80 °C temperature range, EPA understands there is a need for listing R–1150. However, EPA proposes that limiting the use of R–1150 to VLTR equipment designed to reach temperatures lower than −80 °C (−112 °F) is necessary to mitigate local

[38] Engineering ToolBox, (2005). *Refrigerants—Physical Properties.* Available online at: *https://www.engineeringtoolbox.com/refrigerants-d_902.html* Accessed October 28, 2021.

air quality concerns discussed in section II.F.3 that could occur with broad use, given the larger picture of VOC and generation of ground-level ozone in areas like Los Angeles. If R–1150 were used broadly across the refrigeration and AC sector, it could have significant impacts on local air quality. For equipment in this end-use designed to reach temperatures higher than −80 °C (−112 °F), other alternatives with lower reactivities are widely available, *e.g.,* CO_2, ethane, propane, and R–410A. There are sufficient refrigerant options available to fill the need in VLTR equipment designed to reach temperatures higher than −80 °C (−112 °F) without allowing the use of refrigerants as photochemically reactive as R–1150.

8. What additional information is EPA including in these proposed listings?

EPA is providing additional information related to these proposed listings. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.E.2 above for further discussion on what additional information EPA is including in these proposed listings. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes.

9. On which topics is EPA specifically requesting comment?

EPA takes comment on this listing, including the proposed use conditions and narrowed use limits. In particular, EPA takes comment on the specific temperature range to which R–1150 should be limited. For example, R–1150 could instead be listed as acceptable for equipment designed to attain temperatures of −89 °C (−128.2 °F), lower than the boiling point of ethane, since ethane could attain temperatures down to −89 °C and would present lower risk of potential local air quality impacts because of lower reactivity in the lower atmosphere than R–1150. EPA also takes comment on whether R–1150 should be listed as unacceptable, given the potential local air quality impacts.

G. Streaming and Total Flooding Fire Suppression—Proposed Listing of 2-bromo-3,3,3 trifluoropropene (2–BTP) as Acceptable, Subject to Use Conditions, as a Streaming Agent in Non-Residential Applications and as a Total Flooding Agent in Normally Unoccupied Spaces Under 500 ft³

1. Background on Streaming and Total Flooding Fire Suppression

The fire suppression and explosion protection end-uses addressed in this action are total flooding and streaming. Total flooding systems, which historically employed halon 1301 as a fire suppression agent, are used in both normally occupied and unoccupied areas. In the United States, approximately 90 percent of installed total flooding systems protect anticipated hazards from ordinary combustibles (*i.e.,* Class A fires), while the remaining ten percent protect against applications involving flammable liquids and gases (*i.e.,* Class B fires).[39] It is also estimated that approximately 75 percent of total flooding systems protect electronics (*e.g.,* computers, telecommunications, process control areas), while the remaining 25 percent protect other applications, primarily in civil aviation (*e.g.,* engine nacelles/auxiliary power units, cargo compartments, lavatory trash receptacles), military weapons systems (*e.g.,* combat vehicles, machinery spaces on ships, aircraft engines and tanks), oil/gas and manufacturing industries (*e.g.,* gas/oil pumping, compressor stations), and maritime (*e.g.,* machinery space, cargo pump rooms). Streaming applications, which have historically used halon 1211 as an extinguishing agent, include portable fire extinguishers designed to protect against specific hazards.

2. What is EPA's proposed listing decisions for 2–BTP?

EPA is proposing to list 2–BTP as acceptable, subject to use conditions, for use in normally unoccupied spaces under 500 ft³ in total flooding fire suppression systems. In addition, EPA proposes to list 2–BTP as acceptable, subject to use conditions, as a streaming agent for use in non-residential applications, except for commercial home office and personal watercraft. 2–BTP was previously listed as acceptable, subject to use conditions, for use in engine nacelles and auxiliary power units on aircraft in total flooding fire suppression systems and for use in aircraft as a streaming agent (81 FR 86778, December 1, 2016).

The redacted submission and supporting documentation for 2–BTP are provided in the docket for this proposed rule (EPA–HQ–OAR–2021–0836) at *https://www.regulations.gov.* EPA performed assessments to examine the health and environmental risks of this substitute during production operations and the filling of fire extinguishers as well as in the case of an inadvertent discharge of the system during maintenance activities on the fire extinguishing system. These assessments are available in the docket for this proposed rule.[40] [41]

3. What is 2–BTP and how does it compare to other fire suppressants in the same end-uses?

a. Total Flooding

Environmental information: 2–BTP has an ODP of 0.0028 and a GWP of 0.23–0.26. The ODPs of other total flooding agents range from 0 to 0.048 and GWPs of other total flooding alternatives range from 0 to 3,500. 2–BTP is considered a VOC and is not excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)) for the purpose of addressing the development of SIPs to attain and maintain the NAAQS.

Flammability information: 2–BTP is nonflammable.

Toxicity and exposure data: EPA assessed potential health risks from exposure to the proposed substitute as a total flooding agent in normally unoccupied spaces up to 14.2 m³ (500 ft³) during manufacture, installation, and servicing, consistent with the use description provided by the submitter. According to the SDS, exposure to 2–BTP following a discharge may be hazardous if inhalation, skin contact, or eye contact with the proposed substitute occurs at sufficiently high levels. However, the most likely pathway of exposure is through inhalation, which may cause central nervous system effects, such as dizziness, confusion, physical incoordination, drowsiness, anesthesia, or unconsciousness. The cardiotoxic Lowest Observed Adverse Effect Level (LOAEL) for this agent is 1.0 percent (10,000 ppm), at which level exposure may cause increased sensitivity of the heart to adrenaline, which might cause irregular heartbeats

[39] Wickham, 2002. Status of Industry Efforts to Replace Halon Fire Extinguishing Agents. March 2002.

[40] ICF, 2022q. Risk Screen on Substitutes in Total Flooding Systems in Normally Unoccupied Spaces. Substitute: 2-bromo-3,3,3-trifluoropropene (2–BTP).

[41] ICF, 2022r. Risk Screen on Substitutes as Streaming Agents in Non-Residential Applications. Substitute: 2-bromo-3,3,3-trifluoropropene (2–BTP).

and possibly ventricular fibrillation or death.

2–BTP vapors may reduce oxygen available for breathing, causing asphyxiation in high concentrations. Such vapors pose a potential hazard if large volumes are trapped in enclosed or low places. In addition, as noted above, if person(s) are exposed to high concentrations, the person(s) may experience central nervous system effects, such as drowsiness and dizziness, which may result in the person(s) not realizing that he/she is suffocating. These health effects after exposure are similar for other common fire suppressants.

To assess potential health risks from exposure to the proposed substitute for personnel during manufacturing, EPA developed an AEL of 2 ppm for 2–BTP based on review of available toxicity studies.[42] The AEL represents the maximum 8-hour TWA at which personnel in an occupational environment can be exposed regularly without adverse effects. The estimated exposure values provided by the submitter are greater than the occupational AEL. To effectively mitigate potential occupational exposure and maintain average exposure levels below the occupational AEL of 2 ppm, the manufacturing space should be equipped with specialized engineering controls and well ventilated with a local exhaust system and low-lying source ventilation. The sampling data provided by the submitter demonstrate that local exhaust ventilation greatly reduces exposure concentration inside the fill booth and in the filling area.

Exposure to the proposed substitute is not likely during installation or servicing of 2–BTP total flooding systems for normally unoccupied spaces. The risk of accidental activation of the fire extinguishing system while personnel are present near the protected space is highly unlikely if proper procedures are followed. Proper instructions on system installation and servicing included in manuals for the 2–BTP systems should be adhered to. In the case of accidental release, required engineering controls in accordance with the National Fire Protection Association (NFPA) 2001 Standard on Clean Agent Fire Extinguishing Systems to limit personnel exposure to discharges should be employed with 2–BTP systems.

EPA provides additional information on safe use of this substitute for establishments manufacturing, installing and maintaining equipment using this agent in the ''Further Information'' column of the regulatory listing. EPA recommends that a time delay of 30 to 60 seconds is programmed in accordance with the NFPA 2001 standard. Although exposure is highly unlikely during installation and maintenance activities, exposure is possible upon reentry into a space after a system has been discharged. In the event of an accidental release, the space should be adequately ventilated. EPA recommends that personnel wear protective clothing, goggles, gloves, and particulate-removing respirators with National Institute for Occupational Safety and Health (NIOSH) type N95 or better filters while performing installation or maintenance, and a self-contained breathing apparatus (SCBA) while performing clean-up activities to reduce the risk of exposure. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of this substitute.

2–BTP is not expected to cause a significant risk to human health in the general population when used in total flooding systems in normally unoccupied areas. The proposed use in spaces under 500 ft^3 would require a smaller amount of fire suppressant, reducing potential exposures to workers and the general public and reducing potential toxicity risks. Disposal of 2–BTP total flooding systems is subject to local, state, and federal regulations, which ensure that 2–BTP and water contaminated with 2–BTP are not to be dumped into sewers, on the ground, or into any body of water, but rather taken to a wastewater treatment facility or disposed of properly. 2–BTP is not considered to be hazardous waste under EPA regulations implementing RCRA at 40 CFR part 261. EPA provides additional information on safe use of this substitute for establishments manufacturing, installing and maintaining equipment using this agent in the ''Further Information'' column of the proposed regulatory listing. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of this substitute.

Comparison to other fire suppressants: 2–BTP has an ODP of 0.0028, comparable to or lower than other listed substitutes in this end-use, with ODPs ranging from zero to 0.048. 2–BTP has a GWP of 0.23–0.26 that is lower than or comparable to that of other acceptable substitutes for total flooding agents, with GWPs that range from about zero to 3,500. 2–BTP is considered a VOC and is not excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS. Other acceptable fire suppression agents currently in use in this end-use are also VOC (*e.g.,* C_6-perfluoroketone), and 2–BTP is anticipated to pose no greater risk than other alternatives listed as acceptable in this end-use. Emissions of 2–BTP should be controlled by adhering to standard industry practices. Toxicity risks can be minimized by use consistent with the NFPA 2001 standard, recommendations in the SDS, and other safety precautions common in the fire suppression industry. The potential toxicity risks due to inhalation exposure are common to many total flooding agents, including those already listed as acceptable under SNAP for this same end-use. 2–BTP post-activation products are nonflammable, as are all other available total flooding agents.

EPA is proposing to find 2–BTP acceptable, subject to use conditions, as a total flooding agent for use in normally unoccupied spaces under 500 ft^3 because the overall environmental and human health risk posed by the substitute is lower than or comparable to the overall risk posed by other alternatives listed as acceptable in the same end-use.

b. Streaming Uses

Environmental information: The environmental information for this substitute is set forth in the ''Environmental information'' section in listing II.G.3.a above.

Flammability information: 2–BTP is nonflammable.

Toxicity and exposure data: Toxicity and personal protective equipment (PPE) information is described above under total flooding applications. EPA evaluated occupational and general population exposure at manufacture and at end-use to ensure that the use of 2–BTP as a streaming agent will not pose unacceptable risks to workers or the general public. For the occupational exposure assessment, EPA has evaluated

[42] ICF, 2022q. Risk Screen on Substitutes in Total Flooding Systems in Normally Unoccupied Spaces. Substitute: 2-bromo-3,3,3-trifluoropropene (2–BTP).

the risks associated with potential exposures to 2–BTP during production operations and the filling of fire extinguishers as well as in the case of an inadvertent discharge of the fire extinguisher during maintenance activities.

2–BTP is not expected to pose a risk to workers during manufacture when the engineering controls and PPE requirements as referenced in the SDS for this proposed substitute are followed. The potential health risks from exposure to the proposed substitute for personnel during manufacturing is described above under total flooding applications.

EPA also assessed potential end-use exposure scenario at 7.5-minute and 15-minute TWA exposures for 2–BTP following potential release of agent from the handheld extinguisher in confined spaces (*e.g.,* electronics and server rooms).[43] These exposures were then compared with the cardiotoxic LOAEL for 2–BTP. All but one modeled 7.5-minute and 15-minute exposures for varying ventilation rates were lower than the LOAEL of 10,000 ppm for 2–BTP. The estimated exposures were derived using conservative assumptions (*i.e.,* no mechanical ventilation) and represent a worst-case scenario with a low probability of occurrence. Because anticipated exposures could exceed the exposure limit for 2–BTP, EPA recommends that standard safety techniques to ensure safety during the use of 2–BTP fire extinguishers be followed in non-residential locations. 2–BTP handheld extinguishers must follow required minimum room volumes established by UL 2129, Halocarbon Clean Agent Fire Extinguishers,[44] when discharged into a confined space. This standard prohibits the exceedance of the cardiotoxic LOAEL for any fire suppressant (*i.e.,* 10,000 ppm or 1.0% for 2–BTP). Therefore, per UL 2129, a warning label for 2–BTP extinguishers will mitigate use in confined spaces. Based on the above results, 2–BTP is not expected to pose significant risk to end users when used as a streaming fire extinguishing agent in non-residential applications, except for commercial home office and personal watercraft. EPA provides additional information on safe use of this substitute for establishments manufacturing, installing and maintaining equipment using this agent in the ''Further Information'' column of the regulatory listing. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of this substitute.

Comparison to other fire suppressants: 2–BTP has an ODP of 0.0028, comparable to other listed substitutes in this end-use, with ODPs ranging from zero to 0.022. 2–BTP has a GWP of 0.23–0.26, which for streaming agents is lower than or comparable to that of other acceptable substitutes, with GWPs that range from about zero to 3,220. 2–BTP is considered a VOC and is not excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS. Other acceptable fire suppression agents currently in use in this end-use are also VOC (*e.g.,* C_6-perfluoroketone), and 2–BTP is anticipated to pose no greater risk than other alternatives listed as acceptable in this end-use. Toxicity risks can be minimized by use consistent with the NFPA 10 Standard for Portable Fire Extinguishers, recommendations in the SDS, and other safety precautions common in the fire suppression industry.

EPA is proposing to find 2–BTP as acceptable, subject to use conditions, as a streaming agent for use in non-residential applications, except for commercial home office and personal watercraft, because the overall environmental and human health risk posed by the substitute is lower than or comparable to the overall risk posed by other alternatives listed as acceptable in the same end-use.

4. What use conditions is EPA proposing?

EPA is proposing to list 2–BTP as acceptable, subject to use conditions, for use in normally unoccupied spaces under 500 ft^3 in total flooding fire suppression systems, and as acceptable, subject to use conditions, as a streaming agent for use in non-residential applications, except for commercial home offices and personal watercrafts.

5. Why is EPA proposing these specific use conditions?

EPA is proposing to list 2–BTP as acceptable, subject to use conditions, for use in normally unoccupied spaces under 500 ft^3 in total flooding fire suppression systems. These limitations are consistent with additional information submitted to EPA. The limitations correspond to use in small enclosed spaces, such as an electrical closet. Such spaces would require a smaller amount of fire suppressant, reducing potential exposures to workers and the general public and reducing potential toxicity risks.

Additionally, EPA is proposing to list 2–BTP as acceptable subject to use conditions as a streaming agent for use in non-residential applications, except for commercial home office and personal watercrafts. The definition of ''residential use'' in the SNAP regulations at 40 CFR 82.172 is use by a private individual of a chemical substance or any product containing the chemical substance in or around a permanent or temporary household, during recreation, or for any personal use or enjoyment. Use within a household for commercial or medical applications is not included in this definition, nor is use in automobiles, watercraft, or aircraft. Use in a commercial home office or in personal watercraft could result in exposure to members of the general public, including sensitive individuals such as children or the elderly. In addition, air exchange is often lower in a home office or a personal watercraft than in industrial or other commercial applications, potentially resulting in higher exposure levels than in those other non-residential applications. Because of the more sensitive populations and potentially higher exposures associated with those applications, EPA is proposing to list 2–BTP for use in non-residential applications other than commercial home office and personal watercraft.

6. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed listing decision, including the proposed use conditions.

H. Total Flooding Fire Suppression—Proposed Listing of EXXFIRE® as Acceptable, Subject to Use Conditions, for Use in Normally Unoccupied Spaces

1. What is EPA's proposed listing decision for EXXFIRE®?

EPA is proposing to list EXXFIRE® as acceptable, subject to use conditions, for use in total flooding fire suppression systems in normally unoccupied spaces. Prior to activation, the EXXFIRE® formulation is in solid form and contained within a hermetically sealed steel container. Upon detection of a fire, nitrogen gas is released from the unit.

[43] ICF, 2022r. Risk Screen on Substitutes as Streaming Agents in Non-Residential Applications. Substitute: 2-bromo-3,3,3-trifluoropropene (2–BTP).

[44] UL, 2017. Standard 2129—Halocarbon Clean Agent Fire Extinguishers. Edition 3. This document is accessible at: *https://www.shopulstandards.com/ProductDetail.aspx?UniqueKey=32182.*

The nitrogen gas dilutes the oxygen level within the enclosure, and consequently suppresses the fire. After activation, only gas components exit the casing. All solid products remain inside the casing before, during and after activation. Use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 standard.

The redacted submission and supporting documentation for EXXFIRE® are provided in the docket for this proposed rule (EPA–HQ–OAR–2021–0836) at *https://www.regulations.gov.* EPA performed an assessment to examine the health and environmental risks of each of this substitute. This assessment is available in the docket for this proposed rule.[45]

2. What is EXXFIRE® and how does it compare to other fire suppressants in the same end-use?

Environmental information: According to the submitter, the active ingredients for this technology are nonvolatile solids before activation so the ODP, atmospheric lifetime, and GWP are all zero. The gaseous post-activation products that are released upon activation of the fire suppressant with GWPs are carbon monoxide (CO), CO_2, and various hydrocarbons with GWPs ranging from less than one to 25; however, these compounds are present in trace amounts, together making up less than 0.5 percent of the total weight of the post-activation products. The majority of the post-activation constituents of EXXFIRE® are either not organic (*e.g.,* nitrogen, oxygen, water, hydrogen) or are excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)), addressing the development of SIPs to attain and maintain the NAAQS. Some constituents of EXXFIRE® are considered VOC and are not excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)), including a variety of hydrocarbons; however, these compounds are present in trace amounts.

Flammability information: EXXFIRE® post-activation products are nonflammable, except for certain hydrocarbons that are present in trace amounts.

Toxicity and exposure data: EPA assessed potential health risks from exposure . . . . Most post-activation products for EXXFIRE® are not expected to result in adverse health effects; however, due to the potential presence of lithium fluoride, which is acutely toxic upon inhalation or ingestion and can cause serious skin, eye, and respiratory tract irritation, the use of this system is only recommended for use in normally unoccupied spaces. Although expected to be maintained inside the generator, the potential presence of lithium fluoride in the post-activation particulate products justifies the necessity for personnel to wear proper PPE (*i.e.,* particulate-removing respirator with NIOSH type N95 or better filters) upon reentry into the space following a discharge of the system to mitigate those risks. The submitter indicates that the proposed substitute can reduce oxygen levels to 10 to 12 percent, which can cause a potential asphyxiation hazard.

EPA evaluated occupational and general population exposure at manufacture and at end use to ensure that the use of EXXFIRE® will not pose unacceptable risks to workers or the general public. Exposure is possible upon reentry into a space after a system has been discharged. Protective gloves, tightly sealed goggles, protective work clothing, and particulate-removing respirators should be worn for installation and servicing activities, to protect workers in any event of potential discharge of the proposed substitute, accidental or otherwise. Filling or servicing operations should be performed in well-ventilated areas. Toxicity risks can be minimized by use consistent with the NFPA 2001 standard, recommendations in the SDS, and other safety precautions common in the fire suppression industry. EPA provides additional information on safe use of this substitute for establishments manufacturing, installing and maintaining equipment using this agent in the ''Further Information'' column of the regulatory listing. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of this substitute.

Comparison to other fire suppressants: EXXFIRE® has an ODP of zero, comparable to other listed substitutes in this end-use, with ODPs ranging from zero to 0.048. For total flooding agents, EXXFIRE® has a GWP of zero prior to activation (and one to 25 for certain post-activation products present in trace amounts), which is comparable to or lower than that of other acceptable substitutes, such as HFC–227ea and other HFCs, with GWPs up to 3,500. The majority, approximately 99.5 percent, of the post-activation constituents of EXXFIRE® are either not organic or are excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)), addressing the development of SIPs to attain and maintain the NAAQS. EXXFIRE® is anticipated to pose no greater risk than other alternatives listed as acceptable in this end-use. Toxicity risks can be minimized by use consistent with the NFPA 2001 standard, recommendations in the SDS, and other safety precautions common in the fire suppression industry. The potential toxicity risks due to inhalation exposure are common to many total flooding agents, including those already listed as acceptable under SNAP for this same end-use. EXXFIRE®'s post-activation products are nonflammable, as are all other available total flooding agents.

EPA is proposing to list EXXFIRE® as acceptable, subject to use conditions, in the end-use listed above because it does not pose greater overall environmental and human health risk than other available substitutes in the same end-use.

3. What use conditions is EPA proposing and why?

Consistent with the request by the submitter, the use condition requires that EXXFIRE® be used in total flooding fire suppression systems only in areas that are not normally occupied. EPA conducted this evaluation for use only in unoccupied spaces, and information was provided by the submitter in the SNAP application specific for this type of space based on EPA guidance.[46]

4. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed listing decision, including the proposed use conditions.

I. Total Flooding Fire Suppression—Proposed Listing of Powdered Aerosol H (Pyroquench-α™) as Acceptable, Subject to Use Conditions, for Use in Normally Unoccupied Spaces

1. What is EPA's proposed listing decision for Powdered Aerosol H?

EPA is proposing to list Powdered Aerosol H, also known as Pyroquench-α™, as acceptable, subject to use conditions, for use in total flooding fire suppression systems in normally unoccupied spaces. Prior to activation, the Powdered Aerosol H formulation is

[45] ICF, 2022s. Risk Screen on Substitutes in Total Flooding Systems in Normally Unoccupied Spaces; Substitute: EXXFIRE®.

[46] EPA, 2004. A Guide to Completing a Risk Screen: Collection and Use of Risk Screen Data. Fire Suppression Sector. April 2004.

contained as a solid disk of chemicals in insulated and dual-sealed casings. In response to heat and lack of oxygen, the formulation undergoes a chemical reaction; once the Powdered Aerosol H system is activated, it generates and discharges a homogenous mixture of gas and particulates into a space containing a fire hazard or directly on the hazard itself, extinguishing the fire. In the ''Further Information'' column of the tables at the end of this document, we state that use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2010 Standard for Fixed Aerosol Fire Extinguishing Systems.

The redacted submission and supporting documentation for Powdered Aerosol H are provided in the docket for this proposed rule (EPA–HQ–OAR–2021–0836) at *https://www.regulations.gov.* EPA performed an assessment to examine the health and environmental risks of each of this substitute. This assessment is available in the docket for this proposed rule.[47]

2. What is Powdered Aerosol H and how does it compare to other fire suppressants in the same end-use?

Environmental information: According to the submitter, the active ingredients for this technology are nonvolatile solids before activation so the ODP, atmospheric lifetime, and GWP are all zero. The gaseous post-activation products that are released upon activation of the fire suppressant with GWPs are nitrogen dioxide (NO_2) and CO_2, with GWPs of 120 and one, respectively. The post-activation constituents of Powdered Aerosol H are excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)), addressing the development of SIPs to attain and maintain the NAAQS.

Flammability information: Powdered Aerosol H post-activation products are nonflammable.

Toxicity and exposure data: EPA assessed potential health risks from exposure to the proposed substitute as a total flooding agent in normally unoccupied spaces. Because the pre-activation components of the fire suppressant are prepared in tablets that are non-reactive and do not crumble or flake, there is no concern with regard to inhalation or ingestion of the pre-activation compounds. The discharge of the powdered aerosol after activation results in temporary reduced visibility in the protected space due to the uniform distribution of the particulate generated and may cause ocular, dermal, and respiratory irritation. EPA recommends that workers should not enter the space following discharge until all particles have settled and the gases released by the total flooding system have dissipated. Use according to the NFPA 2010 Standard will reduce any safety risks due to reduced visibility. The use of proper PPE, such as protective clothing, gloves, goggles, and particulate-removing respirators, during manufacturing, at installation, maintenance, and clean-up, minimizes personnel exposure from inhalation of the substitute. EPA provides additional information on safe use of this substitute for establishments manufacturing, installing and maintaining equipment using this agent in the ''Further Information'' column of the regulatory listing. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of this substitute.

EPA expects that procedures identified in the SDS for Powdered Aerosol H and good manufacturing practices will be adhered to, and that the appropriate safety and personal PPE consistent with OSHA guidelines will be used during installation, servicing, post-discharge clean-up and disposal of total flooding systems using Powdered Aerosol H. The manufacturer guidance upon installation of the system provides the appropriate time after which workers may re-enter the area for disposal to allow the maximum settling of all particulates.

Comparison to other fire suppressants: The post-activation products of Powdered Aerosol H have an ODP of zero, comparable to or lower than other listed substitutes in this end-use, with ODPs ranging from zero to 0.048. For total flooding agents, Powdered Aerosol H's GWP of zero prior to activation (and one to 120 for certain post-activation products) is comparable to or lower than that of other acceptable substitutes, such as HFC–227ea and other HFCs, with GWPs up to 3,500. Other acceptable substitutes in this end-use have comparable GWPs ranging from zero to one, such as water, inert gases, and other powdered aerosol fire suppressants. Toxicity risks can be minimized by use consistent with the NFPA 2010 standard, recommendations in the SDS, and other safety precautions common in the fire suppression industry. The potential toxicity risks due to inhalation exposure are common to many total flooding agents, including those already listed as acceptable under SNAP for this same end-use. Powdered Aerosol H's post-activation products are nonflammable, as are all other available total flooding agents.

EPA is proposing to list Powdered Aerosol H as acceptable, subject to use conditions, in the end-use listed above because it does not pose greater overall environmental and human health risk than other available substitutes in the same end-use.

3. What use conditions is EPA proposing and why?

Consistent with the submitter's request, EPA proposes the use condition that Powdered Aerosol H be used in total flooding fire suppression systems only in areas that are not normally occupied. EPA conducted this evaluation for use only in unoccupied spaces, and information was provided by the submitter in the SNAP application specific for this type of space based on EPA guidance.[48]

4. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed listing decision, including the proposed use conditions.

III. Request for Advance Comment on Potential Approaches to SNAP Listing Decisions for Certain Very Short-Lived Substances

In making decisions regarding whether a substitute is acceptable or unacceptable, and whether substitutes present risks that are lower than or comparable to risks from other substitutes that are currently or potentially available in the end-uses under consideration, EPA examines the criteria in 40 CFR 82.180(a)(7) which includes (i) atmospheric effects and related health and environmental impacts; (ii) general population risks from ambient exposure to compounds with direct toxicity and to increased ground-level ozone; (iii) ecosystem risks; (iv) occupational risks; (v) consumer risks; (vi) flammability; and (vii) cost and availability of the substitute. The ability of a chemical to destroy ozone is represented quantitatively by its ODP, which is the ratio of the amount of ozone that would be destroyed by the emission of a given mass of that chemical to the amount of

[47] ICF, 2022t. Risk Screen on Substitutes in Total Flooding Systems in Normally Unoccupied Spaces; Substitute: Pyroquench-α™.

[48] EPA, 2004. A Guide to Completing a Risk Screen: Collection and Use of Risk Screen Data. Fire Suppression Sector. April, 2004.

ozone destroyed by emission of the same mass of CFC–11. In order for a chemical to deplete stratospheric ozone, it must be transported from the troposphere, where almost all emissions occur, to the stratosphere, where release of its halogen atoms can trigger catalytic ozone destruction.

Most class I and class II ODS are fairly stable in the troposphere and persist long enough to become well-mixed in the troposphere and then be transported into the stratosphere. Because of their longer tropospheric lifetimes and tropospheric mixing, the ability of these chemicals to deplete stratospheric ozone depends little on where on the surface of the Earth or during which season the chemicals are released, and so the ability of a particular chemical to destroy ozone can reasonably be represented by a single ODP value that is constant over space and time. However, some alternatives that contain chlorine, bromine, and/or iodine are more reactive and have shorter atmospheric lifetimes. Halogenated substances with atmospheric lifetimes shorter than about six months are called very short-lived substances (VSLS). Given the shorter atmospheric lifetimes of VSLS, the location of emissions can significantly impact the amount of ozone depletion that results. Emissions at locations where atmospheric conditions quickly move VSLS to the stratosphere will result in more ozone depletion. Conversely, emissions from locations where atmospheric conditions result in VSLS moving more slowly to the stratosphere result in less ozone depletion. If there are different ODPs calculated for different regions, the reported consensus value in WMO (2018) is the upper limit of those values. While not the only source of information used by the Agency, EPA regards the quadrennial report of the Montreal Protocol's Scientific Assessment Panel as the premier source for information concerning stratospheric ozone science. Appendix A of the Scientific Assessment of Ozone Depletion: 2018 (WMO, 2018) contains a compilation of metrics, including ODPs, for ODS, ODS alternatives, and related species, based on best available data. The international scientific community considers these ODPs to be consensus ODPs.

Given the United States is a party to the Montreal Protocol with 196 other countries, we recognize the importance of a globally consistent approach to considering ODPs. A globally consistent approach to assessing risk of alternatives is also important because SNAP listing decisions are often used by other countries as a signal that the alternative is safe. Thus, considerations under the SNAP program about the ozone depletion risk of a particular chemical have been based on an ODP that is the consensus of the scientific community.

Under the SNAP program EPA has found alternatives with ODPs to be unacceptable. However, having a non-zero ODP does not necessarily make a substance unacceptable in all contexts. We have previously listed alternatives with an ODP, including listing class II substances as alternatives to class I substances—noting that many of those class II substances have subsequently been listed as unacceptable and were also listed as chemicals to be phased out under the Montreal Protocol and the Clean Air Act. We have also listed alternatives with an ODP as acceptable, subject to use restrictions. In a few cases, particularly where the ODP is several orders of magnitude below that of the class II substances, we have listed the alternative as acceptable without any use restrictions. In other words, a substitute with a measurable ODP could be determined to reduce overall risks to human health and the environment, compared with other currently or potentially available alternatives. For example, the SNAP program listed a number of class II ODS as acceptable as substitutes to class I ODS and changed the status to unacceptable when alternatives with lower ODPs became available.

The SNAP program has made some acceptability determinations regarding VSLS in the past. Two examples are given below:

- In 1995, EPA listed the VSLS trifluoroiodomethane (CF_3I) as acceptable with use restrictions for specialized total flooding fire suppression applications, noting that its ODP was then estimated to be 0.008–0.01, lower than some class II ODS listed as acceptable fire suppressants in the same end-use at that time.[49] Given the limited applications where this chemical was found to be acceptable, it has not been widely used. More recent studies have found CF_3I emissions in different regions have an ODP ranging from 0.0034 (Europe) to 0.094 (S. Asia).[50] [51] These studies were considered by WMO in their 2018 report, which lists an ODP of <0.09 for CF_3I.
- In 2012, SNAP listed HCFO–1233zd(E), a VSLS with a WMO-listed ODP of <0.0004 (WMO, 2018), as acceptable for use as a blowing agent in polyurethane foams (77 FR 47768; August 10, 2012). This VSLS has an ODP orders of magnitude below the class II substances it can replace and has become more widely used in part because of its very low ODP and GWP.

EPA's SNAP program has received a submission to find the blend R–466A acceptable in certain end uses in the refrigeration and AC sector. This blend contains CF_3I, which is listed by the World Meteorological Organization (WMO, 2018) as having an ODP of < 0.09. This is significantly higher than the ODPs of some HCFCs subject to phaseout, *e.g.,* HCFC–22 has an ODP of 0.055 and HCFC–123 has an ODP of 0.02.[52] While EPA has at times listed substitutes that have non-zero ODPs, including VSLS, as acceptable under the SNAP program, EPA has also at times listed substitutes with ODPs as unacceptable. While EPA is not proposing any action on the substitute R–466A in this proposal, we note that broad use of R–466A, containing CF_3I, for air conditioning end-uses could lead to large amounts of emissions on an ODP-weighted basis. If R–466A were to penetrate the AC market to the extent that it substituted for 10 percent of the R–410A estimated to be used annually in the United States in 2022, this would mean consumption of over 200 ODP-weighted tons using the consensus ODP values of 0.09 for CF_3I and 0.036 for R–466A. For comparison, the U.S. cap on HCFC consumption is currently 75 ODP-weighted tons annually. While HCFO–1233zd(E) is also a VSLS with potential for widespread use, the WMO-listed ODP of <0.0004 for HCFO–1233zd(E) is two orders of magnitude less than that of CF_3I and EPA's Vintaging Model estimates annual U.S. consumption at less than 5 ODP-weighted tons.

The Agency is seeking advance comment on how EPA should address VSLS within the SNAP program to inform potential future listing decisions. EPA is specifically requesting comment on the following questions:

- Should EPA consider finding a VSLS with a WMO-listed ODP that is similar to the ODP of substances that have been phased out under the CAA Title VI to be unacceptable under SNAP?

[49] 60 FR 31092, June 13, 1995.

[50] Brioude et al. (2010). Variations in ozone depletion potentials of very short-lived substances with season and emission region, *Geophys. Res. Lett., 37,* L19804, doi:10.1029/2010GL044856, 2010.

[51] Youn et al. (2010). Potential impact of iodinated replacement compounds CF_3I and CH_3I on atmospheric ozone: A three-dimensional modeling study, *Atmos. Chem. Phys., 10,* 10,129–10,144,doi:10.5194/acp-10-10129-2010, 2010.

[52] N.B. There are limitations on the use of HCFC–123 as detailed in section II.A.3 above.

- Should EPA take a more conservative approach when determining whether VSLS with ODPs similar to class II substances are acceptable alternatives under SNAP given these substances are not listed as class II substances under the CAA and therefore are not scheduled to be phased out?
- How should the Agency consider submissions of VSLS with ODPs similar to class II ODS, or blends containing such VSLS, as alternatives in light of the reality that SNAP listings are used by other countries to determine whether an alternative may be acceptable?

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0226. The approved Information Collection Request includes five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a Toxic Substances Control Act (TSCA)/SNAP Addendum, notification for test marketing activity, recordkeeping for substitutes acceptable subject to use restrictions, and recordkeeping for small volume uses. This action does not impose an information collection burden under the PRA.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on the small entities subject to the rule. This action proposes to add the additional options under SNAP of using HFC–32, HFO–1234yf, R–452B, R–454A, R–454B, R–454C, R–1150, 2–BTP, EXXFIRE®, and Powdered Aerosol H in the specified end-uses, but does not mandate such use. Users who choose to avail themselves of this flexibility for R–1150 must make a reasonable effort to ascertain that other substitutes or alternatives are not technically feasible and must document and keep records of the results of such investigations. Because equipment for HFC–32, HFO–1234yf, R–452B, R–454A, R–454B, R–454C is not manufactured yet in the U.S. for the chillers, residential dehumidifiers, and non-residential dehumidifiers end-uses, no change in business practice is required to meet the use conditions, resulting in no adverse impact compared with the absence of this rule. Similarly, R–1150, 2–BTP, EXXFIRE®, and Powdered Aerosol H are proposed to be listed as acceptable with use conditions consistent with industry standards and with the intended uses described by the submitters, also requiring no change in business practices and resulting in no adverse impact compared with the absence of this rule. The new use conditions for HFC–32 in self-contained room ACs and HPs were requested by industry and are consistent with the most recent, updated standard; these would allow for greater consistency in business practices for different types of equipment using the same refrigerant. Equipment for HFC–32 already manufactured prior to the effective date of a final rule would not be required to be changed. Self-contained room ACs and HPs using HFC–32 have been subject to similar use conditions, and thus the updated requirements would result in no adverse impact compared with the absence of this rule. Thus, if the rule were finalized as proposed, it would not impose new costs on small entities. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. EPA periodically updates tribal officials on air regulations through the monthly meetings of the National Tribal Air Association and will share information on this rulemaking through this and other fora.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 because the rule is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. While EPA has not conducted a separate analysis of risks to infants and children associated with this rule, the rule does contain use conditions that would reduce exposure risks to the general population, with the reduction of exposure being most important to the most sensitive individuals. This action's health and risk assessments are contained in the comparisons of toxicity for the various substitutes, as well as in the risk screens for the substitutes that are listed in this proposed rule. The risk screens are in the docket for this rulemaking.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act and 1 CFR Part 51

This action involves technical standards. EPA uses and incorporates by reference portions of the 2019 UL Standard 60335–2–40, which establishes requirements for the evaluation of residential AC equipment and safe use of flammable refrigerants, among other things. Additionally, EPA uses and incorporates by reference portions of the 2021 UL Standard 61010–2–011, which establishes requirements for the evaluation of

laboratory equipment. These standards are discussed in greater detail in sections II.D.1 and II.E.4 of this preamble.

The 2019 UL Standard 60335–2–40 and 2021 UL Standard 61010–2–011 are available at *http://www.shopulstandards.com/ProductDetail.aspx?UniqueKey=36463* and may be purchased by mail at: COMM 2000, 151 Eastern Avenue, Bensenville, IL 60106; email: *orders@shopulstandards.com*; Telephone: 1–888–853–3503 in the U.S. or Canada (other countries dial 1–415–352–2178); internet address: *http://ulstandards.ul.com/* or *www.comm-2000.com.* The cost of each of the 2019 UL Standard 60335–2–40 and 2021 UL Standard 61010–2–011 is $440 for an electronic copy and $550 for hard copy. UL also offers a subscription service to the Standards Certification Customer Library that allows unlimited access to their standards and related documents. The cost of obtaining this standard is not a significant financial burden for equipment manufacturers and purchase is not necessary for those selling, installing, and servicing the equipment. Therefore, EPA concludes that the UL standard incorporated by reference is reasonably available.

EPA is also incorporating by reference ANSI/ASHRAE Standard 15–2019, Safety Standard for Refrigeration Systems, in the use conditions for six refrigerants listed for use in chillers. This standard is available at *https://www.ashrae.org/resources-publications/bookstore/standards-15-34* and may be purchased by mail at: 6300 Interfirst Drive, Ann Arbor, MI 48108; by telephone: 1–800–527–4723 in the U.S. or Canada; internet address: *http://www.techstreet.com/ashrae/ashrae_standards.html?ashrae_auth_token=*. The cost of ASHRAE Standard 15–2019 is $159.00 for an electronic copy or hard copy. The cost of obtaining this standard is not a significant financial burden for equipment manufacturers or for those selling, installing and servicing the equipment. Therefore, EPA concludes that the ASHRAE standard proposed to be incorporated by reference is reasonably available.

EPA has already incorporated the following standards into appendix R: UL 471 (November 24, 2010); UL 484 (December 21, 2007, with changes through August 3, 2012).; UL 541 (December 30, 2011); and UL 60335–2–24 (April 28, 2017).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

A regulatory action may involve potential environmental justice concerns if it could: (1) Create new disproportionate impacts on people of color, communities of low-income, and/or indigenous peoples; (2) exacerbate existing disproportionate impacts on people of color, communities of low-income, and/or indigenous peoples; or (3) present opportunities to address existing disproportionate impacts on people of color, communities of low-income, and/or indigenous peoples through the action under development.

EPA believes that this action does not create disproportionately high and adverse human health or environmental effects on people of color, communities of low-income and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994) and may help reduce any existing disproportionate impacts. The proposed listings for HFC–32, HFO–1234yf, R–452B, R–454A, R–454B, R–454C, R–1150, 2–BTP, EXXFIRE®, and Powdered Aerosol H in the end-uses addressed in this action would provide additional lower-GWP and ODP or comparable alternatives in their respective end-uses. By providing lower-GWP and ODP or comparable alternatives for these end-uses, this proposed rule is also anticipated to reduce the use and eventual emissions of potent GHGs in this end-use, which could help to reduce the effects of climate change, including the public health and welfare effects on people of color, communities of low-income and/or indigenous peoples. This action's health and environmental risk assessments are contained in the comparison of health and environmental risks for HFC–32, HFO–1234yf, R–452B, R–454A, R–454B, R–454C, R–1150, 2–BTP, EXXFIRE®, and Powdered Aerosol H, as well as in the risk screens that are available in the docket for this rulemaking. EPA's analysis indicates that other environmental impacts and human health impacts of HFC–32, HFO–1234yf, R–452B, R–454A, R–454B, R–454C, R–1150, 2–BTP, EXXFIRE®, and Powdered Aerosol H are comparable to or less than those of other substitutes that are listed as acceptable for the same end-use. Based on these considerations, EPA expects that the effects on people of color, communities of low-income and/or indigenous peoples would not be disproportionately high and adverse.

V. References

Unless specified otherwise, all documents are available electronically through the Federal Docket Management System at *regulations.gov,* Docket number EPA–HQ–OAR–2021–0836.

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ICF, 2014. Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. February, 2014.

ICF, 2022a. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–32.

ICF, 2022b. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: HFO–123yf.

ICF, 2022c. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–452B.

ICF, 2022d. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–454A.

ICF, 2022e. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–454B.

ICF, 2022f. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–454C.

ICF, 2022g. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: HFC–32.

ICF, 2022h. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: R–452B.

ICF, 2022i. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: R–454A.

ICF, 2022j. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: R–454B.

ICF, 2022k. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: R–454C.
ICF, 2022l. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: HFO–1234yf
ICF, 2022m. Risk Screen on Substitutes in Non-residential Dehumidifiers (New Equipment); Substitute: HFC–32.
ICF, 2022n. Risk Screen on Substitutes in Residential and Light Commercial Air Conditioning and Heat Pumps (New Equipment); Substitute: HFC–32 (Difluoromethane).
ICF, 2022o. Risk Screen on Substitutes in Very Low Temperature Refrigeration (New Equipment); Substitute: R–1150.
ICF, 2022p. Additional Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. May, 2020.
ICF, 2022q. Risk Screen on Substitutes in Total Flooding Systems in Normally Unoccupied Spaces. Substitute: 2-bromo-3,3,3-trifluoropropene (2–BTP).
ICF, 2022r. Risk Screen on Substitutes as Streaming Agents in Non-Residential Applications. Substitute: 2-bromo-3,3,3-trifluoropropene (2–BTP).
ICF, 2022s. Risk Screen on Substitutes in Total Flooding Systems in Normally Unoccupied Spaces; Substitute: EXXFIRE®.
ICF, 2022t. Risk Screen on Substitutes in Total Flooding Systems in Normally Unoccupied Spaces; Substitute: Pyroquench-α™.
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UL 60335–2–40, 2019. Household And Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers. Third Edition. November 1, 2019.
UL Standard 61010–2–011, 2021. Safety Requirements for Electrical Equipment for Measurement, Control, and Laboratory Use—Part 011: Particular Requirements for Refrigerating Equipment. Second edition. May 13, 2021.
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Youn et al. (2010). Youn, D., K.O. Patten, D.J. Wuebbles, H. Lee, and C.-W. So, Potential impact of iodinated replacement compounds CF_3I and CH_3I on atmospheric ozone: A three-dimensional modeling study, *Atmos. Chem. Phys., 10,* 10,129–10,144, doi:10.5194/acp-10–10129–2010, 2010.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Stratospheric ozone layer.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 82 as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart G–Significant New Alternatives Policy Program

■ 2. Amend appendix R to subpart G of part 82 by:

■ a. Revising the heading for appendix R to subpart G of part 82;

■ b. Revising the table titled ''Substitutes That Are Acceptable Subject to Use Conditions''; and

■ c. Removing the two undesignated paragraphs immediately preceding table A.

The revisions read as follows:

Appendix R to Subpart G of Part 82—Substitutes Subject to Use Restrictions Listed in the December 20, 2011, Final Rule, Effective February 21, 2012, and in the April 10, 2015 Final Rule, Effective May 11, 2015, and in the [Date of Publication of the Final Rule in the Federal Register] Final Rule, Effective [Date 30 Days After Date of Publication of the Final Rule in the Federal Register]

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

End-use	Substitute	Decision	Use conditions	Further information
1. Household refrigerators, freezers, and combination refrigerators and freezers (New equipment only).	Isobutane (R–600a) Propane (R–290) R–441A.	Acceptable subject to use conditions.	As of September 7, 2018: These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment designed for a different refrigerant) These refrigerants may be used only in a refrigerator or freezer, or combination refrigerator and freezer, that meets all requirements listed in UL 60335–2–24[126]	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling these refrigerants. Special care should be taken to avoid contact with the skin since these refrigerants, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on refrigerators and freezers with these refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service refrigerators and freezers containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
2. Retail food refrigerators and freezers (stand-alone units only) (New equipment only).	Isobutane (R–600a) Propane (R–290) R–441A.	Acceptable subject to use conditions.	As provided in clauses SB6.1.2 to SB6.1.5 of UL 471,[1 2 3] the following markings must be attached at the locations provided and must be permanent: (a) On or near any evaporators that can be contacted by the consumer: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing." (b) Near the machine compartment: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (c) Near the machine compartment: "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the exterior of the refrigerator: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (e) Near any and all exposed refrigerant tubing: "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The refrigerator or freezer must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then retail food refrigerators and freezers using these refrigerants should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (*i.e.,* right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor.

3. Very low temperature refrigeration Non-mechanical heat transfer (New equipment only).	Ethane (R–170)	Acceptable subject to use conditions.	This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant (*i.e.,* the substitute may not be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). This refrigerant may only be used in equipment that meets all requirements in Supplement SB to, UL 471.[1323] In cases where listing 3 or 4 of this table includes requirements more stringent than those of UL 471, the appliance must meet the requirements of listing 3 or 4 of this table in place of the requirements in UL 471. The charge size for the equipment must not exceed 150 g (5.29 oz) in each circuit.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling ethane. Special care should be taken to avoid contact with the skin since ethane, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service equipment containing ethane. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
4. Very low temperature refrigeration. Non-mechanical heat transfer (New equipment only).	Ethane (R–170)	Ethane (R–170)	As provided in clauses SB6.1.2 to SB6.1.5 of UL 471,[1 2 3] the following markings must be attached at the locations provided and must be permanent: (a) On or near any evaporators that can be contacted by the consumer: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing." (b) Near the machine compartment: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (c) Near the machine compartment: "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the exterior of the refrigerator: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (e) Near any and all exposed refrigerant tubing: "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The refrigeration equipment must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then refrigeration equipment using this refrigerant should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (*i.e.,* right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor. Example of non-mechanical heat transfer using this refrigerant would be use in a secondary loop of a thermosiphon.

