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Contents

Federal Register

Vol. 87, No. 168

Wednesday, August 31, 2022

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

10431 53361

7 CFR

1499 53363
3555 53369

10 CFR

429 53618
430 53618

14 CFR

Proposed Rules:

39 (3 documents) 53419, 53421, 53424

16 CFR

310 53372

22 CFR

41 53373

33 CFR

165 (2 documents) 53375, 53377

38 CFR

1 53380

40 CFR

52 53381

Proposed Rules:

68 53556

50 CFR

20 53404
622 (2 documents) 53415, 53416
679 (2 documents) 53417, 53418

Proposed Rules:

17 53429

Federal Register
Vol. 87, No. 168
Wednesday, August 31, 2022

Presidential Documents

Title 3—

The President

Proclamation 10431 of August 26, 2022

Overdose Awareness Week, 2022

By the President of the United States of America

A Proclamation

The overdose epidemic has taken a heartbreaking toll on our Nation, claiming the lives of far too many Americans and devastating families and communities across the country. During Overdose Awareness Week, we renew our commitment to taking bold action to prevent overdoses and related deaths. We continue our efforts to enhance prevention, harm reduction, treatment, and recovery support services for individuals with substance use disorder and addiction. We affirm our duty to stop the flow of illicit drugs from reaching our communities.

As the overdose epidemic has evolved, synthetic opioids —particularly illicitly manufactured fentanyl—now drive the majority of overdose deaths. In 2021, more than 100,000 people died from an overdose, an approximate 15 percent increase from the previous year. Every loss is a painful reminder that, now more than ever, we must address our Nation's overdose epidemic.

As I said during my State of the Union Address, beating the opioid overdose epidemic is an urgent priority for the Nation and a key pillar of my Administration's Unity Agenda. That is why the American Rescue Plan provided nearly $4 billion to strengthen our Nation's mental health and substance use care infrastructure. The Department of Justice has seized record amounts of illicit drugs and provided $94 million to adult re-entry and recidivism reduction programs, including almost $30 million for substance use disorder treatment. The Department of Health and Human Services released a comprehensive Overdose Prevention Strategy, increasing access to services for affected individuals and families. The White House Office of National Drug Control Policy released its first *National Drug Control Strategy,* focusing on untreated addiction and drug trafficking, two critical drivers of the overdose epidemic. We are making significant strides in ending the stigmatization surrounding addiction so people can access the help they need.

We are also changing how we help people with substance use disorder in a variety of ways. We are working to expand access to high-impact harm reduction interventions like naloxone, the opioid overdose reversal medication, and to remove barriers to effective treatment. We are addressing the underlying factors that lead to substance use disorder and addiction. We are targeting drug trafficking organizations by disrupting the operating capital they need to sustain their criminal enterprises.

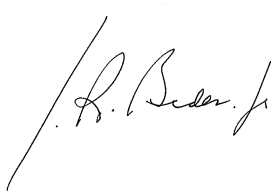
These are important steps, but we know more work lies ahead. That is why my budget calls for an historic investment of $42.5 billion for National Drug Control Program Agencies to support the *National Drug Control Strategy,* including $24.3 billion to support the expansion of evidence-based prevention, treatment, harm reduction, and recovery support services. This request also includes increasing funding to reduce illicit drug supplies and improve the health and safety of our communities.

Overdose Awareness Week is a time to remember those tragically lost to overdose and the pain of the families who are left behind. But it is also an opportunity to recommit ourselves to working together to build safe, healthy, and resilient communities. By adopting evidence-based approaches

to reducing overdose risks and lowering barriers to treatment and support, we can save more American lives.

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 August 28 through September 3, 2022, as Overdose Awareness Week. I call upon citizens, Government agencies, civil society organizations, healthcare providers, and research institutions to raise awareness of substance use disorder to combat stigmatization, to promote treatment and celebrate recovery, and to strengthen our collective efforts to prevent overdose deaths. August 31st also marks Overdose Awareness Day, on which we honor and remember those who have lost their lives to the drug overdose epidemic.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, 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.