5. Vending Machines (New equipment only).	Isobutane (R–600a) Propane (R–290) R–441A.	Acceptable subject to use conditions.	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerants (*i.e.,* none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). Detaching and replacing the old refrigeration circuit from the outer casing of the equipment with a new one containing a new evaporator, condenser, and refrigerant tubing within the old casing is considered "new" equipment and not a retrofit of the old, existing equipment. These substitutes may only be used in equipment that meets all requirements in Supplement SA to UL 541.[125] In cases where listing 5 or 6 of this table includes requirements more stringent than those of UL 541, the appliance must meet the requirements of listing 5 or 6 of this table in place of the requirements in UL 541. The charge size for vending machines must not exceed 150 g (5.29 oz) in each circuit.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling these refrigerants. Special care should be taken to avoid contact with the skin since these refrigerants, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on refrigeration equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
6. Vending Machines (New equipment only).	Isobutane (R–600a) Propane (R–290) R–441A.	Acceptable subject to use conditions.	As provided in clauses SA6.1.2 to SA6.1.5 of UL 541,[125] the following markings must be attached at the locations provided and must be permanent: (a) On or near any evaporators that can be contacted by the consumer: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing." (b) Near the machine compartment: ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.'' (c) Near the machine compartment: "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed.'' (d) On the exterior of the refrigerator: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.'' (e) Near any and all exposed refrigerant tubing: "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used.'' All of these markings must be in letters no less than 6.4 mm (¼ inch) high The refrigeration equipment must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then refrigeration equipment using this refrigerant should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (*i.e.,* right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor.

7. Residential and light-commercial air conditioning and heat pumps—self-contained room air conditioners only (New equipment only).	Propane (R–290) R–441A	Acceptable subject to use conditions.	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerants (*i.e.,* none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These refrigerants may only be used in equipment that meets all requirements in Supplement SA and Appendices B through F of UL 484.[124] In cases where listing 7 or 8 includes requirements more stringent than those of UL 484, the appliance must meet the requirements of listing 7 or 8 of this table in place of the requirements in UL 484. The charge size for the entire air conditioner must not exceed the maximum refrigerant mass determined according to Appendix F of UL 484 for the room size where the air conditioner is used. The charge size for these three refrigerants must in no case exceed 1,000 g (35.3 oz or 2.21 lbs) of propane or 1,000 g (35.3 oz or 2.21 lb) of R–441A. For portable air conditioners, the charge size must in no case exceed 300 g (10.6 oz or 0.66 lbs) of propane or 330 g (11.6 oz or 0.72 lb) of R–441A. The manufacturer must design a charge size for the entire air conditioner that does not exceed the amount specified for the unit's cooling capacity, as specified in table A, B, C, D, or E of this appendix R.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling these refrigerants. Special care should be taken to avoid contact with the skin since these refrigerants, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
8. Residential and light-commercial air conditioning and heat pumps—self-contained room air conditioners only (New equipment only).	Propane (R–290)R–441A	Acceptable subject to use conditions.	As provided in clauses SA6.1.2 to SA6.1.5 of UL 484,[1 2 4] the following markings must be attached at the locations provided and must be permanent: (a) On the outside of the air conditioner: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the air conditioner: ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the air conditioner near the compressor: ''CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the outside of each portable air conditioner: "WARNING: Appliance shall be installed, operated and stored in a room with a floor area larger the "X" m^2 (Y ft^2)." The value "X" on the label must be determined using the minimum room size in m^2 calculated using Appendix F of UL 484. For R–441A, use a lower flammability limit of 0.041 kg/m^3 in calculations in Appendix F of UL 484. All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The air conditioning equipment must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then air conditioning equipment using this refrigerant should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (*i.e.,* right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor. Air conditioning equipment in this category includes: Window air conditioning units. Portable room air conditioners. Packaged terminal air conditioners and heat pumps.

9. Residential and light-commercial air conditioning and heat pumps—self-contained room air conditioners only.(New equipment only) manufactured on or after May 10, 2015 and up to but not including [Date 30 days after date of publication of the final rule in the **Federal Register**].	HFC–32	Acceptable subject to use conditions.	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerants (*i.e.,* none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These refrigerants may only be used in equipment that meets all requirements in Supplement SA and Appendices B through F of UL 484.[124] In cases where listing 9 or 10 of this table includes requirements more stringent than those of UL 484, the appliance must meet the requirements of listing 9 or 10 of this table in place of the requirements in UL 484. The charge size for the entire air conditioner must not exceed the maximum refrigerant mass determined according to Appendix F of UL 484 for the room size where the air conditioner is used. The charge size for these three refrigerants must in no case exceed 1,000 g (35.3 oz or 2.21 lbs) of propane or 1,000 g (35.3 oz or 2.21 lb) of R–441A. For portable air conditioners, the charge size must in no case exceed 300 g (10.6 oz or 0.66 lbs) of propane or 330 g (11.6 oz or 0.72 lb) of R–441A. The manufacturer must design a charge size for the entire air conditioner that does not exceed the amount specified for the unit's cooling capacity, as specified in table A, B, C, D, or E of this appendix.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling these refrigerants. Special care should be taken to avoid contact with the skin since these refrigerants, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
10. Residential and light-commercial air conditioning and heat pumps—self-contained room air conditioners only. (New equipment only) manufactured on or after May 10, 2015 and up to but not including [Date 30 days after date of publication of the final rule in the **Federal Register**].	HFC–32	Acceptable subject to use conditions.	As provided in clauses SA6.1.2 to SA6.1.5 of UL 484,[1 2 4] the following markings must be attached at the locations provided and must be permanent: (a) On the outside of the air conditioner: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the air conditioner: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the air conditioner near the compressor: "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the outside of each portable air conditioner: "WARNING: Appliance shall be installed, operated and stored in a room with a floor area larger the "X" m^2 (Y ft^2)." The value "X" on the label must be determined using the minimum room size in m^2 calculated using Appendix F of UL 484. For R–441A, use a lower flammability limit of 0.041 kg/m^3 in calculations in Appendix F of UL 484. All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The air conditioning equipment must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then air conditioning equipment using this refrigerant should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (*i.e.,* right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor. Air conditioning equipment in this category includes: Window air conditioning units. Portable room air conditioners. Packaged terminal air conditioners and heat pumps.
11. Residential and light-commercial air conditioning and heat pumps—self-contained room air conditioners only. (New equipment only) manufactured on or after [Date 30 days after of publication of the final rule in the **Federal Register**].	HFC–32	Acceptable Subject to Use Conditions.	This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant (*i.e.,* this substitute may not be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants).	

This substitute may only be used in air conditioning equipment that meets all requirements in the UL 60335–2–40.[127] In cases where this listing 11 includes requirements more stringent than those of UL 60335–2–40, the appliance must meet the requirements of this listing 11 in place of the requirements in UL 60335–2–40.

The following markings must be attached at the locations provided and must be permanent:

(a) On the outside of the equipment: "WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing."

(b) On the outside of the equipment: "WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used."

(c) On the inside of the equipment near the compressor: "WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed."

(d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: "WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations";

a. If the equipment is delivered packaged, this label shall be applied on the packaging.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
			b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the equipment near the nameplate: a. At the top of the marking: "Minimum Installation height, X m (W ft)". This marking is only required if required by the UL 60335–2–40. The terms "X" and "W" shall be replaced by the numeric height as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. b. Immediately below marking (a) of this listing 11or at the top of the marking if marking (a) is not required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)". The terms "Y" and "Z" shall be replaced by the numeric area as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside of the product: "WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition." (g) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25mm) in both directions from such locations and shall be replaced if removed.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex HH of UL 60335–2–40.[2 7] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from residential and light commercial air conditioning appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

[1] The Director of the Federal Register approves this incorporation by reference (5 U.S.C. 552(a) and 1 CFR part 51). You may inspect a copy at the U.S. EPA or at the National Archives and Records Administration (NARA). Contact the U.S. EPA at: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, *www.epa.gov/dockets,* (202) 202–1744. For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or visit *www.archives.gov/federal-register/cfr/ibr-locations.html.*

[2] You may obtain the material from: Underwriters Laboratories Inc. (UL) COMM 2000; 151 Eastern Avenue; Bensenville, IL 60106; email: *orders@comm-2000.com*; phone: 1–888–853–3503 in the U.S. or Canada (other countries +1–415–352–2168); website: *https://ulstandards.ul.com/* or *www.comm-2000.com.*

[3] UL 471. Commercial Refrigerators and Freezers. 10th edition. Supplement SB: Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System. November 24, 2010.

[4] UL 484. Room Air Conditioners. 8th edition. Supplement SA: Requirements for Room Air Conditioners Employing a Flammable Refrigerant in the Refrigerating System and Appendices B through F. December 21, 2007, with changes through August 3, 2012.

[5] UL 541. Refrigerated Vending Machines. 7th edition. Supplement SA: Requirements for Refrigerated Venders Employing a Flammable Refrigerant in the Refrigerating System. December 30, 2011.

[6] UL 60335–2–24. Standard for Safety: Requirements for Household and Similar Electrical Appliances—Safety—Part 2–24: Particular Requirements for Refrigerating Appliances, Ice-Cream Appliances and Ice-Makers, Second edition, dated April 28, 2017.

[7] UL 60335–2–40, Standard for Household And Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers, 3rd edition, Dated November 1, 2019.

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■ 3. Add appendix X to subpart G of part 82 to read as follows:

Appendix X to Subpart G of Part 82—Substitutes Listed in the [Date of Publication of the Final Rule in the Federal Register] Final Rule—Effective [Date 30 Days After Date of Publication of the Final Rule in the Federal Register]

REFRIGERANTS—SUBSTITUTES ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End-use	Substitute	Decision	Narrowed use limits	Further information
1. Very low temperature refrigeration (new only).	R–1150	Acceptable Subject to Use Conditions and Narrowed Use Limits.	• Temperature range—R–1150 may only be used in equipment designed specifically to reach temperatures lower than −80 °C (−112 °F). • The manufacturers of new very low temperature equipment would need to demonstrate that other alternatives are not technically feasible. They must document the results of their evaluation that showed the other alternatives to be not technically feasible and maintain that documentation in their files. This documentation, which does not need to be submitted to EPA unless requested to demonstrate compliance, "shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.,* performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes." (§82.180(b)(3)).	

REFRIGERANTS—SUBSTITUTES ACCEPTABLE SUBJECT TO USE CONDITIONS

End-use	Substitute	Decision	Use conditions	Further information
1. Centrifugal Chillers for comfort cooling and Industrial Process Air Conditioning Positive Displacement Chillers for comfort cooling and Industrial Process Air Conditioning.	HFO–1234yf, R–454A, R–454B, R–454C	Acceptable Subject to Use Conditions.	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in air conditioning equipment that meets all requirements in UL 60335–2–40.[135] In cases where this listing 1 includes requirements more stringent than those of UL 60335–2–40, the appliance must meet the requirements of this listing 1 in place of the requirements in the UL 60335–2–40. These refrigerants may be used in chillers if and only if such chiller meets all requirements listed in ASHRAE 15–2019.[124] In cases where this listing 1 includes requirements different than those of ASHRAE 15–2019, the appliance must meet the requirements of this listing 1 in place of the requirements in ASHRAE 15–2019. Where similar requirements of ASHRAE 15–2019 and UL 60335–2–40 differ, the more stringent or conservative condition shall apply unless superseded by this listing 1.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin.

REFRIGERANTS—SUBSTITUTES ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
			The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: ''WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.'' (b) On the outside of the equipment: ''WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.'' (c) On the inside of the equipment near the compressor: ''WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed.'' (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: ''WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations'' a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the equipment near the nameplate: ..... a. At the top of the marking: ''Minimum Installation Height, X m (W ft)''. This marking is only required if required by UL 60335–2–40. The terms ''X'' and ''W'' shall be replaced by the numeric height as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the height in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis. b. Immediately below marking (a) of this listing 1or at the top of the marking if marking (a) is not required: ''Minimum room area (operating or storage), Y m^2 (Z ft^2)''. The terms ''Y'' and ''Z'' shall be replaced by the numeric area as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the area in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside of the product: ''WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition.''LI O=≥xl≥ O=≥oi3≥≤(g) For fixed equipment that is ducted, including chillers, near the nameplate: ''WARNING—Risk of Fire—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions.''. (h) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25mm) in both directions from such locations and shall be replaced if removed.	A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex HH of UL 60335–2–40, 3rd edition.[3 5] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from residential and light commercial air conditioning appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

2. Positive Displacement chillers for comfort cooling using a rotary or scroll compressor and Industrial Process Air Conditioning using a chiller with a rotary or scroll compressor.	HFC–32, R–452B.	Acceptable Subject to Use Conditions.	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in air conditioning equipment that meets all requirements in UL 60335–2–40.[1 2 3] In cases where this listing 2 includes requirements more stringent than those of UL 60335–2–40, the appliance must meet the requirements of this listing 2 in place of the requirements in UL 60335–2–40. These refrigerants may be used in chillers if and only if such chiller meets all requirements listed in ASHRAE 15–2019.[1] In cases where this listing 2 includes requirements different than those of ASHRAE 15–2019, the appliance must meet the requirements of this listing 2 in place of the requirements in ASHRAE 15–2019. Where similar requirements of ASHRAE 15–2019 and UL 60335–2–40 differ, the more stringent or conservative condition shall apply unless superseded by this listing. The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: ''WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.'' (b) On the outside of the equipment: ''WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.'' (c) On the inside of the equipment near the compressor: ''WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed.'' (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: ''WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations'' a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex HH of UL 60355–2–40.[3 5] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from residential and light commercial air conditioning appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

REFRIGERANTS—SUBSTITUTES ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
			(e) On the equipment near the nameplate: ..... a. At the top of the marking: "Minimum Installation height, X m (W ft)". This marking is only required if required by UL 60335–2–40. The terms "X" and "W" shall be replaced by the numeric height as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. b. Immediately below marking (a) or at the top of the marking if marking (a) is not required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)". The terms "Y" and "Z" shall be replaced by the numeric area as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside of the product: "WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition." (g) For fixed equipment that is ducted, including chillers, near the nameplate: "WARNING—Risk of Fire—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions." (h) All of these markings must be in letters no less than 6.4 mm (¼ inch) high The equipment must have red Pantone Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25mm) in both directions from such locations and shall be replaced if removed.	

3. Residential Dehumidifiers.	HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C	Acceptable Subject to Use Conditions.	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in dehumidifier equipment that meets all requirements in UL 60335–2–40.[1 3 5] In cases where this listing 3 includes requirements more stringent than those of UL 60335–2–40, the appliance must meet the requirements of this listing 3 in place of the requirements in UL 60335–2–40. The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: "WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the equipment: "WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the equipment near the compressor: "WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed." (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: "WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations" a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the equipment near the nameplate: a. At the top of the marking: "Minimum Installation Height, X m (W ft)". This marking is only required if required by UL 60335–2–40. The terms "X" and "W" shall be replaced by the numeric height as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. b. Immediately below marking (a) of this listing 3or at the top of the marking if marking (a) is not required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)". The terms "Y" and "Z" shall be replaced by the numeric area as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. (f) On the outside of the product: "WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition." (g) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25mm) in both directions from such locations and shall be replaced if removed.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex HH of UL 60335–2–40.[3 5] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from residential and light commercial air conditioning appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

REFRIGERANTS—SUBSTITUTES ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
4. Non-residential Dehumidifiers.	HFC–32	Acceptable Subject to Use Conditions.	This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant (*i.e.,* this substitute may not be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). This substitute may only be used in dehumidifier equipment that meets all requirements in UL 60335–2–40.[1 3 5] In cases where this listing 4 includes requirements more stringent than those of UL 60335–2–40, the appliance must meet the requirements of this listing 4 in place of the requirements in UL 60335–2–40. The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: ''WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.''. (b) On the outside of the equipment: ''WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.''. (c) On the inside of the equipment near the compressor: "WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed.''. (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: "WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations''. a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the equipment near the nameplate:	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex HH of UL 6035–2–40.[3 5] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from residential and light commercial air conditioning appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

a. At the top of the marking: "Minimum Installation Height, X m (W ft)". This marking is only required if required by UL 60335–2–40. The terms "X" and "W" shall be replaced by the numeric height as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis.
b. Immediately below marking (a) of this listing 4 or at the top of the marking if marking (a) is not required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)". The terms "Y" and "Z" shall be replaced by the numeric area as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis.

(f) On the outside of the product: ''WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition.''

(g) All of these markings must be in letters no less than 6.4 mm (1/4 inch) high.

The equipment must have red Pantone Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25mm) in both directions from such locations and shall be replaced if removed.

REFRIGERANTS—SUBSTITUTES ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
5. Very Low Temperature Refrigeration.	R–1150	Acceptable Subject to Use Conditions.	R–1150 may be used only in new equipment specifically designed and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment designed for other refrigerants). R–1150 may only be used in laboratory equipment that meet all requirements in UL 61010–2–011.[136] In cases where this listing 5 includes requirements more stringent than those of UL 61010–2–011, the appliance must meet the requirements of this listing 5 in place of the requirements in UL 61010–2–011. Requirements of note include: (a) Warning labels—The following markings, or the equivalent, must be provided in letters no less than 6.4 mm (¼ inch) high and must be permanent: (b) Attach near the machine compartment: ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing''. (c) Attach near the machine compartment: ''CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed.'' (d) Attach on the exterior of the refrigeration equipment: ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.'' (e) Attach near all exposed refrigerant tubing: ''CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used.'' (f) Attach on the exterior of the refrigeration equipment: ''This equipment is intended for use in commercial, industrial, or institutional occupancies as defined in the Safety Standard for Refrigeration Systems, ANSI/ASHRAE 15'' (g) Attach on the exterior of the shipping carton: ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations.'' (h) The instructions shall include the following warnings as necessary: a. ''WARNING: Ensure all ventilation openings are not obstructed.'' b. ''WARNING: Do not use mechanical devices or other means to accelerate the defrosting process, other than those recommended by the manufacturer.''. c. ''WARNING: Do not damage the refrigerant circuit.'' Equipment must have distinguishing red (Pantone® Matching System (PMS) #185 or RAL 3020) color-coded hoses and piping to indicate use of a flammable refrigerant. The laboratory equipment shall have marked service ports, pipes, hoses and other devices through which the refrigerant is serviced. Markings shall extend at least 1 inch (25mm) from the servicing port and shall be replaced if removed. Equipment must use no more than 150 g of R–1150 in each refrigerant circuit using this refrigerant.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex HH of UL 60335–2–40.[35] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from residential and light commercial air conditioning appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

[1] The Director of the Federal Register approves this incorporation by reference (5 U.S.C. 552(a) and 1 CFR part 51). You may inspect a copy at the U.S. EPA or at the National Archives and Records Administration (NARA). Contact the U.S. EPA at: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, *www.epa.gov/dockets,* (202) 202–1744. For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or visit *www.archives.gov/federal-register/cfr/ibr-locations.html.*

[2] You may obtain this material from: American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 180 Technology Parkway NW, Peachtree Corners, Georgia 30092; phone: 404–636–8400; website: *www.ashrae.org.*

[3] You may obtain this material from: Underwriters Laboratories Inc. (UL) COMM 2000; 151 Eastern Avenue; Bensenville, IL 60106; phone: 415–352–2168; email: *orders@comm-2000.com*; website: *https://ulstandards.ul.com/* or *www.comm-2000.com.*

[4] ANSI/ASHRAE Standard 15–2019. Safety Standard for Refrigeration Systems, including all addenda published as of July 28, 2022.

[5] UL 60335–2–40, Standard for Household And Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers, 3rd edition, Dated November 1, 2019.

[6] UL 61010–2–011, Safety Requirements for Electrical Equipment for Measurement, Control, and Laboratory Use—Part 011: Particular Requirements for Refrigerating Equipment, 2nd edition, dated May 13th, 2021.

FIRE SUPPRESSION AND EXPLOSION PROTECTION AGENTS—ACCEPTABLE SUBJECT TO USE CONDITIONS

End-use	Substitute	Decision	Use conditions	Further information
1. Total Flooding	2–BTP	Acceptable Subject to Use Conditions.	Acceptable only for use in normally unoccupied spaces under 500 ft^3.	This fire suppressant has a relatively low GWP of 0.23–0.26 and a short atmospheric lifetime of approximately seven days. This agent is subject to a TSCA section 5(a)(2) SNUR. For establishments manufacturing, installing and maintaining equipment using this agent, EPA recommends the following: • This agent should be used in accordance with the safety guidelines in the latest edition of NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems; [1] • In the case that 2–BTP is inhaled, person(s) should be immediately removed and exposed to fresh air; if breathing is difficult, person(s) should seek medical attention; • Eye wash and quick drench facilities should be available. In case of ocular exposure, person(s) should immediately flush the eyes, including under the eyelids, with fresh water and move to a non-contaminated area; • Exposed persons should remove all contaminated clothing and footwear to avoid irritation; and medical attention should be sought if irritation develops or persists; • Although unlikely, in case of ingestion of 2–BTP, the person(s) should consult a physician immediately; • Manufacturing space should be equipped with specialized engineering controls and well ventilated with a local exhaust system and low-lying source ventilation to effectively mitigate potential occupational exposure; regular testing and monitoring of the workplace atmosphere should be conducted; • Employees responsible for chemical processing should wear the appropriate PPE, such as protective gloves, tightly sealed goggles, protective work clothing, and suitable respiratory protection in case of accidental release or insufficient ventilation; • All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and • Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. • Safety features that are typical of total flooding systems such as predischarge alarms, time delays, and system abort switches should be provided, as directed by applicable OSHA regulations and NFPA standards.[1] Use of this agent should also conform to relevant OSHA requirements, including 29 CFR 1910.160 and 1910.162. See notes 1 through 5 to this table.

FIRE SUPPRESSION AND EXPLOSION PROTECTION AGENTS—ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
2. Streaming	2–BTP	Acceptable, Subject to Use Conditions.	Acceptable only for use in non-residential applications, except for commercial home office and personal watercraft.	This fire suppressant has a relatively low GWP of 0.23–0.26 and a short atmospheric lifetime of approximately seven days. This agent is subject to a TSCA section 5(a)(2) SNUR. For establishments manufacturing, installing and maintaining equipment using this agent, EPA recommends the following: • This agent should be used in accordance with the safety guidelines in the latest edition of NFPA 10, Standard for Portable Fire Extinguishers; [1] • In the case that 2–BTP is inhaled, person(s) should be immediately removed and exposed to fresh air; if breathing is difficult, person(s) should seek medical attention; • Eye wash and quick drench facilities should be available. In case of ocular exposure, person(s) should immediately flush the eyes, including under the eyelids, with fresh water and move to a non-contaminated area; • Exposed persons should remove all contaminated clothing and footwear to avoid irritation; and medical attention should be sought if irritation develops or persists; • Although unlikely, in case of ingestion of 2–BTP, the person(s) should consult a physician immediately; • Manufacturing space should be equipped with specialized engineering controls and well ventilated with a local exhaust system and low-lying source ventilation to effectively mitigate potential occupational exposure; regular testing and monitoring of the workplace atmosphere should be conducted; • Employees responsible for chemical processing should wear the appropriate PPE, such as protective gloves, tightly sealed goggles, protective work clothing, and suitable respiratory protection in case of accidental release or insufficient ventilation; • All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and • Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. See notes 1 through 5 to this table.

3. Total Flooding	EXXFIRE®	Acceptable Subject to Use Conditions.	Acceptable only for use in normally unoccupied spaces	Use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems.[1] For establishments manufacturing, installing and maintaining equipment using this agent, EPA recommends the following: • In the case that EXXFIRE® is inhaled, person(s) should be immediately removed and exposed to fresh air. • Eye wash and quick drench facilities should be available. In case of ocular exposure, person(s) should immediately flush the eyes with water for a minimum of 15 minutes. • In the case of dermal exposure, the SDS recommends that person(s) should remove large grain particles, rinse with water for a minimum of 15 minutes, and remove all contaminated clothing. • Manufacturing space should be equipped with engineering controls, specifically an adequate exhaust ventilation system, to effectively mitigate potential occupational exposure. • Employees responsible for chemical processing should wear the appropriate personnel protective equipment (PPE), such as protective gloves, tightly sealed goggles, protective work clothing, and suitable respiratory protection in case of accidental release or insufficient ventilation. • All spills should be cleaned up immediately in accordance with good industrial hygiene practices. • Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. • Safety features that are typical of total flooding systems such as predischarge alarms, time delays, and system abort switches should be provided, as directed by applicable OSHA regulations and NFPA standards.[1] See notes 1 through 5 to this table.
4. Total Flooding	Powdered Aerosol H.	Acceptable Subject to Use Conditions.	Acceptable only for use in normally unoccupied spaces	Use of this agent should be in accordance with the safety guidelines in the latest edition of NFPA 2010, Standard for Fixed Aerosol Fire Extinguishing Systems.[1] For establishments manufacturing, installing, and maintaining equipment using this agent, EPA recommends the following: • Workers should use appropriate safety and protective equipment (*e.g.,* protective gloves, tightly sealed goggles, protective work clothing, and particulate-removing respirators using NIOSH type N95 or better filters) consistent with OSHA guidelines. • A local exhaust system should be installed and operated to provide adequate ventilation to reduce airborne exposure to Powdered Aerosol H constituents. • An eye wash fountain and quick drench facility should be close to the production area. • Training for safe handling procedures should be provided to all employees that would be likely to handle the containers of the agent or extinguishing units filled with the agent. • Workers responsible for cleanup should allow particulates to settle before reentering area and wear appropriate personal protective equipment. • All spills should be cleaned up immediately in accordance with good industrial hygiene practices. See notes 1 through 5 to this table.

[1] National Fire Protection Association (NFPA) standards are available from *www.nfpa.org.*

Note 1: The EPA recommends that users consult Section VIII of the OSHA Technical Manual for information on selecting the appropriate types of personal protective equipment for all listed fire suppression agents. The EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.,* respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes).

Note 2: Use of all listed fire suppression agents should conform to relevant OSHA requirements, including 29 CFR 1910.160 and 1910.162.

Note 3: Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.

Note 4: Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.

Note 5: The agent should be recovered from the fire protection system in conjunction with testing or servicing and recycled for later use or destroyed.

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Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Part 218
Train Crew Size Safety Requirements; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[Docket No. FRA–2021–0032, Notice No. 1]

RIN 2130–AC88

Train Crew Size Safety Requirements

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes regulations establishing safe minimum requirements for the size of train crews depending on the type of operation. A minimum requirement of two crewmembers is proposed for all railroad operations, with exceptions proposed for those operations that do not pose significant safety risks to railroad employees, the public, or the environment. This proposed rule would also establish minimum requirements for the location of crewmembers on a moving train and promote safe and effective teamwork. FRA also proposes a special approval procedure to allow railroads to petition FRA to continue legacy operations with one-person train crews and allow any railroad to petition FRA for approval to initiate a new train operation with fewer than two crewmembers.

DATES: Comments on the proposed rule must be received by September 26, 2022. FRA will consider comments received after that date to the extent practicable.

ADDRESSES:

Comments: Comments related to Docket No. FRA–2021–0032 may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket number (FRA–2021–0032), and Regulatory Identification Number (RIN) for this rulemaking (2130–AC88). All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Kevin Lewis, Operating Crew Certification Specialist, U.S. Department of Transportation, Federal Railroad Administration, telephone: 918–557–0651, email: *kevin.lewis@dot.gov;* or Alan H. Nagler, Senior Attorney, U.S. Department of Transportation, Federal Railroad Administration, telephone: 202–493–6038, email: *alan.nagler@dot.gov.*

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I. Executive Summary

Purpose of the Regulatory Action

For the past five years, a period in which railroad operations have produced consistent safety statistics, railroads (including freight, passenger, and tourist operations) have typically utilized crews of at least two persons. During this time, railroads have implemented positive train control (PTC) and other technologies and are expected to implement upgrades to these technologies and otherwise look to introduce operational efficiencies. FRA intends this rule to ensure that trains are adequately staffed for their intended operation and railroads have appropriate safeguards in place for safe train operations, whenever using a crew of fewer than two persons. In the event a railroad desires to transition a train operation to an operation with fewer than two crewmembers, as proposed, this rule would require the railroad to consider and address the safety risks of doing so by conducting a risk assessment of the proposed operation. Research identified the cognitive and collaborative demands placed on crewmembers and indicates that an increase in physical tasks and cognitive demands for a one-person crewmember could potentially lead to task overload or a loss of situational awareness that could cause an accident. The proposed risk assessment requirement would follow accepted hazard analysis processes and provide for the mitigation of identified hazards to acceptable levels.

Without this proposed rule, FRA has a limited ability to address the totality of potential safety issues related to the reduction of crew staffing levels. Currently, FRA can exercise its authority in discrete instances through the agency's emergency order authority (potentially after a serious accident) or in review of a passenger operation's emergency preparedness plan under 49 CFR part 239. Also, none of the other recent regulatory initiatives FRA has issued or is in the process of developing focus on the specific hazards and risks associated with reducing the number of train crewmembers to fewer than two crewmembers, nor do they require railroads to mitigate any such hazards and risks.

This proposed rule is necessary for FRA to proactively protect railroad employees, the public, and the environment. By requiring railroads to petition FRA for approval of existing (legacy) or new one-person crewmember operations, this proposed rule would allow FRA to closely examine the safety of legacy operations in accordance with established, minimum safety requirements, and prohibit the initiation of one-person crewmember operations that would not be consistent with railroad safety. FRA proposes to require

this petition to include consideration of the impact that operating with fewer than two crewmembers may have on mitigating the consequences of rail accidents and minimizing blocked at-grade highway-rail crossings.

Further, if a railroad petitions FRA to continue or initiate a train operation with fewer than two crewmembers, this rulemaking proposes a public comment period so that stakeholders, such as the railroad's employees, or businesses and communities adjacent to or served by the railroad, can provide relevant safety information or data.

This proposed rule is also necessary to prevent the multitude of State laws regulating crew size from creating a patchwork of rules governing train operations across the country. Despite the fact that provisions of the Federal railroad safety statutes mandate that laws, regulations, and orders ''related to railroad safety'' be nationally uniform, FRA is aware that some States have laws in place regulating crew size in a variety of ways. For example, California requires a minimum of two crew members for certain trains,[1] Washington requires a minimum of two crew members for certain trains and switching assignments,[2] Nevada requires a minimum of two crew members for certain trains or locomotives of certain railroads,[3] while Arizona has a ''full crew'' requirement for certain trains (requiring not only an engineer and conductor but crewmembers such as firemen, brakemen, and flagmen on certain trains),[4] and Massachusetts imposes other restrictions (providing the Department of Public Utilities can order changes to the crew size of any train).[5] Without this rule, railroads could be subjected to a different crew staffing law in every State in which they operate. Such a patchwork of State laws would likely result in significant cost and operational inefficiencies, and even potential safety concerns from a lack of a uniform standard. In this regard, there would be no assurance that State laws would be based on an analysis or determination concerning such impacts on safety.

Summary of Major Provisions

FRA is proposing regulations to ensure that trains are appropriately staffed for their intended operation and railroads have sufficient safeguards in place for safe train operations, whenever using a crew of fewer than two persons. With certain exceptions, FRA proposes to require that railroads staff every train operation with a minimum of two crewmembers (including a locomotive engineer and an additional crewmember). The proposed rule prescribes minimum requirements for the location of crewmembers on a moving train, requirements to ensure any crewmember not operating the train and outside of the operating cab of the controlling locomotive can directly communicate with the locomotive engineer, and special approval procedures for railroads to petition FRA to continue certain legacy operations with one-person train crews and to initiate new train operations with fewer than two crewmembers.

The NPRM is based on the premise that the locomotive engineer always located in the cab of the controlling locomotive when the train is moving unless the controlling locomotive is being operated remotely in accordance with 49 CFR 229.15. In most instances, there will only be one additional crewmember—usually a conductor. As proposed, however, the NPRM would not prohibit a railroad from having more than two crewmembers or from having additional or more stringent requirements governing the proper location of any crewmembers other than the locomotive engineer. Railroads also have the flexibility to adopt their own rules or practices based on Federal requirements and instruct their employees to comply with such rules or practices.

Although the NPRM includes several proposed exceptions to the minimum two crewmember requirement, the rule would prohibit certain train operations from operating with fewer than two crewmembers. Specifically, proposed § 218.123(c) prohibits the operation, without at least a two-person crew, of trains containing certain quantities and types of hazardous materials that have been determined to pose the highest risk in transportation from both a safety and security perspective (*e.g.,* trains transporting 20 or more car loads or intermodal portable tank loads of certain hazardous materials or one or more car loads of hazardous materials designated as rail-security sensitive materials (RSSM) as defined by the Department of Homeland Security). FRA proposes a total of ten exceptions to the minimum two crewmember requirement. In § 218.125, FRA proposes two general exceptions to the minimum two crewmember requirement. The first proposed exception includes trains operating in helper service (*i.e.,* a train that is assisting another train that has incurred a mechanical failure or lacks the power to traverse difficult terrain) because, as explained in greater detail in the section-by-section analysis, railroads commonly use one-person crews safely in helper service and helper service operations are generally not complex. The second proposed exception includes trains consisting of a locomotive or a consist of locomotives (excluding diesel or electric multiple units (DMUs or EMUs)) not attached to any piece of equipment or attached only to a caboose because, as explained in greater detail in the section-by-section analysis, these types of movements are typically made so that the locomotives can be better utilized and such movements pose less risk to railroad employees and the general public.

As applied to passenger and tourist train operations, the NPRM (§ 218.127) proposes four exceptions to the minimum two crewmember requirement. First, FRA proposes to except from the minimum two crewmember requirement tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation. Second, FRA proposes to except from the minimum two crewmember requirement passenger or tourist operations in which cars, empty of passengers, are being moved and passengers do not board the train's cars until the crew conducts a safety briefing on the safe operation and use of the cars' exterior side doors, consistent with the current door safety briefing

[1] Cal. Lab. Code sec. 6903, which requires at least a two-person crew for operation of a train or light engine used in connection with the movement of freight, not including hostler service or utility employees.

[2] Wash. Rev. Code Ann. sec. 81.40.015, which requires at least two crewmembers for all freight and passenger trains and switching assignments, not including Class III railroad carriers operating on their roads while at a speed of twenty-five miles per hour or less.

[3] N.R.S. sec. 705.415, which requires a train or locomotive crew of not less than two persons on any Class I freight railroad, Class I railroad or Class II railroad for transporting freight with the exception of a train or locomotive engaged in helper or hostling services.

[4] Ariz. Rev. Stat. Ann. sec. 40–881, which requires a passenger, mail or express train composed of less than six cars train to carry a crew consisting of not less than one engineer, one fireman, one conductor and one flagman, with an exception for gasoline motor cars; and, for those same types of trains that are longer, the crew must add a brakeman, but may drop the flagman when such train is operated outside yard limits on branch lines including the use of main lines where necessary to reach initial or final terminals of branch lines.

[5] Mass. Gen. Laws Ann. Ch. 160, sec. 185, which provides discretion to its Department of Public Utilities to order changes as it deems necessary whenever the department is of opinion, after a hearing, that the number of men forming a train crew of any train is not sufficient to operate said train for the safety of the public and the employees of the railroad.

requirement. Of course, there may be reasons to employ a two-person train crew if switches need to be thrown or other safety-related tasks suggest a second crewmember is warranted, notwithstanding this exception for movement of empty cars. The third exception applies to certain passenger or tourist operations where the locomotive engineer has direct access to the passenger seating compartment. Finally, FRA proposes to except certain rapid transit operations from the minimum two crewmember requirement.

As applied to freight operations, FRA is also proposing in § 218.129 four exceptions to the minimum two crewmember requirement. FRA is proposing exceptions for certain unit freight train loading and unloading operations, certain small railroad operations, and work train and remote-control operations that meet certain requirements. More detail on each of these proposed exceptions is found in the relevant section-by-section analysis below.

Proposed § 218.131 would allow legacy, one-person train operations to continue after the effective date of a final train crew size safety requirements rule until FRA can review the safety of the operation. Moreover, this proposed rule provides a mechanism for the operation to continue after FRA conducts its review.

FRA proposes to define a legacy operation as one that a railroad established at least two years before the effective date of a final rule establishing train crew size safety requirements. The proposed rule would prohibit a railroad from continuing a legacy, one-person train operation beyond 90 days after the effective date of a final rule if the railroad fails to file a special approval petition containing a description of the operation. As proposed, a railroad petition to continue a legacy, one-person operation must include evidence that the railroad has implemented certain rules and practices designed to ensure the safety of the one-person operation.

Proposed § 218.133 would allow a railroad to petition FRA to initiate a new train operation staffed with fewer than two crewmembers that is not otherwise prohibited or permitted by the other requirements of subpart G. In addition to much of the information FRA proposes to require to support a petition to continue a legacy operation, a special approval petition to initiate a new operation with fewer than two persons must contain a risk assessment of the proposed operation that follows accepted hazard analysis processes and provides for mitigation of identified hazards to acceptable levels. In the context of this rulemaking, a risk assessment is the process of determining, either quantitatively or qualitatively, the level of risk associated with a proposed train operation staffed with fewer than two crewmembers, including mitigating the risks to an acceptable level. As discussed in more detail in section III.I below, when the likelihood of an event whose probability of occurrence is so small, consequence(s) so slight, or benefit(s) so great, taking the risk or subjecting others to the risk is deemed acceptable. Generally, an acceptable level of risk is achieved when it is determined that further risk reduction measures will not result in an additional, significant reduction of risk in excess of the cost of such measures. For example, there is a risk that a locomotive engineer will operate a train past a red signal. A resulting hazard is that the train will collide with another train on the track past the signal. The probability that this unsafe event will occur is based on an analysis of the causal factors that could lead the engineer to operate the train past the red signal. The likelihood of an accident resulting is analyzed based on the probability that another train is occupying the track past the signal. Mitigation measures (*e.g.,* a train control system or certain operating rules) may not be able to completely eliminate the risk of the hazard, but the risk of the hazard (*i.e.,* a collision) occurring may be reduced to a level where additional mitigations would not be effective and the likelihood of the unsafe event occurring would be so small, further mitigations would not be warranted.

The minimum process and content requirements for a railroad's risk assessment are proposed in § 218.135. Section 218.135 would also allow a railroad to use alternative methodologies or procedures, or both, to conduct a risk assessment if the Associate Administrator finds they will provide an accurate assessment of the risk associated with the proposed operation.

In proposed § 218.137 a railroad would be able to petition FRA for special approval for both one-person, legacy train operations and the initiation of a new operation with fewer than two train crewmembers. FRA estimates the time burden for a railroad to prepare a petition will be 40 hours per petition for legacy train operations and 48 hours per petition for new operations. The proposed special approval procedure is expected to take 120 days once a railroad submits a petition for special approval. For example, the proposed special approval procedure would require that FRA publish a notice in the **Federal Register** soliciting public comment on each petition. All documents would be filed in a public docket and internet accessible. The proposed special approval procedure envisions that FRA may reopen consideration of the petition for cause stated. FRA proposes that when it decides a petition, or reopens consideration of a petition, it will send written notice of the decision to the petitioner and the decision will be published in the docket. Further, FRA proposes that a railroad making a material modification to an operation previously approved by FRA must file a description of the modification, and either a new or updated risk assessment, at least 60 days before proposing to implement any such modification. The proposed requirement to seek special approval is not expected to delay action on any operation because each railroad would need an equivalent timeframe to plan for the process of reducing crew size in advance of implementation.

Finally, FRA proposes an annual requirement for railroads that receive special approval to continue a legacy operation or initiate a new operation with fewer than two train crewmembers to conduct a formal review and analysis of those operations. FRA proposes an annual requirement to ensure that each railroad is regularly reviewing the safety of its operation and the accuracy of its risk assessment, and to provide FRA with enough data to identify any safety trends in the approved operations. Further, an annual requirement aligns with the general administration of FRA's safety program as well as FRA's statutory requirements.[6]

Costs and Benefits

FRA analyzed the economic impact of this proposed rule. FRA estimated the costs associated with special approvals, risk assessments, annual railroad responsibilities after receipt of special approval, and Government administration.

The primary benefit of this rule is to ensure any railroad, seeking to operate a train with fewer than two crewmembers identifies, evaluates, and addresses, in a comprehensive and standardized manner, safety concerns that may arise from such operation. A second crewmember performs important safety functions that could be lost when reducing crew size below two.

[6] *See e.g.,* 49 U.S.C. 103(j) and (k) (requiring the FRA Administrator to develop long-range national rail plans, and performance goals and reports for those plans that are typically updated annually).

FRA proposes that railroads seeking to operate trains with fewer than two crewmembers will be required to submit a petition to FRA to approve such an operation. The proposed petition process would require the submission of information demonstrating that the operation will be operated consistent with railroad safety. Additionally, the proposed safety requirements in this NPRM would allow the rail industry to maintain its strong safety record without proposing any restrictions that would directly impact its competitiveness compared with other modes of transportation.

This rule thus further ensures railroads operate in a safe manner by requiring them to properly assess and mitigate risks associated with fewer crewmembers, before initiation of such an operation, which they currently are not required to do. FRA seeks comment from all stakeholders, including any States with laws on train crew size.

FRA estimates the 10-year costs of the proposed rule to be $2.0 million, discounted at 7 percent. The annualized costs would be $0.3 million discounted at 7 percent. The following table shows the total costs of this proposed rule, over the 10-year analysis period. FRA qualitatively discusses the benefits but does not have sufficient data to monetize those benefits.

TOTAL 10-YEAR DISCOUNTED COSTS

[2020 Dollars] [7]

Category	Total cost, 7 percent ($)	Total cost, 3 percent ($)	Annualized cost, 7 percent ($)	Annualized cost, 3 percent ($)
Special Approval (Legacy Operations)	41,486	41,486	5,907	4,863
Special Approval (New Operations)	318,665	400,442	45,371	46,944
Risk Assessment (Initial and Revisions)	555,124	696,616	79,037	81,665
Risk Assessment—Material Modifications	159,353	197,690	22,688	23,175
Railroad Annual Oversight Responsibilities	127,374	161,450	18,135	18,927
Government Administrative Cost	806,837	1,006,977	114,875	118,048
Total costs	2,008,840	2,504,662	286,014	293,623

II. Legal Authority

FRA is proposing regulations concerning train crew size safety requirements based on the statutory general authority of the Secretary of Transportation (Secretary). The general authority states, in relevant part, that the Secretary ''as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.'' [8] The Secretary delegated this authority to the Federal Railroad Administrator.[9]

III. Background

A. A Brief History of Train Crew Staffing

1. General History

Historically, technology has enabled a gradual reduction in the number of train crewmembers from about five in the 1960s to about two by the end of the 1990s. Four major technological breakthroughs led to train crew staffing reductions. First, the phase-out of steam locomotives allowed locomotives to be operated without the crewmember known as the fireman, dedicated to keeping the engine fed with coal. Second, the introduction of portable radios made it easier to transmit information from a crewmember at the far end of the train to the leading end, allowing the conductor to move from the caboose to the lead locomotive and leading to the eventual removal of a crewmember known as a brakeman. Third, the end-of-train device replaced the need for one or more crewmembers to be at the rear of a train on a caboose to monitor brake pipe pressure. Fourth, the development of improved train control devices, such as Cab Signal System, Automatic Train Stop, and Automatic Train Control, helped automate safer operations in case of human error. Further, over the last 25 years, remotely controlled locomotive operations utilizing only a one-person crew for switching service have become commonplace.

By statute, the Secretary of DOT is required to ''prescribe regulations and issue orders to establish a program requiring the licensing or certification . . . of any operator of a locomotive.'' [10] A person [11] who operates a locomotive or train is a locomotive engineer. FRA fulfilled that statutory requirement in 1991 by issuing a regulation requiring each railroad to file a locomotive engineer certification program with FRA.[12] Each railroad's program must specify how the railroad plans to make the determinations necessary to certify each of its locomotive engineers, as well as ensure that the certified locomotive engineers of other railroads are qualified to safely operate on the controlling railroad's track.[13] A locomotive engineer's main task is to operate the train safely. Other important tasks central to operation include: ensuring that the locomotive mechanical requirements are met; coordinating with the conductor about operational details; and, under the conductor's supervision, interpreting train orders, signals, and operating rules.

FRA also has conductor certification requirements [14] that were statutorily mandated.[15] FRA defines a conductor as the crewmember in charge of a train or yard crew,[16] and the conductor's job requires supervising train operations so they are safe and efficient. The

[7] Numbers in this table and subsequent tables may not sum due to rounding. As discussed further in section VI.I. of the Regulatory Impact Analysis (RIA), quantified costs do not include costs that could be incurred in order to mitigate risks associated with a reduction in the number of crewmembers.

[8] 49 U.S.C. 20103.

[9] 49 CFR 1.89(a).

[10] 49 U.S.C. 20135.

[11] Although current FRA regulations do not explicitly require the presence of a human operator, FRA's regulations were developed and drafted based on a general assumption that a train would be operated by a person albeit with assistance from technology. Automated operations are discussed later in this NPRM.

[12] 56 FR 28254 (June 19, 1991), 49 CFR part 240.

[13] 49 CFR part 240, subpart B—Component Elements of the Certification Process, and § 240.229 (requiring certain action on the part of a railroad controlling the conduct of joint operations with another railroad). Additional guidance was provided in an interpretation published August 29, 2008. 73 FR 50883.

[14] 49 CFR part 242, ''Qualification and Certification of Conductors.''

[15] 49 U.S.C. 20163, ''Certification of train conductors.''

[16] 49 CFR 242.7 (defining ''conductor'').

conductor's responsibilities include: managing the train consist; coordinating with the locomotive engineer for safe and efficient en route operation; interacting with dispatchers, roadway workers, and others outside the cab; and dealing with exceptional situations (*e.g.,* mechanical problems).[17] In addition, as locomotive and train technologies have become more complex in recent years, a conductor (or second crewmember) can assist a locomotive engineer by responding to technology prompts or conveying information displayed that will allow the engineer to focus on the train's controls and movement. The purpose of the conductor certification regulation is to ensure that only those persons meeting minimum Federal safety standards serve as conductors. When FRA published the conductor certification final rule, the agency made clear that the rule should not be read as FRA's endorsement of any particular crew consist arrangement.[18] For a one-person train crew, FRA requires that the crewmember be certified as both a locomotive engineer and a conductor.[19]

2. Indiana Rail Road's One-Person Train Crew Operation

Indiana Rail Road (INRD), a Class II, 250-mile regional railroad that operates in southern Indiana and Illinois, was a trailblazer in initiating one-person crew operations in the United States. During a July 15, 2016, FRA public hearing on FRA's 2016 train crew staffing NPRM, an INRD manager testified about how INRD established its one-person operation.[20] For instance, INRD officials observed operations overseas before implementing one-person operations on INRD.[21]

Without mentioning whether INRD conducted a risk assessment or similar safety analysis, INRD imposed on itself more stringent requirements than what are Federally required. INRD determined that all employees would be considered train operators, dual-certified as both locomotive engineers and conductors, and represented by the Brotherhood of Locomotive Engineers and Trainmen (BLET).[22] INRD's manager testified that: these one-person train operators are not working 12 hours on duty as permitted by the hours of service laws, but instead are on duty 9 to 10 hours; three-quarters of these train operators are also working assigned jobs, meaning they have set, five-day work schedules; and, the majority of these train operators are operating unit trains, which are entire trains hauling a single commodity, which for INRD generally means entire trains hauling ''grain, coal, rock, coke, things like that.'' [23] Although FRA has found that the limitations INRD has imposed on its one-person operations have helped establish its positive safety record,[24] there are no Federal requirements prohibiting INRD from changing its self-imposed standards for the safety of one-person operations.

INRD's manager also explained how he invited FRA to visit and discuss INRD's one-person operations with INRD's operating rules personnel thereby soliciting FRA's feedback on what was ''missing or . . . should [be] change[d].'' [25] INRD's manager stated the ''[m]ain reason [INRD] did that [was] there [are] obviously things that [INRD] probably missed or [INRD] hadn't thought of because there's a lot going on'' and FRA could be helpful because it ''deal[s] with a lot of railroads, a lot of other situations.'' [26] FRA's feedback led INRD to adopt or enhance procedures that protect the one-person crew in an emergency, establish more frequent communications between the one-person crew and the dispatcher, and implement standard procedures for protecting grade crossings, releasing automatic interlockings, and addressing other circumstances typically handled by a conductor.

In the INRD manager's remarks at the 2016 public hearing, he stated that the number of one-person crew starts on INRD has lessened in the last couple of years because ''the nature of [INRD's] business has changed from percentage of unit trains, which lend themselves to the one-man crews . . . [to] more route switcher local work.'' [27] FRA understands this statement to mean that INRD reduced the number of one-person crew starts because route switcher local work involves frequent switching, which may pose increased safety hazards if the one crewmember has to repeatedly mount and dismount the locomotive, throw switches, and couple and uncouple cars. However, when the nature of INRD's business changed, the railroad was not required to reduce the number of one-person crew starts, nor conduct any risk assessment or safety analysis, to ensure it maintained its positive safety record.

B. Summary of Prior Crew Staffing Rulemaking and Court Order

On March 15, 2016, FRA issued an NPRM proposing regulations concerning train crew staffing.[28] The 2016 NPRM arose out of two rail accidents in 2013. One accident was illustrative of how a second train crewmember might have prevented grave harm (Lac-Mégantic, Quebec) and the other showed how multiple train crewmembers can help prevent harm post-accident, as well as how an expert crewmember team can support each other during life-threatening conditions (Casselton, North Dakota).[29]

On July 5–6, 2013, a catastrophic accident occurred in Lac-Mégantic, Quebec, Canada involving a one-person

[17] Rosenhand, Hadar, Emilie Roth, and Jordan Multer, Cognitive and Collaborative Demands of Freight Conductor Activities: Results and Implications of a Cognitive Task Analysis, FRA (July 2012).

[18] 76 FR 69802, 69825 (Nov. 9, 2011).

[19] 49 CFR 240.308(c) and 242.213(d).

[20] A transcript of the public hearing is available in the docket to the 2016 NPRM at *https://www.regulations.gov/document?D=FRA-2014-0033-1559* (''Hearing Transcript''). Bob Babcock, INRD Senior Vice President of Operations and Business Development, testified beginning on page 77 of the Hearing Transcript.

[21] Hearing Transcript at 80.

[22] Hearing Transcript at 80–81.

[23] Hearing Transcript at 81.

[24] In the 2016 NPRM, FRA explained that it would expect to approve the continuation of a freight operation if it met certain characteristics that were directly taken from a document INRD submitted to the Office of Information and Regulatory Affairs (OIRA) during the Executive Order 12866 review in which INRD explained the characteristics of its operation. *See* 81 FR 13951 and *https://www.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=2130-AC48&meetingId=834&acronym=2130-DOT/FRA* (handout). Those characteristics are: 70 percent or more of the railroad's carload traffic is non-hazardous materials; the railroad has adopted crew staffing rules and practices to ensure compliance with all Federal rail safety laws, regulations, and orders; the maximum authorized track speed for the operation is 40 mph; the one-person train crewmembers have set daytime schedules with little fluctuation; the one-person train crewmembers average on-duty time is less than 9.5 hours per shift; the operation is structured so that the one-person crewmember would not have to leave the locomotive cab except in case of emergency; the railroad has a rule or practice requiring the one-person crew to contact the dispatcher whenever it can be anticipated that communication could be lost, *e.g.,* prior to entering a tunnel; the railroad has a rule or practice requiring the one-person crew to test the alerter on the lead locomotive and confirm it is working before departure; the railroad has a rule or practice requiring dispatcher confirmation with the one-person crew that the train is stopped before issuing a mandatory directive; the railroad has a rule or practice requiring a one-person crew have an operable cell phone and radio, and both must be tested prior to departure; and the railroad has a method of determining the train's approximate location when communication is lost with the one-person crew unexpectedly and a protocol for determining when search-and-rescue operations must be initiated.

[25] Hearing Transcript at 109.

[26] Hearing Transcript at 110.

[27] Hearing Transcript at 81; *see also id.* at 125.

[28] 81 FR 13918. The 2016 NPRM, and all comments submitted in response to that NPRM, is available for review in Docket Number FRA–2014–0033 on *www.regulations.gov.*

[29] The accidents, which are described in this summary, are more extensively described in the 2016 NPRM. *See* 81 FR 13921–13924 (Mar. 15, 2016).

crew that failed to properly secure a train before leaving it unattended on mainline track where it did not stay secured and rolled down a grade to the center of town, where 63 of the 72 crude oil tank cars in the train derailed, and about one-third of the derailed tank car shells had large breaches.[30] There were multiple explosions and fires causing an estimated 47 fatalities to the general public, extensive damage to the town, and approximately 2,000 people to be evacuated from the surrounding area. In the aftermath of the derailment at Lac-Mégantic, Transport Canada issued an order for all Canadian railroad companies to provide for minimum operating crew requirements considering technology, length of train, speeds, classification of dangerous goods being transported, and other risk factors; however, the railroad involved in the accident did not automatically make corresponding changes to its operating procedures in the U.S. even though the risk associated with this catastrophic accident also exists in the U.S.[31] The TSB of Canada report on the Lac-Mégantic accident found that it could not be concluded that a one-person crew contributed to the accident. However, TSB of Canada found that the risk of implementing single-person train operations is a risk that must be addressed because it is related to unsafe acts, unsafe conditions, or safety issues with the potential to degrade rail safety. TSB of Canada concluded that addressing the risk of one-person operations is essential to preventing future similar accidents, even if the risk itself cannot be determined to directly have led to this accident. TSB of Canada's report also highlighted how ''risk assessments are particularly crucial when a company makes a change to its operations, since this is when new risks may emerge'' and that the railroad's risk assessment in this instance ''did not thoroughly identify and manage the risks to ensure safe operations.'' [32]

FRA's initial response to the Lac-Mégantic accident was to issue Emergency Order 28 on August 2, 2013, which contained the preliminarily known details of the events that led to the accident and ordered each railroad to institute and carry out specific measures with respect to securement of unattended vehicles and trains transporting certain types of hazardous material on mainline track and mainline sidings outside of a yard or terminal.[33] On August 29, 2013, FRA followed the issuance of the emergency order by hosting an emergency meeting of its Federal Advisory Committee known as the Railroad Safety Advisory Committee (RSAC).[34] At the time of the meeting, RSAC was composed of 54 voting representatives from 32 member organizations, representing various rail industry perspectives.[35] RSAC was established to provide advice and recommendations to FRA on railroad safety matters and, in the announcement for the meeting, FRA requested ''that both freight and passenger railroads be prepared to discuss Transport Canada's directive requiring that two-person crews operate trains carrying hazardous materials on main track.'' [36] On August 29, 2013, RSAC accepted a task (No. 13–05) entitled ''Appropriate Train Crew Size'' and formed a Working Group. The task statement noted that, in light of the Lac-Mégantic accident, ''FRA believes it is appropriate to review whether train crew staffing practices affect railroad safety.'' [37] In the 2016 NPRM, FRA summarized discussions of RSAC's Working Group and explained that, although no consensus was reached on any recommendations,[38] the 2016 proposed rule largely reflected concerns FRA identified during the Working Group meetings.[39]

Before the RSAC Working Group concluded its meetings on March 31, 2014,[40] ana accident occurred at Casselton, North Dakota on December 30, 2013, that FRA considered illustrative of how having multiple train crewmembers can improve safety for the general public and the crewmembers themselves.[41] In this incident, a ''grain train'' derailed on an adjacent track about two minutes before a ''key train,'' consisting of two head end locomotives, one rear distributive power unit (DPU), and two buffer cars on each end of 104 loaded crude oil cars, collided with it. The collision derailed the key train's two leading locomotives, as well as the first 21 trailing cars behind the locomotives, causing a release of an estimated 474,936 gallons of crude oil from 18 loaded tank cars fueling a fire which caused subsequent explosions as the loaded oil tank cars burned. The local fire department had requested that nearby residents voluntarily evacuate immediately following the collision, and approximately 1,500 residents did evacuate. The voluntary evacuation was lifted approximately 25 hours after the collision. There were no injuries to crewmembers, emergency responders, or the general public, but images and video of the burning railcars made the accident national news. Meanwhile, the train crewmembers on both trains performed admirably.

During the 2013 Casselton incident, the grain train's locomotive engineer and conductor crewmembers potentially prevented the environmental and property damages from being much worse, in addition to potentially shortening the evacuation period, by calling a trainmaster for permission and coordinating with emergency responders to twice cut undamaged tank cars away from the burning derailed cars.[42] Although an exact timeline was not established in investigation reports, the National Transportation Safety Board (NTSB) describes the grain train crew's first mitigating actions as occurring contemporaneously with the crew's movement and arrival at a nearby highway-rail grade crossing at which they were met by the assistant fire chief of the Casselton Fire Department who made the request for them to assist emergency responders.[43] The second set of mitigating actions is described as occurring 30 to 45 minutes after the

[30] On August 20, 2014, the Transportation Safety Board (TSB) of Canada released its railway investigation report, which refines the known factual findings and makes recommendations for preventing similar accidents. TSB of Canada Railway Investigation R13D0054 is available online at *http://bit.ly/VLqVBk*.

[31] Letter from Joseph C. Szabo, FRA Administrator, to Mr. Edward Burkhardt, CEO of MMA (Aug. 21, 2013), placed in the docket.

[32] TSB of Canada Railway Investigation R13D0054 at 123.

[33] 78 FR 48218 (Aug. 7, 2013) (noting the emergency order was issued five days before it was published).

[34] 78 FR 48931 (Aug. 12, 2013) (announcing the RSAC emergency meeting).

[35] *Id.* and *see also* 81 FR 13935–36 (providing an overview of RSAC).

[36] 78 FR 48931.

[37] 81 FR 13936.

[38] 81 FR 13936–39.

[39] 81 FR 13941–42.

[40] 81 FR 13938.

[41] FRA's Accident Investigation Report HQ–2013–31, regarding the Casselton, ND accident on December 30, 2013 is available online at *https://railroads.dot.gov/elibrary/hq-2013-31-finalized#p1_z50_gD_lAC_y2013.*

[42] The grain train was operated by a three-person crew when it derailed. The three-person crew included a locomotive engineer, a conductor, and a student locomotive engineer (*i.e.,* a conductor training to be a locomotive engineer). In addition, a supervisor (Road Foreman of Engines) was on board the train to test the student. The supervisor was not on the train when the crew took mitigating actions requested by local emergency first responders, as the three-person crew and the supervisor got off the train and walked to meet a railroad employee in a motor vehicle who had been waiting to pick up the supervisor. It was while the crew was with the supervisor that local emergency responders requested the crew's assistance, but the crew had to call a trainmaster to receive permission to comply with the request. FRA attributes the mitigating actions to the two certified crewmembers, as any operation of the locomotive or train by the student was under the supervision of the certified locomotive engineer. *Id.*

[43] NTSB Railroad Accident Brief (RAB) 1701 at 5 (available in the docket as ''Casselton NTSB RAB1701.pdf'').

grain train crew completed moving the first set of cars away from the fire.[44] The grain train's two certified crewmembers were thus responsible for moving approximately 70 loaded crude oil cars in the key train out of harm's way.

In the meantime, the alert key train crewmembers during the Casselton incident were able to survive the impact of the collision, escape their locomotive, which was on fire and had a jammed front door, and alert the dispatcher to the collision, largely based on a series of team related actions. Without teamwork, there were factors indicating a one-person crew might not have survived. For instance, the conductor admitted that he had never been in a situation where a collision was imminent, did not know what to do, and therefore might not have gotten down on the floor and braced himself, as the locomotive engineer instructed.[45] Also, a one-person crew might not have been in a position to see out the window and notice the train was on fire, as the conductor did in this case and warn the engineer of the fire danger. Upon exiting the locomotive, the crew found themselves in knee-deep snow and it was only about a minute later that the locomotive was engulfed in flames.[46] Thus, if a one-person crew were slower than the key train's two-person crew to evaluate the dangers, take action to protect him- or herself during the imminent collision, and subsequently evacuate the locomotive, that one-person might not have been able to survive the accident.

Similar to the proposals in this NPRM, the 2016 NPRM generally proposed to require a minimum of two crewmembers for all railroad operations except operations determined to not pose significant safety risk to railroad employees, the general public, and the environment. Also similar to this proposed rule, the 2016 NPRM proposed special approval processes to allow an existing, less than two crewmember operation to continue and to allow the initiation of a new, less than two crewmember operation. The approval processes proposed in the 2016 NPRM, however, contemplated that a requesting railroad would provide a description of the existing or proposed operation(s), along with ''appropriate data or analysis, or both'' or a ''safety analysis . . . including any information regarding the safety history of the operation'' to enable FRA to determine whether the proposed operation would provide ''at least an appropriate level of safety.'' [47]

On May 29, 2019, FRA withdrew the 2016 NPRM.[48] In the 2019 notification of withdrawal (2019 Withdrawal), FRA provided a general summary of the nearly 1,600 comments on the 2016 NPRM from industry stakeholders and individuals, including current, former, and retired crewmembers, the NTSB, two members of Congress, and numerous State and local government officials.

Although 1,545 of the comments supported the regulation of crew staffing, FRA explained that it was withdrawing the 2016 NPRM for several reasons. For instance, FRA concluded in the 2019 Withdrawal that the connections between train crew staffing and railroad safety with respect to the Lac-Mégantic and Casselton accidents are tangential at best and do not provide a sufficient basis for FRA regulation of train crew staffing requirements.[49] FRA also explained that FRA's accident/incident safety data [50] did not establish that one-person operations are less safe than multi-person train crews.[51] Similarly, FRA concluded that the comments did not provide conclusive data suggesting that there have been any previous accidents involving one-person crew operations that could have been avoided by adding a second crewmember or that one-person crew operations are less safe.[52] In addition, FRA found that implementation of a train crew staffing rule would establish a potential barrier to automation or other technology improvements.[53] In issuing the 2019 Withdrawal, FRA noted its view that consideration and rejection of a Federal crew staffing requirement preempted all State laws attempting to regulate train crew staffing in any manner.[54]

Four separate lawsuits were filed challenging the 2019 Withdrawal, which were consolidated in the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit). Petitioners included the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers and the Brotherhood of Locomotive Engineers and Trainmen filing jointly, and three States (California, Washington, and Nevada) filing separately. On February 23, 2021, the Court vacated FRA's withdrawal and preemption determination, and remanded the rulemaking to FRA.[55]

The proposals in this NPRM are similar to many aspects of the 2016 NPRM, but this proposed rule's risk assessment and annual oversight requirements are intended to enable FRA to play a more active role in ensuring that railroads appropriately consider any relevant safety risks that may arise from train operations using less than two person crews. The risk assessment requirement of this proposed rule is also designed to ensure that, to the extent practicable, railroads follow a uniform standard in evaluating the risks of the proposed operations.

In this NPRM, FRA occasionally cites to the 2016 NPRM and 2019 Withdrawal; however, those citations are for reference purposes. This rulemaking is not a continuation of the prior rulemaking and instead stands on its own as a new proposed rule.

C. Preemption

Of particular concern to FRA is the patchwork of State laws regulating crew size in some manner and the impact of those various State requirements on safe rail operations.[56] In the 2019 Withdrawal, FRA explained that provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (FRSA), repealed and recodified at 49 U.S.C. 20106, mandate that laws, regulations, and orders ''related to railroad safety'' be nationally uniform.[57] The FRSA provides that a State law is preempted where FRA, under authority delegated from the Secretary of Transportation, ''prescribes a regulation or issues an order covering the subject matter of the State requirement.'' [58] A Federal regulation or order covers the subject matter of a State law where ''the federal regulations substantially subsume the subject matter of the relevant state law.'' [59] A Federal regulation or order need not be identical to the State law to cover the same subject matter. The Supreme Court has held preemption can be found from ''related safety regulations'' and ''the context of the overall structure of the regulations.'' [60] Federal and State actions cover the same

[44] *Id.*

[45] 81 FR 13924.

[46] *Id.*

[47] 81 FR 13965–66.

[48] 84 FR 24735.

[49] 84 FR 24738.

[50] 49 CFR part 225, Railroad Accidents/Incidents: Reports Classification, and Investigations.

[51] 84 FR 24739.

[52] 84 FR 24740.

[53] *Id.*

[54] 84 FR 24741.

[55] *Transp. Div. of the Int'l Ass'n of Sheet Metal, Air, Rail & Transp. Workers* v. *FRA,* 988 F.3d 1170, 1184–85 (9th Cir. 2021).

[56] 84 FR 24741(describing how FRA believes nine States have laws in place regulating crew size in some manner and laws regulating crew size have been proposed in 30 States since 2015).

[57] 49 U.S.C. 20106(a)(1).

[58] 49 U.S.C. 20106(a)(2). 49 U.S.C. 20106(a)(2).

[59] *CSX Transportation, Inc.* v. *Easterwood,* 507 U.S. 658, 664–65 (1993).

[60] *Easterwood,* 507 U.S. at 674.

subject matter when they address the same railroad safety concerns.[61]

FRSA's preemption provision includes a ''narrow exception'' [62] to FRA's broad authority to preempt State laws. This narrow exception allows non-Federal regulation of ''essentially local'' safety hazards.[63] An ''essentially local safety hazard'' is ''one which is not adequately encompassed within national uniform standards.'' [64] Meanwhile, the State laws at issue do not address an ''essentially local'' hazard because they would apply statewide.[65] Thus, legislative history and subsequent judicial decisions indicate the narrow exception is intended to allow States to respond to local situations not capable of being adequately addressed in uniform national standards, but local safety hazards cannot be Statewide.[66]

For these reasons, if FRA issues a final rule establishing minimum safety requirements for the size of train crews, it would cover the same subject matter as the State laws regulating crew size, and therefore FRA expects a final rule will have preemptive effect on those State laws that are Statewide in character and do not address narrow, local safety hazards. In the alternative, to address FRA's concern regarding the patchwork of State laws on crew size, FRA could articulate FRA's preemption of crew size requirements through a rulemaking without establishing minimum crew size requirements. FRA did not propose this alternative as it would not address the various safety concerns raised in this rulemaking. Further, FRA recognizes that if the issue of crew size safety is left to be governed by a patchwork of State laws, logistically it may become impossible for a railroad to even consider operations with fewer than two crewmembers. Thus, this rulemaking is intended to ensure railroads have the flexibility to consider changes in crew size for individual operations based on an objective analysis of the safety and risks of the operation. FRA would appreciate comments on this issue.

D. Reconsideration of the Safety Issues

The Ninth Circuit's decision to vacate and remand the 2019 Withdrawal left FRA with the decision of whether to leave the issue of crew size safety to the status quo, initiate a rulemaking solely to have preemptive effect on the patchwork of State laws regulating crew size, or initiate a new rulemaking to address both safety issues and the preemption issue. In addition to the concern that a patchwork of State laws regulating crew size in some manner may impact safe rail operations due to the potential for crew consist size changes as trains cross State lines and any associated risks, FRA found several other safety issues to reconsider. For instance, upon reflection, FRA over-relied on the absence of single-person crew safety data to support its 2019 Withdrawal, because there have been too few current one-person train crew operations to create any meaningful data. The lack of safety data reflects the paucity of data; it does not support any conclusions about the safety of single-person crews.[67]

FRA's 2019 Withdrawal also downplayed other safety concerns, such as the views expressed in approximately 1,545 comments of the nearly 1,600 received that supported the 2016 NPRM and the lessons learned from the Lac-Mégantic and Casselton accidents. As discussed above, the 2019 Withdrawal focused on the causes of the Lac-Mégantic and Casselton accidents and found the connections between crew staffing and railroad safety ''tangential at best'' and that ''the same type of positive post-accident mitigating actions'' by the multi-person crews achievable with ''a well-planned, post-accident protocol that quickly brings railroad employees to the scene of an accident.'' [68] However, there is no Federal requirement for such a well-planned, post-accident protocol in such instances and thus there are no assurances that a railroad with a one-person train operation will initiate a safety protocol that could substitute for how multiple crewmembers, working as a team, could help prevent harm (Lac-Mégantic) and support each other during life-threatening conditions while helping to mitigate post-accident harm (Casselton).

Another issue FRA is reconsidering is the 2019 Withdrawal's reference to DOT's focus on removing unnecessary barriers to automation by ''issuing voluntary guidance, rather than regulations that could stifle innovation.'' [69] In revisiting the conclusion in the 2019 Withdrawal that an FRA ''train crew staffing rule would unnecessarily impede the future of rail innovation and automation,'' FRA finds that a train crew staffing rule would not necessarily halt rail innovation or automation. Notwithstanding the statements made in the 2019 Withdrawal, as detailed below, FRA has reexamined and reevaluated the safety issues associated with train operations involving fewer than two person crews, and based on this reevaluation, FRA has concluded that a rule addressing crew size could effectively serve as a tool to ensure new technologies involving automation and other rail innovations are thoroughly reviewed and shown to be consistent with railroad safety before they are implemented. DOT's current policy priorities include, but are not limited to, ensuring that ''[i]nnovations should reduce deaths and serious injuries on our Nation's transportation network, while committing to the highest standards of safety across technologies.'' [70] Under these policy priorities, FRA finds that a train crew size safety rule, as proposed in this NPRM, could better ensure that railroads implementing innovative technologies and automation: (1) achieve increased rail safety, or (2) at a minimum, do not introduce additional risk into railroad operations. In other words, safety continues to be DOT's top priority, and, rather than issue voluntary guidance, this NPRM would require regulated entities to analyze and demonstrate how innovations are consistent with safety, and receive FRA's approval, before implementing the technologies.

Further, the 2019 Withdrawal did not consider how technological trends and operational changes, especially on Class I freight railroads since 2016, have impacted safety or may impact safety in the future. The growth in the number of trains with more than 150 rail cars is a business practice that FRA has observed over the past several years,[71] and this

[61] *Burlington Northern R.R.* v. *Montana,* 880 F.2d 1104, 1105 (9th Cir. 1989).

[62] *Duluth, Winnipeg & Pac. Ry. Co.* v. *City of Orr,* 529 F.3d 794, 796 (8th Cir. 2008).

[63] 49 U.S.C. 20106(a)(2).

[64] *Union Pacific R. Co.* v. *California Pub. Utils. Comm'n,* 346 F.3d 851, 860 (9th Cir. 2003).

[65] 49 U.S.C. 20106(a)(2); H.R. Rep. No. 91–1194 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4104, 4117 (''these local hazards would not be statewide in character''); *see also Norfolk & Western Ry. Co.* v. *Public Utilities Comm'n of Ohio,* 926 F.2d 567, 571 (6th Cir. 1991) and *National Ass'n of Regulatory Util. Comm'rs* v. *Coleman,* 542 F.2d 11, 14–15 (3d Cir. 1976) (both holding that the local hazard exception cannot be applied to uphold the application of a statewide rule).

[66] H.R. Rep. No. 91–1194 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4104, 4117.

[67] *See Transp. Div. of the Int'l Ass'n of Sheet Metal, Air, Rail & Transp. Workers* v. *FRA,* 988 F.3d 1170, 1182 (9th Cir. 2021) (''Critically, this lack of data does not support the promulgation of a one-person train crew rule and the preemption of state safety laws.'').

[68] 84 FR 24738.

[69] 84 FR 24740.

[70] U.S. DOT Innovation Principles. *https://www.transportation.gov/priorities/innovation/us-dot-innovation-principles.*

[71] U.S. Government Accountability Office (GAO), Report to Congressional Requesters ''Rail Safety: Freight Trains Are Getting Longer, and Additional

Continued

change, along with other operational changes, may have cascading safety impacts unless mitigated by technology, training, or other processes. Through this proposed rulemaking, FRA is seeking to formalize the agency's role in reviewing and ensuring railroads complete thorough risk assessments before using fewer than two persons to crew any train.

The sections below discuss safety issues and impacts that may arise from train operations with fewer than two train crewmembers. FRA requests comments and data on the identified issues and other safety concerns that may stem from train operations with fewer than two crewmembers.

1. Revisiting Research on the Cognitive and Collaborative Demands of Crewmembers

The 2016 NPRM described, and the docket for this rulemaking contains, five FRA-sponsored research reports, and one Transportation Research Board conference report, that contain presentations from multiple research reports, identifying many safety considerations with reducing train crew staffing to fewer than two persons.[72] In the 2019 Withdrawal, FRA stated that ''[w]hile these reports identify safety issues that railroads should consider when evaluating any reduction in the number of train crewmembers or a shift in responsibilities among those crewmembers, the reports do not indicate that one-person crew operations are less safe and therefore do not form a sufficient basis for a final rule on crew staffing.'' [73] Also, as previously discussed, the Ninth Circuit vacated the 2019 Withdrawal, in part because it found that FRA's conclusions ''fail[ed] to address the multiple safety concerns raised by commenters and the research.'' [74] In consideration of FRA's current policy priorities, FRA finds that the 2019 Withdrawal overweighted a lack of safety data and de-emphasized safety concerns raised by the research. Thus, FRA revisits the research in this background to explain how the safety concerns the research raises helped in the development of the proposed requirements for this rulemaking.

The research identified a multitude of cognitive and collaborative demands placed on passenger train conductors,[75] freight train conductors,[76] and locomotive engineers.[77] For example, the research identified five categories of cognitive job duties for freight conductors that included managing the train consist and train makeup; coordinating with the engineer for safe and efficient en route operations; communicating with non-crewmembers, such as dispatchers, customers, and roadway workers; diagnosing and responding to train problems and other exceptional situations; and, managing the train crew's paperwork.[78] This research on the cognitive job duties for freight conductors concluded that although the freight conductor has a distinct set of formal responsibilities, the conductor and locomotive engineer operate as an integrated team, contributing knowledge and backing each other up as necessary.[79] If a conductor is handling all radio communication duties and taking care of paperwork when the train is in motion, the safety benefit is that the engineer can concentrate on operating the train.[80] Other research identified why railroad workers are at risk of fatigue and raised the issue of whether a railroad implementing a one-person train crew operation adopted strategies for reducing railroad worker fatigue.[81] Such strategies include improving the predictability of schedules, considering the time of day permitted for one-person train crews to operate, educating workers about fatigue and sleep disorders, and implementing redundancy backstops in case the crewmember falls asleep while performing safety-sensitive tasks.

Research explains that there are critical components to building effective teams.[82] Individuals that form expert teams engage in a regular cycle of pre-brief, performance, and debrief. This performance cycle engages the individuals that form expert teams to identify high and low priorities, revise goals and plans, identify lessons learned, and evaluate whether the team is effective both in performing its tasks and identifying the needs of team members. The research regarding teamwork in U.S. railroad operations [83] concludes that the main advantage of developing individuals who engage in that regular briefing cycle is that they can work with other properly trained individuals to form an expert team that can be expected to have higher levels of performance than non-expert teams. For example, properly trained individuals that are assigned a duty tour together on any given day will form an expert team that makes better decisions and fewer errors, which in turn enables the expert team to have a higher probability of mission success.[84]

The research raised additional safety concerns regarding one-person train crews, such as the loss of low workload periods during which teams have time to plan ahead,[85] the loss of a second crewmember to notice and correct errors,[86] and the difficulty some crewmembers may have working alone.[87] Similarly, the research highlighted that having a two-person crew broadens the number of experiences from which the crew can draw from to effectively problem-solve, plan ahead, or identify and avoid potential hazards.[88]

The research describing the technology implications of a cognitive task analysis for locomotive engineers also suggests why implementing PTC could create new sources of workload and distraction and thus should not be presumed to lead to fewer tasks for the crew to do, nor make it easier to accomplish the tasks with a single

Information is Needed to Assess Their Impact: at 11 (May 2019)(GAO–19–443). *https://www.gao.gov/assets/gao-19-443.pdf.* (corroborating FRA's finding that freight train-length has increased in recent years, even though there is limited data available).

[72] 81 FR 13924–30.

[73] 84 FR 24740.

[74] *Transp. Div. of the Int'l Ass'n of Sheet Metal, Air, Rail & Transp. Workers* v. *FRA,* 988 F.3d at 1183 (9th Cir. 2021).

[75] *Rail Industry Job Analysis: Passenger Conductor,* Final Report, dated February 2013, DOT/FRA/ORD–13/07. This research report was prepared by the John A. Volpe National Transportation Systems Center. *https://www.fra.dot.gov/eLib/details/L04321.*

[76] *Cognitive and Collaborative Demands of Freight Conductor Activities: Results and Implications of a Cognitive Task Analysis—Human Factors in Railroad Operations,* Final Report, dated July 2012, DOT/FRA/ORD–12/13. This research report was prepared by the John A. Volpe National Transportation Systems Center. *https://www.fra.dot.gov/eLib/details/L04331.*

[77] *Technology Implications of a Cognitive Task Analysis for Locomotive Engineers—Human Factors in Railroad Operations,* Final Report, dated January 2009, DOT/FRA/ORD–09/03. This research report was prepared by the John A. Volpe National Transportation Systems Center. *https://railroads.dot.gov/elibrary/technology-implications-cognitive-task-analysis-locomotive-engineers.*

[78] *Cognitive and Collaborative Demands of Freight Conductor Activities: Results and Implications of a Cognitive Task Analysis—Human Factors in Railroad Operations* at 2.

[79] *Id.* at 42.

[80] *Id.* at 2.

[81] *Fatigue Status in the U.S. Railroad Industry,* Final Report, dated February 2013, DOT/FRA/ORD–13/06. *https://railroads.dot.gov/elibrary/fatigue-status-us-railroad-industry.* This research report was prepared by QinetiQ North America and an Engineering Psychologist within FRA's Office of Research and Development.

[82] *Teamwork in U.S. Railroad Operations,* A Conference, April 23–24, 2009, Irvine, California, Transportation Research Board, Number E–C159, dated December 2011. The many authors of the research and reports are listed in the publication. *https://onlinepubs.trb.org/onlinepubs/circulars/ec159.pdf.*

[83] *Id.* at 17.

[84] *Id.*

[85] *Id.* at 30.

[86] *Id.* at 19.

[87] *Id.* at 3–4, 13–14.

[88] *Id.* at 5, 34.

person until the issue can be studied.[89] Traditionally, locomotive engineers are highly engaged with the train operation, noticing visual cues (*i.e.,* landmarks and mileposts), monitoring radio communications of other trains, and relaying information by radio to other trains about potential hazards. Some locomotive engineers even indicated that they get a variety of sensory-based cues that help them perceive their location, such as vibrations associated with a portion of track or a smell that reminds them they are near a farm.[90] The research suggests that PTC technology may require locomotive engineers to focus more on in-cab displays and thereby reduce their ability to monitor activity outside the cab.[91] This raises the question of whether engineers will lose some of the situational awareness that helps them perceive where the train is based on their prior experiences. Typically, a locomotive engineer will use that situational awareness to help anticipate future events. Furthermore, the research concluded that train crews must avoid too much reliance on new train control technologies because, if the system ever fails, the engineer must be able to operate the train safely or bring the train to a safe stop until the technology is repaired.[92]

2. Current Regulatory Weaknesses

In the 2016 NPRM's background section, FRA explained that many of the Federal rail safety regulations were written with the expectation that each train would have multiple crewmembers.[93] FRA cited six different railroad safety scenarios in the 2016 NPRM raising safety concerns.[94] While FRA noted in the 2019 Withdrawal that none of the scenarios cited in the 2016 NPRM require a minimum number of crewmembers to achieve compliance, the implementation of a one-person operation, without any off-setting measures, may render existing rail safety requirements either less effective or ineffective. This may be especially true for prohibited conduct that is not always easy for railroad officers who conduct operational tests and inspections to detect.[95] For example, a second crewmember's presence or reminder of an electronic device prohibition could act as a deterrent to any prohibited use. A second crewmember can vigilantly monitor the safe movement of the train when prohibited conduct is detected or stop the train to report the inappropriate electronic device usage. If prohibited conduct is a contributing cause to an accident/incident, a second crewmember may provide evidence during an investigation. Although it is possible that inward-facing cameras in the locomotive cab could equally act as a deterrent to prohibited electronic device use and provide valuable information during a post-accident investigation, such cameras are currently not required and have not been installed voluntarily on all locomotives industry-wide. Consistent with the statutory mandate on which it is based,[96] FRA did not propose an inward-facing camera requirement for freight locomotives in its notice of proposed rulemaking regarding locomotive image and audio recording devices (Recording Devices NPRM).[97] FRA has not yet issued the Recording Devices final rule. FRA considered proposing an inward-facing camera requirement for freight locomotives in this train crew size safety proposed rule but declined to do so. Although these recording devices could act as a deterrent and provide valuable information during a post-accident investigation, the devices would not be as effective as a second crewmember who could more quickly take action when prohibited conduct is detected and also provide critical evidence during an investigation that a recording device did not capture. Accordingly, without inward-facing cameras in the locomotive cab, FRA would expect a railroad's risk assessment for a one-person train crew operation would identify this hazard and appropriate mitigation actions. Such mitigation might include requiring frequent supervisory monitoring during a tour of duty. As an alternative to the proposed risk assessment requirement, FRA requests comment on whether other specific actions should be mandated (*e.g.,* frequent supervisory monitoring during a tour of duty or similar interactions that would discourage a one-person crewmember from violating the prohibitions on electronic device use).

In the 2016 NPRM, FRA also raised various other concerns related to crewmember distraction, whether by prohibited electronic devices, radio transmissions, interfacing with railroad-approved on-board electronic systems, or other crewmembers. For instance, although research suggests properly trained teams should not distract one another, FRA anticipates that some commenters will take the position that a second crewmember is a source of distraction and could add to the number of persons killed or seriously injured when an accident occurs. As in 2016, such instances of crewmember distraction are likely rare, but FRA does not have readily available information for estimating such countervailing impacts of this proposed rule.[98] In the justification for the final rule restricting railroad operating employees from using cellular telephones and other electronic devices, FRA stated that ''it is difficult to identify distraction and its role in a crash'' if it goes unreported by the operator of the vehicle.[99] In FRA's view, the potential for a second crewmember distracting another crewmember is balanced by the greater likelihood that a properly trained second crewmember acts as a deterrent to prohibited conduct and can monitor the other crewmember's attentiveness.

FRA also explained in the 2016 NPRM how a one-person train crew has more opportunity to conceal a drug or alcohol violation than the person would if there were two or more crewmembers. For instance, FRA has requirements for most railroads to conduct random testing, reasonable cause testing, and to implement self/co-worker referral programs.[100] However, even if a one-person train crew is subject to random and reasonable cause testing and referral programs under part 219, the person will not be tested before, during, or after every tour of duty. With multiple train crewmembers, another crewmember

[89] *Technology Implications of a Cognitive Task Analysis for Locomotive Engineers—Human Factors in Railroad Operations* at 38–40. Please note that FRA's PTC regulation prohibits requiring a locomotive engineer to ''perform functions related to the PTC system while the train is moving that have the potential to distract the locomotive engineer from performance of other safety-critical duties,'' which would include distracting, non-useful alerts. *See* 49 CFR 236.1006(d)(1), formerly § 236.1029(f).

[90] *Technology Implications of a Cognitive Task Analysis for Locomotive Engineers—Human Factors in Railroad Operations* at 17.

[91] *Id.* at 45.

[92] *Using Cognitive Task Analysis to Inform Issues in Human Systems Integration in Railroad Operations—Human Factors in Railroad Operations* at 25, Final Report, dated May 2013, DOT/FRA/ORD–13/31 This research report was prepared by the John A. Volpe National Transportation Systems Center. *https://www.fra.dot.gov/eLib/details/L04589.*

[93] 81 FR 13932–34.

[94] *Id.*

[95] For example, FRA requires each railroad to maintain a program of operational tests and inspections, and the railroad officers who conduct the tests or inspections to be trained and qualified. 49 CFR 217.9.

[96] *See* 49 U.S.C. 20168.

[97] 84 FR 35712, 35713 (July 24, 2019).

[98] 81 FR 13919.

[99] 75 FR 59580, 59582 (Sep. 27, 2010) (describing how data on the number of motorcoach crashes may potentially understate the true size of the problem because ''self-reporting of negative behavior, such as distracted driving, is likely lower than actual occurrence of that behavior).

[100] *See* 49 CFR part 219.

might suspect that a person has used, or is using or possessing alcohol or drugs on railroad property.[101] If a railroad were to use a one-person train crew, there is no current requirement that supervisors initiate any procedures to substitute for that lack of contact with other railroad personnel. Under this proposed rule, FRA would expect a railroad's risk assessment for a one-person train crew operation to address this hazard and mitigate this risk. Such mitigation might include requiring a one-person train crew to have face-to-face meetings with supervisors at the beginning and end of each tour of duty, or more frequent supervisory monitoring during a tour of duty; other types of mitigation may also be appropriate. FRA finds that a railroad seeking to implement a less than two-person crew operation would be in the best position to identify its own mitigation strategies. As alternative options to the proposed risk assessment, FRA considered whether to require those face-to-face meetings with supervisors at the beginning and end of each tour of duty, or more frequent supervisory monitoring during a tour of duty, or similar interactions that would discourage a one-person crewmember from violating the prohibitions on alcohol and drug use. FRA requests comment on this issue, including comments on whether each railroad that continues a legacy operation under proposed § 218.131(b)(12) and/or each railroad that implements certain specific freight train operations proposed for exception under § 218.129(b) should be required to adopt and comply with a railroad operating rule or practice whereby those one-person train crewmembers must have face-to-face meetings with supervisors at the beginning and end of each tour of duty, or more frequent supervisory monitoring during a tour of duty.

FRA also finds that safety is diminished when employees no longer need to discuss their work, and the processes or requirements they must follow, at regular intervals.[102] For this reason, FRA's regulations contain job briefing requirements for train crewmembers and other operating employees. For example, FRA requires train crewmembers to hold job briefings when conducting shoving or pushing movements,[103] when operating or verifying the position of a hand-operated switch,[104] when a utility employee commences duties with a train crew,[105] and when, under certain conditions, a railroad operating employee wants to use a railroad-supplied electronic device in the cab of the controlling locomotive.[106] These job briefing requirements typically are required before work is begun, each time a work plan is changed, and upon completion of the work.

Not only are job briefings relevant to rail safety because the employees must coordinate their work, but the briefings are also relevant to rail safety as a way to share information and experiences. The voluntary sharing of knowledge and experiences is a safety issue raised in research describing the value of intermediate or rolling job briefs that are informally initiated en route before performing particularly challenging tasks.[107] These informal practices are described as going beyond the requirements of formal rules and procedures as including ''proactive communications intended to foster common ground, redundancy checks intended to reduce the possibility of error; and proactive actions intended to level workload and facilitate work across the distributed organization.'' [108] The research concludes that the act of discussing potential hazards enables crewmembers to be better prepared, especially when less experienced crewmembers might fail to identify and avoid those hazards unbeknownst to them.[109] This finding is a significant factor in the research's overall conclusion that ''train crews . . . were shown to exhibit characteristics of high performing teams that have been found across industries [specifically including] mutual performance monitoring and active support of each other's activities (*e.g.,* backup behavior).'' [110] For these reasons, a one-person train crew that lacks a job briefing requirement may be less prepared, and thus less safe, than a two-person train crew unless a job briefing requirement with a non-crewmember is added for certain tasks or situations. A railroad that conducts a risk assessment, like the one proposed in this rulemaking, would likely be in the best position to decide when job briefings with non-crewmembers could be a reasonable alternative to job briefings with other crewmembers because such job briefings would capture the benefits of high-performing teams and mitigate risk.

Without the proposed risk assessment requirements, FRA alternatively considered requiring more frequent communications between a one-person crew and non-crewmembers. However, in considering such an alternative, it is difficult to know how, if at all, such a communication requirement could reliably ensure the specific hazards of a train operation are identified and addressed. For example, the appropriate alternative non-crewmember(s) required to participate in the job briefing would need to be identified. FRA would likely need to address railroad operations more broadly than any individual railroad with knowledge of its own operations. FRA suspects that such a job briefing with non-crewmembers may only be needed in complex situations, not every time work conditions or situations change, and the addition of a job briefing requirement with a person other than a train crewmember could be addressed in a special approval petition or by FRA during the proposed approval process rather than an alternative FRA regulatory requirement. The addition of job briefings across the larger distributed team [111] made up of dispatchers, train crews, operational managers, and roadway workers is part

[101] Working with a potentially impaired co-worker is a safety hazard that puts other crewmembers in direct conflict with one another. For that reason, FRA has developed minimum standards for co-worker referral programs that allow the employee suspected of abuse to get treatment and rehabilitation, with the potential to return to railroad safety-sensitive work under certain conditions. *See* 49 CFR 219.1001 through 219.1007 (permitting a railroad to implement alternate referral programs with the written concurrence of the recognized representatives of the regulated employees). The referral programs make it more palatable for an employee to turn in a potentially impaired co-worker, knowing that the co-worker will have an opportunity to get professional help without the co-worker necessarily losing his or her job, and not having to work side-by-side with that impaired co-worker.

[102] For instance, in the context of roadway maintenance, FRA issued guidance reminding the regulated community of the importance of job safety briefings for activities that fall outside of FRA's safety regulations but that may be subject to the U.S. Occupational Safety and Health Administration's (OSHA) regulations requiring briefings. FRA explained that ''[j]ob safety briefings, specific to the task or tasks to be performed, provide a mechanism to not only communicate identified risks to every member of the roadway work group, but to also ensure that the roadway work group agrees as to how the identified risks will be mitigated.'' 81 FR 85674, 85675 (Nov. 28, 2016) (citing Safety Advisory 2016–02, ''Identification and Mitigation of Hazards Through Job Safety Briefings and Hazard Recognition Strategies).

[103] 49 CFR 218.99(b)(1).

[104] 49 CFR 218.103(b)(1).

[105] 49 CFR 218.22(c)(4).

[106] 49 CFR 220.307(c)(1).

[107] *Teamwork in Railroad Operations and Implications for New Technology,* Final Report, dated May 2020, DOT/FRA/ORD–20/01. This research report was prepared by the John A. Volpe National Transportation Systems Center. *https://railroads.dot.gov/elibrary/teamwork-railroad-operations-and-implications-new-technology.*

[108] *Id.*at 28.

[109] *Id.*at 13.

[110] *Id.*at 28.

[111] *Id.*at 5 (explaining that distributed teams are distributed geographically and the team participants may or may not be members of the same craft, although they may need to communicate and coordinate to accomplish work safely and efficiently).

of current, informal cooperative practices that contribute to safe and efficient performance across a railroad.[112] Thus, FRA expects that a railroad's risk assessment would best address the job briefing issue. Alternatively, FRA requests comment on whether FRA should add job briefing requirements to address the safety implications of a train operation with a one-person crew.

Additionally, other operational tasks are more difficult with a one-person train crew. For instance, FRA requires that an employee copying a mandatory directive received by radio transmission not be operating the controls of moving equipment.[113] Thus, a one-person train crew would have to stop the train to receive a mandatory directive that was transmitted by radio—even in circumstances, such as steep grade, that would make stopping the train logistically difficult. A railroad's risk assessment would be expected to identify the hazard of a steep grade and how mandatory directives will be conveyed safely to mitigate such risk. Although FRA believes a risk assessment provides the best option to identify hazards regarding mandatory directives received by radio transmission and allow each railroad to devise its own mitigation strategies, FRA requests comment on other options, such as the option FRA considered to prohibit the conveyance of a mandatory directive by radio when a one-person crew is operating a train on a steep grade.