[FR Doc. 2022–18933
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Rules and Regulations

Federal Register
Vol. 87, No. 168
Wednesday, August 31, 2022

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1499

RIN 0551–AB02

Food for Progress Program

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is amending the regulation governing the Food for Progress Program to update citations and make other technical and clarifying changes. The Office of Management and Budget (OMB) revised and renumbered certain provisions in its regulations regarding universal identifiers, the System for Award Management, and the uniform administrative requirements, cost principles, and audit requirements for Federal awards. This amendment makes technical corrections to the Food for Progress Program regulation to reflect the revised OMB regulations, and it makes other minor changes intended to improve the efficiency and effectiveness of the program.

DATES: This rule is effective August 31, 2022.

FOR FURTHER INFORMATION CONTACT: Ingrid Ardjosoediro, 202–720–3627, *ingrid.ardjosoediro@usda.gov.* Persons with disabilities who require an alternative means for communication of information (*e.g.,* Braille, large print, audiotape, etc.) should contact *FAS-ReasonableAccommodation@usda.gov* or Cynthia Stewart (Reasonable Accommodation Coordinator), *cynthia.stewart@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Food for Progress Program provides for the donation of U.S. agricultural commodities to developing countries and emerging democracies committed to introducing and expanding free enterprise in the agricultural sector. The commodities are generally sold on the local market and the proceeds are used to support agricultural development activities. The program has two principal objectives: to improve agricultural productivity and expand trade in agricultural products. The Food for Progress Program is authorized in section 1110 of the Food Security Act of 1985 (also known as the Food for Progress Act of 1985) (7 U.S.C. 1736o).

The Foreign Agricultural Service (FAS) implements the Food for Progress Program on behalf of CCC. FAS uses the regulation in 7 CFR part 1499, Food for Progress Program, in the administration of the Food for Progress Program. The previous version of the regulation was published as a final rule on August 28, 2019 (84 FR 45059).

Amendment of Regulation

The Food for Progress Program regulation, 7 CFR part 1499, refers to and cites various sections of 2 CFR part 25, Universal Identifier and System for Award Management, and 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. OMB amended 2 CFR parts 25 and 200 in August 2020 and, as a result, CCC has identified a number of instances where technical corrections to 7 CFR part 1499 are necessary to update citations and make the language consistent with 2 CFR parts 25 and 200. FAS, on behalf of CCC, is amending the Food for Progress Program regulation to make these technical corrections.

In addition, FAS is amending the Food for Progress Program regulation to make other changes that are technical or clarifying in nature and intended to improve the efficiency and effectiveness of the program, including the following:

(1) Clarifying that other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the Food for Progress Program, to the extent that such regulations do not directly conflict with the provisions of 7 CFR part 1499 (7 CFR 1499.1(c));

(2) Providing further detail about the impact description that must be included as part of the strategic analysis in an application for an award under the Food for Progress Program (7 CFR 1499.4(b)(2));

(3) Replacing ''interim evaluation'' with ''midterm evaluation'' to be consistent with the ''Monitoring and Evaluation Policy,'' issued by the Foreign Agricultural Service—Food Assistance Division, USDA (7 CFR 1499.4(b)(6) and 1499.13(d));

(4) Bringing the language in the regulation into better alignment with language in the Food for Progress Act of 1985 (7 CFR 1499.5(e)(4));

(5) Clarifying that the term ''point of entry'' refers to the point of entry of the donated commodities into the target country (7 CFR 1499.6(e));

(6) Providing that, when a recipient needs to use funds that have been advanced by CCC to pay approved expenses under an agreement, the recipient may transfer the funds from a bank account located in the United States, where they have been required by the regulation to be maintained, to a bank account in the target country (7 CFR 1499.6(f)(7));

(7) Clarifying that transportation of donated commodities to the designated discharge port or point of entry will be arranged for under an agreement, in the manner determined by CCC, by CCC or the recipient; and the recipient will be responsible for any transportation of the donated commodities after their arrival at the designated discharge port or point of entry for as long as the recipient has title to such donated commodities, except as may otherwise be provided in the agreement (7 CFR 1499.7(b) and (f));