Another operational issue that could be addressed in the proposed risk assessment is how a railroad with a one-person train crew plans to handle situations in which the controlling locomotive's radio fails en route. With a two-person crew, one person can operate the train while a second person communicates with the dispatcher from a second locomotive that has a working radio. A one-person crew would not have this workaround.[114] Without this workaround and without a risk assessment addressing this hazard, FRA alternatively considered that the current requirements, allowing the train to continue until the earlier of the next calendar day inspection or reaching the nearest forward repair point, are too lenient.[115] For instance, FRA considered an alternative option of adding to the current regulatory requirements that, when a controlling locomotive has a radio or wireless communication device that fails en route, a one-person train crew is prohibited from continuing beyond a location where a second crewmember can be safely added to the train. Thus, the alternative prohibition FRA considered would be significantly more stringent than the current rule, as FRA would expect the train to be stopped and a second crewmember added at any location where the train can be safely stopped and a crewmember can be safely added, which would likely be at a location much closer than a repair point in most situations. FRA requests comments regarding why this alternative option might be preferable to the risk assessment as proposed, or whether there are alternative options.

FRA also expects the proposed, railroad-developed risk assessments will address the hazards associated with how often and under what conditions a one-person train crew will be expected to leave the locomotive cab to throw a switch, operate through it, and then leave the locomotive cab again to return the switch to its previous, normal state.[116] In this rulemaking, FRA proposed that, under certain operations specified by exceptions and legacy operations, ''a one-person train crewmember must remain in the locomotive cab during normal operations and may leave the locomotive cab only in case of an emergency affecting railroad operations.'' [117] FRA considered extending this type of proposed prohibition as an alternative to a risk assessment for other one-person train operations under proposed § 218.133, but chose a risk assessment as the best option because it would allow each railroad to consider the hazards and mitigate the risks knowing the extent of its operation. FRA would appreciate comments on this alternative prohibition option or other options that would address the hazards associated with how often and under what conditions a one-person train crew will be expected to leave the locomotive cab.

Further, the 2016 NPRM described how, in the event of a highway-rail grade crossing activation failure, *i.e.,* when the warning lights do not flash or the gates do not come down to stop motor vehicle traffic, motor vehicle traffic must be warned of an approaching train and a one-person crew could not stop and flag the crossing without a non-crewmember flagger or a uniformed law enforcement officer's assistance.[118] While complying with the current activation failure requirements with fewer than two crewmembers is possible, there are no current Federal requirements that a railroad have an effective plan for quickly protecting the crossing and moving the train so it is not blocking other crossings that have passive warning devices only. Similar to other operational safety hazards mentioned in this background, describing how the current regulations were written for multi-person train crews, FRA expects that the risk assessment proposed in this rulemaking would be the best option because it would require a railroad to maintain procedures that will promptly allow one-person train crews to protect highway-rail grade crossings where there has been an activation failure. Without a risk assessment requirement, FRA considered the alternative of mandating that a railroad with a one-person train operation establish operating rules or practices necessary to safely protect those crossings without undue delay. FRA would appreciate comments on the options considered and any alternative options.

Blocked highway-rail grade crossings, by trains traveling over or stopping on track crossed by a highway, are another operational safety hazard that FRA would expect a railroad to address in a proposed risk assessment for a one-person train crew operation. For instance, the proposed requirement of a risk assessment would be expected to address operational changes that increase hazards such as more frequently blocked crossings. A one-person train operation might increase blocked crossings when operating longer, slower, or more frequent trains, or by requiring trains to stop more frequently blocking highway-rail grade crossings for longer periods of time, but FRA cannot know whether this is likely to be the case without a risk assessment that describes the operation and its hazards.[119] Blocked crossings can lead to social costs due to increased travel times and inconvenience. In addition, crossings that are blocked for significant periods of time could affect public safety. For example, recipients and providers of emergency medical services could be detrimentally impacted by extended delays caused by trains

[112] *Id.*at 28.

[113] *See* 49 CFR 220.61.

[114] 49 CFR 220.38 (describing the requirements for train operations in the event of a communication equipment failure).

[115] *Id.*

[116] *See* 49 CFR 218.103 through 218.107 (requiring each railroad to adopt and comply with operating rule requirements for operating hand-operated switches).

[117] *See* proposed 49 CFR 218.129(b) and 218.131(b)(12)(i).

[118] 81 FR 13934 (citing 49 CFR 234.105).

[119] GAO–19–443 at 17 (citing GAO–16–274 which reported that ''the amount of time that highway-rail grade crossings are blocked depends on a number of factors and is typically a function of the number, speed, and length of trains).

blocking highway access to crossings, as could police and fire department personnel responding to other types of community emergencies, a situation that could be exacerbated with an increase in one-person train crew operations.[120] For instance, each year there are news reports that blocked crossings have led to a delay in providing emergency services or getting someone to medical care, and that harm may have resulted as a consequence.[121] Also, when highway users are not given any advance warning of a blocked crossing or any information regarding when the crossing will no longer be blocked, motor vehicle drivers may feel they need to take risks to avoid waiting for the crossing to clear. Similarly, communities are concerned that longer trains may ''prolong the duration of a blockage and can block more crossings concurrently, making it harder for vehicles to find an alternative route around the train.'' [122] FRA believes the best option to address this operational safety concern is by requiring the proposed risk assessment, which would allow the railroad to identify hazards and mitigate risk. Without a risk assessment option, FRA alternatively considered how to regulate one-person train operations so that each railroad, at a minimum, has a plan to unblock crossings when trains are stopped. FRA would appreciate comments on these options or other alternative options to a risk assessment that would address how FRA could regulate one-person train operations so that the safety issue of trains blocking crossings is not made worse than when trains are operated by two or more crewmembers.

Without a train crew size safety requirements regulation, railroads could diminish the safety purposes of some existing regulatory requirements. Specifically, railroads could avoid fully considering the potential safety repercussions resulting from one-person crew operations or taking off-setting measures consistent with railroad safety. In addition, railroads lacking proper training, testing, or supervision programs for one-person crew operations could introduce new safety risks for neighboring communities. For these reasons, in reviewing and approving train operations with fewer than two crewmembers, FRA proposes to condition its approval of such operations on specific conditions necessary to ensure the approval is consistent with railroad safety. Further, as indicated in this background, FRA is proposing the risk assessment option because it is the best option, as it would allow each railroad to identify the hazards in its own operation and mitigate the risks to an acceptable level. FRA is interested to hear from commenters on both the risk assessment and alternative options considered and described in this background; however, considering that so many of the Federal rail safety regulations were written with the expectation that each train would have at least two crewmembers, FRA's position in this proposed rule is that new regulatory requirements are warranted to prevent one-person train operations from potentially degrading safety.

E. Transportation of Certain Hazardous Materials

DOT has long recognized that hazardous materials are essential to the economy of the U.S. and the well-being of its people, but incidents can occur involving releases or security threats.[123] FRA coordinates with DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) to regulate and enforce the safe and secure transportation of hazardous materials by rail.[124] As a result of this shared role, PHMSA and FRA work closely when considering regulatory changes and the agencies take a system-wide, comprehensive approach consistent with the risks posed by the bulk transport of hazardous materials by rail. FRA and PHMSA also coordinate with the Department of Homeland Security and its Transportation Security Administration (TSA) on rail transportation security issues, as those agencies have the lead role in security matters.

Accordingly, to ensure the safety and security of the rail transportation of hazardous materials, PHMSA and FRA, in coordination with DHS, have historically promulgated rules subjecting certain hazardous materials to additional operational restrictions or requiring railroads to take certain actions to ensure the safe and secure rail transportation of these high-risk hazardous materials.[125] PHMSA's hazardous materials regulations are designed to achieve three goals: (1) ensure that hazardous materials are packaged and handled safely and securely during transportation; (2) provide effective communication to transportation workers and emergency responders of the hazards of the materials being transported; and (3) minimize the consequences of an incident should one occur.[126] The regulations categorize hazardous materials by analysis and experience into hazard classes and packing groups based upon the risks they present during transportation.

Because of the dangers of hazardous materials generally, and the additional dangers of a release in transit due to an accident, derailment, theft, or attack, DOT considers train crewmembers as ''hazmat employees'' requiring specific types of training.[127] These training requirements are substantial. For example, the types of training required for hazmat employees include general awareness/familiarization training, function-specific training, safety training that includes emergency

[120] GAO–19–443 at 17–22 (describing the various safety impacts blocked crossings may have on communities).

[121] For example, a news report describes how, on September 30, 2021, a mother gave CPR to her 3-month old boy for an hour while a train blocked a crossing preventing EMTs from providing help. The EMTs ended up walking between the train cars to get to the boy and, when returning to the ambulance, the train started moving so the EMTs had to wait until the train passed to cross the tracks back to the ambulance. It was reported that, according to the boy's mother, the delay allegedly contributed to the boy's death a couple of days later. Last visited at *https://www.easttexasnews.com/index.php/polk-county-news-2/925-tragedy-on-the-tracks*. In another example, a news report describes how a man in Tennessee died on May 17, 2021, after first responders were delayed reaching him allegedly due to a train that was blocking a crossing. Last visited at *https://www.newschannel5.com/news/bedford-county-man-dies-after-train-blocks-ambulance-route*. In addition, a news report describes how a man in September 2020 died after emergency vehicles coming to his aid were stuck behind a train at the only entrance to the man's street and that numerous calls were made to police for over two hours about the train blocking access. Last visited at *https://www.8newsnow.com/news/oklahoma-family-sues-after-father-dies-while-emergency-vehicles-stuck-behind-train/*. The three news articles will be available in the docket for the rulemaking (FRA–2021–0032).

[122] GAO–19–443 at 18.

[123] *See e.g.,* 67 FR 22028 (May 2, 2002) (proposing new requirements to enhance the security of hazardous materials transported in commerce in the wake of the terrorist attacks of September 11, 2001).

[124] PHMSA's mission is to protect people and the environment by advancing the safe transportation of energy and other hazardous materials that are essential to our daily lives. In advancement of its mission, PHMSA: establishes national policy; sets and enforces standards; educates; and conducts research to prevent incidents. PHMSA also prepares the public and first responders to reduce consequences if an incident does occur. PHMSA's standards include requirements for shipments and packaging during transportation of hazardous materials whether by rail, aircraft, vessel, or public highway.

[125] 49 CFR parts 171–180.

[126] 80 FR 26644, 26649 (May 8, 2015).

[127] 49 CFR 171.8 (defining ''hazmat employees'' by the type of work the person is employed to do). Locomotive engineers are hazmat employees because they operate a vehicle used to transport hazardous materials, as specified in paragraph (2)(v) of the definition of hazmat employees. Similarly, other train crewmembers, such as conductors, are responsible for the safety of transporting hazardous materials, paragraph (2)(iv), and directly affect hazardous materials transportation safety while employed by a hazmat employer, paragraph (1)(i).

response and exposure mitigation/protection measures, security awareness training, in-depth security training, and any other training required by other Federal agencies.[128] Further, these types of training are required initially and recurrently at least once every three years.[129] Considering these extensive training requirements for train crewmembers who are hazmat employees, the proposed train crew size safety requirements for trains carrying hazardous materials are complementary to existing DOT requirements that highlight the greater risks posed by certain types of shipments. The following background provides some historical explanation for why the train crew size safety requirements proposed in this rulemaking rule would prohibit transporting certain types of hazardous materials by train with a one-person crew.

A 2008 PHMSA final rule, for example, requires railroads to annually assess the safety and security risks of the routes over which the railroads transport certain hazardous materials because certain hazardous materials present greater risks than others.[130] For instance, a hazardous material may present a greater risk because of the potential consequences of an unintentional release of that material and the material's potential for use as a ''weapon[ ] of opportunity or weapon[ ] of mass destruction.'' [131] For that reason, PHMSA specifically categorized materials poisonous by inhalation (PIH materials), certain radioactive materials, and certain explosives, as examples of materials presenting the greatest risk and required that railroads annually analyze the routes over which these materials are transported and available alternatives to determine the safest and most secure route.

Also in 2008, in response to a statutory mandate that implemented recommendations of the 9/11 Commission,[132] TSA similarly categorized certain rail shipments of hazardous materials as rail-security sensitive materials (RSSMs).[133] TSA added the RSSM term to denote that the Secretary of Homeland Security determined that certain ''categories and quantities of hazardous materials . . . pose a significant risk to national security while being transported in commerce by rail due to the potential use of one or more of these materials in an act of terrorism.'' [134] Included within the definition of RSSMs are tank cars containing PIH materials and shipments of certain threshold quantities of explosive and radioactive materials.

After the 2013 catastrophic accident in Lac-Mégantic, Canada, Transport Canada issued a directive containing a specific requirement that railroads in Canada operate trains carrying loaded hazardous materials tank cars over main track and sidings with at least two crew members.[135] Canada replaced the temporary directive with a more permanent, minimum two crewmember operating requirement ''for a freight train or transfer carrying one or more loaded tank cars of dangerous goods.'' [136] On August 7, 2013, FRA issued a safety advisory recommending that railroads review their crew staffing practices for over-the-road train movements of trains transporting five or more PIH tank car loads, or 20 or more rail car loads or intermodal portable tank loads of any Division 2.1 flammable gas, Class 3 flammable liquid or combustible liquid, Class 1.1 or 1.2 explosive, or other certain listed hazardous substances.[137]

Subsequently, in 2015, PHMSA addressed the risks of the rail transportation of large volumes of flammable liquids and imposed operational restrictions (*e.g.,* speed limits, certain braking requirements, and route analysis requirements) on trains transporting large volumes of these materials. In doing so, PHMSA defined trains subject to these additional operational restrictions as ''high-hazard flammable trains.'' [138] PHMSA acknowledged in the 2015 final rule that it did not directly address regulations governing human factors, but that it does indirectly address some of the issues through consideration of 27 safety and security factors as part of the routing requirements.[139] Several of those 27 safety and security factors that must be considered in the risk analysis would likely place a larger burden on a one-person train crew, such as the volume of hazardous material transported, rail traffic density, trip length for route, the emergency response capability along the route, and the training and skill level of crews.[140] PHMSA's decision to indirectly address the human factors issues was driven by its understanding that ''FRA has initiated a rulemaking to address the appropriate oversight to ensure safety related train crew size'' as a separate, key regulatory safety initiative.[141]

Also in 2015, FRA issued a final rule amending existing securement requirements for unattended equipment, primarily for trains transporting PIH materials and large quantities of certain flammable hazardous materials.[142] Specifically, FRA found that the dangerous properties of PIH materials and large quantities of certain flammable and other hazardous materials (including certain explosives and hazardous substances) often compound the consequences of a rail accident should one occur.[143] Thus, FRA amended its regulations to require railroads to take additional measures to secure equipment containing a tank car load of PIH material or 20 or more loaded tank cars or loaded intermodal portable tanks of certain flammable, combustible, or explosive hazardous materials or certain designated hazardous substances.[144] For instance, FRA's 2015 final rule added a requirement to verify securement of certain unattended freight trains or cars containing the hazardous materials described above ''with another person qualified to make the determination that the equipment is secured in accordance

[128] 49 CFR 172.704(a) and (b).

[129] 49 CFR 172.704(c).

[130] 73 FR 72182, 72193 (Nov. 26, 2008).

[131] *Id.* at 72184.

[132] Implementing the Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53; 121 Stat. 266 (Aug. 3, 2007). The statute defined ''security-sensitive material'' as ''a material, or group of materials, in a particular quantity and form that the Secretary of Homeland Security, in consultation with the Secretary of Transportation, determines through rulemaking with opportunity for public comment, poses a significant risk to national security while being transported in commerce.''

[133] 73 FR 72130 (Nov. 26, 2008).

[134] *Id.* at 72134.

[135] The emergency directive pursuant to section 33 of the Railway Safety Act was issued on July 23, 2013, approximately 17 days after the Lac-Mégantic accident and was set to remain in effect until the end of 2013. It is described in a safety advisory FRA issued after the accident, Safety Advisory 2013–06, cited below. Although the signed and dated directive is no longer available on Transport Canada's website, Transport Canada released this ''Backgrounder'' for research or reference: *https://www.canada.ca/en/news/archive/2013/07/emergency-directive-pursuant-section-33-railway-safety-act.html.* Transport Canada also lists the directive as issued on July 23, 2013 in a list of ''Measures to enhance railway safety and the safe transportation of dangerous goods'': *https://tc.canada.ca/en/rail-transportation/rail-safety/measures-enhance-railway-safety-safe-transportation-dangerous-goods#wb-auto-4.*

[136] Canadian Rail Operating Rules (CROR), General Rule-M(iii). *https://tc.canada.ca/en/rail-transportation/rules/canadian-rail-operating-rules/general-rules.*

[137] FRA Safety Advisory 2013–06, 78 FR 48224, 48228 (Aug. 7, 2013).

[138] 80 FR 26644, 2674626746 (May 8, 2015). The rule defined a ''high-hazard flammable train'' as ''a single train transporting 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout the train consist.''

[139] *Id.* at 26651.

[140] 49 CFR part 172, appendix D.

[141] 80 FR 26654–55.

[142] 80 FR 47350 (Aug. 6, 2015).

[143] *Id.* at 47353–55.

[144] 49 CFR 232.103(n)(6)(i)(A) and (B).

with the railroad's processes and procedures.'' [145] FRA's analysis for that requirement explained that a multi-person crew could satisfy the requirement or, where a one-person crew was involved, then the crewmember ''would have to call the dispatcher or some other qualified railroad employee to verify with the qualified employee that the train had been properly secured.'' [146]

Based on the known safety and security risks associated with operating trains transporting large amounts of hazardous materials and with the hazardous materials known to present the greatest safety and security risks, as discussed in more detail in the section-by-section analysis of proposed § 218.123 below, in this NPRM FRA is proposing to prohibit the operation of trains transporting hazardous materials subject to FRA's securement regulation or materials designated by TSA as RSSMs on trains with fewer than two crewmembers.

F. Current Operations

Since FRA already has regulations requiring certain minimum standards for locomotive engineers and conductors,[147] FRA has chosen not to define the duties of the two required crewmembers in this proposed rule. Nearly every movement of a locomotive, whether the locomotive is coupled to other rolling equipment or not, requires that the operation be performed by a certified locomotive engineer.[148] For most current railroad operations, this is accomplished with a two-person train crew consisting of a locomotive engineer and a conductor. Train crews consisting of two people, one a locomotive engineer and the other a conductor, are universally the norm because that crewmember configuration provides the railroad with the necessary flexibility to assign the crew where operations have more complexity than a one-person crew can be expected to perform alone. That is, a train crew with both a locomotive engineer and conductor can be expected to work independently, without the need for the railroad to have separate plans regarding how the train will accomplish switching cars, protecting highway-rail grade crossings, and other safety-related tasks typically requiring more than just one-person. It is also more efficient with a conductor who can fill out any required paperwork and receive mandatory directives transmitted by radio while the locomotive engineer keeps the train moving.

Each current operation of a locomotive or train that requires a locomotive engineer is also required to have a conductor, but FRA recognizes that there are circumstances where a person is ''serving as both the conductor and the engineer.'' [149] With a one-person train crew, the single crewmember must be dual-certified as a locomotive engineer and a conductor.[150] In this way, FRA currently requires that each locomotive or train must have a crew that can perform all the duties described by the qualifications requirements in FRA's locomotive engineer and conductor certification regulations.

FRA currently permits a train crew consisting of a certified locomotive engineer, who is not dual-certified as a conductor, and a second person who is a certified conductor attached to the train crew, but not traveling on the train.[151] As proposed, this rule would limit this practice to the excepted small railroad operations under proposed § 218.129(c)(1), as the NPRM would generally require crewmembers to be on their moving train and only would allow disembarking temporarily from the train to perform duties assigned.[152] Thus, a second person, even if that person is a certified conductor, would not be a train crewmember under this proposed rule if the person is intermittently assisting the train's movements and traveling in a motor vehicle along a highway near the train. If this proposed rule is finalized, FRA is considering whether to amend the references in the locomotive engineer and conductor certification rules that permit the current operation to explain how these provisions are limited. FRA would appreciate comments on this issue.

Additionally, a railroad operation with a train crew that consists of either: (1) a locomotive engineer and conductor; or (2) one crewmember that is dual-certified may have other operating employees identified as train crewmembers. FRA currently defines ''train crew'' in § 218.5 as one or more railroad employees who are: assigned to a controlling locomotive; called to perform service subject to the Federal hours of service requirements; involved with the movement of the equipment they are called to operate; reporting and working together as a unit that remains in close contact, if more than one employee; and subject to the railroad operating rules and program of operational tests and inspections required in 49 CFR 217.9 and 217.11. Thus, as FRA has an existing definition of the requirements for a train crew, FRA did not propose any new or additional requirements for the train crew in this proposed rule. FRA would appreciate comments on this issue. An alternative option is that FRA require a second crewmember be a conductor, even if the other crewmember is dual-certified, in an effort to ensure a level of teamwork that may not be attainable with any other crewmember. This issue is further explained below for freight and passenger train operations.

1. Freight Train Operations

Regarding the Class I freight railroads, FRA understands that the status of train crew staffing levels has remained unchanged since the Association of American Railroads (AAR) reported to FRA in 2013 after the Lac-Mégantic accident that the Class I railroads were only using two-person crews for over-the-road mainline operations.[153] Because there are no Class I freight railroads currently with a legacy operation and does not expect Class I freight railroads to establish legacy one-person train crew operations before a final rule in this rulemaking is issued. FRA expects that, if this proposed rule became a final rule, Class I freight railroads will be required to petition FRA for special approval under proposed § 218.133 to initiate train operations staffed with fewer than two crewmembers.

Meanwhile, fewer freight short line and regional railroads (*i.e.,* Class II and III railroads) are using one-person train crew staffing arrangements than in 2016. In 2016, FRA identified fourteen Class II and III railroads operating single-person train operations,[154] but FRA's analysis in 2021 identified only seven of those same freight railroads maintaining such operations.[155] Also, in the 2016

[145] 49 CFR 232.103(n)(8)(i).

[146] 80 FR 47372.

[147] 49 U.S.C. 20135 and 20163 and 49 CFR parts 240 and 242.

[148] 49 CFR 240.7 (defining ''locomotive engineer'' and allowing exceptions for movements of locomotives: (1) within a locomotive repair or servicing area and (2) of less than 100 feet for inspection or maintenance purposes).

[149] 76 FR 69802, 69809, Nov. 9, 2011 (explaining that a person may hold both a locomotive engineer certification and a conductor certification, and, establishing rules for when revocation of each certification is appropriate under 49 CFR 242.213).

[150] In previous rulemakings, FRA decided that one train crewmember could be both the train's certified locomotive engineer and certified conductor. *See* 49 CFR 240.308(c)(1) and 242.213(d)(1).

[151] 49 CFR 240.308(c)(2) and 242.213(d)(2).

[152] *See* proposed 49 CFR 218.123(d).

[153] 81 FR 13937 (citing letter from Mr. Edward R. Hamberger, President and CEO of AAR, to Mr. Joseph C. Szabo, FRA Administrator (Oct. 16, 2013), which was placed in the docket to the 2016 NPRM).

[154] 81 FR at 13940.

[155] As of February 4, 2021, FRA identified the following seven railroads as operating with a one-person train crew: (1) Indiana Rail Road; (2)

NPRM, FRA received correspondence from the American Short Line and Regional Railroad Association assuring FRA that its members carefully considered safety concerns when assigning train crew staff. FRA understood this to mean that railroads conducting one-person train crew operations did not implement the operation until a safety analysis was performed.[156] Considering the low number of known short line and regional railroad operations with fewer than two train crewmembers, few Class II and III freight railroads are expected to initiate use of fewer than two train crewmembers in the near future, and the proposed legacy option should permit the continuance of those operations with a good safety record. FRA requests comment on any additional short line and regional freight railroads conducting one-person train crew operations and the interest of railroads to conduct one-person train crew operations in the future.

Freight train operations may currently utilize one crewmember who is dual-certified as both a locomotive engineer and a conductor, along with a second crewmember that may be lacking many of the relevant qualifications normally associated with a conductor. In FRA's observations, this is an uncommon occurrence. Rather, it is more common to observe a freight railroad using two dual-certified crewmembers, allowing the crewmembers to take turns operating the locomotive and performing the conductor's duties. However, a freight railroad is currently not prohibited from deploying a dual-certified crewmember with a brakeman, or other operating crewmember as a second crewmember, even though the employee lacks the versatility and training of a conductor, which could raise questions regarding the safety of such a two-person operation. Presumably, a second crewmember who is not a conductor, but is traveling with the train, would handle physical tasks that require a crewmember to dismount from the train, such as throwing a switch, protecting a highway-rail grade crossing, and conducting brake tests. Additionally, a second crewmember who is not a conductor could help identify signal indications and assist the locomotive engineer with radio communications, among other duties. However, a second crewmember who is not a conductor would have fewer responsibilities when compared to a conductor, and the contributing value to the team would likely be less. For example, a second crewmember who is not a conductor would be expected to have training on fewer safety issues compared to a conductor and therefore may not have the knowledge to discuss or resolve as many operational questions as a conductor.

Similar operational concerns could arise with current practices that allow use of a second person who is more like a utility employee [157] than a crewmember who is assigned to a train. There are certainly some duties that a utility employee can perform for a train crew that would typically be performed by a freight conductor if the crew had a second crewmember who was a freight conductor. However, unlike a crewmember, the utility employee is neither in the locomotive cab with the locomotive engineer nor in near constant radio communication with the locomotive engineer while the train is moving, and therefore cannot replace all the conductor's duties and accompanying safety benefits.

2. Passenger Train Service

Passenger train service means the transportation of persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) by railroad in intercity passenger service or commuter or other short-haul passenger service in a metropolitan or suburban area.[158] For passenger train service, a locomotive engineer is normally located in the locomotive cab, and a passenger conductor, and potentially one or more assistant conductors, normally rides in the passenger cars with the passengers. It is commonplace for train crewmembers to be qualified to perform multiple crewmember jobs so that they are interchangeable, although that is not always the case on each railroad or for each train operation.

Multiple train crewmembers are typically necessary on a passenger train to meet the requirements of FRA's passenger train emergency preparedness rule,[159] which is intended ''to reduce the magnitude and severity of casualties in railroad operations by ensuring that railroads involved in passenger train operations can effectively and efficiently manage passenger train emergencies.'' [160] There are numerous ways that passenger train crewmembers, other than the locomotive engineer, can assist the passengers in an emergency. Emergencies can require evacuations in various types of circumstances where a trained person would be helpful to guide passengers away from danger. For example, passengers that self-evacuate might not realize that they could step on an electrified rail or be struck by a train approaching on an adjacent track. Evacuations in remote areas, in tunnels, or on bridges also pose significant dangers to passengers and are places where crewmembers must be trained on safe methods to assist passengers.

A one-person passenger train crew would have significant difficulty coordinating any type of evacuation, especially in difficult terrain, or if there are large numbers of passengers or other logistical challenges. Furthermore, although posted emergency evacuation signs and instructions for train passengers can be useful, and are indeed required by FRA regulation, the crew's presence is likely to improve instruction to passengers and facilitate situational awareness.

Although passenger train conductors normally do not ride in or next to the locomotive cab with the locomotive engineer for more than a few minutes at a time, passenger train conductors are integral to the train's safe operation. For instance, passenger train conductors assist with train inspection, train makeup, form and record management, troubleshooting, and repair. Passenger train conductors also maintain verbal communication with the locomotive engineer, even though they are often not in the locomotive cab. A well-trained passenger train conductor will recognize passing landmarks and communicate important information by radio to the locomotive engineer.

One safety concern for passenger train crew staffing, similar to the concern expressed above for freight train crew staffing, is that a passenger railroad will use one crewmember who is dual-certified as both a locomotive engineer and a conductor, but the second crewmember is not a certified conductor and may be lacking many of the relevant qualifications normally associated with a passenger train conductor. If a second passenger train crewmember is not a passenger conductor, the second person would have fewer responsibilities when compared to a passenger conductor, and the contributing value to the team would likely be less. As in the freight

California Northern Railroad Company; (3) Ventura County Railroad Company; (4) Modesto and Empire Traction Company; (5) Pacific Harbor Line Inc.; (6) City of Prineville Railway; and (7) Portland and Western Railroad, Inc.

[156] 81 FR 13937.

[157] 49 CFR 218.5 (defining utility employee as a railroad employee assigned to and functioning as a temporary member of a train or yard crew whose primary function is to assist the train or yard crew in the assembly, disassembly or classification of rail cars, or operation of trains (subject to the conditions set forth in 49 CFR 218.22)).

[158] *See* 49 CFR 239.7 (defining passenger train service).

[159] 49 CFR part 239.

[160] 49 CFR 239.1(a).

operations example, a second crewmember who is not a conductor would be expected to have training on fewer safety issues compared to a conductor and therefore may not have the knowledge to discuss or resolve as many operational questions as a conductor. Consistent with the existing requirements for a ''train crew'' in § 218.5, a second crewmember on a passenger train, even if not conductor-qualified, must have functions connected with the movement of the train and be called to perform service subject to the Federal hours of service requirements during a tour of duty.[161] FRA is aware of at least two passenger train operations in which the railroads do not use train crewmembers that meet the definition of ''train or yard crew'' in § 218.5, notably because the second person does not have functions connected with the movement of the train and thus is not performing service subject to the Federal hours of service requirements during a tour of duty.[162] Although such passenger train operations may satisfy the requirements of 49 CFR part 239,[163] railroads would need to seek FRA's special approval under proposed § 218.131 to continue such legacy train operation staffing arrangements.

3. Tourist Train Operations

Currently, the typical train crew staffing arrangement for tourist train operations is like that for passenger train service, with a locomotive engineer located in the locomotive cab and a conductor, and potentially one or more assistant conductors, riding in the passenger cars. The assistant conductors may go by a different title as tourist train operations usually have paid or volunteer train crewmembers that can assist passengers in case of an emergency. Tourist train operations are not required to comply with FRA's passenger train emergency preparedness requirements, whether the operation is on or off the general railroad system.[164] Although FRA is unaware of any tourist train operation on the general railroad system of transportation that operates with a one-person train crew, FRA proposes to include tourist train operations in this rulemaking to ensure tourist trains continue to be appropriately staffed for safety. All tourist operations can likely meet the requirements or exceptions proposed in the rule without altering their operations and, therefore, would not incur any costs.

4. Train Operations in Other Countries

Generally, the data available about one-person train operations in other countries is limited because the information available does not separate one-person crew rail operations from multi-person operations. For this reason, it is difficult to normalize the data and effectively evaluate the safety of foreign, one-person train operations. Canada's train operations are the most comparable foreign operation to those of the U.S. and, as explained in more detail in section III.E above, following the 2013 catastrophic accident in Lac-Mégantic, Canada, Transport Canada issued a temporary directive requiring at least two crewmembers for trains carrying loaded hazardous materials tank cars over main track and sidings. That temporary directive was then replaced with a mandatory operating rule requiring a minimum of two crewmembers for a freight or transfer train carrying one or more loaded tank cars of dangerous goods.

Foreign train operations in developed countries, other than Canada, are not comparable for the most part due to differences in train lengths, territory, and infrastructure. For instance, a foreign, one-person freight train operation in an industrial-type railroad servicing only one origin and one destination would not be comparable due to the complexity of most U.S.-based freight rail operations. Most foreign, one-person freight train operations also do not carry out extensive interlining or switching with other railroads. Further, many foreign, one-person passenger train operations do not have to share track with freight operations or operate over highway-rail grade crossings, and thus the safety hazards associated with those foreign operations are not comparable to those involving U.S. passenger train operations.

To the extent that commenters believe foreign, one-person train operations are relevant, FRA requests that the comments include information and data describing the operations. FRA would also appreciate comments that explain how the foreign operation is comparable to U.S.-based operations and whether the operation would need to file a special approval petition under the rule as proposed if it was U.S.-based, or whether the operation if it was U.S.-based might meet the criteria in one of the exceptions of the proposed rule with or without a change to the proposed requirements.

G. Ensuring Safety in the Future

Since the 2016 NPRM was published, the number of crewmembers on each type of train has largely stayed constant, during a period in which railroad operations have also returned consistent safety statistics. For example, over the five-year period from 2016 to 2020, the average rate of FRA-reportable, human-factor-caused accidents/incidents across industry was 1.05 accidents per million train miles. The lowest rate of 0.95 was in 2016; the highest rate was in 2020 at 1.18 accidents per million train miles. While these consistent safety statistics were attained with the overwhelming majority of train operations using two or more crewmembers, it is unknown how introducing the additional risk factor of a reduction to a one-person crew will impact safety without conducting or reviewing a risk assessment for the industry or each operation.

The industry's safety record on one-person train crew operations is not well-developed, with few industry participants, and a negligible record of information, which precludes FRA from making meaningful data comparisons of the safety of one-person train crew operations to multiple-person operations. As previously explained above, only a small number of short line and regional railroads, and an even smaller number of passenger train operations, have established one-person train crew operations, and the short line and regional railroads have a dwindling number of such operations, from about

[161] 49 CFR 218.5 (defining ''train or yard crew,'' in part, by requiring that the crew be called ''to perform service covered by Section 2 of the Hours of Service Act.'').

[162] As of October 25, 2021, FRA identified the following passenger train operations as operating with a one-person train crew: (1) Denver Regional Transportation District/Denver Transit Operators; and (2) Utah Transit Authority's FrontRunner.

[163] 49 CFR 239.7 (defining ''crewmember,'' in part, to include ''a person, other than a passenger, who is assigned to perform . . . [o]n-board functions in a sleeping car or coach assigned to intercity service, other than food, beverage, or security service'', and 49 CFR 239.101(a)(2), addressing employee training and qualification of all ''on-board personnel,'' whether in intercity or commuter passenger train service).

[164] 49 CFR 239.3(b)(3); 49 U.S.C. 20133(b). The passenger train emergency preparedness requirements in part 239, like those for passenger equipment safety in part 238, arose from a statutory mandate that allowed for different treatment of tourist train operations and followed a series of accidents involving intercity passenger and commuter rail operations. The requirements were therefore structured to apply to intercity passenger and commuter rail operations, not tourist operations. However, FRA noted that the exclusion of tourist operations from those rules was based on incomplete information regarding the unique circumstances of tourist railroads, and that future application of some or all of the emergency preparedness requirements could become appropriate. In such case, FRA would initiate a rulemaking to extend the application of part 239 to tourist operations. *See* 63 FR 24630, 24644 (May 4, 1998). Nor would any such exclusion preclude the application of other rules to tourist operations.

fourteen in 2016 to seven in 2021. Consequently, as the number of such operations has dwindled, there is even less data for FRA to consider in establishing the industry's one-person train crew safety record.

Further, those few one-person Class II and III train crew operations are not necessarily indicative of what the safety record might be on the major Class I freight railroads, which tend to operate longer trains, with higher tonnage, for longer distances, and at higher speeds than a short line or regional railroad operation. Train crews on major Class I freight railroads must generally contend with more complexities than typically found on a short line or regional railroad operation, such as more than one type of signal system, more than one set of railroad operating rules and practices that must be followed during the same tour of duty, or higher train traffic density.

For these reasons, FRA proposes to review each railroad's petition for a described operation and to require each railroad that receives FRA's approval to conduct a formal, annual review and analysis of the FRA-approved train operation(s) with fewer than two crewmembers. This will enable FRA to make better safety evaluations and comparisons of operations with fewer than two crewmembers in the future.

H. The Proposal Is Complementary to, not Duplicative of, Other Regulatory Initiatives

This proposed rule is complementary to, rather than duplicative of, other recent regulatory initiatives FRA has issued or is in the process of developing. These initiatives include: the implementation of PTC systems by required railroads;[165] railroad safety risk reduction programs;[166] and the development of fatigue risk management programs.[167] Each of these initiatives will enhance safety, and may either aid a railroad in transitioning to an operation with fewer than two crewmembers or assist a railroad in identifying hazards and mitigating risks associated with those hazards once such an operation is established. None of these initiatives nor FRA's regulation on Passenger Train Emergency Preparedness, however, focus exclusively on the specific hazards and risks associated with reducing the number of train crewmembers to fewer than two crewmembers, nor do they necessarily require railroads to mitigate any such hazards and risks. Further, none of these initiatives establish a structure for FRA review of, or allow the public to review, a railroad's plans to reduce crew size or require FRA to approve crew size reductions before they can go into effect.

1. Positive Train Control (PTC) Systems

PTC systems must be designed to prevent the following accidents or incidents: train-to-train collisions, over-speed derailments, incursions into established work zones, and movements of trains through switches left in the wrong position,[168] and therefore the implementation of a PTC system helps improve the safety of rail operations, including any one-person train operation. However, PTC systems do not completely perform all the job functions of a conductor. Based on the research already described and FRA's understanding of PTC systems, PTC does not: (1) check the engineer's alertness, which includes ensuring that the engineer is not fatigued, under the influence of any controlled substance or alcohol, or distracted by using a prohibited electronic device; (2) fill in the knowledge or experience gaps of the sole crewmember about how to address a particularly difficult operating problem, or help in diagnosing and responding to train problems and other exceptional situations; (3) assist in the physically demanding task of securing a train with hand brakes, typically at the end of a tour of duty when the crew is looking forward to going off-duty; (4) assist in flagging highway-rail grade crossings when necessary after PTC slows or stops a train before traversing the crossing or breaking up the train at such crossings to avoid blocking them from highway users for extended periods; (5) update train consist information arising from the set-out and pickup of cars; (6) protect the point, *i.e.,* the leading end of the train movement, during shoving or pushing movements that are not protected by PTC, where the locomotive engineer is not operating from the leading end of the leading locomotive in a position to visually determine conditions in the direction of movement; (7) assist a locomotive engineer when complying with ''restricted speed,'' which requires a locomotive engineer to stop the train within one half the engineer's range of vision to avoid colliding with on-track equipment and operating through misaligned switches;[169] or (8) assist the train if the PTC system fails en route or enters non-PTC territory. Furthermore, the research suggests that, because PTC technology may require locomotive engineers to focus more of their attention on in-cab displays, it will reduce their ability to monitor activity outside the cab and raises a question about whether the engineers will lose any situational awareness in relation to the coherent mental picture (*i.e.,* the situation model) of where the engineer perceives the train to be based on prior experience. Moreover, if the PTC system fails to initialize or fails en route, in certain circumstances, the train may still be operated and in the event a one-person crew was involved, that sole crewmember would not have the benefit of either PTC or a second crewmember.[170] Thus, while PTC is a safety overlay to help prevent certain accidents, FRA's PTC regulations do not include the requirements to perform crewmember job functions, which are essential to prevent or mitigate other accidents.

Likewise, the risk assessment required in FRA's PTC regulatory requirements is different than the risk assessment requirements in this proposed rule and thus would not be duplicative. For instance, FRA requires a railroad to submit a PTC safety plan (PTCSP) and receive PTC System Certification[171] before placing a PTC system into service. Although a PTCSP requires a railroad to develop and submit a hazard log, risk assessment, and hazard mitigation analysis similar to one that would be required in this proposed rule for one-person train crew operations, the subject of the PTC risk assessment is different than for this proposed rule. The PTCSP is required to address all

[165] *See generally* 49 CFR part 236, subpart I; and press release in which FRA announces full implementation of PTCPTC (Dec. 29, 2020), *available at https://railroads.dot.gov/sites/fra.dot.gov/files/2020-12/fra1920.pdf.*

[166] 49 CFR parts 270 and 271.

[167] 85 FR 83484 (Dec. 22, 2020) (proposing to amend 49 CFR parts 270 and 271 to require certain railroads to develop and implement a Fatigue Risk Management Program as one component of the railroads' larger railroad safety risk reduction programs).

[168] *See, e.g.,* 49 U.S.C. 20157(g)(1), (i)(5); 49 CFR 236.1005 (setting forth the technical specifications).

[169] Restricted speed is a railroad term that provides a maximum authorized speed for the train, typically 15 or 20 miles per hour, but also requires a train crew to operate at a speed slower than that maximum authorized speed so that the train can be stopped without colliding with on-track equipment or operating through a misaligned switch. Collisions are more likely avoidable if all movements are made at a speed slow enough to stop the movement in half the engineer's range of vision. Restricted speed is often used in yards but may also apply to main track and other types of track where a train may be sharing the track with other locomotive or train movements. If the maximum authorized speed for a restricted speed movement is 15 miles per hour, and the locomotive engineer is operating the train at 10 miles per hour, PTC will not stop that train from colliding with cars left on-track nor will PTC prevent the train from operating through a misaligned switch.

[170] *See* 49 U.S.C. 20157(j); 49 CFR 236.567 and 236.1029.

[171] 49 CFR 236.1015.

safety-relevant hazards during the life cycle of a PTC system. Meanwhile, this proposed rule would require the development of a hazard log, risk assessment, and hazard mitigation analysis to evaluate and mitigate risks of a one-person train crew. Thus, the proposed rule would not duplicate PTC requirements, as the existing PTC regulations require a risk assessment of an ''as-built PTC system'' specifically, whereas the type of risk assessment proposed in this rule for a train operation with fewer than two crewmembers focuses on the entire operation, including the factors proposed under § 218.135, such as the authorized methods of operation; applicable operating rules and practices; hours of operation; qualifications and certifications of crewmembers; number, frequency, and makeup of trains involved; route and terrain over which trains will be operated; number and types of grade crossings; amounts and types of hazardous materials to be transported; and characteristics of the geographic areas through which trains will operate.

2. Railroad Safety Risk Reduction Programs

As codified in 49 CFR parts 270 and 271, FRA requires Class I railroads, railroads with inadequate safety performance, and passenger rail operations to implement railroad safety risk reduction programs. A railroad safety risk reduction program is a comprehensive, system-oriented approach to safety that determines an operation's level of risk by identifying and analyzing identified hazards and developing strategies to mitigate risks associated with those hazards. In this background, FRA is using the term ''railroad safety risk reduction programs'' to include both a ''system safety program'' (SSP) that is required for certain passenger rail operations[172] and a ''risk reduction program'' (RRP) that is required for a limited number of other rail operations.[173]

Although a railroad safety risk reduction program might address a railroad's safety hazards and risks associated with changes in train crew staffing, the framework established by these programs neither directly addresses the risks associated with reducing train crewmembers to fewer than two nor establishes an industry-wide approach.

First, not every railroad is required to have a railroad safety risk reduction program. Indeed, FRA estimates that fewer than 100 railroads (out of approximately 750 under FRA's jurisdiction) over the next 10 years will be required to develop a railroad safety risk reduction program.

Second, even if a railroad is required to have a railroad safety risk reduction program through which it identifies the risks associated with reducing train crew size to fewer than two crewmembers,[174] the railroad may decide not to implement mitigations to eliminate or reduce those specific risks. Parts 270 and 271 permit railroads to prioritize risks.[175] Whether a railroad that is required to have a program mitigates risks associated with crew staffing will depend on how the railroad prioritizes risks for mitigation and how effectively that mitigation would promote continuous safety improvement compared to mitigation of other identified hazards and risks. Thus, even if train crew staffing is identified as a risk, a railroad may not implement mitigations to eliminate or reduce that risk.

Accordingly, while the safety risk reduction program requirements may complement this proposed rule, they do not address the need for FRA and the railroads to consider and address the safety risks of operations utilizing fewer than two crewmembers across the entire industry.

3. Fatigue Risk Management Programs

On June 13, 2022, FRA published a final rule adding a Fatigue Risk Management Program (FRMP) to the railroad safety risk reduction program requirements in parts 270 and 271.[176] An FRMP is a comprehensive, system-oriented approach to safety in which a railroad determines its fatigue risk by identifying and analyzing applicable hazards, and developing plans to mitigate, if not eliminate, those risks. Like the railroad safety risk reduction program rules, the final rule is part of FRA's continual efforts to improve rail safety and will satisfy the statutory mandate of Section 103 of the Rail Safety Improvement Act of 2008.[177]

Like the railroad safety risk reduction requirements, there is no guarantee that any railroad covered by the regulation will use an FRMP to address the train crew staffing issue. As with the railroad safety risk reduction program rules, a covered railroad must identify fatigue hazards, assess the risks associated with those fatigue hazards, and prioritize those risks for mitigation purposes. It is possible that other fatigue risks, not associated with a decrease in crew size, might rank higher, in which case the risk associated with a decrease in train crew size might not be promptly mitigated. Further, because the FRMP requirements would apply only to those railroads required to comply with the railroad safety risk reduction program requirements, an FRMP would not be required of every railroad. Thus, like the railroad safety risk reduction program rules, the FRMP final rule is complementary to this proposed train crew size safety requirements rule and is not duplicative.

I. Risk Assessments

Risk, in simple terms, can be thought of as the possibility of something bad happening, and in the context of this rule, the possibility of an unsafe event occurring that results in an accident or incident. Risk also has an element of uncertainty—meaning the probability that the unsafe event will occur and the likelihood of the unsafe event resulting in an accident or incident. A certain amount of risk is inherent in all transportation activities, including railroad operations. Generally, FRA's existing safety regulations address known risks in railroad operations (*i.e.,* risks that have been realized and have resulted in accidents and injuries). Changes to any existing process, operating condition, or even equipment or infrastructure, however, may introduce new risks.

Risks can be systematically reduced by following a risk management process. A risk management process is a formal process used to identify, evaluate, and eliminate or reduce hazards to within a range of acceptability. It is a way to proactively reduce and mitigate risk before an accident, injury, or other

[172] 49 CFR 270.3 (requiring the application of the system safety rule to certain passenger rail operations).

[173] 49 CFR 271.3 (requiring the application of the risk reduction program rule to certain rail operations).