(8) Providing that a recipient may only use the services of a transportation company that is legally operating in the country in which it will be transporting the donated commodities and that would not have a conflict of interest in transporting the commodities (7 CFR 1499.7(d));

(9) Clarifying that CCC will arrange for transporting the donated commodities in accordance with 7 CFR 1499.7(b)(1) when CCC determines that it is applicable, regardless of where and when title to the donated commodities passes to a recipient; and that a recipient must maintain the donated commodities in good condition from the time that it takes possession of them at the designated discharge port, point of entry, or point of receipt from the originating carrier until their distribution, sale, or barter (7 CFR 1499.8(b) and (c));

(10) Providing additional information about requirements regarding the acknowledgment of funding by USDA, the use of the USDA logo, and communications to the public, as well as the process for a recipient to request a waiver of compliance with one or more of such requirements (7 CFR 1499.8(d) and (e));

(11) Clarifying that the recipient's responsibility for the donated commodities, which becomes effective following transfer of title to the recipient, remains in effect for as long as the recipient has title to the commodities (7 CFR 1499.9(a) and (b) and 1499.10(a));

(12) Providing that the recipient must report damage to or loss of donated commodities in accordance with one of three stated procedures, depending on the estimated amount of such damage or loss (7 CFR 1499.9(b)(1));

(13) Clarifying that the ''in excess of $5,000'' threshold amount that triggers the requirement to inspect damaged donated commodities refers to the amount of damage sustained by the donated commodities, not to the overall value of the donated commodities; and the value of the donated commodities prior to the damage must be determined on the basis of the costs incurred by CCC with respect to such commodities, as well as costs incurred by the recipient and paid by CCC (7 CFR 1499.9(e));

(14) Modifying the text previously in 7 CFR 1499.13(f) and moving it to 7 CFR 1499.13(c) to clarify that information covering the receipt, handling, and disposition of the donated commodities, and the receipt and use of any sale proceeds, etc., must be included in the performance reports (7 CFR 1499.13(c)(ii) and (iii)); and

(15) Clarifying that the date of submission of the final expenditure report, as referenced in 2 CFR 200.334, will be the date of submission of the final financial report (7 CFR 1499.13(h)).

Notice and Comment

This rule is being issued as a final rule without prior notice and opportunity for comment. This rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. The Administrative Procedure Act exempts such rules from the statutory requirement for prior notice and opportunity for comment (5 U.S.C. 553(a)(2)). Accordingly, this rule may be made effective less than 30 days after publication in the **Federal Register**.

Assistance Listings for Federal Users

The program covered by this regulation is included in the Assistance Listings for Federal Users at *SAM.gov* under the following FAS CFDA number: 10.606, Food for Progress.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act of 2002 (44 U.S.C. chapter 36), to promote the use of the internet and other information technologies to provide increased opportunities for citizens' access to Government information and services, and for other purposes.

Congressional Review Act

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

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant. It has been determined that this rule is not significant for the purposes of Executive Order 12866; therefore, this rule was not reviewed by the Office of Management and Budget.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' This rule does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule will not be retroactive.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with officials of State and local governments that would be directly affected by the proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This rule will not directly affect State or local officials and, for this reason, it is excluded from the scope of Executive Order 12372.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of any rule that is subject to notice and comment rulemaking under the Administrative Procedure Act (APA) or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act does not apply to this rule because CCC is not required by the APA or any other law to publish a notice of proposed rulemaking with respect to the subject matter of the rule.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' This rule will not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. This rule does not impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States was not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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. CCC does not expect this rule to have any effect on Indian tribes.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because it does not impose any enforceable duty or contain any unfunded mandate as described under the UMRA.

List of Subjects in 7 CFR Part 1499

Agricultural commodities, Cooperative agreements, Exports, Food assistance programs, Foreign aid, Grant programs—agriculture, Technical assistance.