[174] Both the SSP and RRP rules require a railroad to identify and analyze ''employee levels'' as part of their risk-based hazard management program. 49 CFR 270.103(q)(1) and 271.103(b) introductory text and (b)(1), and 49 U.S.C. 20156. Further, a railroad's obligation to identify and analyze risks associated with reducing train crewmembers to below two would not end after the railroad performs its initial risk-based hazard analysis, as both RRP and SSP are ongoing programs that support continuous safety improvement. 49 CFR 270.103(p)(1)(vii) and 271.101(a). For example, a railroad must periodically assess its SSP or RRP to determine whether the program's goals are being met, and a railroad might identify new hazards and risks as part of this review, including those associated with crew size. 49 CFR 270.303 and 271.401. RRP and SSP also require a railroad to proactively identify hazards and risks associated with a reduction in crew size before making the operational change, in addition to monitoring operational safety following implementation of the new crew size. *See* 49 CFR 270.103(s) and 271.105, and 85 FR 9296.

[175] *See e.g.,* 49 CFR 270.5 (definition of ''risk-based hazard management'') and 271.103(b)(3).

[176] 85 FR 83484.

[177] Codified at 49 U.S.C. 20156.

catastrophe occurs. FRA's railroad safety risk reduction program rules, discussed above, are examples of the use of risk management tools in FRA's existing rail safety regulatory framework. As also discussed above, however, FRA's railroad safety risk reduction program rules do not specifically mandate that railroads take action to mitigate any resulting risk from those hazards associated with changes in crew staffing levels.

Because, as noted previously, with the exception of certain freight and passenger operations, railroads have historically operated trains with at least two crewmembers, insufficient historical accident and incident data exists to demonstrate the potential impacts of crew size on rail safety generally, and insufficient historical data exists on the impacts of crew size under specific operating scenarios. Accordingly, rather than taking a ''wait and see'' reactive approach to potential new hazards introduced with changes in crew size, FRA is proposing to require railroads to conduct a risk assessment when seeking to initiate new train operations staffed with fewer than two crewmembers (and railroads seeking to materially modify legacy fewer-than-two-crewmember operations).

A risk assessment is a process of identifying new potential hazards, analyzing what could happen if a particular hazard occurs, estimating the probability of the hazard occurring as well as the likelihood of the hazard resulting in an accident or incident, and methods to reduce or eliminate the hazard through mitigations (*e.g.,* new or modified processes or equipment). To be effective, risks assessments must be conducted in an objective manner and as a result, standardized risk assessment processes, tools, and other methodologies exist in various industries and contexts.[178]

As noted above, performing risk assessments, risk management, and risk reduction are not new to FRA or the railroad industry. As also noted earlier in this preamble, FRA's RRP and SSP rules, as well as FRA's PTC rule, require railroads to develop and implement processes and procedures that will identify hazards and then mitigate or eliminate the risks that result from those hazards. Similarly, in 2007, FRA published a ''Collision Hazard Analysis Guide'' (Guide) to assist passenger rail operations in conducting collision hazard assessments.[179] FRA based the Guide on the Department of Defense's Standard Practice for System Safety (MIL–STD–882) and the hazard identification and resolution processes described by the American Public Transportation Association's ''Manual for the Development of System Safety Program Plans for Commuter Railroads.'' The Guide provides a ''step-by-step procedure on how to perform hazard analysis and how to develop effective mitigation strategies that will improve passenger rail safety.'' [180] Although the Guide focuses on passenger rail collisions, the techniques described in the Guide are also valid for evaluating other hazards or safety issues related to any type of operating system.[181]

Prior to development and publication of the Guide, FRA relied on MIL–STD–882 when promulgating certain aspects of FRA's Passenger Equipment Safety Standards (49 CFR part 238).[182] Part 238 references MIL–STD–882 as a formal safety methodology to identify hazards and then eliminate or reduce the risks associated with each hazard to an acceptable level, when performing required fire safety analyses in procuring new passenger equipment and in planning for the safety of Tier II passenger equipment operations.[183] In addition to MIL–STD–882, FRA has also relied on standards of the American Railway Engineering and Maintenance Association (AREMA) when defining the requirements for abbreviated risk assessments in FRA's Standards for Processor-Based Signal and Train Control Systems and Positive Train Control Systems.[184] Specifically, FRA incorporated AREMA's Communications and Signaling Manual (AREMA Manual), Volume 4, Section 17—Quality Principles. Part 17.3.5 of the AREMA Manual provides a recommended procedure for hazard identification and management for vital electronic/software-based products and systems used in safety-critical systems.[185] Although the AREMA Manual addresses the assessment of risk associated with ''products'' developed for use in safety-critical systems, the general processes set out in the standard can, like the processes in FRA's Guide, be applied to any type of system (including the system surrounding operating any train with fewer than two person crews).

In the 2005 final rule codifying FRA's Standards for Processor-Based Signal and Train Control Systems, FRA acknowledged that it did not expect the assessment of risks performed under the AREMA standard would prove a product to be ''absolutely safe.'' [186] Instead, FRA indicated that it expected the assessment to provide evidence that the risks associated with the product have been carefully considered and that steps have been taken to minimize or mitigate the risks.[187] The same rationale applies to FRA's current proposal. The goal of the risk assessment process is to ensure accepted hazard analysis processes are followed and appropriate mitigation measures are taken to reduce risk to an acceptable level. Generally, an acceptable level of risk is achieved when it is determined that further risk reduction measures will not result in an additional, significant reduction of risk (*i.e.,* when the probability of an unsafe event occurring is small and the likely severity of an accident or incident resulting from that unsafe event is also small). For example, there is a risk that an engineer will allow a train to pass a red signal. The resulting hazard is that the train will collide with another train that is occupying the track past the signal. The probability that this unsafe event will occur is based on an analysis of relevant causal factors (*e.g.,* the potential for an engineer to be distracted or to lose situational awareness). The likelihood of an accident or incident resulting is analyzed based on the probability that another train is occupying the track past the red signal. Potential mitigation may include processes (*e.g.,* the role and tasks of the conductor in calling signals) and equipment and technology (*e.g.,* PTC). In this example, these mitigation measures may not completely eliminate the hazard (*i.e.,* the potential for a collision). However, depending on the operating environment, the risk of the hazard (*i.e.,* a collision) occurring may be reduced to an acceptable level. For example, some signal systems with PTC as an overlay allow for an engineer to pass a red signal to perform certain operations (*e.g.,* switching operations) if appropriate railroad operating procedures are followed. In such

[178] *See e.g.,* American Railway Engineering and Maintenance of Way Association (AREMA), Communications and Signal Manual, Volume 4, Section 17—Quality Principles (AREMA Standard); Department of Defense Standard Practice: System Safety, MIL–STD–882 (May 11, 2012); (DOD Standard) Federal Aviation Administration Order 8040.4B, Safety Risk Management Policy (May 2, 2017).

[179] FRA, U.S. Department of Transportation, Collision Hazard Analysis Guide: Commuter and Intercity Passenger Rail Service (Oct. 2007) (*available at https://railroads.dot.gov/elibrary/collision-hazard-analysis-guide-commuter-and-intercity-passenger-rail-service*).

[180] *Id.* at 5.

[181] *See id.*

[182] 64 FR 25540 (May 12, 1999).

[183] 49 CFR 238.5, 238.103, 238.603, 64 FR 25540, 25663, 25670, 25696 (May 12, 1999).

[184] *See* 49 CFR part 236, subpart H and I.

[185] 49 CFR 236.909(d).

[186] 70 FR 11052, 11071 (March 7, 2005).

[187] *Id.*

situations, the probability of an unsafe event occurring during the switching operation may be small and it may be determined that further mitigation other than operational procedures and equipment alerts would not further reduce the risk.

As noted above, and in more detail in the section-by-section analysis of proposed § 218.135, standardized risk assessment processes, tools, and methodologies exist not only in FRA's regulations, but in other industries and contexts. In this NPRM, FRA is proposing a process based on these widely accepted existing standards, but tailored to the specific context of this rulemaking.

FRA has proposed specific content and methodology requirements for conducting risk assessments, including defining acceptable and unacceptable levels of risk and allowing for both quantitative and qualitative analyses. FRA intends the specific content and methodology requirements proposed to both ensure that all relevant risks are properly identified, evaluated, and addressed, and to provide railroads clarity and certainty regarding what level of risk FRA proposes as acceptable and what level of risk FRA proposes as not acceptable. Using a standardized risk assessment process as proposed should result in risk assessments being conducted and documented in a consistent manner, enabling railroads to conduct the assessments effectively and efficiently, and at the same time, limit the burden on FRA as it reviews and evaluates every risk assessment filed. Further, as the proposed risk assessment process is consistent with the requirements of other FRA regulations (*e.g.,* FRA's Passenger Equipment Safety Standards, PTC, SSP, RRP), railroads are able to apply the knowledge and skills in preparing risk assessment and hazard analyses for those regulations to the risk assessment process this proposed rule would require.

Although FRA is proposing specific content and methodology requirements for risk assessments, FRA recognizes that every railroad operation is unique and that the technical resources and capabilities of railroads vary. Accordingly, FRA is also providing the flexibility for railroads to use alternative risk assessment methodologies and procedures if those methodologies and procedures provide an accurate assessment of the risk associated with the operation. FRA expects that the flexibility to develop and use alternative risk assessment methodologies and procedures may be used by some Class I railroads with sophisticated, technical risk management programs. As proposed, any railroad seeking FRA's approval to use such an alternative standard will need to demonstrate to FRA that the methodology and procedures provide at least as accurate an assessment of risk as the specific methodology and processes proposed.

J. Expected Impact on the Safety of Rail Operations and FRA's Proposed Review Standard

FRA expects this proposed rule would ensure that the current industry-wide level of rail safety is not eroded by railroads reducing crew size below two. This rule would require railroads to objectively evaluate and then address safety risks associated with continuing a legacy train operation staffed with one crewmember or initiating a new operation using fewer than two train crewmembers. FRA's proposed petition requirements in §§ 218.131 and 218.133 are intended to solicit enough information for FRA to make an informed decision whether to allow the continuance of a legacy operation or the initiation of a new operation. Without this regulation, railroads would not be required to consult FRA, nor seek FRA approval, to continue or initiate a train operation with fewer than two crewmembers except, to a certain extent, those passenger train operations which require FRA's approval to implement a passenger train emergency preparedness plan under 49 CFR part 239. However, part 239 does not require a railroad to comprehensively consider the safety risks associated with a train operation. Part 239 only requires consideration of the risks and processes involved in responding to emergency situations.

FRA proposes that its decision to grant or deny a petition would be based on whether a railroad submits all required data and information and, as applied to legacy operations, whether that data and information demonstrates that the operation has historically operated consistent with railroad safety, and for proposed new operations, whether the railroad submits all required data and information, and additionally provides evidence of a properly conducted risk assessment demonstrating that the operation will be operated consistent with railroad safety.

1. Legacy Train Operations

As previously discussed in this background section (III.F.), in 2021, FRA identified seven Class II and III freight railroads with one-person train operations and two one-person passenger train operations. Although FRA expects that the nine operations it identified as current will file for special approval or may otherwise qualify for an exception, it is possible that FRA is unaware of some other railroads that may be using one-person train crews or that some additional railroads may initiate and establish a legacy operation before the final rule's effective date.

FRA expects to approve the continuation of a legacy operation with a one-person train crew if a railroad provides a thorough description of that operation, has sufficiently assessed the risks associated with the operation, and has taken appropriate measures to mitigate or address any risks or safety hazards associated with the operation. In reviewing legacy operations, this rulemaking provides FRA with the opportunity to confirm that each railroad is following an operating model that makes rail safety a priority.

FRA expects that some of these legacy operations do not address every FRA safety concern. For example, in the background section (III.D.2), FRA identified how the adoption of a one-person train crew could degrade safety without considering, for example, how the railroad would monitor the use of prohibited electronic devices, or how operational concerns may arise, such as the loss of a second crewmember's experience during a job briefing. If a railroad does not address those issues, FRA may permit the operation to continue with special conditions that require the railroad to devise strategies to address those safety concerns in a manner that appropriately fits the size and scope of the operation. FRA requests comment regarding the clarity of the proposed requirements and where FRA should include additional guidance or examples for any of the requirements.

2. Proposed New Fewer Than Two Person Operations

FRA is uncertain about how many petitions for special approval it can expect to receive to initiate a new train operation with fewer than two crewmembers although, for purposes of the Regulatory Impact Analysis, FRA is estimating it will receive two petitions in the first year and that number would increase by 25% per year over the 10-year analysis. The table below shows the estimated number of new operations with fewer than two crewmembers.

ESTIMATED NUMBER OF NEW OPERATIONS WITH FEWER THAN TWO CREWMEMBERS

Year	Number of new one-person operations per year
1	2
2	3
3	4
4	5
5	6
6	8
7	10
8	13
9	16
10	20

There are several reasons for this uncertainty. First, based on FRA's experience, it appears that during the last five years, Class II and III short line and regional freight railroads have reduced the number of one-person legacy operations; however, FRA's information may be incomplete and there may be more operations that FRA does not know about or railroads that are considering initiating such an operation. Second, because collective bargaining agreements typically govern crew size on Class I railroads, those railroads will need their labor organizations to agree to any reductions in crew sizes through the collective bargaining process before implementation of a new operation with fewer than two crewmembers. Major labor organizations opposed such reductions when they challenged FRA's 2019 Withdrawal. Third, passenger train operations still need to comply with or seek a waiver from FRA's passenger train emergency preparedness requirements in 49 CFR part 239 but may also find alternative methods that are acceptable to FRA. Finally, tourist train operations are the least likely type of operation to embrace fewer than two-person train crews given the nature of their operations.

FRA is proposing in § 218.133 that a railroad seeking to initiate a train operation with fewer than two crewmembers file for FRA's review and approval a petition thoroughly describing the proposed operation, including a risk assessment specific to the proposed operation. As proposed, the risk assessment requirement is designed to ensure railroads conduct a comprehensive, objective assessment of the risks of a planned train operation with fewer than two crewmembers. Although some level of risk is inherent in all transportation activities, risk can be reduced, in some cases to a negligible level, through effective operational practices, technology deployment, and implementation of mitigating measures.

This proposed risk assessment would be considered separate from any railroad safety risk reduction program required under part 270 or 271, and therefore would not be covered by either rule's provision protecting certain information from use in litigation proceedings for damages. Both these provisions apply only to information compiled or collected ''solely'' for the purpose of either part 270 or 271, and specifically exclude ''information that is required to be compiled or collected pursuant to any other provision of law or regulation.'' [188] Further, FRA's statutory authority for establishing these litigation information protections requires FRA to first conduct a study to determine whether such protections are in the public interest.[189] While FRA issued the litigation information protection provisions in parts 270 and 271 based on such a study, that study did not address whether FRA should extend litigation protections to risk analyses that were not required to be part of a complete railroad safety risk reduction program, such as the risk assessment proposed in this rulemaking.

FRA notes that it has statutory discretion to prohibit public disclosure under the Freedom of Information Act [190] (FOIA) of risk analyses and risk mitigation analyses it obtains, if it determines that the prohibition of public disclosure is necessary to promote public safety.[191] FRA currently does not believe, however, that exercising its discretion in this manner would be consistent with the provisions of this proposed rule that make petitions and the risk analyses they contain available for public comment. Because FRA finds that making the petitions and accompanying risks analyses available for public comment is critical to ensure transparency of the approval process, FRA concludes that protecting them from public disclosure under FOIA is not necessary to promote public safety. FRA nevertheless requests public comment on whether to exercise its discretion to prohibit the public disclosure of the proposed risk assessments under FOIA, as well as alternative options that would allow for some disclosure protection but still allow for meaningful public comment.

As proposed, FRA will evaluate a railroad's risk assessment to determine whether the assessment:

1. Accurately identifies all hazards associated with the proposed operation (or proposed material modification to an existing operation);

2. Appropriately categorizes all identified hazards according to their risks (likelihood and severity); and

3. Identifies and provides for the implementation of appropriate mitigations measures for identified hazards.

As discussed in the Risk Assessment section above, FRA does not expect that a railroad will prove that a proposed operation is absolutely safe. Some level of risk is involved in every transportation operation, and every rail operation, even rail operations with two or more crewmembers that exist today. However, a railroad's risk assessment should provide evidence that risks associated with the proposed operation have been carefully considered and that steps have been taken to eliminate or mitigate those risks, particularly those risks found to have significant potential safety impacts.

As proposed, FRA will approve a petition only if it finds doing so would be consistent with railroad safety. FRA expects to approve a petition if the Associate Administrator for Railroad Safety independently determines that a railroad's safety case establishes that the proposed operation will not result in an unacceptable level of risk. In terms of the proposed risk assessment methodology, FRA will approve a petition if the Associate Administrator independently determines that a railroad's safety case establishes an acceptable level of risk generally or an acceptable level of risk under specific conditions identified.[192] An unacceptable level of risk would be a level of risk that would make the particular operation inconsistent with railroad safety (*e.g.,* a risk that poses catastrophic consequences and is likely to happen on more than an improbable basis or a risk that poses a negligible consequence but is likely to occur frequently). In making such a determination, the Associate Administrator will consider all supporting data and information a railroad submits with a petition and the accuracy of a railroad's risk assessment and effectiveness of mitigating actions identified. If FRA identifies inaccuracies in the supporting data or information submitted with a railroad's petition, it

[188] *See* 49 CFR 270.105(a)(2) and 271.11(a)(2).

[189] See 49 U.S.C. 20119.

[190] 5 U.S.C. 552 and *see* 49 CFR part 7 (stating DOT's FOIA regulation).

[191] *See* 49 U.S.C. 20118(c) (stating that ''[t]he Secretary may prohibit the public disclosure of risk analyses or risk mitigation analyses that the Secretary has obtained under other provisions of, or regulations or orders under, this chapter if the Secretary determines that the prohibition of public disclosure is necessary to promote railroad safety'').

[192] *See* proposed § 218.135(a)(6).

will not approve the petition. Similarly, if FRA identifies flaws in the analysis underlying a railroad's risk assessment, FRA will not approve the petition.

FRA acknowledges that the appropriateness of specific mitigating measures will depend on the specific context of individual operations (*i.e.,* what may be an appropriate risk mitigation measure for one railroad's operation, may not be an equally appropriate mitigating measure for another railroad's operation). Accordingly, FRA will evaluate each petition and supporting risk assessment in the context of the specific facts of the proposed operation.

FRA also recognizes that the risk mitigation measures a railroad identifies may not mitigate every identified hazard, but FRA expects the mitigation measures to address the identified hazards with the most significant potential safety impacts to ensure that the overall level of risk of a proposed operation is reduced to an acceptable level. The proposed risk assessment requirement is discussed in more detail in the section-by-section analysis of § 218.135.

FRA anticipates that it would grant petitions that build their risk assessment on accurate information, provide a properly executed risk assessment, and show that hazards not mitigated completely are reasonably determined to be acceptable. FRA anticipates that it would deny a petition if information or data on which a railroad builds its risk assessment is not accurate, the risk assessment is not properly executed, or any partially mitigated or unmitigated hazards are determined (by either the submitting railroad or FRA) to be generally unacceptable or unacceptable under the specific circumstances proposed.

3. Automated Operations

The rail industry is anticipating a future growth in automation and is concerned about how a train crew staffing rule might unnecessarily impede the future of rail innovation and automation. As noted in section III.D above and further explained below, FRA does not expect this rule to impede the future of rail innovation, nor does it expect this rule to allow the rail industry to bypass the existing waiver or other existing regulatory processes that may be necessary for automated operations to be implemented in compliance with FRA's safety regulations.[193]

In March 2018, FRA published a Request for Information (RFI) on the future of automation in the railroad industry.[194] In the RFI, FRA sought information from industry stakeholders, the public, local and State governments, and other interested parties on the extent to which they believe railroad operations can (and should) be automated, as well as the potential benefits, costs, risks, and challenges to achieving such automation. FRA also sought comment on how it could best support the development and implementation of new and emerging automation technologies in railroad operations.

FRA received over 3,000 separate comments in response to the RFI from a wide variety of stakeholders, including: members of the public; railroads; railroad industry suppliers and equipment manufacturers; individual railroad employees; railroad labor organizations; and State and emergency response organizations. The vast majority of public commenters seemed to equate automation in the railroad industry with full automation (*i.e.,* fully autonomous rail operations and the elimination of operating crews). Railroads and industry suppliers, on the other hand, acknowledged that automation is an incremental process already underway. These commenters noted that existing technologies (*e.g.,* PTC technology, automated track inspections) are already resulting in increased automated efficiencies and rail safety benefits by reducing the potential for human error, the primary cause of railroad accidents. At the same time, other commenters, including rail labor organizations, urged caution noting infrastructure concerns, the unique operating environment in which U.S. railroads operate, and the importance of not underestimating the value of skilled railroad personnel.

This NPRM proposes a process that would ensure that railroads consider safety and conduct a risk assessment when filing a petition for special approval to initiate a new operation staffed with fewer than two crewmembers or materially modifying an FRA-approved legacy operation, and that FRA will be reviewing and approving those petitions when the criteria are met. Additionally, the petition and requirements proposed concerning annual railroad responsibilities after receipt of special approval would serve to gather data on the relationship between crew size and safety. Thus, FRA expects this proposed rule would help ensure the safe and secure transportation of people and goods without unnecessarily impeding the future of rail innovation and automation.

Regardless of the number of crewmembers a railroad plans to assign to any train operation, a railroad seeking to use rail automation technology that does not comply with FRA's existing rail safety regulations may file a petition for rulemaking under FRA's regulations, or a petition for a waiver of FRA's safety rules. If a railroad seeks to use technology that does not comply with FRA's existing regulations and the railroad seeks to use a fewer than two-person crew for the operation, the railroad could petition FRA for a rulemaking that would revise FRA's regulations to permit the use of the technology as proposed. A rulemaking petition would need to comply with FRA's Rules of Practice (specifically, 49 CFR part 211, subparts A and B) and would have to follow the Department's regulatory process in compliance with the Administrative Procedure Act.[195] Alternatively, a railroad could petition FRA for a waiver from any applicable regulations as necessary and additionally request that FRA grant a special approval under proposed § 218.133. Similar to a petition for rulemaking, a waiver petition would also need to comply with FRA's Rules of Practice (specifically, 49 CFR part 211, subparts A and C) and must include all required supporting information, including a safety justification. Although a railroad seeking relief from FRA regulations on both an issue with this proposed regulation and an issue with any other FRA regulation would need to file both a waiver petition and a petition for special approval under proposed § 218.133, that request may be made in a single document with the appropriate supporting information provided. Notably, when granting a waiver, just as contemplated by this proposed rule for special approvals under § 218.133, FRA may impose additional conditions to ensure safety. In conclusion, if rail automation technology does not comply with FRA's existing rail safety regulations, there is no prohibition on a railroad filing a waiver petition along with a petition for special approval under this rule as proposed.

[193] *See* 49 CFR part 211, subparts C and E (providing FRA's rules of practice for waivers and miscellaneous safety-related proceedings and inquiries).

[194] 83 FR 13583 (Mar. 29, 2018), Request for Information: Automation in the Railroad Industry (Docket FRA–2018–0027).

[195] 5 U.S.C. 551–559.

IV. Section-by-Section Analysis

Section 218.5 Definitions

The NPRM proposes to add 11 definitions that will be applicable to all of part 218—Railroad Operating Procedures. Part 218 prescribes minimum requirements for railroad operating rules and practices. As the proposed defined terms are not currently used in the existing requirements, the proposed definitions are not expected to change the meaning of those requirements.

The proposed rule defines the term ''Associate Administrator'' so that a petition can be directed to the attention of the proper FRA official who will need to review it for special approval. A definition of ''FTA'' is proposed for those railroads that come under the Federal Transit Administration's jurisdiction and would be expecting FRA to recognize FTA's authority to regulate certain types of operations.

FRA proposes to define four terms that relate specifically to the risk assessment content and procedures requirements in proposed § 218.135. These terms are: hazard; mishap; risk; and risk assessment. The meaning of these terms is discussed in more detail in the analysis of § 218.135.

To clarify that a ''train'' does not include switching operations, FRA proposes a definition for ''switching service'' that is consistent with the way FRA has defined the term in other regulations.[196] Switching service means the classification of rail cars according to commodity or destination; assembling cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing locomotives and cars for repair or storage; or moving rail equipment in connection with work service that does not constitute a train movement. FRA has not limited switching service to yard limits, although switching service often takes place within a rail yard.

FRA proposes a definition of ''tourist train operation'' as a short form of reference to a ''tourist, scenic, historic, or excursion train operation.'' The proposed rule also provides a definition for the phrase ''tourist train operation that is not part of the general railroad system of transportation'' to explain the plain meaning of that phrase. The phrase means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (*i.e.,* there is no freight, intercity passenger, or commuter passenger railroad operation on the track). Any freight, intercity passenger, or commuter passenger railroad operation on the track would make the track part of the general system.[197] In the section-by-section analysis for § 218.127, there is an explanation for why FRA is proposing an exception for a tourist train operation that is not part of the general railroad system of transportation.

The proposed rule defines ''trailing tons'' to mean the sum of the gross weights—expressed in tons—of the cars and the locomotives in a train that are not providing propelling power to the train. This term has the same meaning as in 49 CFR 232.407(a)(5), which is a regulation concerning end-of-train devices. The NPRM needs this term to help define what a work train is in § 218.129(c)(2).

The NPRM proposes a definition of ''train'' that is consistent with the way FRA has defined the term in other regulations.[198] For purposes of this proposed rule, a train means one or more locomotives coupled with or without cars, except during switching service. The term ''switching service'' is also defined in the proposed section. The proposed definition of train is not intended to contain all the exceptions to the crew size and the location of crewmember requirements; instead, those exceptions are found in other sections, clearly identified as exceptions, in the proposed rule text.

Section 218.121 Purpose and Scope

Proposed paragraph (a) states that the purpose of proposed subpart G is to ensure that each train is adequately staffed and has appropriate safeguards in place for safe train operations under all operating conditions. To ensure adequate staffing, the NPRM prescribes minimum requirements for the size of different train crew staffs depending on the type of operation, as described in paragraph (b) of this section.

Proposed paragraph (b) provides that subpart G prescribes minimum requirements for the size of different train crew staffs depending on the type of operation and operating conditions. The decision to propose a requirement for a minimum number of crewmembers on certain types of operations is intended to ensure that each railroad implementing operations with fewer than two train crewmembers has adequately identified potential safety risks and taken mitigation measures to reduce the chances of accidents, as well as the impact of any accident that may still occur. Proposed paragraph (b) also provides that subpart G prescribes minimum requirements for the location of a second train crewmember on a moving train, and promotes safe and effective teamwork. Moreover, proposed paragraph (b) would expressly allow each railroad to prescribe additional or more stringent requirements in its operating rules, timetables, timetable special instructions, and other instructions.

Section 218.123 General Train Crew Staffing Requirements

Subject to the exceptions in §§ 218.125 through 218.129, this section proposes general crew staffing requirements and explains the circumstances under which a second crewmember may be located outside of the operating cab of the controlling locomotive when the train is moving.

Proposed paragraph (a) requires each railroad to comply with the requirements of subpart G and provides the railroad with the option to adopt its own rules or practices for implementing these requirements. In addition, as proposed in §§ 218.129, 218.131, and 218.133, a railroad would need to adopt its own rules or practices to operate a train with fewer than a two-person crew (*e.g.,* when a mitigating action is required to address an identified hazard or that action is not required by Federal regulation). As proposed in § 218.121, each railroad is free to prescribe additional or more stringent requirements as it sees fit. If a railroad or any other person fails to comply with subpart G, or the railroad's rules or practices used to ensure compliance with the requirements of subpart G, that railroad or other person shall be considered to have violated the requirements of subpart G and may be subject to an FRA enforcement action. Although this would be true even without this paragraph, FRA intends this paragraph to remind the regulated community that FRA can take enforcement action for noncompliance with either the requirements of subpart G or a railroad's rules implementing subpart G.

Proposed paragraph (b) would require that each train be assigned a minimum of two crewmembers unless an exception is otherwise provided for in subpart G.

[196] *See, e.g.,* 49 CFR 229.5, 232.5 and 238.5.

[197] *See* 49 CFR part 209, appendix A.

[198] *See, e.g.,* 49 CFR 234.5 (defining ''train'' for grade crossing safety standards), 49 CFR 236.1003 (defining ''train'' for PTC systems), 49 CFR 238.5 (defining ''train'' for passenger equipment safety standards), and 49 CFR 241.5 (defining ''movement of a train'' for extraterritorial dispatching requirements). In each example, a ''train'' may be made up of one or more locomotives, with or without cars. Wording differences in the definition of ''train'' between regulations are attributable to the specific structure or application of each regulation.

Paragraph (c) contains the proposed requirement that, without exception, two crewmembers are always required when a train contains certain quantities and types of hazardous materials that have been determined to pose the highest risk for transportation from both a safety and security perspective. The types and quantities of the hazardous materials identified in paragraph (c) are those that PHMSA, FRA, and TSA, as discussed in section III.E above, have previously determined present heightened safety and security risks in rail transportation. Accordingly, FRA finds that requiring, without exception, a minimum two-person crew to operate such trains is justified.

Proposed paragraph (c)(1) would prohibit the operation of a train with fewer than a two-person crew if the train is transporting certain hazardous materials making it subject to FRA's securement regulation (49 CFR 232.103(n)) if left unattended or if the train is transporting one or more car loads of any hazardous material TSA has designated as RSSM.[199] Paragraph (c)(1) would require a minimum of two crewmembers for any train that contains twenty (20) or more loaded tank cars or loaded intermodal portable tanks of any one or any combination of hazardous materials identified in 49 CFR 232.103(n)(6)(i)(B) (*i.e.,* 20 or more tank car loads or intermodal portable tank loads of any combination of Division 2.1 (flammable gas), Class 3 (flammable or combustible liquid), or Division 1.1 or 1.2 (explosive) hazardous material, or a hazardous substance listed at 49 CFR 173.31(f)(2)).

Proposed paragraph (c)(2) would require a minimum of two crewmembers for any train that contains one or more car loads of any material designated as RSSM as defined in 49 CFR 1580.3. Currently, a hazardous material shipment of RSSM can be any one of the following three types of shipments: (1) a rail car containing more than 2,268 kg (5,000 lbs.) of a Division 1.1, 1.2, or 1.3 (explosive) material, as defined in 49 CFR 173.50; (2) a tank car containing a material poisonous by inhalation as defined in 49 CFR 171.8, including anhydrous ammonia, Division 2.3 gases poisonous by inhalation as set forth in 49 CFR 173.115(c), and Division 6.1 liquids meeting the defining criteria in 49 CFR 173.132(a)(1)(iii) and assigned to hazard zone A or hazard zone B in accordance with 49 CFR 173.133(a), excluding residue quantities of these materials; and (3) a rail car containing a highway route-controlled quantity of a Class 7 (radioactive) material, as defined in 49 CFR 173.403.

The general requirement in proposed paragraph (d) is that a crewmember, other than the crewmember operating the train, may be located anywhere outside of the operating cab of the controlling locomotive when the train is moving under certain conditions. The NPRM is written under the premise that the locomotive engineer is the first crewmember, *i.e.,* the crewmember operating the train, and is always located in the cab of the controlling locomotive when the train is moving because that is the only location from which the train can be operated unless the controlling locomotive is being operated remotely—and there is a proposed exception for remote control operations in § 218.129.(c)(3).[200] The second crewmember is typically a conductor, under 49 CFR part 242; however, as the locomotive engineer could be a certified conductor, it is possible that a second, or additional, crewmember could be designated as having a job title other than conductor and not require a locomotive engineer or conductor certification.[201] Crewmembers that are not operating the train may also include persons who are training to become certified locomotive engineers or conductors, or other operations employees assigned as crewmembers.

The proposed requirement in paragraph (d) is written with an expectation that, in many operations, the best location for the conductor is in the cab of the controlling locomotive when the train is moving. When a conductor is in the cab, the crewmembers can easily communicate about upcoming restrictions, signal indications, and methods of operation. These job briefings and other timely communications help ensure that the locomotive engineer is operating safely and in compliance with all applicable rules and procedures. Knowing that the conductor can provide reminders of restrictions or a level of assurance that the engineer is calling signals correctly may reduce the stress level of the engineer. As FRA explained in the background section (III.D.1), it is when employees are under stress and overloaded with tasks, that a one-person crew is more likely to lose situational awareness and make a mistake, *i.e.,* a human-factor failure.

Although for safety purposes the optimal location for crewmembers is usually in the operating cab of the controlling locomotive when the train is moving, FRA recognizes that in certain instances, trains can be operated safely when crewmembers are located elsewhere on the train. For example, FRA is aware that some operations are designed so that a crewmember not operating the train is positioned at the back of the train, which can facilitate train movements that require manually operating switches at the rear of the train. In other operations, railroads may have a crewmember ride in a locomotive that is not the controlling locomotive. This proposed rule does not prohibit crewmembers that are not operating the train from safely performing their duties from somewhere else on or near the moving train.

In paragraph (d)(1), it is proposed that the normal location of a crewmember be on the train except when necessary for that crewmember to temporarily disembark. The proposed general requirement is intended to prohibit two-person operations where the second crewmember is either never on the train or spends significant periods of time disassociated from physically being on or near the train. A second assigned crewmember that is regularly in a yard tower, for example, would be violating this proposed general requirement that only permits ''temporarily disembarking from the train.'' The relaxation of the requirement that a crewmember that is not operating the train be on the train is intended to permit only movements of short time or duration that are necessary in the normal course of train operations. For example, a conductor may get off a train to throw a switch and then the train may be moved so that the conductor can get back in the controlling locomotive cab without having to walk the entire length of the train. In other instances, there may be a train that cannot easily be moved to pick up a conductor that disembarked to throw a switch, and the conductor may be transported in a motor vehicle, or on a following train, several miles away where the conductor can then safely board the assigned train. Conversely, if a railroad's practice is to stop the train after passing more than one possible place where the train could be stopped safely for the conductor to board, FRA would view the practice as more than a temporary situation and it would appear to violate the proposed general requirement. Regarding proposed paragraph (d)(1), intercity passenger and

[199] See section III.E above for a general discussion of the heightened safety concerns related to the transportation of the identified hazardous materials.

[200] This premise is based on the historical understanding that, aside from remote control operations, a train cannot be operated without a locomotive engineer in the cab of the controlling locomotive, because that is where the controls stand is located. *See e.g.,* 49 CFR 229.115 through 229.140, for requirements for locomotive cabs and cab equipment.

[201] *See* 49 CFR 240.308 and 242.213.

commuter operations would not be expected to make changes to an operation with a locomotive engineer at the control stand and a second crewmember that normally travels in any locomotive or car on the moving train, other than when duties, such as switching, require otherwise.

Proposed paragraph (d)(2) contains the requirement that, when a crewmember that is not operating the train is anywhere outside of the operating cab of the controlling locomotive when the train is moving, the crewmember and the locomotive engineer in the cab of the controlling locomotive can directly communicate with each other. FRA is not proposing to prescribe the methods of communication in this regulation. Deciding appropriate methods of direct communication between crewmembers is left to each railroad. Typically, crewmembers that are visible to one another will communicate by hand signals, as the employees' voices cannot be heard over the locomotive engine from any distance outside the cab. Other times, crewmembers will communicate with one another by radio or other wireless electronic devices in accordance with railroad rules and procedures and FRA's railroad communications regulation found at 49 CFR part 220. The important aspect of this proposed general requirement is that the assigned crewmembers are in direct contact with one another and do not have to communicate through an intermediary. Communication must also be two-way, so that the locomotive engineer can initiate direct communication with the other train crewmember(s).

FRA anticipates that there may be circumstances where direct communication is temporarily lost due to radio malfunctions or other communication failures. Sometimes the loss of communication will be due to circumstances within the control of the crewmembers or will be due to known radio signal obstacles (*e.g.,* geographical obstacles such as mountains). FRA accepts that direct communication may be lost temporarily due to a variety of factors, and will be looking to see that a railroad has implemented procedures or practices to reduce any potential loss of direct communication by crewmembers to a minimum before considering a potential enforcement action. FRA would appreciate comments on this issue.

Regarding proposed paragraph (d)(2), intercity passenger and commuter locomotives do not always have room for a crewmember that is not operating the train in the locomotive control compartment, but a second crewmember may be necessary to assist during shoving or pushing movements, or to otherwise assist the routine operation of the train. If the second crewmember is a conductor, that conductor may not always have a view of upcoming signal indications. Railroads with passenger train operations should look closely at the operating duties that crewmembers, not located in the cab, can perform when any crewmembers can directly communicate with the locomotive engineer in the cab of the controlling locomotive. For example, before leaving each station stop, a passenger conductor could remind the locomotive engineer of any upcoming restrictions that will be reached before arriving at the next station stop. Such job briefings between crewmembers are an effective practice by expert teams.

Proposed paragraphs (d)(3) and (4) also contain general requirements that apply when a crewmember that is not operating the train is anywhere outside of the operating cab of the controlling locomotive when the train is moving. The proposed paragraphs require that these crewmembers must be able to continue to perform the duties assigned even when the crewmembers are outside of the operating cab of the controlling locomotive when the train is moving and, under these circumstances, the location of the crewmembers must not violate any Federal railroad safety law, regulation, or order. These proposed general requirements are catch-all provisions intended to ensure that neither a railroad nor a crewmember concludes that the provisions in this regulation can somehow be used to avoid complying with a person's assigned duties or any Federal requirement. FRA understands that passenger train conductors will normally be in the body of the train, not in the locomotive cab with the engineer. In passenger train operations, normal areas for a conductor to occupy on a train include the locomotive, the passenger cars, the side of a rail car when protecting a move, or on the ground either throwing switches or inspecting the train.

Finally, under proposed paragraph (d), FRA's main concern is with adequately staffed moving trains, not stopped trains. The proposed regulatory text is silent regarding any requirements for the location of a crewmember on a stopped train, as FRA suggests that this is an issue that should be left for each railroad to decide, except to the extent addressed by another regulation—namely, FRA's passenger train emergency preparedness regulation (49 CFR part 239).

Section 218.125 General Exceptions to Train Crew Staffing Requirements

This proposed section is the first of three sections allowing for operational exceptions to the proposed requirement for assigning a minimum of two crewmembers on each train specified in § 218.123(b) and the proposed location requirements for a crewmember that is not operating the train found in § 218.123(d). In the discussion for each proposed paragraph, FRA explains why these proposed exceptions present an acceptable level of risk leading FRA to conclude that, generally, the operations would be consistent with railroad safety. As a reminder, the introductory paragraph of this section reiterates that the exceptions in this section do not apply when a train is transporting the hazardous materials of the types and quantities described in § 218.123(c). This proposed section is intended to cover those general exceptions that apply to freight, passenger, or tourist train operations. FRA requests comments for other similarly situated operations that it should consider excepting and whether a mechanism should be included in the rulemaking to allow future exceptions to be added through a petition process.

In this proposed section, two general exceptions are identified. The exceptions are identified by the shorthand descriptions: (1) helper service and (2) lite locomotive. These shorthand descriptions are used as headings at the beginning of each paragraph.

Paragraph (a) proposes to except trains performing helper service from the proposed two-person crew minimum requirement. The proposed paragraph states that a train is performing helper service when it is using a locomotive or group of locomotives to assist another train that has incurred mechanical failure or lacks the power to traverse difficult terrain. Helper service is a common service performed in the railroad industry as a one-person operation. It is typically not considered a complex operation as the locomotive engineer would be required to operate to the train needing assistance, and then couple to the train so the helper locomotive(s) can provide additional power that will assist the train's locomotive(s) in pushing or pulling it. The proposed paragraph clarifies that helper service includes the time spent traveling to or from a location where assistance is provided. FRA does not believe this type of operation poses a great risk to railroad employees or the general public because cars are not attached and a railroad has

an incentive to not dispatch a helper service train from a great distance away from the train needing assistance. As with all these proposed exceptions, a railroad may decide that a certain helper service operation is complex and that more than one crewmember should be assigned to the helper service train.

Proposed paragraph (b) would exempt a lite locomotive or a lite locomotive consist from the two-person crew requirement based on a similar safety rationale as provided for the proposed helper service exception. That is, when a locomotive or a consist of locomotives is not attached to any piece of equipment, or attached only to a caboose, FRA expects that there is less risk to railroad employees and the general public. Lite locomotives are mainly used to move to a location where the locomotives could be better utilized for revenue trains that are taking or delivering rail cars to customers, or to other railroad yards where the locomotives can be used in switching operations. Additionally, lite locomotives may be operating as a train to take more than one locomotive to a repair shop for servicing. The proposed paragraph includes a definition of ''lite locomotive'' consistent with the definition in FRA's Railroad Locomotive Safety Standards regulation found in 49 CFR 229.5. However, this NPRM includes a further clarification that lite locomotive ''excludes a diesel or electric-multiple unit (DMU or EMU) operation.'' The reason for this additional clarification is that a DMU or EMU is a locomotive that is also a car that can transport passengers, and FRA does not intend this exception to cover a passenger train operation containing either single or multiple DMUs or EMUs. FRA has further clarified DMU/EMU exceptions for passenger trains in proposed § 218.127.

Section 218.127 Specific Passenger and Tourist Train Operation Exceptions to Crew Staffing Requirements

This proposed section permits four specific passenger and tourist train operation exceptions to the proposed requirement for assigning a minimum of two crewmembers on each train. FRA expects these proposed exceptions would avoid any potential disruptions in passenger train service and tourist train operations from the proposed rule without a significant effect on safety.

Proposed paragraph (a) excludes a tourist train operation that is not part of the general railroad system of transportation from the proposed two-person crew requirement. In § 218.5, FRA defined ''tourist train operation'' as a tourist, scenic, historic, or excursion train operation. FRA also defined a ''tourist train operation that is not part of the general railroad system of transportation'' as a tourist, scenic, historic, or excursion train operation conducted only on track used exclusively for that purpose (*i.e.,* there is no freight, intercity passenger, or commuter passenger railroad operation on the track). Excluding these types of operations from this proposed rule is consistent with FRA's jurisdictional policy that already excludes these operations from all but a limited number of Federal safety laws, regulations, and orders.[202] Because these tourist train operations are off the general system, there is no risk that a train could collide with a train carrying hazardous materials or an intercity or commuter passenger train. Proposed paragraph (a) would exclude non-general system tourist train operations from the two-person crew requirement regardless of whether the operations are ''insular'' or ''non-insular.'' FRA does not exercise jurisdiction over tourist train operations that are off the general system and ''insular.'' A tourist train operation is insular ''if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser would be affected by the operation.'' [203] If the tourist train operation is ''non-insular,'' it is possible that the train could collide with a motorist at a highway-rail grade crossing. However, these ''non-insular'' operations would generally involve relatively short tourist trains operating at slow speeds, thereby reducing the probability of an accident with a motorist or even a serious derailment. FRA exercises jurisdiction over non-insular tourist train operations; however, FRA does not require that all of its safety requirements apply to such operations.[204] Because FRA has a statutory obligation to consider financial, operational, or other factors that may be unique to tourist operations, FRA is careful to consider those factors in determining whether any particular rule will apply to tourist train operations.[205] Over the five-year period from 2016 through 2020, there were four FRA-reportable accidents that non-insular tourist railroads off the general system reported as caused by human factors compared to 16 such accidents by tourist railroad operations on the general system. Thus, FRA is balancing the relevant factors, particularly the financial burden to prevent an FRA-reportable accident that averages less than once per year on all non-insular tourist railroads, in proposing to exclude a tourist train operation that is not part of the general railroad system of transportation from the proposed two-person crew requirement. FRA requests comments regarding this proposed exception, and what information, if any, supports that FRA should place greater emphasis on any particular factors.

In paragraph (b), the proposed rule would allow a passenger or tourist train operation with fewer than two crewmembers if the train's cars are empty of passengers and passengers will not board the train's cars until the crew conducts a safety briefing on the safe operation and use of the train's exterior side doors. The proposed exception would not apply just because a passenger or tourist train happens to be empty of passengers, as FRA is proposing a safety briefing requirement, consistent with FRA's passenger equipment safety standards,[206] to help ensure passengers board, and later exit, the train safely. Passenger or tourist trains might need to be moved without passengers for repairs or for the convenience of the railroad, such as to position rolling equipment for future train movements. This exception is proposed because FRA views these movements without passengers as generally not needing a passenger conductor, who would normally ride in a passenger car and not in the locomotive cab. FRA requests comments on this exception, especially if it would require changes to passenger or tourist operations at the point of origin for a train or commenters have information suggesting the exception would be an unsafe practice.

FRA expects that the safety concerns associated with these empty passenger or tourist train operations are lower than for trains loaded with passengers because accidents cannot directly result in injury or fatality of a passenger. Therefore, the proposed rule would allow railroads to determine adequate safeguards to ensure that an empty

[202] 49 CFR part 209, appendix A (describing the extent and exercise of FRA's safety jurisdiction).

[203] *Id.*

[204] *Id.* (describing that FRA's rules that specifically apply beyond the general system to such operations will apply, such as FRA's rules on accident reporting, steam locomotives, and grade crossing signals, as will all of FRA's procedural rules, and the Federal railroad safety statutes themselves).

[205] 49 U.S.C. 20103(f).

[206] *See e.g.,* 49 CFR 238.135(a) (requiring a crew safety briefing prior to a train's departure that identifies each crewmember's responsibilities relating to the safe operation of the train's exterior side doors).

passenger train operated by a one-person train crew is safe. FRA does not expect this proposed rule to encourage those railroads that operate with a minimum of a two-person crew on empty passenger or tourist trains to take undue risk by taking the second crewmember off this assignment. Instead, FRA is trying to avoid a situation where the proposed rule would require adding a second crewmember who does not perform safety functions. On passenger or tourist trains, one of the central safety concerns is how the crew will protect the passengers when getting on or off the train, or in case of an emergency. If the train does not have any passengers on board and will not be picking up any passengers until a safety briefing is conducted, a second crewmember is not needed to address any passenger's safety concerns. On the other hand, if passenger or tourist trains may encounter freight trains on the same track or an adjacent track, if switches need to be thrown, or if the train will be engaging in shoving or pushing movements, it may be beneficial to add a second crewmember to address these operating conditions or any potential emergency situations.

Proposed paragraph (c) contains an exception to the two-person crew general requirement for a passenger or tourist train operation involving a single self-propelled car or married-pair unit, *e.g.,* a DMU or EMU operation, where the locomotive engineer has direct access to the passenger seating compartment and (for passenger railroads subject to 49 CFR part 239) the passenger railroad's emergency preparedness plan for this operation is approved under 49 CFR 239.201. As explained above, a DMU or EMU is a locomotive that is also a car that can transport passengers. These self-propelled cars may be coupled together but are often designed so that a person cannot walk to another car without getting off the train. A married-pair unit is about the length of two cars but allows a person to walk between the two cars/units without getting off the train. In deciding whether to approve an emergency preparedness plan, FRA would consider the physical characteristics of the territory and how the operation may put passengers in danger in case of a train breakdown, accident, or evacuation. For example, FRA will consider whether passengers could easily evacuate from the train with minimal assistance. Some passenger cars have door thresholds that are 48 to 51 inches above the top of the rail. With the door that high off the ground, a ladder would need to be deployed and some passengers would likely need assistance evacuating down the ladder to an area of safety. Even with good signage, passengers who are not trained to know what to do in an emergency might not realize the ladder is available, might not know how to deploy it, or might assume additional risk by rushing to evacuate without deploying it. FRA expects a trained second crewmember would provide valuable assistance in emergency situations where an evacuation could be complicated for passengers. Thus, FRA would likely not approve the emergency preparedness plan, and the exception to the two crewmember rule proposed here would not apply, if the physical characteristics of the territory or the equipment, or both, suggest passengers may not be safely evacuated in an emergency situation under the plan without a second crewmember's assistance.

In the proposed paragraph (c) exception, FRA has considered the concerns of tourist railroads that would not be subject to the § 239.201 emergency preparedness plan FRA-approval requirement. Tourist railroads, including general system tourist operations, are not subject to 49 CFR part 239, as the passenger train emergency preparedness regulation excludes ''[t]ourist, scenic, historic, or excursion operations, whether on or off the general railroad system.'' [207] Therefore, general system and non-general system tourist operations are not subject to § 239.201. In proposing this exception, FRA certainly did not mean to create a new requirement for a tourist railroad to comply with the passenger train emergency preparedness regulation in part 239. Thus, this exemption expressly requires FRA approval under § 239.201 only for passenger train operations subject to 49 CFR part 239.

Proposed paragraph (d) provides an exception from the two-person crew requirement for a rapid transit operation in an urban area connected with the general railroad system of transportation under certain conditions. The proposed exception clarifies that a rapid transit operation in an urban area means an urban rapid transit system. For the exception to apply, a railroad operating a rapid transit operation in an urban area connected with the general system must ensure that all three listed conditions are met. First, the operation must be temporally separated from any conventional railroad operations, meaning that the rapid transit operation in an urban area is strictly time-separated from conventional operations. The biggest safety concern with rapid transit operations on the general system is that they have the potential to collide with much heavier freight or passenger trains. In such a collision, the rapid transit train is likely to suffer significant equipment damage and the potential for catastrophic injuries to passengers would be great. By requiring that these operations be ''temporally separated from any conventional railroad operations,'' the NPRM would help ensure that the excepted rapid transit operations could not potentially collide with heavier, conventional trains. A temporally separated urban rapid transit operation on the general system is required to obtain an FRA-approved waiver from all applicable FRA regulatory requirements demonstrating an acceptable level of safety, so FRA would have assurances that sufficient measures are in place so the operation can be conducted safely on the general system.[208] The second condition is that there is a Federal Transit Administration (FTA) approved and designated State Safety Oversight (SSO) Agency that is qualified to provide safety oversight, while the third condition is that the operator has an FTA/SSO-approved Public Transportation Agency Safety Plan in accordance with 49 CFR parts 673 and 674. The second and third conditions that must be met relate to the fact that these rapid transit operations in an urban area on the general system may be subject to the FTA's jurisdiction. FRA does not want to assert jurisdiction over an operation where FTA is already asserting jurisdiction.

Section 218.129 Specific Freight Train Exceptions to Crew Staffing Requirements

This proposed section provides four exceptions to the minimum two crewmember requirement for freight trains.

Proposed paragraph (a) would exclude certain unit train loading and unloading operations commonly referred to as ''mine load-out'' or ''plant dumping operations.'' As proposed, this exception would apply to certain low speed, ''assembly line'' unit train loading or unloading operations that take place on tracks which are temporarily made inaccessible from the general system of transportation during the operation. The loading or unloading for these operations takes place while

[207] 49 CFR 239.3(b)(3).

[208] *See* 49 CFR part 211, appendix A, section V ''Waivers That May Be Appropriate For Time-Separated Light Rail Operations''.

the train is moving, and FRA proposes to allow the train to operate at no more than 10 mph during the loading or unloading process to qualify for the exception. FRA proposes to require that the track be made inaccessible during these loading or unloading operations, which can be accomplished by placing a derail at a safe distance within the plant, rail yard, customer's facility, or other location where the operation takes place. By making the track temporarily inaccessible, the operation can prevent incursions into the operation area by other rolling equipment, as well as prevent the operated train from unintentionally entering onto the general system. During these types of operations, FRA proposes to prohibit any duties that would require a second crewmember which, for example, would include the operation of hand-operated switches, filling out paperwork, or calling out signal indications; thus, the one-person train crew would not be distracted by these types of additional duties. Further, these loading or unloading operations are normally overseen by a person, either in a tower or on the ground, who can provide oversight into whether the cars are being loaded or unloaded properly, and ensure that the operation is safely progressing. If the operation has such a person providing oversight, the exception proposes that the person must have the capability of communicating with the locomotive engineer operating the train. FRA could not identify any recent FRA-reportable accidents involving this type of operation where a railroad employee's act or omission was identified as contributing to the cause of the accident. Thus, because these operations occur in a controlled environment, at low speeds, without traditional work for a second crewmember to do, and appear to have a good safety record, FRA proposes that these types of operations be excepted from the proposed two train crewmember requirement.

Proposed paragraph (b) would require that each railroad that implements an operation, described as an exception in paragraph (c) of this section, must have certain operating rules or practices that are consistent with railroad safety. These specific proposed requirements are based on FRA's statement in the background section, explaining that FRA would expect to approve the continuation of a freight operation if it met certain characteristics INRD used to describe its one-person train crew operation. The first of these specific requirements in proposed paragraph (b)(1) is that a one-person train crewmember remain in the locomotive cab during normal operations and may leave the locomotive cab only in case of an emergency affecting railroad operations. A one-person operation is a greater safety risk if the one-person crew will be expected to routinely get off and then climb back on the locomotive. A railroad can arrange for switches to be lined for the one-person train operation and for other operational issues to be handled by other railroad personnel that would simplify the operation for a one-person crew.

Proposed paragraph (b)(2) would require that the railroad have operating rules or practices requiring a one-person train crewmember to contact the dispatcher whenever it can be anticipated that radio communication could be lost, unless the railroad has technology or a protocol established to monitor the train's real-time progress. For example, based on the railroad's experience, it should be aware of the locations where a train is likely to lose radio communication, such as in a tunnel or in certain mountainous or remote territory. When a one-person train crew conveys the information to the dispatcher, the dispatcher can anticipate the length of the likely communication loss and act accordingly. FRA does not propose that a one-person train crewmember contact the dispatcher for anticipated radio communication losses when technology or other protocols establish a method of monitoring the train's real-time progress. For example, a GPS tracking device on the lead locomotive could be used to monitor the train's real-time progress when communication is lost. FRA also proposes allowing a railroad to establish a protocol that accomplishes real-time monitoring of a one-crewmember train's progress. FRA has not proposed such a requirement for train crews with two or more crewmembers because additional crewmembers could follow emergency protocols in case of incapacitation of another crewmember but, without at least one additional crewmember that is not operating the train, the dispatcher would be the person who would need to recognize that emergency measures are necessary.

Proposed paragraph (b)(3) would require that if the railroad cannot monitor the train's real-time progress, the railroad must have a method of determining the train's approximate location when communication is lost with a one-person crew. In case of an emergency, the railroad should have an established method for narrowing down the approximate location of the train so that it can send emergency responders or operational supervisor observers to monitor the train's progress. As in proposed paragraph (b)(2), the intent is to address incapacitation of a one-person train crew. Although it would be best to always know the exact location of the train, the size and scope of an operation may suggest that knowing the approximate location of the train is consistent with railroad safety.

Knowing the real-time progress of a one-person crewmember operation, or at least its approximate location, is necessary when performing search-and-rescue operations. In proposed paragraph (b)(4), FRA would require that the railroad establish a protocol for determining when search-and-rescue operations must be initiated when all communication is lost with a one-person train crew. FRA is concerned that a one-person train crewmember could be incapacitated without a second train crewmember available to call for emergency first responders. For example, if a one-person crewmember fainted, the alerter would stop the train and there would not be an accident for the public to notice or report. Without a second crewmember or a search-and-rescue initiation protocol, the incapacitated crewmember could be left on the train indefinitely without any emergency medical assistance.

Proposed paragraph (b)(5) would require that a one-person train operation's lead locomotive be equipped with an alerter as defined in 49 CFR 229.5 and that the one-person train crewmember must test that alerter to confirm it is working before departure. Although 49 CFR 229.140 permits some exceptions to the requirement for a working alerter on each locomotive, this NPRM would not permit those exceptions when a railroad is using a one-person freight train crew under this section. Without an alerter on the lead locomotive, a one-person train crew could become incapacitated with the train moving, and the train would continue to operate down the track indefinitely without another crewmember who could apply the emergency brake. In contrast, with an alerter, the train would be stopped with an emergency brake application after a designated period of inactivity.

Proposed paragraph (b)(6) would require that the dispatcher confirm with a one-person train crewmember that the train is stopped before conveying a mandatory directive by radio transmission as required in 49 CFR 220.61. FRA defines a mandatory directive as ''any movement authority or speed restriction that affects a railroad

operation.'' [209] Although 49 CFR 220.61 requires that mandatory directives conveyed by radio not be received and copied by an employee operating the controls of moving equipment, there is no separate requirement for the dispatcher to confirm with a locomotive engineer that a train is stopped. That is because most trains have two or more crewmembers and a conductor could write down the mandatory directive while the locomotive engineer is operating the train. This proposed requirement would further ensure the safety of the conveyance of mandatory directives by radio transmission. In circumstances where the one-person crewmember cannot safely stop the train to copy the mandatory directive, it would be expected that the one-person crewmember and the dispatcher would discuss where or when the train can be safely stopped so that the mandatory directive can be conveyed. A dispatcher could convey important or emergency information to the one-person crewmember by radio outside of the mandatory directive process.

Proposed paragraph (b)(7) would require that a one-person train crewmember will have a working radio on the lead locomotive and a redundant, electronic device appropriate for railroad communications as permitted in 49 CFR part 220, subpart C. FRA does not currently require a working radio in the controlling locomotive of every train,[210] and because a two-person crew has the capability to operate the train with the conductor on another locomotive in the consist, current requirements permit ''communications redundancy'' by means of a working radio on another locomotive in the consist and do not mandate another means of a working wireless communications device that can be used in the controlling locomotive.[211] As explained in the background section, FRA's requirements for train operations in the event of a communication equipment failure on the controlling locomotive en route, in 49 CFR 220.38, were written with the expectation that one crewmember can operate the train while a second crewmember communicates with the dispatcher from a second locomotive that has a working radio, but this workaround would not be available to a one-person crew. For this reason, FRA proposes this requirement because it is essential to safety that the one-person crew have a way to communicate with the dispatcher or other railroad personnel without leaving the controlling locomotive. To comply with the proposed requirement, one option is that a railroad-supplied electronic device could be used as a redundant form of communication if the lead locomotive's radio were to fail en route.

Except for trains transporting hazardous materials of the types and quantities described in § 218.123(c), proposed paragraph (c) provides the specific freight train exceptions that would apply to small railroads, work trains, and remote control operations.

Proposed paragraph (c)(1) contains two specific freight train exceptions that would only apply to certain operations of small railroads (*i.e.,* railroads with less than 400,000 annual employee work hours). The first exception would apply to a small railroad operation involving a train no longer than 6,000 feet, operating at a maximum authorized speed of 25 mph, and operating over limited grade. The second exception would apply to a small railroad operation with a maximum authorized speed of 25 mph, but for which a second crewmember, who can directly communicate with the engineer in the cab of the locomotive, is intermittently assisting the train's movements.

FRA is proposing to limit these exceptions to small railroads because the operations of these railroads are generally less complex, and thus pose less risk, as compared to the operations of larger railroads, leading FRA to conclude that the proposed exceptions generally present an acceptable level of risk. For example, small railroads typically have much less dense traffic levels than larger railroads and small railroad crews generally operate over the same territory day after day on routine schedules. Even slow speed operations on larger railroads do not share these same general operating characteristics (*i.e.,* larger railroads typically have more dense traffic levels, operate longer trains, and use crews that operate over different territories with varying characteristics on a routine basis). Accordingly, a low speed operation on a larger railroad would present a higher level of risk than a low speed operation on a small railroad. Additionally, in limiting these exceptions to small railroads, FRA is providing additional relief to small businesses in the railroad industry, consistent with FRA's Policy Statement Concerning Small Entities in 49 CFR part 209, appendix C.

The first proposed small railroad exception applies to operations that take place at speeds not exceeding 25 mph, over track with less than 1 percent grade over 3 continuous miles or 2 percent grade over 2 continuous miles, and with trains that do not exceed 6,000 feet in length. In FRA's experience, freight railroads with fewer than 400,000 total employee work hours annually that operate trains over their own track, at relatively slow speeds, and over territory without steep hills or mountains, do not pose an unacceptable safety risk to the general public or railroad employees if conducted with only one crewmember. Generally, the potential consequences of accidents increase as train speed increases. Most small freight railroads maintain their track to no greater than Class 2 track standards, which allow freight trains to be operated at speeds no greater than 25 mph.[212] As proposed, a small freight railroad that maintains its track to better than Class 2 track standards could file a special approval petition to operate at higher speeds.

As proposed, the exception in § 218.129(c)(1)(i) would apply only to small railroad operations over territory with limited grade. Specifically, FRA proposes to limit the exception to operations over track segments with an average grade of ''less than 1 percent over 3 continuous miles or 2 percent over 2 continuous miles.'' This proposed grade threshold is consistent with grade limitations in other FRA regulations.[213] Because many small railroad operations are excepted from operating with a two-way end-of-train device,[214] but those devices are essential for the safety of a one-person train operation over territory with a heavy grade to perform brake tests or make an emergency brake application, FRA proposed to limit this exception. FRA requests comments on whether a final rule should include a two-way end-of-train device option for those small railroad operations that operate over heavy grades or whether there is an alternative option to address this safety concern.

A proposed maximum train length requirement is appropriate for this small railroad operation exception to address safety concerns with trains blocking crossings. Again, this would be a minimum requirement, and a small freight railroad could certainly require two or more train crewmembers if the operation's safety would be compromised by using only one person.

[209] 49 CFR 220.5.

[210] 49 CFR 220.9.

[211] 49 CFR 220.9(a).

[212] 49 CFR 213.9.

[213] *See e.g.,* 49 CFR 232.407(a)(1) (defining ''heavy grade'' as related to the requirement for operations to use end-of-train devices) and 49 CFR 240.231(c) (allowing movements over track with limited grade without a pilot in other than joint operations).

[214] 49 CFR 232.407.

Blocked crossings are a safety concern for various reasons, and have recently led Congress to require that FRA establish a blocked crossing portal to collect information, perform outreach to communities, support collaboration in the prevention of incidents at highway-rail grade crossings, and assess the impacts of blocked crossings.[215] Local emergency responders and other highway users can be significantly delayed if a railroad operation with a one-person train crew cannot plan a safe place to stop the train without blocking grade crossings. Planning a safe place to stop the train is typically considered a conductor's job, but with only one crewmember, that one crewmember must decide. If a second train crewmember is available, it is much easier for two crewmembers to separate a train and unblock the crossing than leaving that task to a one-person crew. A one-person crew, with no additional railroad personnel to help, would first have to secure the train with hand brakes before attempting to unblock the crossing;[216] and, a failure to properly secure the train could result in a runaway train. For this reason, FRA does not want the additional safety risk of a one-person crew leaving the locomotive cab except in case of an emergency affecting railroad operations, as required in proposed paragraph (b)(1) of this section, and does not consider a blocked crossing to be an emergency under that proposed requirement. The train length requirement is necessary to ensure a train operated under this proposed exception is less likely to block one or more grade crossings in a way that is unduly disruptive to the communities the train passes through. The proposed train length limitation also increases the likelihood the one-person crew could get dispatcher permission to move the train to unblock a crossing, as moving a longer train could be more difficult given the location of other crossings, signals, or other physical or railroad features. This additional requirement should still provide great flexibility to short line railroads because a train that is 6,000 feet would be over a mile long and have approximately 85 to 92 cars.

The second proposed small railroad operation exception applies to small operations of railroads with fewer than 400,000 total annual employee work hours that do not exceed 25 mph, and where a second train crewmember is assigned, but is not continuously on or observing the moving train as would be expected of a second crewmember that is working with a locomotive engineer as a unit that remains in close contact. The proposed exception in paragraph (c)(1)(ii) applies when a freight railroad with fewer than 400,000 total employee work hours annually assigns a second crewmember that has the flexibility to travel separately from the train and is assigned to intermittently assist the train's movements at critical times. For example, the second train crewmember may be ''shadowing'' the train by traveling alongside the train in a motor vehicle. The second crewmember could assist with flagging a highway-rail grade crossing, throwing hand-operated switches, or conducting switching service when the train enters a yard or customer's facility. The second train crewmember and the locomotive engineer in the cab of the controlling locomotive must also have a direct way of communicating with each other. Such communication is essential to holding any required job briefings in which train crewmembers exchange critical information about upcoming restrictions or difficult operational concerns. Most commonly, communication in this context will be by radio (or other wireless electronic devices in accordance with railroad rules and procedures and FRA's railroad communications regulation at 49 CFR part 220). Direct communication means that the train crewmembers have the capability to communicate with one another without going through an intermediary, such as a dispatcher. With direct communication, either the locomotive engineer or the second crewmember can request assistance from the other crewmember and expect to receive a timely response. As these operations are conducted at relatively low speeds, under conditions where the one-person crew on board the train is intermittently assisted, and when the crewmembers are in direct communication with each other, FRA expects that the second crewmember would play a critical role in improving the safety of the operation, even if the person is not always on board or observing the moving train.

Proposed paragraph (c)(2) would exempt work train operations from the two-person crew requirement. ''Work train operations'' is defined in this paragraph as operations where a non-revenue service train of 4,000 trailing tons or less is used for the administration and upkeep service of the railroad. This portion of the proposed definition of work train is the same as the definition FRA provided in 49 CFR 232.407(a)(4), in a regulation requiring end-of-train devices; and, as in that rule, the 4,000 trailing tons or less threshold is intended to provide operational flexibility for this proposed requirement on railroads, especially smaller railroads.[217] Work trains mainly haul materials and equipment used to build or maintain the right-of-way and signal systems. Work trains are unlikely to be hauling hazardous materials (unless extra fuel is needed to power machinery) and are generally not considered complex operations. They often travel at restricted speed, which is a slow speed in which the locomotive engineer must be prepared to stop before colliding with on-track equipment or running through misaligned switches.

FRA expects that a work train with 4,000 trailing tons would allow a railroad to operate a work train with potentially up to 50 cars attached to locomotives. A work train that contains up to 50 cars provides a railroad with a lot of flexibility in permitting such trains to be operated without a minimum of two crewmembers. However, FRA expects operational complexities to arise with a work train with more than 4,000 trailing tons so that a second crewmember would be extremely beneficial for safety purposes. The proposed exception for work trains engaged in maintenance and repair activities on the railroad includes the time the work train is traveling to or from a work site. FRA seeks comments on the range of safety risks posed by work trains and the 4,000 trailing tons limitation, including the potential cost to railroads.

Proposed paragraph (c)(3) would permit an exception to the two-person crewmember requirement whenever remote control operations are conducted under certain circumstances. Because the general requirement for a two-person crew minimum only applies to trains, and the definition of train excludes switching service, this exception applies to the use of a remotely controlled locomotive (RCL) that is traveling between yards or customers' facilities, with or without cars. Typically, RCL operations involved in switching have one or two crewmembers. However, in switching, an RCL operation with two crewmembers is not a traditional locomotive engineer and conductor train crew arrangement. Instead, each crewmember has a remote control transmitter, and the crewmembers alternate controlling the RCL when the RCL is near that crewmember. This ''pitch and catch'' arrangement is more

[215] The Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021), sec. 22404.

[216] 49 CFR 232.103(n).

[217] 62 FR 278, 282 (Jan. 2, 1997).

like having two independent, one-person crews who can do all the duties of both a locomotive engineer and a conductor.

Although RCL operations are best utilized for switching services, a railroad may need to move an RCL from one location to another where the RCL can be more efficiently used. FRA is aware that some railroads use a one-person RCL job to service customers. FRA does not find the practice inherently unsafe given the limitations of the technology. However, FRA might be more concerned if railroads tried to operate the one-person RCL jobs with increased complexity beyond the known acceptable limitations previously acknowledged by the industry. For example, the proposed exception in includes the limitations in paragraph (c)(3)(v) that a ''train does not contain more than 20 multilevel cars, *e.g.,* autorack cars, regardless of whether they are loaded or empty [and] [a]ny continuous block of more than five multilevel cars must be placed at the rear of the train.'' The reason for these proposed limitations on RCL operations are that multilevel cars employ cushioning devices that act as shock absorbers to protect the automobiles that are the cargo, especially during switching operations; however, these cushioning devices create challenging train handling characteristics and are not suitable for RCL operations in numbers greater than the proposed limitations. This NPRM reflects limitations, previously discussed in the 2016 NPRM, that reflect guidance accepted by industry stakeholders.[218]

The RCL operations limitations do not contain a distance restriction, although FRA's guidance on the issue explained that the agency expected that an added limitation would be for these operations to be restricted to main track terminal operations. Considering that RCL operations are already restricted to 15 mph,[219] FRA did not anticipate that RCL operations would expand beyond main track terminal operations. While FRA currently does not believe that RCL operations that are so limited need a distance restriction, FRA would appreciate any comments on this issue.

Section 218.131 Continuance of Legacy Train Operations Staffed With a One-Person Train Crew

The purpose of this proposed section is to provide a way for legacy one-person train operations to continue after the effective date of a final train crew size safety requirements rule until FRA can review the safety of the operation. FRA is proposing to define a legacy, one-person operation as one that a railroad established at least two years before the effective date of a final rule on train crew size safety requirements. Without at least two years of one-person train crew operations, a railroad would not have established an accident/incident safety record of a reasonable length on which FRA could base any determination of the level of safety the operation provides. For a railroad to have an operation ''established at least two years before,'' FRA means that during that two-year period, an operation must occur at regular intervals under a set of defined procedures or conditions. FRA understands that a railroad may substitute a multi-person train crew for the one-person operation occasionally but, if the circumstances allow for the one-person operation, the railroad will typically use the one-person train crew. If a railroad did not conduct one-person train crew operations regularly, even when the procedures or conditions were met, the existence of a legacy operation is questionable. FRA expects that railroads with potential legacy operations will submit comments on their particular factual circumstances so that FRA can consider the impact the proposed rule might have on the regulated community wishing to establish legacy operations. Accordingly, FRA requests comments on this issue.

FRA requests comment on the proposed two-year requirement for establishing a legacy, one-person train operation. FRA recognizes there may be other ways to demonstrate the existence of an established legacy operation such as total number of operating hours or rail miles operated. For example, a railroad that operates a one-person train once per week for two years might have fewer operating hours or rail miles than another railroad that operates a one-person train multiple times per week over a single year. For this reason, railroads with any type of legacy operation are encouraged to comment on the proposed rule and describe whether FRA would need to revise proposed § 218.131 so that the railroad's current operation could be considered a legacy operation. Still another option is that FRA could establish a specific date (*e.g.,* January 1, 2021) by which a fewer than two-person operation must be established to be considered a legacy operation under this rule. FRA also requests comment on other potential criteria that should be required, if any, to establish a legacy operation.

FRA is proposing to prohibit the continuance of legacy one-person freight train operations that transport the hazardous materials of the types and quantities described in § 218.123(c) and, per proposed paragraph (a) of § 218.131, that prohibition would apply as of the effective date of a final rule. Thus, to the extent a legacy one-person freight train operation may continue, it is proposed that it must do so without transporting the hazardous materials of the types and quantities described in § 218.123(c).

Proposed paragraph (a) would prohibit a railroad from continuing a legacy one-person train operation beyond 90 days after the effective date of a final rule if the railroad failed to file a special approval petition containing a description of the operation. Hence, each railroad that establishes a one-person train operation, for at least two years before the effective date of a final rule, would need to decide whether it wants to continue the operation beyond 90 days after the effective date of a final rule; if it does, the railroad will be required to file a special approval petition, unless the operation is covered under one of the proposed exceptions in § 218.125, § 218.127, or § 218.129. It is proposed in paragraph (a) that legacy train operations that are excepted under §§ 218.125 through 218.129 will be permitted to continue without the need to file a special approval petition. For those legacy, one-person train operations that file a petition for special approval under the proposed rule, the railroad may continue the operation unchanged beyond 90 days after the effective date of a final train crew size safety requirements rule, unless FRA issues a disapproval decision or attaches special conditions to the approval of the petition per § 218.137.

Proposed paragraph (b) contains a list of the minimum information requirements for a railroad's special approval petition requesting continuance of a legacy, one-person train operation. Proposed paragraph (b)(1) requires information about the primary person at the railroad who can be contacted about the petition. The remaining 14 numbered items listed under proposed paragraph (b) are intended to solicit an accurate description of the operation, the hazards present, the mitigating measures taken to improve safety, and the railroad's description of how it determined the operation was safe to implement.

Paragraph (b)(2) proposes a requirement for a railroad that wants to continue a legacy one-person train operation to identify the location of that

[218] 81 FR 13947 (docketing US DOT/FRA guidance letters at *https://www.regulations.gov/document/FRA-2014-0033-0002*).

[219] 49 CFR 229.15(a)(14).

operation. FRA proposes to require each railroad to provide the location of the legacy operation it wants to continue with as much specificity as can be provided as to industries or communities served, and track segments, territories, divisions, or subdivisions operated over. Although not required, FRA would appreciate receiving documentation describing any prior operations, including their locations, with fewer than two crewmembers that the railroad may have utilized in the past. For example, documentation could show that a railroad used to run a one-person train operation for 3 days per week for 5 years without incident. That kind of information would show the extent of the operation and the safety record.

In consideration of the proposed location description requirement in paragraph (b)(2), a railroad's request for continuance of a legacy train operation staffed with a one-person train crew must identify the current parameters of the operation's location and should not expand the parameters based on plans for future expansion. A railroad that cannot provide records kept in the normal course of business to support a continuing operation should consider submitting affidavits in support of the existence and extent of the one-person train operation. Lacking a submission containing that type of evidence, the railroad would be relying on FRA to initiate an investigation to confirm the operation's location. If a railroad fails to provide adequate documentation of an operation to be continued, and FRA's investigation does not find adequate support of its existence, the request for continuance will be denied and the railroad will need to file a petition for special approval to initiate a train operation with fewer than two crewmembers per the petition requirements in § 218.133.

Proposed paragraphs (b)(3) through (7) and (10) are sufficiently descriptive that further analysis is unnecessary for those paragraphs. The required information is intended to assist FRA in reviewing the hazards and risk of the operation, in lieu of requiring the railroad to conduct a risk assessment.

Proposed paragraph (b)(8) would require a railroad with a legacy one-person operation to state in its petition for special approval whether the one-person operation hauls hazardous materials of any quantity and type, and the approximate percentage of carload traffic in the one-person operation that is hazardous materials. A one-person operation that does not haul hazardous materials would certainly present less risk than one that does, all else being equal. Considering other issues related to the operation's size and scope, understanding the quantity and type of hazardous materials hauled will help FRA evaluate the risks of the legacy one-person operation. In the background section, FRA explained that it would expect to approve the continuation of a freight operation if it met certain characteristics INRD used to describe its one-person train crew operation, including that 70 percent or more of the railroad's carload traffic is non-hazardous materials. FRA proposes that a railroad approximate the percentage of carload traffic in the one-person operation that is hazardous materials in its petition as it should be included as a factor in determining the risk posed. FRA does not view 30 percent as the upper limit for hazardous materials carload traffic in a one-person legacy operation, and FRA is not proposing any upper limit. FRA's concern is how to consider the hazards and risk of hazardous materials in the total safety of the operation, which is an issue that can be evaluated with the other proposed requirements for a petition in this section. Further, commenters to a petition for special approval can help illuminate the hazards and risk.

Proposed paragraph (b)(9) is intended to solicit information about whether any limitations are placed on a person operating as a one-person train crew. FRA expects that some railroads will limit a one-person train crew by establishing a maximum number of miles or hours the person may work during a single tour of duty. It is also possible that a railroad operating a legacy operation may have established a fatigue mitigation plan even though there is no current Federal requirement to do so. FRA expects that it would be more likely to grant a petition if a railroad implemented strategies for reducing railroad worker fatigue, such as improving the predictability of schedules, considering the time of day it permits one-person train crews to operate, and educating workers about fatigue and sleep disorders. The proposed petition could include an explanation for the rationale behind the limitation to show that it is part of the railroad's effort to ensure that the train operation would be consistent with railroad safety.

Proposed paragraph (b)(11) would require a detailed description of any technology that is used to perform tasks typically performed by a second crewmember or that prevents or mitigates the consequences of accidents. The technologies described must be already installed and operational, with all FRA approvals as necessary, so that the functionality and impact of the technology on the operation are understood and can be accurately accounted for by FRA in its decision. FRA does not intend this regulation to provide a forum for a railroad to gain approval for use of new technologies that are not already in use. As explained in the background section, railroads that want to use leading-edge rail automation technology should petition for a waiver of FRA's safety rules.

Proposed paragraph (b)(12) would require that each railroad with a legacy one-person operation must already have or add certain rules or practices that apply to the one-person train crew operation, but do not apply to train crew operations with two or more crewmembers. These specific proposed requirements are based on FRA's statement in the background section explaining that FRA would expect to approve the continuation of a freight operation if it met certain characteristics that INRD used to describe its one-person train crew operation. As these requirements are also proposed for the specific freight train exceptions to the two-person crew requirement in § 218.129(b), the section-by-section analysis for that proposed requirement is applicable here and will not be repeated.

Proposed paragraph (b)(13) would require a railroad's petition to include a disabled-train/post-accident protocol that quickly brings railroad employees to the scene of a disabled train or accident unless the railroad is conducting a passenger train operation that is required to comply with the passenger train emergency preparedness requirements in 49 CFR part 239. In multiple places in the background section, it was explained that without a second crewmember to take mitigation measures, a one-person train crew could be slower to respond to emergencies than a two-person crew but that the railroad could be as effective by implementing a disabled-train/post-accident protocol. FRA does not currently require freight railroads to adopt and comply with a disabled-train/post-accident protocol, although FRA anticipates that some legacy freight operations already maintain the equivalent within their own rules and practices. Thus, for purposes of continuing a legacy one-person freight operation, FRA proposes to require each railroad to submit such a protocol that it has implemented when filing its petition. FRA expects that some railroads already have such a protocol in place and others may need to develop one. Such a proposed protocol must describe the role and responsibilities of

the one-person train crewmember and any other railroad employees, including supervisors, with responsibility to address a disabled train or an accident. For instance, some railroads may have operational facilities along the route taken by the one-person freight train operation that employ personnel that can be dispatched to help a disabled train or respond to an accident. Other railroads may have utility workers or other operating employees that travel by motor vehicle to a disabled train to perform operational tasks or mechanical repair work typically performed by a second crewmember. A train may also be considered disabled because the one-person crewmember's hours of service expires, and the railroad then needs to retrieve and replace the crewmember. In this context, FRA expects that an adequate protocol would broadly address any concern that disables a train, whether it be caused by a track washout or other severe weather event, mechanical breakdown, significant operational delay, accident, or other circumstances that prevent the train from moving. Typical operational delays, such as one train waiting in a siding for another to pass, would not be considered a disabled train event. In addition, the proposed protocol must also describe any logistics and the railroad's expected response times. The reasonableness of the logistics and expected response times of each operation will depend on the scope of the operation and the potential impact on the public.

Proposed paragraph (b)(14) would require a petition for special approval to include five (5) years of accident and incident data for the operation as identified in paragraph (b)(2) of this section, or at least the accident and incident data for the operation from the date the operation was established if the operation was established between 2 to 5 years before the effective date of a final rule. Although FRA requires railroads to report these accidents/incidents under 49 CFR part 225, FRA cannot accurately determine from that reported information which, if any, reportable accidents/incidents are attributable to a railroad's one-person train operation. FRA expects that each railroad will have more information about its own accidents/incidents and can flag the data that applies to the one-person train operation it is petitioning for special approval. The reference in the proposed requirement to paragraph (b)(2) of this section is intended to have the railroad narrow the requested data to the location of the continuing operation that the railroad has identified in its petition. As proposed, FRA does not want to receive accident/incident data unless it pertains to the one-person train operation(s) the railroad's petition is addressing.

Proposed paragraph (b)(15) is a catch-all provision which serves as a reminder to railroads that they may submit any other information describing protections implemented to support the safety of the one-person train operation that the railroad wants to continue after FRA's proposed deadline passes. FRA expects that some railroads would have completed a risk assessment, a safety analysis, or compiled a safety data report before implementing the legacy one-person train operation that the railroad would now want to continue. To the extent that the railroad is willing to share that information with FRA, FRA would like to receive it. Such information would offer assurance that the railroad carefully considered safety issues before implementation and the availability of such information in the petition is expected to be favorably received.

Proposed paragraph (c) would specify that FRA may request any additional information, beyond what is provided in the petition, that it deems necessary. FRA does not expect to routinely request additional information when a railroad provides the minimum required information listed in paragraph (b). However, FRA may need information clarifying what is provided or FRA may have follow-up questions when the information provided in the petition raises additional safety concerns.

Section 218.133 Special Approval Petition Requirements for Initiation of Train Operations Staffed With Fewer Than Two Crewmembers

This proposed section addresses the requirements for initiation of a train operation staffed with fewer than two crewmembers that is not otherwise prohibited or permitted by the other requirements of subpart G. For instance, except for operations permitted under §§ 218.125 through 218.131, proposed paragraph (a)(1) prohibits a railroad from conducting a train operation with fewer than two crewmembers unless it receives special approval under subpart G.

Proposed paragraph (a)(2) addresses the additional general requirements for passenger railroads seeking to begin train operations with fewer than two crewmembers. Because passenger railroads must comply with the existing regulatory requirement to adopt and comply with a written emergency preparedness plan approved by FRA under 49 CFR part 239,[220] proposed paragraph (a)(2) would require that a passenger railroad seeking to begin train operations with fewer than two crewmembers obtain special approval under subpart G and additionally obtain FRA's approval of either: (1) a passenger train emergency preparedness plan under part 239 for the operation; or (2) a waiver from the part 239 emergency preparedness plan requirement.[221] If a passenger railroad chooses to request a waiver under 49 CFR part 211, proposed paragraph (a)(2)(ii) allows the railroad to petition for both a waiver under part 211 and special approval under § 218.133 in the same filing. Because the number of crewmembers assigned to a train will affect a railroad's part 239 emergency preparedness plan for that operation, it is appropriate for a passenger railroad to submit one filing that addresses both regulatory requirements.

Proposed paragraph (b) contains the minimum petition requirements for a railroad to request FRA's approval to initiate a train operation with fewer than two crewmembers. FRA expects that a petition meeting these minimum requirements will contain sufficient information for FRA to determine whether the operation is consistent with railroad safety.

Proposed paragraphs (b)(1) through (14) would require essentially the same minimum requirements for a new operation special approval petition as FRA is proposing for a railroad's special approval petition requesting continuance of a legacy one-person freight train operation in § 218.131(b)(1) through (14). The differences between these 14 paragraphs in the new operation and legacy operation proposed petition requirements are contextual in that a new operation cannot be initiated until the railroad has obtained FRA's approval to initiate the operation as proposed, while a railroad petitioning for FRA approval of a legacy operation may continue its operation while FRA is considering its petition. Given these similarities, for more background on proposed paragraphs (b)(1) through (14) of this section, please see the discussion of paragraphs (b)(1) through (14) of proposed § 218.131.

The significant difference between the filing requirements for a new operation versus a legacy operation is paragraph (b)(15) of each relevant section. For a legacy operation, proposed paragraph (b)(15) of § 218.131 is a catch-all

[220] 49 CFR 239.101.

[221] 49 CFR part 211, subpart C, contains the required processes and procedures for submitting a waiver request to FRA.

provision which makes clear that in addition to the information and analysis required by paragraphs (b)(1) through (14) of the section, a railroad may submit any other relevant information to support its petition. For new operations that have not yet been implemented with fewer than two-person crews, FRA proposes a catch-all provision in paragraph (b)(16) of § 218.133, instead, and the additional requirement of a risk assessment for the proposed new operation in paragraph (b)(15). The proposed risk assessment requirement is discussed in detail below in the section-by-section analysis of § 218.135.

Section 218.135 Risk Assessment Content and Procedures

Proposed § 218.135 contains the minimum proposed requirements for a railroad's risk assessment required under subpart G. Generally, the goal of a risk assessment is to assess risk in an objective manner by following a decision-making process designed to systematically identify hazards, assess the degree of risk associated with those hazards, and based on those assessed risks, identify and implement measures to minimize or mitigate the risks to an acceptable level. In the context of this rulemaking, a risk assessment is the process of determining, either quantitatively or qualitatively, the level of risk associated with a proposed train operation staffed with fewer than two crewmembers, including mitigating the risks to an acceptable level. In this NPRM, FRA is proposing a process specific to analyzing the risks of train operations with fewer than two assigned crewmembers. While the proposed process and methodology are taken from existing standards in transportation and other industries, they are tailored to the specific context of this rulemaking.[222]

FRA is proposing that a railroad's risk assessment be required to identify and account for the risks associated with: (1) the overall operating environment and all operating conditions associated with the proposed operation; and (2) all functions the proposed operation would require to be performed by a crewmember and/or equipment involved in a train's operation that may affect the safety of the operation. As proposed, § 218.135(a) sets the minimum standards for the content and analysis requirements for the required risk assessment. As proposed, however, paragraph (a) would allow a railroad to use alternative risk assessment methodologies and/or procedures if approved by the Associate Administrator.

Specifically, proposed paragraph (a) would require a railroad's risk assessment to contain six elements: (1) a complete description of the proposed operating environment; (2) a list and description of all functions, duties, and tasks associated with the operation of a train as proposed, performed by the crewmember, other railroad employee(s), or equipment, including at a minimum, any function performed; (3) a description of the allocation of all functions, duties, and tasks to the one crewmember, other railroad employee(s), or equipment; (4) a hazard analysis of train operation functions, duties, and tasks; (5) a risk matrix that classifies the severity and likelihood of each partially mitigated or unmitigated hazard; and (6) a risk report of the proposed train operation staffed with fewer than two crewmembers documenting the basis for acceptability of all partially mitigated or unmitigated hazards.

Understanding the specific operating conditions under which a train crew with fewer than two crewmembers would be required to operate is critical to identifying potential hazards and the risks associated with those hazards. Accordingly, paragraph (a)(1) requires a complete description of the operating environment, including, at a minimum: all authorized methods of operation;[223] applicable operating rules and practices; hours of operation; qualifications and certifications of the crewmembers; the number and frequency of trains involved; the tonnage, length, and make-up of trains involved; the route and terrain over which the trains will be operated (*e.g.,* maximum grade, sight distances); number and types of grade crossings involved; the amount and types of hazardous materials that would be transported; and the characteristics of the geographic areas through which the trains will operate (*e.g.,* population density, proximity to environmentally sensitive areas). FRA recognizes that every railroad operating environment, and every railroad operation, is unique. Accordingly, in proposed paragraph (a)(1)(xi), individual railroads may need to identify and describe additional aspects of any proposed operation that are relevant to providing a full and complete description of the specific operating environment and conditions of its proposed fewer than two-person train crew operation. As explained below, the risk assessment's hazard analysis will use this information to identify hazards for each operation, under all conditions and operating modes, including when there is a failure of components, equipment, or systems.

Proposed paragraphs (a)(2) and (3) would require a risk assessment to contain a list and description of all functions, duties, and tasks associated with the operation of a train with fewer than two crewmembers that are performed by the one crewmember, other railroad employee(s), locomotive equipment or components, or operating and control systems; and identification of the allocation of those functions, duties, and tasks. Just as understanding the specific operating environment in which a fewer than two-person crew would be required to operate is critical to any risk assessment process, identifying the specific functions, duties, and tasks associated with operating in that environment is also critical, as is identifying the ''division of labor'' in performing those functions, duties, and tasks. Paragraph (a)(2) requires a railroad to identify and describe all functions, duties, and tasks performed by the crewmember, other railroad employee(s), or equipment (*e.g.,* (1) to prepare a train for operation (any pre-departure function); (2) during a train's operation (any en route function); or (3) once a train has stopped moving (whether because the train has reached its destination or stops en route, for any reason). Pre-departure functions would include, at a minimum, inspecting and preparing a train for operation (*e.g.,* obtaining all track bulletins, orders, and manifests; managing the train consist, including train make-up; obtaining and ensuring the accuracy of consist paperwork, including hazardous materials documentation; arming and testing an end-of-train device, as required, and performing necessary brake tests; releasing the handbrakes; and, reviewing, interpreting, or responding to forms, bulletins, or advisories). During a train's operation, the functions would include operating and controlling the train (*e.g.,* applying and releasing of brakes; modulating the throttle; responding to and acknowledging alarms; interacting with non-crewmembers *e.g.,* dispatcher, roadway workers; and, responding to emergencies or unexpected events (*e.g.,* a trespasser on the tracks). Once a train has stopped, the functions would include securing the equipment and communicating with the dispatcher.

[222] In the Background section under ''Risk Assessments,'' above, FRA explains that these proposed standards are largely based on standards established by the Department of Defense and AREMA, or FRA in the context of other current rail safety requirements.

[223] The phrase ''all authorized methods of operation'' refers to how a train has authority to move. The following are some of the different methods of operation used by railroads: timetable; mandatory directive; signal indication; or any form of absolute or manual block system.

Once all functions, duties, and tasks are identified and described under proposed paragraph (a)(2), proposed paragraph (a)(3) would require a railroad to identify the allocation of those functions, duties, and tasks to the crewmember, other railroad employee(s), or equipment. In other words, ''who is responsible for doing what'' must be identified. As the allocation of functions, duties, and tasks is completed, and it is confirmed whom or what performs specific functions, duties, or tasks, a railroad must also confirm whether there are additional measures, checks or procedures to confirm that the function, duty, or task is completed and performed correctly. This confirmation, and an understanding of what verification and validations steps are in place, are a critical input to the hazard analysis required by proposed paragraph (a)(4). For example, before a train departs, a single crewmember may be responsible for managing train make-up and obtaining a copy of the train consist and other relevant documentation (*e.g.,* hazardous materials documentation). A railroad may also have in place a process to verify the accuracy of the consist and other documentation by use of automatic equipment identification readers or other technology. While a train is in motion, the single crewmember may be required to operate the train by modulating the throttle and applying the brakes as necessary, but those human actions may be supplemented by computerized control systems (*e.g.,* PTC systems, or systems designed to maximize fuel efficiency by controlling train speed).

Using the information gathered in response to paragraphs (a)(2) and (3), proposed paragraph (a)(4) requires a railroad to complete a hazard analysis of train operating functions, duties, and tasks for operations with fewer than two crewmembers. A ''hazard,'' as defined in § 218.5, is an existing or potential condition that can lead to an unplanned event or series of events (*i.e.,* mishap) that can cause an accident or incident; injury, illness, or death; damage to or loss of a system, equipment, or property; or environmental damage. Identifying relevant hazards and preparing a hazard analysis are fundamental to the process of assessing risk. A hazard analysis is performed to identify potential hazards for purposes of eliminating, or at least mitigating, those hazards. A hazard analysis will assign a qualitative or quantitative severity and probability of occurrence to any identified hazard causing (or with the potential to cause) an undesirable event. In the context of a risk assessment under this paragraph, a hazard analysis must be designed to reasonably ensure that any hazards associated with any functions, duties, or tasks involved in the train operation are identified, so that suitable mitigating actions can be identified and implemented to ensure the safety of the operation. A hazard analysis must also document what hazards were identified, and the results of an analysis of those hazards (*i.e.* the extent to which each hazard can be mitigated or eliminated, and any relevant mitigation measures).

As proposed, a hazard analysis must consider the entire state of the proposed fewer than two crewmember operation (*i.e.,* all data and information identified under proposed paragraphs (a)(1) through (3)), and potential failures or malfunctions (including human error and equipment, component, or system failures). Each function, duty, or task potentially represents a hazard, if done incompletely or improperly.

As proposed, paragraph (a)(4) would require a hazard analysis to include four elements: (1) a hazard log, consisting of a comprehensive description of all hazards associated with the proposed train operation; (2) an assessment of each hazard in terms of the severity (*i.e.,* a measure of the worst-credible mishap resulting from the hazard); (3) an assessment of each hazard in terms of probability of occurrence, based on the likelihood of the sequence of events that could lead to the hazardous condition; and (4) a hazard mitigation analysis outlining the sustainable actions and associated components, equipment, systems or processes that are put in place to reduce or eliminate the probability or severity, or both, of each hazard.