For the reasons set forth in the preamble, the Commodity Credit Corporation amends part 1499 of title 7 of the Code of Regulations as follows:

PART 1499—FOOD FOR PROGRESS PROGRAM

■ 1. The authority citation for part 1499 continues to read as follows:

Authority: 7 U.S.C. 1736o; and 15 U.S.C. 714b and 714c.

■ 2. In § 1499.1, revise paragraphs (c), (e), and (f)(1) to read as follows:

§ 1499.1 Purpose and applicability.

* * * * *

(c) In addition to the provisions of this part, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the FFPr Program, to the extent that such regulations do not directly conflict with the provisions of this part. The provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory or regulatory provisions that are generally applicable to CCC apply to the FFPr Program.

* * * * *

(e) The OMB guidance at 2 CFR part 200, and the provisions of 2 CFR part 400 and of this part, do not apply to an award by CCC under the FFPr Program to a recipient that is a foreign public entity, as defined in 2 CFR 200.1, and, therefore, they do not apply to a foreign government or an intergovernmental organization.

(f)(1) The OMB guidance at subparts A through E of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to all awards by CCC under the FFPr Program to all recipients that are private voluntary organizations, including a private voluntary organization that is a foreign organization, as defined in 2 CFR 200.1; nonprofit agricultural organizations or cooperatives, including a nonprofit agricultural organization or cooperative that is a foreign organization; nongovernmental organizations, including a nongovernmental organization that is a for-profit entity or a foreign organization; colleges or universities; or other private entities, including a private entity that is a for-profit entity or a foreign organization.

* * * * *

■ 3. In § 1499.2, revise the definitions of ''Commodities'' and ''Program income'' to read as follows:

§ 1499.2 Definitions.

* * * * *

Commodities means agricultural commodities, or products of agricultural commodities, that are produced in the United States.

* * * * *

Program income means interest earned on proceeds from the sale of donated commodities, as well as funds received by a recipient or subrecipient as a direct result of carrying out an approved activity under an agreement. The term includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under a Federal award, the sale of items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Program income does not include any of the following: proceeds from the sale of donated commodities; CCC-provided funds; interest earned on CCC-provided funds; funds provided for cost sharing or matching contributions, refunds, rebates, credits, or discounts; or interest earned on funds provided for cost sharing or matching contributions, refunds, rebates, credits, or discounts.

* * * * *

■ 4. In § 1499.3, revise the first sentence of paragraph (a) to read as follows:

§ 1499.3 Eligibility and conflicts of interest.

(a) A private voluntary organization, a nonprofit agricultural organization or cooperative, a nongovernmental organization, a college or university, or any other private entity is eligible to submit an application under this part to become a recipient under the Food for Progress Program. * * *

* * * * *

■ 5. In § 1499.4, revise paragraphs (b)(2) and (6), (c) introductory text, and (c)(3) to read as follows:

§ 1499.4 Application process.

* * * * *

(b) * * *

(2) An introduction and a strategic analysis, which includes a description of opportunities for lasting impact and sustainable benefits, as specified in the notice of funding opportunity;

* * * * *

(6) Unless otherwise specified in the notice of funding opportunity, an evaluation plan that describes the proposed design, methodology, and time frame of the project's evaluation activities, and how the applicant intends to manage these activities, and that will include a baseline study, midterm evaluation, final evaluation, and any applicable special studies; and

* * * * *

(c) Unless an exception in 2 CFR 25.110 applies, each applicant is required to:

* * * * *

(3) Maintain an active SAM registration, in accordance with 2 CFR part 25, with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

■ 6. In § 1499.5, revise paragraphs (b), (c), (d)(4), (e) introductory text, and (e)(4) to read as follows:

§ 1499.5 Agreements.

* * * * *

(b) The agreement will include the general information required in 2 CFR 200.211(b), as applicable.

(c) The agreement will incorporate general terms and conditions, pursuant to 2 CFR 200.211(c), as applicable.