A hazard log is a way to track all hazards associated with the operation (*e.g.,* a table). The purpose of a hazard log is to identify associated risks, list mitigations, and document when all required mitigations have been successfully implemented. As proposed in paragraph (a)(4)(i), a hazard log is a mechanism for recording and tracking all safety relevant hazards (*i.e.,* a log of the potential adverse consequences of what can go wrong when a safety-critical or safety-related function is not completed or completed improperly) when preparing a train for operation, during a train's operation, or once a train has stopped moving. Hazard identification may include fault tree analysis, brainstorming, failure mitigation checklists, or other processes to identify hazards. Expert knowledge, training material, equipment design requirements, and other information can be used to support the preparation of a hazard log.

A hazard log must include sufficient supporting documentation to demonstrate that a robust process was used to identify hazards. A hazard log may include hazard sheets documenting how the hazard was identified, who identified the hazard, the probability and severity of each identified hazard, and how each hazard will be mitigated. If any identified hazard is not fully mitigated, the hazard log must contain documentation demonstrating the partially mitigated or unmitigated hazard remaining and the potential consequences of that remaining hazard.

A hazard log is a living document that must be maintained and updated to reflect the current operating environment. If new hazards are identified, the hazard log must be updated. Similarly, if operational changes are made in a way that introduces additional risk, the hazard log must be updated. Changes to a hazard log must be effectively managed, *e.g.,* through a configuration management process. A configuration management process is the practice of analyzing changes in the operating environment and systematically documenting those changes, and the impact of those changes, on the risk assessment and hazard log. An effective configuration management process must be used to determine when and how often a risk assessment needs to be reviewed and re-validated.

FRA proposes that a railroad identify each hazard in its hazard analysis in terms of both severity and probability. The severity of an identified hazard is a measure of the hazard's consequences (*i.e.,* an estimation, or potentially a calculation, of a hazard's consequences). As proposed, a hazard's severity is measured as the worst potential credible mishap resulting from the hazard (*i.e.,* the worse-case possible end condition that could result from a hazard). Severity analysis is usually performed qualitatively but may be performed quantitatively with supporting historical data. Proposed paragraph (a)(4)(ii) would require a railroad's hazard analysis to assess and categorize the severity of each identified hazard as follows: (1) catastrophic; (2) critical; (3) marginal; or (4) negligible. These proposed severity categories are derived from the well-established severity categories used in AREMA's Communications and Signaling Manual, but FRA is proposing to define each category in terms of railroad operations and in terms of other FRA regulations. Table 1 in this section proposes to define each severity category as follows:

Catastrophic: A hazard that results in a fatality, irreversible significant environmental damage, or significant monetary loss, and accidents and incidents required to be reported to FRA telephonically under 49 CFR 225.9.

Critical: A hazard that results in a significant injury (as defined in 49 CFR 225.5), reversible significant environmental damage, or reportable monetary loss, and accidents and incidents that are not required to be telephonically reported under 49 CFR 225.9, but are still FRA-reportable under 49 CFR 225.19.

Marginal: A hazard that results in minor injuries (*i.e.,* injuries that are not significant as defined in 49 CFR 225.5), reversible non-significant environmental damage, or monetary loss.

Negligible: A hazard that results in no injuries, no environmental damage, or equipment or railroad structure damages not requiring repair.

FRA requests comments on these proposed categories.

Proposed paragraph (a)(4)(iii) would require the hazard analysis to assess each identified hazard in terms of probability (*i.e.,* the likelihood of occurrence of an event or a sequence of events that could lead to the hazard). A hazard's probability level may be calculated quantitatively (*e.g.,* using failure rates or accident and incident data). Alternatively, a hazard's probability level may be calculated qualitatively (*e.g.,* based on a mix of historical data, equipment reliability data, and expert knowledge). Regardless of how calculated, for purposes of subpart G, a hazard's probability level must be assessed in the context of the probability levels identified in Table 2 of this section. As proposed, the five categories of probability are: (1) frequent; (2) probable; (3) occasional; (4) remote; and (5) improbable. Like the proposed severity categories, these proposed probability categories are derived from the AREMA standard and, in paragraph (a)(4)(iii), FRA is proposing to define each category in terms of railroad operations and in terms of other FRA regulations. Consistent with the AREMA standard, FRA is proposing to allow the categorization of a hazard's probability through either qualitative or quantitative analysis. Qualitatively, in Table 2, FRA proposes to define each probability category (estimated per 1,000 operating hours) as follows:

Frequent: Likely to occur frequently.

Probable: Likely to occur several times.

Occasional: Likely to occur once, but not several times.

Remote: Unlikely, but possible, to occur.

Improbable: So unlikely that it can be assumed occurrence may not be experienced.

Quantitatively, Table 2 proposes to define each probability category in terms of the probability of a hazard occurring per 1,000 operating hours as follows:

Frequent: A hazard having a probability of occurring more often than once every 1,000 operating hours.

Probable: A hazard having a probability of occurring once between every 1,000 operating hours and every 100,000 operating hours.

Occasional: A hazard having a probability of occurring once between every 100,000 operating hours and every 10,000,000 operating hours.

Remote: A hazard having a probability of occurring once between every 10,000,000 operating hours and every 1,000,000,000 operating hours.

Improbable: A hazard having a probability of occurring less than once every 1,000,000,000 operating hours.

A hazard's probability should be based on all relevant information gathered under proposed paragraphs (a)(1) through (3), and the appropriate probability level for any identified hazard is the likelihood of the occurrence of that hazard at any given time.

The assessment of each hazard's severity and probability is essential to any risk assessment, and as proposed, necessary to complete the risk assessment matrix and risk report that paragraphs (a)(5) and (6) would require.

Paragraph (a)(4)(iv) contains the final proposed component of a hazard analysis, a hazard mitigation analysis. As proposed, a railroad's hazard mitigation analysis would be required to identify sustainable mitigating actions and circumstances (*e.g.,* associated components, equipment, systems, or processes) that are put in place to reduce or eliminate the probability or severity of each identified hazard and associated risk. At a minimum, a hazard mitigation analysis must consider the (1) design of the system, equipment and components, including equipment reliability and the necessary functions to be performed, in both a normal operation and in a failed state; and (2) human factors associated with the processes and tasks to be performed, including the required skills and capabilities of staff, the operating environment, and existing or potential impairments. The goal of a hazard mitigation analysis is always to eliminate an identified hazard if possible. When it is not possible to eliminate a hazard, remaining unmitigated risk must be documented and categorized in terms of severity and probability.

Once a hazard analysis is completed (including implementation and analysis of the effects of all mitigating measures), proposed paragraph (a)(5) requires a risk matrix ranking the severity and likelihood of each hazard that was not eliminated (*i.e.,* each partially mitigated and unmitigated hazard). A risk matrix is a visual representation of the risk analysis and provides a framework to categorize in terms of severity and frequency, each identified hazard that is not fully mitigated by the hazard mitigation analysis. A risk matrix effectively ranks the severity and probability of each hazard; the highest levels of risk are on one end of the matrix, the lowest levels of risk on the other end of the matrix, and the medium risks in the middle of the matrix. Figure 1 below is a graphic representation of the risk matrix concept. Figure 2 below shows a risk matrix as proposed in paragraph (a)(5).

Figure 1: Generic Conceptual Risk Matrix

PROBABILITY	SEVERITY			
	Catastrophic	Critical	Marginal	Negligible
FREQUENT	Very high	Very high	High	High
PROBABLE	Very high	High	High	Medium
OCCASIONAL	Very high	High	Medium	Low
REMOTE	High	Medium	Medium	Low
IMPROBABLE	Medium	Medium	Low	Low

Figure 2: Risk Matrix as Required in Part 218, Subpart G

PROBABILITY	SEVERITY			
	(1) Catastrophic	(2) Critical	(3) Marginal	(4) Negligible
(A) FREQUENT	1A	2A	3A	4A
(B) PROBABLE	1B	2B	3B	4B
(C) OCCASIONAL	1C	2C	3C	4C
(D) REMOTE	1D	2D	3D	4D
(E) IMPROBABLE	1E	2E	3E	4E

Using the severity and probability rankings of one number followed by one letter assigned to each hazard remaining after completion of the hazard mitigation analysis under proposed paragraph (a)(4)(iv) (shown in Figure 2, for example, as 1A, 2B, 3C, 4D), proposed paragraph (a)(5) requires a railroad's risk matrix to categorize the residual risk associated with each hazard into one of 20 different risk categories, ranging from category 1A (a hazard with potential catastrophic consequences likely to occur frequently) to category 4E (an improbable hazard with negligible consequences).

Proposed paragraph (a)(6) requires a risk report documenting the basis for acceptability of all hazards not eliminated through the risk assessment process, *i.e.,* the residual risk associated with the remaining partially mitigated or unmitigated hazards identified in the risk matrix required by paragraph (a)(5). Proposed paragraphs (a)(6)(i) through (iii) specify the three risk categories (unacceptable, acceptable under specific conditions, or acceptable), and place each number/letter ranking of severity/probability into one of those categories as shown in Figure 3 below.

Figure 3: Acceptability/Unacceptability of Residual Risk

Risk Classification	Corresponding Risk Matrix Categories	Description
Unacceptable	1A, 1B, 1C, 1D, 2A, 2B, 2C, 3A, 3B, 4A	The risk is not acceptable.
Acceptable Under Specific Conditions	1E, 2D, 3C, 3D, 4B, 4C	The risk is acceptable under specifically defined conditions, given the scope and extent of the operation and the risk is consistent with railroad safety.
Acceptable	2E, 3E, 4D, 4E	The risk is acceptable.

As proposed, if a hazard cannot be fully mitigated and its matrix categorization falls into the unacceptable category (*i.e.,* categories 1A, 1B, 1C, 1D, 2A, 2B, 2C, 3A, 3B and 4A), proposed paragraph (a)(6)(i) makes clear that FRA will not approve the operation and that a railroad should not file a petition for special approval with a hazard categorized as ''unacceptable'' because that level of risk demonstrates that the hazard is too significant and too likely to occur (*i.e.,* too severe and too probable) for FRA to approve the operation. FRA proposes to prohibit operations that identify unacceptable hazards.

Proposed paragraph (a)(6)(ii) provides for the categorization of certain risks as ''acceptable under specific conditions'' (*i.e.,* categories 1E, 2D, 3C, 3D, 4B, 4C). A railroad may categorize a risk as ''acceptable under specific conditions'' if its finds that given the scope and extent of the operation (*i.e.,* the specific conditions involved with the operation), accepting the risk is consistent with railroad safety. The railroad's risk report must describe why the railroad finds the conditions acceptable. As proposed, FRA will review a railroad's risk report and the underlying hazard analysis to determine if it agrees accepting the risk is consistent with railroad safety. In doing so, FRA will review the description of each hazard in this category, any mitigating measures implemented, any public comments received, and any other relevant information or data (*e.g.,* FRA's own inspection data or technical staff findings) to determine whether accepting the remaining risk, under the specific conditions proposed by the railroad, is consistent with railroad safety.

The title of the hazard category includes the phrase ''under specific conditions'' to emphasize that FRA's review will focus on the specific operating conditions identified in a railroad's special approval petition. FRA expects that the risk report and underlying hazardous analysis for any hazard in this category will demonstrate how the specific mitigating measures placed on the operation reduce the identified risk to a level that allowing the operation under the specific conditions proposed is consistent with railroad safety.

FRA recognizes that given every railroad's unique operating environment and the varied size and scope of different railroads' operations, what may be an acceptable risk for one operation, may not be an acceptable risk for another. For this reason, FRA expects the evaluation of hazards identified as ''acceptable under specific conditions'' to be very fact-based and focused on the specific facts of an operation, as demonstrated by the supporting evidence provided in a railroad's risk report and underlying hazard analysis. For example, if a Class III freight railroad, with limited operations over one track over which no other railroad operates, identifies the grade of that track as a specific hazard, reducing the speed of operations over that track may be an acceptable mitigation measure given the overall size and scope of the operation. However, if a Class I freight railroad with extensive operations over a specific track segment similarly identifies the grade of the track as a hazard and other railroads operate over the same track, reducing the speed of the proposed fewer than two-person operation over that track may not be an acceptable mitigation measure because the additional operations by different railroads over the same track may lead to increased risk given the speed of the other operations, the capacity of the track to handle operations at varying speeds, and potentially the resulting density of operations over the track. FRA would expect that a petitioning railroad with any hazard categorized as ''acceptable under specific conditions'' would specifically address in its petition how its train operation with fewer than two crewmembers would be consistent with railroad safety. For example, a railroad might emphasize that the operation will have set daily schedules to reduce crewmember fatigue or will arrange to keep the operation's trains moving to reduce blocked crossings in communities passed through.

It is possible that a hazard could properly be determined to be ''acceptable under specific conditions'' if a railroad adopts one or more safety measures that exceed the minimum Federal rail safety requirements, and the operational or equipment safety measures adopted are established, proven measures that will reduce the overall severity or probability of risks in the operation generally, even if the additional safety measures do not directly lessen the partially mitigated or unmitigated hazard identified. For example, if a short line freight railroad with a history of low-speed derailments were to invest in track improvements that raised its track class but agreed in its petition that the train operation with fewer than two crewmembers would not operate at the now higher maximum authorized speed allowable, the improvements in track could be considered a specific condition that would offset an identified derailment hazard.

Under the last risk assessment matrix category, proposed paragraph (a)(6)(iii), a hazard that is partially mitigated or unmitigated may simply be acceptable. If it is acceptable, FRA will not deny the petition for special approval if the hazard is appropriately categorized. Thus, the hazards in this category have known and acceptable risks based on their severity and probability. As with

any hazard, FRA may determine that the railroad miscategorized the hazard or there was a mistake with the risk assessment's underlying evaluation of the hazard. If a railroad were to categorize a risk as acceptable, but FRA found otherwise, FRA would likely deny the petition or the railroad would need to update the risk assessment before FRA could approve the petition.

Paragraph (b) provides that the Associate Administrator may approve alternative methodologies and/or procedures other than those required by paragraph (a) to assess the risk associated with an operation proposed under subpart G. If, after providing public notice of the request for approval and an opportunity for public comment on the request, the Associate Administrator finds that any such petition demonstrates that the alternative proposed methodology or procedures will provide an accurate assessment of the risk associated with the operation, proposed paragraph (b) provides that the Associate Administrator may approve the use of the proposed alternative(s). As noted earlier, FRA recognizes that standardized risk assessment processes, tools, and methodologies exist in the transportation industry and other industries. Although in this NPRM, FRA is proposing a process based on these widely accepted existing standards and has tailored the proposed process to the specific context of this rulemaking, FRA recognizes that other industry standards may exist that may be similarly tailored and used to achieve the same goal of this NPRM (*i.e.,* to objectively analyze and effectively mitigate risks of train operations with fewer than two-person crews to an acceptable level). FRA does not intend to preclude the use of such alternative risk assessment standards and paragraph (b) sets forth a process for evaluating any such proposed alternative standards. Recognizing that FRA's approval of an alternative methodology or process of conducting a risk assessment may set the standard for future risk assessments by other parties, it is important to allow for public comment and input on any proposed alternative standard or methodology a party seeks to use. FRA requests comment on this proposal.

As with all aspects of this NPRM, FRA requests comment on the proposal to require risk assessments as part of the petition process for a railroad seeking FRA's approval to initiate a train operation with fewer than two crewmembers. FRA also requests comment on the specific risk assessment process proposed.

Section 218.137 Special Approval Procedure

This section contains the proposed procedure to petition FRA for special approval for both one-person legacy train operations and the initiation of a new operation with fewer than two train crewmembers. Proposed paragraph (a) would require that each railroad submitting a petition to continue a legacy operation or initiate a new operation under proposed §§ 218.131 and 218.133 shall send the petition by email to *FRAOPCERTPROG@dot.gov.* Once FRA receives the petition, FRA will place the petition in a public docket at *https://www.regulations.gov.*

Proposed paragraphs (b) through (d) would establish a special approval procedure. FRA is proposing to use a process to gather public comment on a petition and ensure transparency in FRA's evaluation of any petition. FRA proposed a public comment period so that stakeholders, such as the railroad's employees, or businesses and communities adjacent to or served by the railroad, can provide relevant safety information or data. The special approval procedure has been used successfully in other FRA regulations.[224] Proposed paragraph (b) would require that FRA publish a notice in the **Federal Register** concerning each petition it received under this section.

Proposed paragraph (c) would provide a 60-day comment period for each petition. Proposed paragraph (c)(1) contains the minimum requirement that each comment must provide all relevant information and data in support of the commenter's position. As proposed in paragraph (c)(2), comments must be submitted electronically to the assigned docket noted in the applicable **Federal Register** notice.

Proposed paragraph (d) addresses the process for disposition of petitions. For instance, in paragraph (d)(1), FRA proposes that the Administrator may conduct a hearing on a petition using the same procedures the agency uses to conduct other hearings under its rules of practice.

Proposed paragraphs (d)(2) and (3) set the expectation that FRA will normally grant or deny a petition within 120 days of its receipt and a petition must not be implemented until approved. However, should FRA require additional information from the petitioning railroad, or need to investigate issues raised by commenters, a decision on the petition could be delayed. If there is a delay, as proposed, the petition will remain pending until FRA decides it. Further, as proposed in paragraph (d)(2), FRA may attach special conditions as deemed necessary to any approval under this section.

Once approved, a petition does not expire, although FRA provides in proposed paragraph (d)(2) that it may reopen consideration of the petition for cause stated. ''For cause'' is a legal term that, in this proposed context, means that FRA will not reopen a petition for consideration unless the agency provides a specific reason, along with all supporting evidence it has as justification for doing so. If FRA were to discover significant safety concerns regarding an approved operation, the discovery could trigger a ''for cause'' reopening of the petition. In that case, it is proposed in paragraph (d)(4) that FRA would reopen the petition by sending a written notice to the petitioner. In closing any petition reopened for consideration, or granting or denying a petition, FRA proposes to notify petitioners in writing and publish the decision in the docket.

FRA may also reopen consideration of the petition for cause stated by a railroad petitioner. For example, if FRA denies a petition, or grants a petition with special conditions, and the railroad disagrees with FRA's decision, the railroad may ask FRA to reopen consideration of the petition. A request to reopen a denied petition should include an explanation or evidence supporting why FRA's decision should be amended. Meanwhile, a request to reopen a petition that was granted with special conditions should include any challenge to the special conditions, including any alternative conditions the railroad is willing to accept if FRA were to modify the decision in a manner acceptable to the railroad. If a request to reopen the petition is made contemporaneously with FRA's initial decision, FRA is likely to provide notice to the petitioner and interested parties in the same docket rather than publish a new notice in the **Federal Register**.

Proposed paragraph (e) would require a railroad that intends to materially modify an operation that has previously received FRA's special approval under this section to submit a description of how it intends to modify the operation, along with either a new or updated risk assessment accounting for the identified proposed modifications. Proposed paragraphs (e)(1) through (3) describe how FRA defines a material modification in this context. For instance, a modification is material if it is a change to a railroad's operations, infrastructure, or locomotive control or risk mitigation technology, that may affect the safety of the operation. A

[224] *See, e.g.,* 49 CFR 232.17, 238.21, and 238.203.

modification is also material if the change would affect the assumptions underlying the risk assessment, or the assumptions underlying the risk assessment's risk calculations or mitigations, on which an FRA approval under this section is based. The proposal would require a new or updated risk assessment to meet the requirements of § 218.135 and be submitted to FRA by email at least 60 days before proposing to implement any such modification. Thus, a railroad that wishes to deviate from an FRA-approved petition would need to come back to FRA and request approval for any modification to the operation that is not covered by the prior approval. For example, if FRA approved a one-person operation at a maximum speed of 25 mph and the railroad invested resources to improve the track to support higher operating speeds, the railroad would need special approval to increase the speed of that operation. The railroad would need to consider in its new petition how the dangers of possibly increasing the speed of the one-person operation are addressed in its risk assessment. FRA is proposing this requirement in lieu of requiring that a new special approval petition be filed for a material modification for an already approved operation. FRA intends the proposed requirement to help streamline the approval process for most routine material modifications. FRA notes, however, that even though a railroad with a legacy operation approved under § 218.131 would not have been required to submit a risk assessment when initially requesting special approval, proposed paragraph (e) would require such a railroad seeking to materially modify that operation to submit a risk assessment. Significant expansions or modifications may be considered a new operation requiring a new submission and opportunity for public comment rather than a material modification. FRA may also consider reopening a petition for consideration after receiving a material modification filing. Further, a material modification must not be implemented until approved.

FRA is mindful the special approval procedures take time and may be a source of uncertainty for railroads wishing to operate with less than two person crews; however, FRA believes the procedures are necessary to ensure those operations are performed safely. FRA would appreciate comment on how to improve the proposed special approval procedures to help reduce uncertainty and ensure timely approval of operations with fewer than two crew members that are determined to be safe.

Section 218.139 Annual Railroad Responsibilities After Receipt of Special Approval

This proposed section would require railroads that receive special approval under either § 218.131 or § 218.133 to conduct a formal, annual review and analysis of the FRA-approved train operation(s) with fewer than two crewmembers and annually provide a report of that reviews' findings and conclusions to FRA. FRA proposes that a railroad receiving special approval under subpart G will be required to complete its formal annual review and analysis no later than March 31 of each year, with the first report being due March 31 of the first year following FRA's approval of the petition. FRA expects that tracking and creating an annual report with this type of information as proposed will help identify trends or problems that are not consistent with railroad safety, but that may be acceptable under specific conditions. FRA would appreciate comments on this proposed requirement, including comments on whether three months will provide sufficient time to produce a report. FRA is also considering an alternative option that would require an annual report deadline depending on when each railroad receives FRA-approval to begin a one-person train operation; *e.g.,* an annual report could be required 15 months after the month in which FRA approved the petition for special approval. FRA is also interested in receiving comments on when the first annual report should be due if a petition is approved with less than six months left in the calendar year; *i.e.,* FRA would want to collect all data for a legacy or newly initiated operation once it is approved, but is willing to consider extending the deadline for producing the first annual report if only a few months of data would have been collected. There are many ways to address these concerns, and FRA would appreciate comments expressing a preference and a rationale for any option.

Proposed paragraph (b) lists the formal review and analysis requirements that a railroad must include in its annual report for any FRA-approved train operation with fewer than two crewmembers. Each listed safety data item is proposed for inclusion because it will provide insight into the safety of the operation and track meaningful changes. For example, proposed paragraph (b)(1)(i) would require a railroad with an approved petition to provide the total number of FRA-reportable accidents/incidents under part 225 of this chapter. FRA does not want the total to double-count any single incident and therefore included a proposed requirement in paragraph (b)(1)(i) to prevent railroads from making that mistake. Under that same proposed paragraph, FRA would require that the data be subtotaled by whether the accident/incident occurred at a highway-rail grade crossing or not, as well as track the subtotals of accidents/incidents by State and cause separately.

Proposed paragraphs (b)(1)(ii) through (vii), (x), (xiii), and (xiv) concern data of the type that FRA routinely collects and makes available on its safety data and reporting website.[225] Collecting such data as the total number of FRA-reportable employee fatalities as proposed will allow FRA, railroads, and the public to better evaluate the safety of each railroad's operation and compare each operation to the industry at large or other operations.

Proposed paragraphs (b)(1)(viii), (ix), (xi), and (xii) would require a railroad to include in its annual report the total number of certain types of occurrences involving a train with a fewer than two-person crew that would provide additional insight into how effective the railroad is in addressing certain types of safety hazards as well as how frequently these problems occur. For instance, proposed paragraph (b)(1)(viii) would require a railroad to report the total number of instances where a railroad employee did not comply with a railroad rule or practice applicable to the FRA-approved train operation(s) with fewer than two crewmembers, but not applicable to train crew operations with two or more crewmembers. FRA would expect that tracking that data would provide insight into the effectiveness of each railroad's rules or practices particular to the one-person train crew operation. The same rationale applies to proposed paragraph (b)(1)(ix) which would require a railroad to report the total number of instances where a person certified as both a locomotive engineer and conductor had a certification revoked for violation of an operating rule or practice that occurred when the person was operating per an FRA-approved train operation with fewer than two crewmembers. If FRA did not specifically propose a requirement for that data, it would be difficult for FRA to ascertain whether locomotive engineers operating as one-person train crews were involved in significant operating rule or practice

[225] FRA's Safety Data and Reporting website is found at *https://railroads.dot.gov/safety-data.*

incidents that require a railroad to revoke the person's certification under FRA's requirements for locomotive engineer certification. Paragraph (b)(1)(xi) follows up on FRA's proposed requirement for railroads with fewer than two crewmembers to have disabled-train/post-accident protocols by requiring that railroads report the total number of instances whereby the railroad was required to implement that protocol. Paragraph (b)(1)(xii) proposes that if there are any instances whereby a dispatcher unexpectedly loses communication with an FRA-approved train operation with fewer than two crewmembers, the railroad must report the total number of those instances. FRA seeks comment on the extent and nature of one-person operations that would have expected losses of communications over their route, and whether FRA should require reporting on any loss of communication, expected or not.

In addition to the proposed requirements for structured data, FRA proposed in paragraph (b)(2) that each instance described in paragraphs (b)(1)(i) through (xii) be sufficiently identified by date and location, and that a description of each event be provided. The proposed requirement for additional details would enable FRA to have greater insight into the types of instances that are occurring on each railroad and whether additional FRA action is warranted. For example, a description of an instance would help understand whether a second-crewmember could have helped prevent the instance or other remedial action would further reduce the risk of a hazard under a risk assessment.

Proposed paragraph (c) would require both legacy railroads and railroads initiating a new operation with fewer than two train crewmembers to include a written confirmation in its annual report to FRA that the operation remains unchanged or, if the operation has changed, a new or updated risk assessment. For new operations that completed a risk assessment, the proposed written confirmation must specify that no calculations or assumptions have changed requiring an updated risk assessment meeting the same requirements as the initially filed risk assessment. For legacy railroad operations that are not required to file a risk assessment with FRA as proposed, FRA proposes that these railroads provide FRA with annual, written confirmation that the operation remains substantially the same as described in the railroad's applicable special approval petition and that no technology changes have been implemented, or new or additional hazards identified. If a legacy railroad's operation has changed, it is proposed that the railroad must prepare and submit a risk assessment—even though a risk assessment would not be initially required for the legacy railroad operation. FRA's rationale for this proposed requirement is that substantial changes to the legacy operation would essentially change the operation to a new operation. FRA's prior approval would have been based on the safety and compliance record of the prior operation, not the new, substantially changed operation. Thus, a risk assessment is warranted to objectively determine the safety of any new operation.

FRA is interested in any technology changes because analysis may later reveal that the technology added tasks for a one-person train crew and led to a loss of situational awareness, or that the technology added a welcome redundancy. A new risk assessment of a technology would help understand when a change took place and then enable safety comparisons for before and after the technology change is implemented.

Proposed paragraph (c)(1) would require a railroad, with an approved petition, to revise or conduct a new risk assessment to help ensure the railroad is identifying any new hazards, and adjusting the risk calculations of existing hazards that have changed since the railroad's special approval petition was approved. For example, the operation may be serving more customers, and thus doing more switching. Another example of a new hazard or risk adjustment would be that a new customer is shipping hazardous materials of types and quantities not previously transported by the railroad. Still another new hazard or risk adjustment might be the addition of joint operations with another railroad that were not initiated until after FRA granted the railroad's special approval petition. In addition, in paragraph (c)(2), FRA proposed that any new or updated risk assessment submitted in accordance with this paragraph must include a written plan and schedule for implementing any mitigations required to address any newly identified hazards.

In paragraph (d), FRA proposed that it will review and respond to a railroad's annual report submission by September 30 of the year it is submitted. If necessary, FRA's response may include advice or recommendations. If a railroad's annual report submission suggests that the petition does not comply with the requirements of subpart G or that the operation is no longer consistent with railroad safety, FRA may reopen consideration of the petition under § 218.137.

V. Regulatory Impact and Notices

A. Executive Order 12866

This proposed rule is a significant regulatory action within the meaning of Executive Order 12866. Details on the estimated costs of this NPRM can be found in the Regulatory Impact Analysis (RIA), which FRA has prepared and placed in the docket (FRA–2021–0032).

FRA is proposing regulations establishing minimum requirements for the size of train crew staffs depending on the type of operation. A minimum requirement of two crewmembers is proposed for all railroad operations, with exceptions for those operations that FRA believes do not pose significant safety risks to railroad employees, the general public, or the environment by using fewer than two-person crews.

The proposed rule prescribes minimum requirements for the location of a crewmember that is not operating the train and promotes safe and effective teamwork. In addition, FRA proposes processes to allow railroads to continue operations with one-person train crews, and allow railroads to establish new operations with fewer than two crewmembers when the exceptions do not apply. FRA is not certain about the effect that the proposed rule would have on the total number of operations with crews of fewer than two persons relative to the number that would occur in the baseline without the rule.

The RIA presents estimates of the costs likely to occur over the first 10 years of the proposed rule. The analysis includes estimates of costs associated with special approvals, risk assessments, annual railroad responsibilities after receipt of special approval, and Government administrative costs.

FRA estimated 10-year costs of $2.0 million discounted at 7 percent. The annualized cost would be $0.3 million discounted at 7 percent. The following table shows the estimated 10-year costs of the proposed rule.

[226] As discussed further in section VI.I. of the RIA, quantified costs do not include costs that could be incurred in order to mitigate risks associated with a reduction in the number of crewmembers.

TOTAL 10-YEAR DISCOUNTED COSTS

[2020 Dollars] [226]

Category	Total cost, 7 percent ($)	Total cost, 3 percent ($)	Annualized cost, 7 percent ($)	Annualized cost, 3 percent ($)
Special Approval (Legacy Operations)	41,486	41,486	5,907	4,863
Special Approval (New Operations)	318,665	400,442	45,371	46,944
Risk Assessment (Initial and Revisions)	555,124	696,616	79,037	81,665
Risk Assessment—Material Modifications	159,353	197,690	22,688	23,175
Railroad Annual Oversight Responsibilities	127,374	161,450	18,135	18,927
Government Administrative Cost	806,837	1,006,977	114,875	118,048
Total Costs	2,008,840	2,504,662	286,014	293,623

While FRA has qualitatively discussed the benefits in the RIA, it does not have sufficient data to monetize those benefits. The primary benefit of this rule is that it would ensure that railroads evaluate and address any potential safety concerns before moving to a train operation with fewer than two crewmembers. The safety of these trains could be eroded if a crew with fewer than two persons operates without accounting for additional risks. The proposed rule would help ensure that train crew staffing does not result in inappropriate or unacceptable levels of safety risks to railroad employees, the public, and the environment.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 [227] and Executive Order 13272 [228] require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, FRA prepared this IRFA to facilitate public comment on the potential small business impacts of the requirements in this NPRM.

FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from adoption of the proposals in this NPRM. FRA particularly encourages small entities that could potentially be impacted by the proposed amendments to participate in the public comment process. FRA will consider all information and comments received in the public comment process when making a determination of the economic impact on small entities.

1. Reasons for Considering Agency Action

FRA is concerned with the ability of railroads to utilize operations with fewer than two crewmembers without notifying FRA. Railroads may not be considering the adverse safety impact that fewer crewmembers will have. This NPRM would require two crewmembers unless certain exceptions are met. This proposed rule would ensure that railroads examine railroad safety with respect to crew size and work with FRA for special approval for operating trains with fewer than two crewmembers. If FRA did not issue the rule as proposed, railroads would be generally free to operate trains with fewer than two crewmembers, and States could also enforce varying crew size safety requirements.

2. A Succinct Statement of the Objectives of, and the Legal Basis for, the Proposed Rule

This proposed rule would help FRA ensure that safety is not adversely affected when initiating train operations with fewer than two crewmembers. The annual railroad responsibilities would provide FRA information regarding train operations with fewer than two crewmembers on an annual basis that may be able to improve safety.

FRA is proposing regulations concerning train crew size safety requirements based on the statutory general authority of the Secretary. The general authority states, in relevant part, that the Secretary ''as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.'' [229] The Secretary delegated this authority to the Federal Railroad Administrator.[230]

3. A Description of, and Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. ''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 1,500 employees, a ''commuter rail system'' with annual receipts of less than $16.5 million dollars, or a contractor that performs support activities for railroads with annual receipts of less than $16.5 million.[231]

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a proposed statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR part 1201, General Instruction 1–1, which is $20 million or less in inflation-adjusted annual revenues,[232] and commuter railroads or

[227] 5 U.S.C. 601 *et seq.*

[228] 67 FR 53461 (Aug. 16, 2002).

[229] 49 U.S.C. 20103.

[230] 49 CFR 1.89(a).

[231] U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes, August 19, 2019. *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019,%202019.pdf.*

[232] The Class III railroad revenue threshold is $39,194,876 or less, for 2018. (The Class II railroad

small Governmental jurisdictions that serve populations of 50,000 or less.[233] FRA is using this definition for the proposed rule.

When shaping the proposed rule, FRA considered the impact that the proposed rule would have on small entities. FRA has provided exceptions to the two-person crew requirement which would limit the impact on small entities. In addition, tourist train operations that are not part of the general system may operate with one-person crews.

The proposed rule would be applicable to all railroads, although very few railroads would be affected. FRA estimates there are 744 Class III railroads, of which 704 operate on the general system. These railroads are of varying size, with some belonging to larger holding companies. Currently, nine railroads operate one-person crews; six of which are Class III railroads. Most small railroads would qualify for an exception under section 218.129 which allows for one-person operations if a railroad has under 400,000 employee hours annually and operates less than 25 mph. FRA estimates that 25% of railroads submitting special approval requests each year to initiate operations with fewer than two crewmembers would be Class III railroads.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Would be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

Railroads would be required to submit information to FRA for special approval to operate trains with fewer than two crewmembers. FRA estimates that small railroads would require the same number of hours to complete the special approval request as Class I and Class II railroads. The risk assessment burden may be slightly less than larger railroads, but the average of 120 hours seems to encompass all operations, large and small.

Small railroads would likely have fewer hazards to address as the operation with fewer than two crewmembers may be smaller and less complex than larger railroads' operations. This would ease some of the burden on small railroads and may encourage more short line railroads to initiate train operations with fewer than two crewmembers.

The risk assessment and annual railroad responsibilities would be prepared by a professional or administrative employee. The burdened hourly compensation rate of a railroad employee who performs those duties is $77.44. The special approvals would be prepared by executives, officials, and staff assistants. The hourly compensation rate of a railroad employee who performs those duties is $115.24. The type of professional skills needed by these employees includes the ability to plan and organize work. Such an employee would also need good verbal and written communication skills and attention to detail.

Special Approval (Legacy Operations)

Railroads with one-person train operations that were being conducted at least two years before the effective date of the final rule, and that are not otherwise prohibited from operating one-person operations, may continue those operations by filing a special approval petition containing a description of the operation. This process is described in § 218.131 of the proposed rule. FRA would review the information provided, and grant or deny approval to operate with fewer than two crewmembers.

FRA is currently aware of nine one-person train crew operations. Six of these railroads are Class III railroads. Each of these railroads would be required to submit information for special approval to continue those operations. Each special approval would require approximately 40 hours of railroad time. The following table shows the costs for special approval for these six existing one-person operations by Class III railroads. The total cost for special approvals for Class III railroads with existing one-person operations would be $27,657. That cost would only be incurred in the first year of the analysis.

RAILROAD COST PER SPECIAL APPROVAL (LEGACY OPERATIONS), CLASS III RAILROADS

Type of employee	Hours per special approval a	Hourly wage rate ($) b	Total labor cost per special approval ($) c = a * b	Number of special approvals d	Total annual cost across industry ($) e = c * d
Senior Manager	14	115.24	1,613		
Superintendent	10	115.24	1,152		
Train Master	8	115.24	922		
Road Foreman	8	115.24	922		
Total	40		4,610	6	27,657

Special Approval Process (New Operations)

In order to initiate an operation with fewer than two crewmembers, a railroad must apply for special approval as required by § 218.133. Railroads must submit the appropriate data or analysis so FRA can determine whether the train operation proposed is consistent with railroad safety. New technologies or alternative intervention from railroad employees could be included in the proposed rule to ensure that the operation with fewer than two crewmembers would not negatively impact safety.

Railroads must include a description of a disabled-train/post-accident protocol that quickly brings railroad employees to the scene of a disabled

threshold is between $39,194,876 and $489,935,956; and the Class I railroad threshold is $489,935,956 or more.) *See* Surface Transportation Board (STB), available at *https://www.stb.gov/econdata.nsf/d03c0c2161a050278525720a0044a825/1acf737531cf98ce8525841e0055e02e.*

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

train or accident. Additionally, railroads must submit a copy of any railroad rule or practice that applies to the train operation with fewer than two crewmembers but does not apply to train crew operations with two or more crewmembers. Some railroads may need to modify some rules or practices to tailor them to their fewer than two-person operations. FRA then would grant or deny approval before the operation is implemented. Each special approval for new operations with fewer than two crewmembers would require approximately 48 hours of railroad time.

The estimated cost to railroads for each special approval would be $5,531. The following table shows the costs for special approval for new operations.

RAILROAD COST PER SPECIAL APPROVAL (NEW OPERATIONS), CLASS III RAILROADS

Type of employee	Hours per special approval a	Hourly wage rate ($) b	Total labor cost per special approval ($) c = a * b
Senior Manager	16	115.24	1,844
Superintendent	12	115.24	1,383
Train Master	10	115.24	1,152
Road Foreman	10	115.24	1,152
Total	48		5,531

FRA estimates that two new operations would commence in year 1 with fewer than two crewmembers. There would be an estimated 25% annual increase in the number of new operations with fewer than two crewmembers.

FRA estimates that 25% of new operations with fewer than two crewmembers would be on Class III railroads. The following table shows the number of new one-person operations per year.

ESTIMATED NUMBER OF NEW OPERATIONS WITH FEWER THAN TWO CREWMEMBERS

Year	Number of new operations per year a	Number of new operations per year, class III railroads b = a * 0.25
1	2	1
2	3	1
3	4	1
4	5	1
5	6	2
6	8	2
7	10	3
8	13	3
9	16	4
10	20	5

The following table shows the 10-year estimated costs for special approvals for new operations with fewer than two crewmembers, for Class III railroads.

10-YEAR COSTS FOR SPECIAL APPROVAL, NEW OPERATIONS, CLASS III RAILROADS

Year	Estimated new one-person operations per year a	Total labor cost per special approval ($) b	Total costs ($) c = a * b	Present value 7% ($)	Present value 3% ($)
1	1	5,531	5,531	5,531	5,531
2	1	5,531	5,531	5,170	5,370
3	1	5,531	5,531	4,831	5,214
4	1	5,531	5,531	4,515	5,062
5	2	5,531	11,063	8,440	9,829
6	2	5,531	11,063	7,888	9,543
7	3	5,531	16,594	11,057	13,897
8	3	5,531	16,594	10,334	13,493
9	4	5,531	22,126	12,877	17,466

10-YEAR COSTS FOR SPECIAL APPROVAL, NEW OPERATIONS, CLASS III RAILROADS—Continued

Year	Estimated new one-person operations per year a	Total labor cost per special approval ($) b	Total costs ($) c = a * b	Present value 7% ($)	Present value 3% ($)
10	5	5,531	27,657	15,044	21,197
Total			127,222	85,687	106,603
Annualized				12,200	12,497

The cost for special approval for new operations with fewer than two crewmembers would be $127,222 over the 10-year analysis. The discounted value would be $85,687 (PV, 7 percent).

Risk Assessment

As part of the special approval process, railroads initiating new train operations utilizing fewer than two crewmembers would be required to conduct a risk assessment. The risk assessment must include a description of the proposed operation, a hazard analysis, and discussion of the tasks and functions of crewmembers.

Each risk assessment would require an average of 120 hours to complete. If a railroad applies for special approval for more than one train operation, the subsequent requests may take considerably less time than the initial request. This is especially true if the operating characteristics are similar between those operations.

The following table shows the cost for Class III railroads to conduct risk assessments.

ANNUAL COST FOR RISK ASSESSMENTS, CLASS III RAILROADS

Type of employee	Hours per operation a	Hourly wage rate ($) b	Total labor cost per risk assessment ($) c = a * b
Professional and Administrative	120	77.44	9,293

Based on the estimated number of new operations with fewer than two crewmembers, the following table shows the 10-year estimated costs for risk assessments for Class III railroads.

10-YEAR COSTS FOR RISK ASSESSMENTS, CLASS III RAILROADS

Year	Estimated new one-person operations per year a	Total labor cost per risk assessment ($) b	Total costs ($) c = a * b	Present value 7% ($)	Present value 3% ($)
1	1	9,293	9,293	9,293	9,293
2	1	9,293	9,293	8,685	9,022
3	1	9,293	9,293	8,116	8,759
4	1	9,293	9,293	7,585	8,504
5	2	9,293	18,585	14,178	16,513
6	2	9,293	18,585	13,251	16,032
7	3	9,293	27,878	18,576	23,347
8	3	9,293	27,878	17,361	22,667
9	4	9,293	37,170	21,633	29,342
10	5	9,293	46,463	25,273	35,610
Total			213,728	143,951	179,087
Annualized				20,495	20,995

The cost for risk assessments for new Class III railroad operations with fewer than two crewmembers would be $213,728 over the 10-year analysis. The discounted value would be $143,951 (PV, 7 percent).

Risk Assessment Revisions

If the risk assessment is incomplete or does not address all hazards presented by fewer than two-person operations, FRA may require a railroad to revise

their risk assessment. This would happen after FRA has reviewed the initial risk assessment as part of the special approval process.

FRA estimates that one small railroad's risk assessment would require a revision each year. Each revision would require approximately 24 additional hours of labor by the railroad. Once revisions are made, the special approval would once again be reviewed by FRA for a decision to be made.

The estimated cost for each risk assessment revision is shown in the table below.

COST FOR RISK ASSESSMENT REVISIONS

Type of employee	Hours per operation a	Hourly wage rate ($) b	Total labor cost per revised risk assessment ($) c = a * b
Professional and Administrative	24	77.44	1,859

The estimated total 10-year cost for risk assessment revisions for Class III railroads is $1,859. The discounted value is $1,011 (PV, 7 percent). The following table shows the costs for Class III railroads to revise risk assessments.

ANNUAL RAILROAD COSTS FOR RISK ASSESSMENT REVISIONS, CLASS III RAILROADS

Year	Number of risk assessments submitted per year a	Percentage of risk assessments requiring revisions (%) b	Number of revised risk assessments c = a * b	Cost per revision ($) d	Total costs ($) e = c * d	Present value 7% ($)	Present value 3% ($)
1	1	30	0	1,859	0	0	0
2	1	30	0	1,859	0	0	0
3	1	25	0	1,859	0	0	0
4	1	25	0	1,859	0	0	0
5	2	20	0	1,859	0	0	0
6	2	20	0	1,859	0	0	0
7	3	15	0	1,859	0	0	0
8	3	15	0	1,859	0	0	0
9	4	10	0	1,859	0	0	0
10	5	10	1	1,859	1,859	1,011	1,424
Total					1,859	1,011	1,424
Annualized						144	167

Risk Assessment When Material Modification is Made (Legacy Operations)

Legacy one-person operations would need to submit a risk assessment when a material modification is made. FRA estimates that this risk assessment would require approximately 120 hours of labor. Since only nine railroads currently operate trains with one-person crews, FRA estimates that only a small number would be required to perform a risk assessment over the 10-year analysis. Six of the nine railroads are Class III railroads. FRA estimates that one Class III railroad every other year would have a material modification to its operation and require a risk assessment.

The estimated total 10-year cost for risk assessments for Class III railroads would be $46,463. The discounted value would be $33,737 (PV, 7 percent). The following table shows the annual costs for legacy railroads that are performing a risk assessment.

ANNUAL RAILROAD COSTS FOR RISK ASSESSMENTS, CLASS III LEGACY OPERATIONS

Year	Number of railroads submitting risk assessment a	Hours per risk assessment b	Hourly wage rate ($) c	Total costs ($) d = a * b * c	Present value 7% ($)	Present value 3% ($)
1	0	120	77.44	0	0	0
2	1	120	77.44	9,293	8,685	9,022
3	0	120	77.44	0	0	0
4	1	120	77.44	9,293	7,585	8,504
5	0	120	77.44	0	0	0

ANNUAL RAILROAD COSTS FOR RISK ASSESSMENTS, CLASS III LEGACY OPERATIONS—Continued

Year	Number of railroads submitting risk assessment a	Hours per risk assessment b	Hourly wage rate ($) c	Total costs ($) d = a * b * c	Present value 7% ($)	Present value 3% ($)
6	1	120	77.44	9,293	6,625	8,016
7	0	120	77.44	0	0	0
8	1	120	77.44	9,293	5,787	7,556
9	0	120	77.44	0	0	0
10	1	120	77.44	9,293	5,055	7,122
Total				46,463	33,737	40,219
Annualized					4,803	4,715

Updating Risk Assessment When Material Modification is Made (New Operations)

As part of the proposed rule, railroads must update and resubmit their risk assessment 60 days before a ''material modification'' is made. A railroad that intends to materially modify an operation with fewer than two crewmembers would be required to submit a description of how it intends to modify the operation and an updated risk assessment accounting for the identified proposed modifications.

FRA estimates that approximately 15 percent of railroads would need to resubmit their risk assessment in any particular year. For these railroads, the burden for updating the risk assessment would be approximately 40 hours.

FRA calculated that the cost for updated risk assessments for new Class III operations with fewer than two crewmembers would be $40,268 over the 10-year analysis. The discounted value would be $25,549 (PV, 7 percent). The following table shows the annual costs for railroads that are resubmitting the risk assessment.

10-YEAR COSTS FOR UPDATED RISK ASSESSMENTS, CLASS III RAILROADS

Year	Number of operations a	Number of updated risk assessments b = a * 0.15	Hours per risk assessment c	Hourly wage rate ($) d	Total costs ($) e = b * c * d	Present value 7% ($)	Present value 3% ($)
1	1	0	40	77.44	0	0	0
2	2	0	40	77.44	0	0	0
3	3	0	40	77.44	0	0	0
4	4	1	40	77.44	3,098	2,528	2,835
5	6	1	40	77.44	3,098	2,363	2,752
6	8	1	40	77.44	3,098	2,208	2,672
7	11	2	40	77.44	6,195	4,128	5,188
8	14	2	40	77.44	6,195	3,858	5,037
9	18	3	40	77.44	9,293	5,408	7,336
10	23	3	40	77.44	9,293	5,055	7,122
Total					40,268	25,549	32,942
Annualized						3,638	3,862

Annual Railroad Responsibilities After Receipt of Special Approval

Each railroad that receives special approval for an operation with fewer than two crewmembers would be required to conduct an annual review and analysis, and report to FRA its findings and conclusions no later than March 31 of the following year.

As part of the annual railroad responsibilities in § 218.139, railroads must confirm that the risk assessment, including all calculations and assumptions, remains unchanged. This section also requires railroads to submit information about their specially approved operations collected over the course of the previous year.

The annual burden would be eight hours per train operation. The total estimated cost for annual railroad responsibilities for Class III railroads would be $69,694 over the 10-year analysis. The discounted value would be $46,979 (PV, 7 percent). The table below shows the annual costs for annual railroad responsibilities on Class III railroads.

10-YEAR COSTS FOR ANNUAL RAILROAD RESPONSIBILITIES, CLASS III RAILROADS

Year	Number of reports per year a	Hours per operation b	Hourly wage rate ($) c	Total costs ($) d = a * b * c	Present value 7% ($)	Present value 3% ($)
1	0	8	77.44	0	0	0
2	7	8	77.44	4,027	3,763	3,909
3	7	8	77.44	4,491	3,923	4,234
4	8	8	77.44	5,111	4,172	4,677
5	10	8	77.44	5,885	4,490	5,229
6	11	8	77.44	6,815	4,859	5,878
7	13	8	77.44	8,054	5,366	6,745
8	16	8	77.44	9,602	5,980	7,808
9	19	8	77.44	11,616	6,760	9,169
10	23	8	77.44	14,094	7,666	10,802
Total				69,694	46,979	58,451
Annualized					6,689	6,852

Summary of Class III Railroad Costs

The following table shows the annualized cost for Class III railroads that are conducting train operations with fewer than two crewmembers over the 10-year analysis period. The total annualized cost for all class III railroads would be $51,907 (PV, 7 percent).

TOTAL 10-YEAR COSTS, CLASS III RAILROADS (LEGACY AND NEW OPERATIONS)

Cost category	Annualized cost, 7 percent ($)
Special Approval	16,138
Risk Assessment	20,495
Risk Assessment Revisions	144
Risk Assessment—Material Modifications	8,441
Railroad Oversight Responsibilities	6,689
Total Cost for All Class III Railroads	51,907

The industry trade organization representing small railroads, ASLRRA, reports the average freight revenue per Class III railroad is $4.75 million.[234] The following table summarized the average annual costs and revenue for Class III railroads.

AVERAGE CLASS III RAILROADS' COSTS AND REVENUE

Total cost for all Class III railroads, annualized 7 percent ($)	Number of Class III railroads	Average annual cost per Class III railroad ($)	Average Class III revenue ($)	Average annual cost as percent of revenue (%)
a	b	c = a ÷ b	d	e = c ÷ d
51,907	36	1,442	4,750,000	0.03

The average annual cost for a Class III railroad that is operating with fewer than two-person crews would be $1,442. This represents a small percentage (0.03%) of the average annual revenue for a Class III railroad.

The estimates above show that the burden on Class III railroads would not be a significant economic burden. FRA requests comments on this estimate and will consider all comments when making a determination for the final rule.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rule that duplicates, overlaps with, or conflicts with this NPRM. This proposed rule is complementary to, rather than duplicative of, other recent regulatory initiatives FRA has issued or is in the process of developing. These initiatives include: the implementation of positive train control (PTC) systems by required railroads; [235] railroad safety risk reduction programs; [236] and the development of fatigue risk management programs.[237] Each of these initiatives will enhance safety, and may either aid

[234] American Short Line and Regional Railroad Association, *Short Line and Regional Railroad Facts and Figures*, p. 10 (2017 pamphlet) (hereinafter *Facts and Figures*).

[235] *See generally* 49 CFR part 236, subpart I; and press release in which FRA announces full implementation of positive train control (Dec. 29, 2020), *available at https://railroads.dot.gov/sites/fra.dot.gov/files/2020-12/fra1920.pdf.*

[236] 49 CFR parts 270 and 271.

[237] 85 FR 83484 (Dec. 22, 2020) (proposing to amend 49 CFR parts 270 and 271 to require certain railroads to develop and implement a Fatigue Risk Management Program as one component of the railroads' larger railroad safety risk reduction programs).

a railroad in transitioning to an operation with fewer than two crewmembers or assist a railroad in identifying hazards and mitigating risks associated with those hazards once such an operation is established. None of these initiatives, however, focus exclusively on the specific hazards and risks associated with reducing the number of train crewmembers to fewer than two crewmembers, nor do they necessarily require railroads to identify, evaluate, or mitigate any such hazards and risks.

6. A Description of Significant Alternatives to the Rule

This analysis considered two alternatives to the rule: the baseline approach, and a waiver process for FRA-approval of trains operating with fewer than two crewmembers. The baseline alternative (no action) would not ensure that safety is being considered by railroads when reducing crew size. There are many benefits to having two crewmembers in the locomotive. Without this rule, railroad operations may be less safe if railroads do not provide alternate measures to ensure safety is not eroded when reducing the number of crewmembers to fewer than two people.

A waiver process alternative requires a railroad seeking FRA-approval to file a petition containing adequate safety data, but does not require that the safety data include a risk assessment. Risk management is a method used to identify, control, and eliminate or reduce hazards to within a range of acceptability. The goal of a risk assessment is to assess risk in an objective manner by following a decision-making process designed to systematically identify hazards, assess the degree of risk associated with those hazards, and, based on those assessed risks, identify and implement measures to eliminate or mitigate the risks to an acceptable level. A waiver process alternative would remove the standardization and objectivity offered by a risk assessment, leaving it more difficult for FRA to consistently evaluate railroad operations with fewer than two crewmembers.

C. Paperwork Reduction Act

FRA is submitting the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995.[238] The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe[239]	Total annual responses (A)	Average time per response (hours) (B)	Total annual burden (hours) (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates)[240]
218.123—General crew staffing requirements—Each railroad's adoption or revision of rules and practices with the requirement of subpart G (New proposed requirement).	671 railroads	3 adopted rules and practices.	8	24	$1,859
—(d)(2) Location of crewmember(s) that is not operating the train when the train is moving—Direct communication between train crew members (New proposed requirement).	Direct communications between train crewmembers during train operations are a usual and customary practice. Consequently, there is no burden connected with this provision.				
218.127(c)—Specific passenger and tourist train operation exceptions to two-person crew requirement—Passenger railroads' emergency preparedness plan approved under 49 CFR 239.201 (New proposed requirement).	The burden for emergency preparedness plans is already included under OMB Control Number 2130–0545. Consequently, there is no additional burden associated with this requirement.				
—(d)(3) Federal Transit Administration (FTA) and designated State Safety Oversight (SSO) Agency approved Public Transportation Agency Safety Plan in accordance with 49 CFR parts 673 and 674 (New proposed requirement).	The burden for approved FTA and SSO Public Transportation Agency Safety Plans is included under OMB Control Number 2132–0558. Consequently, there is no additional burden associated with this requirement.				
218.129(b)(1) and (2)—Specific freight train exceptions to two-person crew requirement—Direct communication between train crewmembers and dispatchers (New proposed requirement).	Direct communications between train crewmembers and dispatchers during train operations are a usual and customary practice. Consequently, there is no burden connected with this provision.				
—(b)(3) through (7) Railroad's method and protocol for determining when communication is lost with a one-person train crew (New proposed requirement).	The burden for this requirement is included under § 218.123.				
—(c)(1)(ii)(B) Small railroad operations—Direct communication between crew members (New proposed requirement).	Direct communications between crew members during train operations are a usual and customary practice. Consequently, there is no burden connected with this provision.				
—(c)(3) Remote control operations—Controlling railroad has developed air brake and train handling instructions governing these operations (New proposed requirement).	The burden for air brake and train handling instructions is already included under OMB Control Number 2130–0008 (49 CFR part 232). Consequently, there is no additional burden associated with this requirement.				
218.131(a) through (b)(11)—Special approval petition requirements for continuance of legacy train operations staffed with a one-person train crew (New proposed requirement).	9 railroads	3 one-person train crew operation descriptions.	40	120	9,293

[238] 44 U.S.C. 3501 *et seq.*

[239] For purposes of this table, there are 671 railroads, excluding tourist railroads not on the general system, in the respondent universe. Additionally, FRA is currently aware of nine one-person train crew operations.

[240] Throughout the tables in this document, the dollar equivalent cost is derived from the 2020 Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75-percent overhead charges.

[241] Totals may not add due to rounding.

CFR section	Respondent universe [239]	Total annual responses (A)	Average time per response (hours) (B)	Total annual burden (hours) (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates) [240]
—(b)(12) Copy of any railroad rule or practice that applies to the one-person train crew operation (New proposed requirement).	The burden of this requirement is included above.				
—(b)(13) A disabled-train/post-accident protocol (New proposed requirement).	The burden for this requirement is included under § 218.131(a) through (b)(11).				
—(b)(14) and (15) Accident and incident data or any other information describing protections in lieu of a second train crewmember (New proposed requirement).	The burden for this requirement is included under § 218.131(b)(1) through (11).				
218.133(a)(2)—Special approval petition requirements for initiation of train operations staffed with fewer than two members—Passenger railroads seeking to begin train operations with fewer than two crewmembers (New proposed requirement).	There are many exceptions for passenger operations already in existence. Consequently, FRA anticipates no passenger operations would apply for special approval for one-person crews.				
—(b)(1) through (14) Petition for initiation of a train operation staffed with fewer than two crewmembers that does not meet an exception identified in §§ 218.125 through 218.131 (New proposed requirement).	671 railroads	3 waiver petitions	40	120	9,293
—(b)(15) Risk assessment for initiation of a train operation staffed with fewer than two crewmembers that does not meet an exception identified in §§ 218.125 through 218.131 (New proposed requirement).	671 railroads	3 risk assessments	120	360	27,878
—(b)(15) Revised risk assessment after FRA's initial of the risk assessment for a train operation staffed with fewer than two crewmembers that does not meet an exception identified in §§ 218.125 through 218.131—Railroads' response to FRA (New proposed requirement).	671 railroads	1 revised risk assessment.	24	24	1,859
218.135(a)—Risk assessment content and procedures—General (New proposed requirement).	The burden for this requirement is included under §§ 218.133(b)(15) and 218.137(e).				
—(b) Alternative standard—Petition for approval to use alternative methodologies (New proposed requirement).	The burden for this requirement is included under §§ 218.133(b)(15), 218.137(e), and 218.139.				
218.137(c)—Special approval procedure—Comments sent to FRA on petitions for special approval (New proposed requirement).	Railroad industry and interested parties.	2 petition comments	1	2	155
—(d)(1) Disposition of petitions—Hearings on petitions (New proposed requirement).	The requirements of this provision are exempted from the Paperwork Reduction Act under 5 CFR 1320.4(a)(2) because this activity is conducted during an administrative action affecting specific individuals or entities.				
—(d)(2) Special approval procedure—Disposition of petitions—Petitioners' response to FRA's special conditions to the approval of petition (New proposed requirement).	The burden for this requirement is included under § 218.137(e).				
—(e) Modified operation submitted to FRA—Legacy railroads (New proposed requirement).	9 railroads	1 risk assessment	120	120	9,293
—(e) Modified operation submitted to FRA—New one-person operation (New proposed requirement).	671 railroads	2 updated risk assessments.	40	80	6,195
218.139—Annual railroad responsibilities after receipt of special approval—Annual review and analysis of FRA-approved train operation(s) (New proposed requirement).	671 railroads	8 annual reviews	8	64	4,956
—(b)(7) Written confirmation that the risk assessment for operations approved under § 218.133 (New proposed requirement).	The burden for this requirement is included under § 218.139.				
Total [241]	671 railroads	26 responses	N/A	914	70,780

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Collection Clearance Officer, at 202–493–0440. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them via email to Ms. Wells at *Hodan.Wells@dot.gov.*

OMB is required to decide concerning the collection of information requirements contained in this rule

between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, Federalism,[242] requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply, and preparation of a federalism summary impact statement for the proposed rule is not required.

[242] 64 FR 43255 (Aug. 10, 1999).

E. International Trade Impact Assessment

The Trade Agreements Act of 1979 [243] prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This proposed rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Impact

FRA has evaluated this proposed rule consistent with the National Environmental Policy Act [244] (NEPA), the Council of Environmental Quality's NEPA implementing regulations,[245] and FRA's NEPA implementing regulations [246] and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS.[247] Specifically, FRA has determined that this proposed rule is categorically excluded from detailed environmental review.[248]

The main purpose of this rulemaking is to establish minimum requirements for the size of train crew staffs depending on the type of operation to maintain safety. This rule would not directly or indirectly impact any environmental resources and would not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review.[249] FRA has concluded that no such unusual circumstances exist with respect to this proposed rule and it meets the requirements for categorical exclusion.[250]

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties.[251] FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f).[252] Further, FRA reviewed this proposed rulemaking and found it consistent with Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad.''

G. Executive Order 12898 (Environmental Justice)

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' and DOT Order 5610.2B [253] require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations. FRA has evaluated this proposed rule under Executive Order 12898 and the DOT Order and has determined it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

[243] 19 U.S.C. Ch. 13.

[244] 42 U.S.C. 4321 *et seq.*

[245] 40 CFR parts 1500 through 1508.

[246] 23 CFR part 771.

[247] 40 CFR 1508.4.

[248] *See* 23 CFR 771.116(c)(15) (categorically excluding ''[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise'').

[249] 23 CFR 771.116(b).

[250] 23 CFR 771.116(c)(15).

[251] *See* 16 U.S.C. 470.

[252] *See* Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

[253] *Available at: https://www.transportation.gov/regulations/dot-order-56102b-department-transportation-actions-address-environmental-justice.*

H. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995,[254] each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act [255] further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This proposed rule would not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' [256] FRA evaluated this proposed rule under Executive Order 13211 and determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

J. Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

List of Subjects in 49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 218—[AMENDED]

■ 1. The authority citation for part 218 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart A—General

■ 2. Amend § 218.5 by adding definitions in alphabetical order for ''Associate Administrator'', ''FTA'', ''Hazard'', ''Mishap'', ''Risk'', ''Risk assessment'', ''Switching service'', ''Tourist train operation'', ''Tourist train operation that is not part of the general railroad system of transportation'', ''Trailing tons'', and ''Train'' to read as follows:

§ 218.5 Definitions.

* * * * *

Associate Administrator means the Associate Administrator for Railroad Safety and Chief Safety Officer of the Federal Railroad Administration or that person's delegate as designated in writing.

* * * * *

FTA means the Federal Transit Administration.

* * * * *

Hazard means an existing or potential condition that could lead to an unplanned event or series of events (*i.e.,* mishap) that can cause an accident or incident; injury, illness, or death; damage to or loss of a system, equipment, or property; or damage to the environment.

* * * * *

Mishap means an event or condition or series of events or conditions resulting in an accident or incident.

Risk means the combination of the expected probability (or frequency of occurrence) and the consequence (or severity) of a hazard.

Risk assessment means the process of determining, either quantitatively or qualitatively, the measure of risk associated with train operations with fewer than two crewmembers under all intended operating conditions.

* * * * *

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

Tourist train operation means a tourist, scenic, historic, or excursion train operation.

Tourist train operation that is not part of the general railroad system of transportation means a tourist, scenic, historic, or excursion train operation conducted only on track used exclusively for that purpose (*i.e.,* there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

Trailing tons means the sum of the gross weights–expressed in tons–of the cars and the locomotives in a train that are not providing propelling power to the train.

Train means one or more locomotives coupled with or without cars, except during switching service.

* * * * *

■ 3. Add subpart G to read as follows:

Subpart G—Train Crew Size Safety Requirements

Sec.
218.121 Purpose and scope.
218.123 General train crew staffing requirements.
218.125 General exceptions to train crew staffing requirements.
218.127 Specific passenger and tourist train operation exceptions to crew staffing requirements.
218.129 Specific freight train exceptions to crew staffing requirements.
218.131 Special approval petition requirements for continuance of legacy train operations staffed with a one-person train crew.
218.133 Special approval petition requirements for initiation of train operations staffed with fewer than two crewmembers.
218.135 Risk assessment content and procedures.
218.137 Special approval procedure.
218.139 Annual railroad responsibilities after receipt of special approval.

Subpart G—Train Crew Size Safety Requirements

§ 218.121 Purpose and scope.

(a) The purpose of this subpart is to ensure that each train is adequately staffed and has appropriate safeguards in place for safe train operations under all operating conditions.

[254] Public Law 104–4, 2 U.S.C. 1531.

[255] 2 U.S.C. 1532.

[256] 66 FR 28355 (May 22, 2001).

(b) This subpart prescribes minimum requirements for the size of different train crew staffs depending on the type of operation and operating conditions. The minimum crew staffing requirements reflect the safety risks posed to railroad employees, passengers, the public, and the environment. This subpart also prescribes minimum requirements for the location of a second crewmember on a moving train and promotes safe and effective teamwork. Each railroad may prescribe additional or more stringent requirements in its operating rules, timetables, timetable special instructions, and other instructions.

§ 218.123 General train crew staffing requirements.

(a) *General.* Each railroad shall comply with the requirements of this subpart, and may adopt its own rules or practices consistent with the requirements of this subpart. If any person, as defined in § 218.9 (including, but not limited to, each railroad, railroad officer, supervisor, and employee), violates any requirement of a railroad rule or practice implementing the requirements of this subpart, that person shall be considered to have violated the requirements of this subpart.

(b) *Two-person train crew staffing requirement.* Except as provided for in this subpart, each train shall be assigned a minimum of two crewmembers.

(c) *Hazardous material two-person train crew mandate.* For the purposes of this paragraph (c), a tank car containing residue of a hazardous material as defined in § 171.8 of this title is not considered a loaded car. None of the exceptions in §§ 218.125 through 218.133 are applicable when any train is transporting:

(1) Twenty (20) or more loaded tank cars or loaded intermodal portable tanks of any one or any combination of hazardous materials identified in § 232.103(n)(6)(i)(B) of this chapter; or

(2) One or more car loads of rail-security sensitive materials (RSSM) as defined in § 1580.3 of this title.

(d) *Location of crewmember(s) when the train is moving.* A train crewmember that is not operating the train may be located anywhere outside of the operating cab of the controlling locomotive when the train is moving if:

(1) The train crewmember is on the train, except when the train crewmember cannot perform the duties assigned without temporarily disembarking from the train;

(2) The train crewmember and the locomotive engineer in the cab of the controlling locomotive can directly communicate with each other;

(3) The train crewmember can continue to perform the duties assigned; and

(4) The location does not violate any Federal railroad safety law, regulation, or order.

§ 218.125 General exceptions to train crew staffing requirements.

Except as provided in § 218.123(c), the following general exceptions apply to the requirements in § 218.123 for two-person crew staffing and the location of crewmember(s) when the train is moving. A train does not require a minimum of two crewmembers under the following conditions:

(a) *Helper service.* The train is performing helper service, *i.e.,* using a locomotive or group of locomotives to assist another train that has incurred mechanical failure or lacks the power to traverse difficult terrain. Helper service includes traveling to or from a location where assistance is provided; or

(b) *Lite locomotive.* The train is a locomotive or a consist of locomotives not attached to any piece of equipment or attached only to a caboose. This exception excludes a diesel or electric multiple-unit (DMU or EMU) operation.

§ 218.127 Specific passenger and tourist train operation exceptions to crew staffing requirements.

The following passenger and tourist train operations do not require a minimum of two crewmembers:

(a) The train is a tourist train operation that is not part of the general railroad system of transportation;

(b) A passenger or tourist train operation in which:

(1) The locomotive engineer is moving cars empty of passengers; and

(2) Passengers will not board the train's cars until the crew conducts a safety briefing on the safe operation and use of the train's exterior side doors, in accordance with § 238.135 of this chapter;

(c) A passenger or tourist train operation involving a single self-propelled car or married-pair unit, *e.g.,* a diesel or electric multiple-unit (DMU or EMU) operation, where the locomotive engineer has direct access to the passenger seating compartment and (for passenger railroads subject to part 239 of this chapter) the passenger railroad's emergency preparedness plan for this operation is approved under § 239.201 of this chapter; or

(d) A rapid transit operation in an urban area, *i.e.,* an urban rapid transit system that is connected with the general railroad system of transportation under the following conditions:

(1) The operation is temporally separated from any conventional railroad operations;

(2) There is an FTA-approved and designated State Safety Oversight (SSO) Agency that is qualified to provide safety oversight; and

(3) The operator has an FTA/SSO-approved Public Transportation Agency Safety Plan in accordance with parts 673 and 674 of this title.

§ 218.129 Specific freight train exceptions to crew staffing requirements.

(a) *Requirements for mine load out, plant dumping, or similar operation exception.* A unit freight train, *i.e.,* a train composed of cars carrying a single type of commodity, is being loaded or unloaded in an assembly line manner while the train moves at 10 miles per hour or less on a track which is temporarily made inaccessible from the general railroad system of transportation. During the loading or unloading process, there must not be any duties requiring a second crewmember (*e.g.,* no operation of a hand-operated switch, filling out paperwork, or calling of signal indications). If the operation is overseen by another person, typically in a tower or on the ground, that person must have the capability of communicating with the locomotive engineer operating the train.

(b) *Requirements for certain specific freight train exceptions.* Each railroad that implements an operation, described as an exception in paragraph (c) of this section, shall adopt and comply with a railroad operating rule or practice for its train operation with fewer than two crewmembers that complies with the following requirements of this paragraph (b):

(1) A one-person train crewmember must remain in the locomotive cab during normal operations and may leave the locomotive cab only in case of an emergency affecting railroad operations;

(2) A one-person train crewmember must contact the dispatcher whenever it can be anticipated that radio communication could be lost, *e.g.,* before the train enters a tunnel, unless technology or a protocol is established to monitor the train's real-time progress;

(3) If the railroad cannot monitor the train's real-time progress, the railroad must have a method of determining the train's approximate location when communication is lost with the one-person crew;

(4) The railroad must establish a protocol for determining when search-and-rescue operations shall be initiated when all communication is lost with a one-person train crew;

(5) A one-person train operation's lead locomotive must be equipped with an alerter, as defined in § 229.5 of this chapter, and a one-person train crewmember must test that alerter to confirm it is working before departure;

(6) The dispatcher must confirm with a one-person train crewmember that the train is stopped before conveying a mandatory directive by radio transmission as required in § 220.61 of this chapter; and

(7) A one-person train crewmember must have a working radio on the lead locomotive and a redundant, electronic device appropriate for railroad communications as permitted in part 220, subpart C, of this chapter.

(c) *Exceptions.* Except as provided in § 218.123(c), the following freight train operations are excepted from the requirements in § 218.123 for two-person crew staffing and location of crewmember(s) when the train is moving.

(1) *Small railroad operations.* A freight train operated on a railroad and by an employee of a railroad with fewer than 400,000 total employee work hours annually may operate with one crewmember at a maximum authorized speed not exceeding 25 miles per hour under either of the following sets of conditions:

(i)(A) The average grade of any segment of the track operated over is less than 1 percent over 3 continuous miles or 2 percent over 2 continuous miles; and

(B) The total length of the train is no greater than 6,000 feet; or

(ii)(A) A second train crewmember, other than the locomotive engineer, is intermittently assisting the train's movements; and

(B) The second train crewmember and the locomotive engineer in the cab of the controlling locomotive can directly communicate with each other;

(2) *Work train operations.* During work train operations when a non-revenue service train that does not exceed 4,000 trailing tons is used for the administration and upkeep service of the railroad. This includes when such a work train is traveling to or from a work site; or

(3) *Remote control operations.* The train is remotely controlled using the operator control unit assigned to the receiver on the controlling locomotive and the following conditions apply:

(i) The locomotive consist does not exceed 6,000 total working horsepower and is utilizing no more than 12 powering axles;

(ii) The train length, excluding locomotives, does not exceed 3,000 feet;

(iii) The train tonnage, excluding locomotives, does not exceed 4,000 tons;

(iv) The train does not exceed a total of 50 conventional cars or platforms, in any combination;

(v) The train does not contain more than 20 multilevel cars, *e.g.,* autorack cars, regardless of whether they are loaded or empty. Any continuous block of more than five multilevel cars must be placed at the rear of the train;

(vi) Movements are restricted from operating on any grade greater than 1 percent that extends for more than half a mile; and

(vii) The controlling railroad has developed air brake and train handling instructions governing these operations, and the remote control operator is required to comply with those instructions.

§ 218.131 Special approval petition requirements for continuance of legacy train operations staffed with a one-person train crew.

(a) Except as provided in § 218.123(c), a one-person train operation that has been established for at least two years before [EFFECTIVE DATE OF FINAL RULE], may continue if the railroad files a special approval petition under § 218.137, containing a description of the operation no later than [DATE 90 DAYS AFTER EFFECTIVE DATE OF FINAL RULE]. A railroad is not required to file a special approval petition if the one-person operation is limited to an exception covered by § 218.125, § 218.127, or § 218.129.

(b) The special approval petition shall, at a minimum, include the following:

(1) The name, title, address, telephone number, and email address of the primary person to be contacted regarding review of the special approval petition;

(2) The location of the continuing operation, with as much specificity as can be provided, as to industries or communities served, and track segments, territories, divisions, or subdivisions operated over;

(3) The class(es) of track operated over, the method of operation, and a list of the signal and train control systems, devices, and appliances installed and in operation;

(4) The locations of any track where the average grade of any segment of the track operated over is 1 percent or more over 3 continuous miles or 2 percent or more over 2 continuous miles;

(5) The maximum authorized speed of the operation;

(6) The approximate average number of miles and hours a single person operates as a one-person train crew;

(7) The maximum number of cars and tonnage set for the operation, if any;

(8) Whether the one-person operation is permitted to haul hazardous materials of any quantity and type, and the approximate percentage of carload traffic in the one-person operation that is hazardous materials;

(9) Whether any limitations are placed on a person operating as a one-person train crew. Such limitations may include, but are not limited to, a maximum number of miles or hours during a single tour of duty, or limitations placed on a person in coordination with a fatigue mitigation plan;

(10) Information regarding other operations traveling on the same track as the one-person train operation or that travel on an adjacent track. Such information shall include, but is not limited to, the volume of traffic and the types of opposing moves (*e.g.,* passenger trains or freight trains hauling hazardous materials);

(11) A detailed description of any technology that is used to perform tasks typically performed by a second crewmember, or that prevents or mitigates the consequences of accidents or incidents;

(12) A copy of any railroad rule or practice that applies to the one-person train crew operation, but does not apply to train crew operations with two or more crewmembers. FRA will not approve a petition unless these railroad rules or practices include the following requirements:

(i) The one-person train crewmember must remain in the locomotive cab during normal operations and may leave the locomotive cab only in case of an emergency;

(ii) The one-person train crewmember must contact the dispatcher whenever it can be anticipated that radio communication could be lost, *e.g.,* before the train enters a tunnel, unless technology or a protocol is established to monitor the train's real-time progress;

(iii) If the railroad cannot monitor the train's real-time progress, the railroad must have a method of determining the train's approximate location when communication is lost with the one-person crew;

(iv) The railroad must establish a protocol for determining when search-and-rescue operations shall be initiated when all communication is lost with the one-person train crew;

(v) The one-person train operation's lead locomotive must be equipped with an alerter, as defined in § 229.5 of this chapter, and the one-person train crewmember must test that alerter to confirm it is working before departure;

(vi) The dispatcher must confirm with the one-person train crewmember that the train is stopped before conveying a mandatory directive by radio transmission as required in § 220.61 of this chapter; and

(vii) The one-person train crewmember must have a working radio on the lead locomotive and a redundant, electronic device appropriate for railroad communications as permitted in part 220, subpart C, of this chapter;

(13) A disabled-train/post-accident protocol that quickly brings railroad employees to the scene of a disabled train or accident. The protocol must describe the role and responsibilities of the one-person train crewmember and any other railroad employees, including supervisors, with responsibility to address a disabled train or accident. The proposed protocol must also describe any logistics and the railroad's expected response time(s). A passenger train operation with an approved emergency preparedness plan under part 239 of this chapter satisfies the requirement in this paragraph (b)(13);

(14) Five (5) years of accident and incident data, as required by part 225 of this chapter, for the operation identified in paragraph (b)(2) of this section or, for operations established less than five (5) years before [EFFECTIVE DATE OF FINAL RULE], accident and incident data for the operation from the date the operation was established; and

(15) Any other information describing protections provided in lieu of a second train crewmember, or relevant data or analysis, or both, for FRA to consider in determining whether approving the special approval petition is consistent with railroad safety.

(c) FRA may request any additional information, beyond what is provided in the petition, that it deems necessary.

§ 218.133 Special approval petition requirements for initiation of train operations staffed with fewer than two crewmembers.

(a) *General.* (1) With the exception of operations permitted under §§ 218.125 through 218.131, no railroad may operate a train with fewer than two crewmembers unless it receives special approval for the operation under this subpart.

(2) Passenger railroads seeking to begin train operations with fewer than two crewmembers must obtain FRA's approval under § 218.137 and have either:

(i) An approved passenger train emergency preparedness plan under part 239 of this chapter for the operation; or

(ii) An approved waiver from the passenger train emergency preparedness plan requirements as permitted under part 211 of this chapter. A passenger railroad may petition FRA for both a waiver under part 211 and special approval for initiation of train operations staffed with fewer than two crewmembers in the same filing.

(b) *Petition for initiation of a train operation staffed with fewer than two crewmembers.* Each petition for initiation of a train operation with fewer than two crewmembers that does not meet an exception identified in §§ 218.125 through 218.131 must contain sufficient information for FRA to determine whether approving the petition operation is consistent with railroad safety. At a minimum, a petition must include:

(1) The name, title, address, telephone number, and email address of the primary person to be contacted regarding review of the special approval petition;

(2) The location of the operation, with as much specificity as can be provided, as to industries or communities served, and track segments, territories, divisions, or subdivisions operated over;

(3) The class(es) of track to be operated over, the method of operation, and a list of the signal and train control systems, devices, and appliances installed and in operation;

(4) The locations of any track where the average grade of any segment of the track operated over is 1 percent or more over 3 continuous miles or 2 percent or more over 2 continuous miles;

(5) The maximum authorized speed of the operation;

(6) The approximate average number of miles and hours a person is projected to operate as a train crewmember in a fewer than two-person train operation;

(7) The maximum number of cars and tonnage proposed for the operation, if any;

(8) Whether the operation will be permitted to haul hazardous materials (as defined by § 171.8 of this title) of any quantity and type;

(9) Whether any limitations will be placed on a person operating as a one-person train crew. Such limitations may include, but are not limited to, a maximum number of miles or hours during a single tour of duty, or limitations placed on a person in coordination with a fatigue mitigation plan;

(10) Information regarding other operations that may travel on the same track as, or an adjacent track to, the train operation staffed with fewer than two crewmembers. Such information shall include, but is not limited to, the volume of traffic and the types of opposing moves (*e.g.,* passenger or freight trains hauling hazardous materials);

(11) A detailed description of any technology that will be used to perform tasks typically performed by a second crewmember, or that will prevent or significantly mitigate the consequences of accidents or incidents;

(12) A copy of any railroad rule or practice that will apply to the proposed train operation(s) with fewer than two crewmembers, but does not apply to train crew operations with two or more crewmembers;

(13) A disabled-train/post-accident protocol that quickly brings railroad employees to the scene of a disabled train or accident. The protocol must describe the role and responsibilities of the one-person train crewmember and any other railroad employees, including supervisors, with responsibility to address a disabled train or accident. The protocol must also describe any logistics and the railroad's expected response time(s). A passenger train operation with an approved emergency preparedness plan under part 239 of this chapter satisfies the requirement in this paragraph (b)(13);

(14) Five (5) years of accident and incident data, as required by part 225 of this chapter, for the operation identified in paragraph (b)(2) of this section, when operating with two or more crew members, or, for operations established less than five (5) years before [EFFECTIVE DATE OF FINAL RULE], accident and incident data for the operation from the date the operation was established;

(15) A risk assessment of the proposed operation that meets the requirements of § 218.135; and

(16) Any other information describing protections provided in lieu of a second train crewmember, or other relevant data or analysis.

(c) *Additional information.* FRA may request any additional information, beyond what is provided in the petition, that it deems necessary.

§ 218.135 Risk assessment content and procedures.

(a) *General.* A risk assessment submitted under this subpart must meet the following requirements:

(1) Contain a complete description of the railroad environment, including, at a minimum:

(i) All authorized method(s) of operation;

(ii) All applicable operating rules and practices;

(iii) Hours of operation;

(iv) Qualifications and certifications of crewmembers;

(v) Number and frequency of trains involved;

(vi) The tonnage, length, and makeup of the trains involved;

(vii) The route and terrain over which the trains will be operated (*e.g.,* maximum grade, sight distances);

(viii) Number and types of grade crossings;

(ix) Amount and types of hazardous materials to be transported, if any;

(x) The characteristics of the geographic areas through which the trains will operate (*e.g.,* population density and proximity to environmentally sensitive areas); and

(xi) Any other relevant factor.

(2) Contain a list and descriptions of all functions, duties, and tasks associated with the proposed operation to be performed by the one crewmember, other railroad employee(s), or equipment, including, at a minimum, any function performed:

(i) To prepare a train for operation (including, but not limited to, pre-departure inspections, obtaining track bulletins, orders, or manifests, managing the train consist, including train makeup, obtaining and ensuring the accuracy of the train consist, arming and testing the end-of-train device, and performing brake tests);

(ii) To operate a train (including, but not limited to, operating and controlling the train, interacting with non-crewmembers such as the dispatcher or roadway workers, and responding to emergencies or unexpected events); and

(iii) To ensure safety once a train has stopped moving (*e.g.,* including, but not limited to, securing the train).

(3) Describe the allocation of all functions, duties, and tasks to the one crewmember, other railroad employee(s), or equipment.

(4) Contain a hazard analysis for the proposed train operation's functions, duties, and tasks, including:

(i) A hazard log consisting of a comprehensive description of all hazards associated with the proposed train operation.

(ii) An assessment of each hazard in terms of the severity, measured as the worst-credible mishap resulting from the hazard and categorized in accordance with Table 1 to this paragraph (a)(4)(ii):

TABLE 1 TO § 218.135(a)(4)(ii)

Category	Severity ranking (1 being the most severe)	Definition
SEVERITY CATEGORIES		
Catastrophic	1	Results in one or more of the following: fatality, irreversible significant environmental damage, or significant monetary loss. Accidents/incidents that must be reported to FRA telephonically under § 225.9 of this chapter are considered catastrophic.
Critical	2	Results in one or more of the following: significant injury (as defined in § 225.5 of this chapter), reversible significant environmental damage, or reportable monetary loss. Accidents/incidents that are not telephonically reported under § 225.9 of this chapter, but are still FRA-reportable under § 225.19 of this chapter, are considered critical.
Marginal	3	Results in one or more of the following: minor injuries (*i.e.,* injuries that are not significant as defined in § 225.5 of this chapter), reversible non-significant environmental damage, or monetary loss. Mishaps that are not FRA-reportable accidents/incidents, but are considered accountable rail equipment accidents/incidents as defined in § 225.5 of this chapter, are considered marginal.
Negligible	4	Results in one or more of the following: no injuries, no environmental damage, or equipment or railroad structure damages that do not require repair.

(iii) An assessment of each hazard in terms of probability of occurrence as defined in Table 2 to this paragraph (a)(4)(iii):

TABLE 2 TO § 218.135(a)(4)(iii)

Description	Level	Qualitative characterization of probability	Quantitative characterization of probability [1]
PROBABILITY LEVELS			
FREQUENT	A	Likely to occur frequently	Greater than once every 1,000 operating hours.
PROBABLE	B	Likely to occur several times	Between once every 1,000 hours and once every 100,000 hours.
OCCASIONAL	C	Likely to occur once, but not several times	Between once every 100,000 hours and once every 10,000,000 hours.
REMOTE	D	Unlikely but possible to occur	Between once every 10,000,000 hours and once every 1,000,000,000 hours.
IMPROBABLE	E	So unlikely that it can be assumed the occurrence may not be experienced.	Less than once every 1,000,000,000 hours.

[1] Probability of a hazard occurring per 1,000 operating hours.

(iv) A hazard mitigation analysis outlining the sustainable actions and associated components, equipment, systems, or processes that are put in place to reduce or eliminate the probability or severity, or both, of each hazard. At a minimum, a hazard mitigation analysis must consider the following:

(A) The design of the system, equipment, and components, including equipment reliability and the necessary functions to be performed, in both a normal operation and in a failed state; and

(B) The human factors associated with the processes and tasks to be performed, including the required skills and

capabilities, the operating environment, and existing or potential impairments.

(5) A risk matrix in the format of Table 3 to this paragraph (a)(5) that classifies the severity and likelihood of each partially mitigated or unmitigated hazard as follows:

TABLE 3 TO § 218.135(a)(5)

Probability	Severity			
	(1) Catastrophic	(2) Critical	(3) Marginal	(4) Negligible
Risk Matrix				
(A) FREQUENT	1A	2A	3A	4A
(B) PROBABLE	1B	2B	3B	4B
(C) OCCASIONAL	1C	2C	3C	4C
(D) REMOTE	1D	2D	3D	4D
(E) IMPROBABLE	1E	2E	3E	4E

(6) A risk report of the train operation staffed with fewer than two crewmembers, documenting the basis for acceptability of all partially mitigated and unmitigated hazards identified in the matrix required by paragraph (a)(5) of this section. The risk report must, at a minimum, categorize the risk of each partially mitigated and unmitigated hazard as follows:

(i) *Unacceptable.* Categories 1A, 1B, 1C, 1D, 2A, 2B, 2C, 3A, 3B, and 4A are unacceptable. A railroad should not file a petition for special approval with a hazard in this category as FRA will not approve an operation with a partially mitigated or unmitigated hazard that is categorized as unacceptable;

(ii) *Acceptable under specific conditions.* Categories 1E, 2D, 3C, 3D, 4B, and 4C are acceptable under specific conditions. A railroad's risk report must describe why the railroad finds the conditions acceptable. A hazard will be acceptable under specific conditions if FRA finds that accepting such hazard is consistent with railroad safety; and

(iii) *Acceptable.* Categories 2E, 3E, 4D, and 4E are acceptable. FRA will not deny a petition for special approval because of an appropriately categorized acceptable hazard that is partially mitigated or unmitigated.

(b) *Alternative standard.* A railroad may petition the Associate Administrator for approval to use alternative methodologies or procedures, or both, other than those required by paragraph (a) of this section to assess the risk associated with an operation proposed under this section. If, after providing public notice of the request for approval and an opportunity for public comment on the request, the Associate Administrator finds that any such petition demonstrates that the alternative proposed methodology or procedures, or both, will provide an accurate assessment of the risk associated with the operation, the Associate Administrator may approve the use of the proposed alternative(s).

§ 218.137 Special approval procedure.

(a) *Petition.* Each railroad submitting a petition under §§ 218.131 and 218.133 shall send the petition by email to *FRAOPCERTPROG@dot.gov.* FRA will make the petition publicly available at *https://www.regulations.gov.*

(b) ***Federal Register*** *notice.* FRA will publish a notice in the **Federal Register** concerning each petition under §§ 218.131 and 218.133.

(c) *Comment.* Not later than 60 days from the date of publication of the notice in the **Federal Register** under paragraph (b) of this section, any person may comment on the petition.

(1) Each comment shall provide all relevant information and data in support of the commenter's position.

(2) Each comment shall be submitted to FRA through *https://www.regulations.gov.*

(d) *Disposition of petitions.* (1) If the Administrator finds it necessary or desirable, FRA will conduct a hearing on a petition in accordance with its rules of practice in part 211 of this chapter.

(2) A petition must not be implemented until approved. If FRA finds that the petition complies with the requirements of § 218.131 or § 218.133, as applicable, and that approving the petition is consistent with railroad safety, FRA will grant the petition, normally within 120 days of its receipt. If the petition is neither granted nor denied within 120 days, the petition remains pending for decision. FRA may attach special conditions to the approval of the petition. Following the approval of a petition, FRA may reopen consideration of the petition for cause stated.

(3) If FRA finds that a petition does not comply with the requirements of this subpart or that approving the petition would not be consistent with railroad safety, FRA will deny the petition, normally within 120 days of its receipt.

(4) When FRA decides a petition, reopens consideration of a petition, or closes a reopened petition, FRA will send written notice of the decision to the petitioner and publish that decision in the docket.

(e) *Modifications.* A railroad that intends to materially modify an operation subject to an FRA approval under this section shall submit a description of how it intends to modify the operation, along with either a new or an updated risk assessment accounting for the identified proposed modifications. A material modification submission is required for material modifications to both legacy train operations staffed with a one-person train crew under § 218.131 and newly initiated train operations staffed with fewer than two crewmembers under § 218.133. The new or updated risk assessment must meet the requirements of § 218.135 and be submitted by email to *FRAOPCERTPROG@dot.gov* at least 60 days before proposing to implement any such modification. When FRA decides on a material modification to a petition, FRA will send written notice of the decision to the petitioner and publish that decision in the same docket created for the petition in paragraph (a) of this section. FRA may reopen consideration of a petition based on a material modification, deny the material modification, or grant the material modification with or without special conditions to the approval. A material modification must not be implemented until approved. If the material modification submission is neither granted nor denied within 60 days, the petition remains pending for decision. For the purposes of this paragraph (e), a material modification is a change:

(1) To a railroad's operations, infrastructure, locomotive control technology, or risk mitigation technology, that may affect the safety of the operation;

(2) That would affect the assumptions underlying the risk assessment on which an FRA approval under this section is based; or

(3) That would affect the assumptions underlying the risk assessment's risk calculations or mitigations on which an FRA approval under this section is based.

§ 218.139 Annual railroad responsibilities after receipt of special approval.

(a) Each railroad that receives special approval under either § 218.131 or § 218.133 shall conduct a formal review and analysis each calendar year, of the FRA-approved train operation(s) with fewer than two crewmembers, and report to FRA its findings and conclusions from its review no later than March 31 of the following year to *FRAOPCERTPROG@dot.gov.*

(b) A railroad's annual report must include the safety data and information listed in paragraphs (b)(1) and (2) of this section for any FRA-approved train operation with fewer than two crewmembers.

(1) The total number of:

(i) FRA-reportable accident/incident under part 225 of this chapter, including subtotals for accidents/incidents that occurred at a highway-rail grade crossing and those that did not occur at a highway-rail grade crossing, and subtotals by State and cause. If an accident/incident was FRA-reportable for more than one reason (*e.g.,* the accident/incident occurred at a highway-rail grade crossing and resulted in rail equipment damages higher than the current reporting threshold), the accident/incident shall only be listed once in the total calculation;

(ii) FRA-reportable employee fatalities;

(iii) FRA-reportable employee injuries;

(iv) Trespasser fatalities at a highway-rail grade crossing;

(v) Trespasser injuries at a highway-rail grade crossing;

(vi) Passenger fatalities at a highway-rail grade crossing;

(vii) Passenger injuries at a highway-rail grade crossing;

(viii) Instances where a railroad employee did not comply with a railroad rule or practice applicable to the FRA-approved train operation(s) with fewer than two crewmembers, but not applicable to train crew operations with two or more crewmembers;

(ix) Instances where a person certified as both a locomotive engineer and conductor had a certification revoked for violation of an operating rule or practice that occurred when the person was operating per an FRA-approved train operation with fewer than two crewmembers;

(x) Accountable rail equipment accident/incident under part 225 of this chapter;

(xi) Instances when the railroad was required to implement its disabled-train/post-accident protocol for an FRA-approved train operation with fewer than two crewmembers;

(xii) Instances when a dispatcher unexpectedly lost communication with an FRA-approved train operation with fewer than two crewmembers;

(xiii) Employee hours worked; and

(xiv) Train miles.

(2) For each instance counted in the totals reported in paragraphs (b)(1)(i) through (xii) of this section, a railroad's annual report must clearly identify each instance by date and location and provide a complete factual description of the event.

(c) The annual report must also include written confirmation that the risk assessment for operations approved under § 218.133, including all calculations and assumptions, remain unchanged, or for an operation approved under § 218.131, written confirmation that the operation remains substantially the same as that described in the railroad's applicable special approval petition and that no technology changes have been implemented or new or additional hazards identified.

(1) If any risk assessment calculation or assumption changes for an operation approved under § 218.133, or an operation approved under § 218.131 is found to have substantially changed, a new or updated risk assessment meeting the requirements of § 218.135 must be prepared and submitted with the railroad's annual report. This annual reporting requirement does not negate the requirement to submit a new or updated risk assessment when making a material modification to an operation as required in § 218.137.

(2) Any new or updated risk assessment submitted in accordance with this paragraph (c) must include a written plan and schedule for implementing any mitigations required to address any newly identified hazards.

(d) FRA will review and respond to a railroad's annual report submission by September 30 of the year it is submitted. FRA's response may include advice or recommendations. FRA may reopen consideration of a petition under § 218.137 based on a finding that a railroad's annual report submission suggests that the petition does not comply with the requirements of this subpart or that the operation is no longer consistent with railroad safety.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

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