(d) * * *

(4) Performance goals for the agreement, including a list of results, with long-term benefits where applicable, to be achieved by the activities; indicators, targets, and baseline data; and information about how performance will be assessed, including the timing and scope of expected performance; and

* * * * *

(e) The agreement will also include specific terms and conditions, and certifications and representations, including the following, as applicable:

* * * * *

(4) The recipient will assert that, to the best of its knowledge, any sale or barter of the donated commodities will not displace or interfere with any sales of United States commodities that would otherwise be made to or within the target country. The recipient must submit information to CCC to support this assertion; and

* * * * *

■ 7. In § 1499.6, revise paragraphs (a)(1), (e), and (f)(7) and (8) to read as follows:

§ 1499.6 Payments.

(a) * * *

(1) The original, or a true copy, of each on board bill of lading indicating the freight rate and signed by the originating ocean carrier;

* * * * *

(e) If CCC has agreed to be responsible for the costs of transporting, storing, and distributing the donated commodities from the designated discharge port or the point of entry into the target country, and if the recipient will bear or has borne any of these costs, in accordance with the agreement, CCC will either provide an advance payment or a reimbursement to the recipient in the amount of such costs, in the manner set forth in the agreement.

(f) * * *

(7) Except as may otherwise be provided in the agreement, a recipient must deposit and maintain in an insured bank account located in the United States all funds advanced by CCC. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies or CCC determines that this requirement would constitute an undue burden. A recipient will not be required to maintain a separate bank account for advance payments of CCC-provided funds. However, a recipient must be able to separately account for funds received, obligated, and expended under each agreement. When the recipient requires the use of funds that have been advanced by CCC to pay approved expenses under this agreement, the recipient may transfer the funds from the bank account located in the United States to a bank account in the target country.

(8) A recipient may retain, for administrative purposes, up to $500 per Federal fiscal year of any interest earned on funds advanced under an agreement. The recipient must remit to the U.S. Department of Health and Human Services any additional interest earned during the Federal fiscal year on such funds, in accordance with the procedures in 2 CFR 200.305(b)(9).

* * * * *

■ 8. In § 1499.7:

■ a. Revise paragraphs (b) introductory text and (b)(1);

■ b. Redesignate paragraph (d) as paragraph (e);

■ c. Add new paragraphs (d) and (f).

The revisions and additions read as follows:

§ 1499.7 Transportation of donated commodities.

* * * * *

(b) Transportation to the designated discharge port or point of entry of donated commodities, and other goods such as bags that may be provided by CCC under the FFPr Program, will be arranged for under a specific agreement in the manner determined by CCC. Such transportation will be arranged for by:

(1) CCC in accordance with the Federal Acquisition Regulation (FAR) in 48 CFR chapter 1, the Agriculture Acquisition Regulation (AGAR) in 48 CFR chapter 4, and directives issued by the Director, Office of Contracting and Procurement, USDA; or

* * * * *

(d) A recipient may only use the services of a transportation company that is legally operating in the country in which it will be transporting the donated commodities and that would not have a conflict of interest in transporting such donated commodities.

* * * * *

(f) A recipient will be responsible for arranging and paying for any transportation of the donated commodities after their arrival at the designated discharge port or point of entry for as long as the recipient has title to such donated commodities, except as may otherwise be provided in the agreement.

■ 9. Revise § 1499.8 to read as follows:

§ 1499.8 Entry, handling, and labeling of donated commodities and notification requirements.

(a) A recipient must make all necessary arrangements for receiving the donated commodities in the target country, including obtaining appropriate approvals for entry and transit. The recipient must make arrangements with the target country government for all donated commodities that will be distributed to beneficiaries to be imported and distributed free from all customs duties, tolls, and taxes. A recipient is encouraged to make similar arrangements, where possible, with the government of a country where donated commodities to be sold or bartered are delivered.

(b) A recipient must, as provided in the agreement, arrange for transporting, storing, and distributing the donated commodities from the designated point and time where title to the donated commodities passes to the recipient, except that CCC will arrange for transporting the donated commodities in accordance with § 1499.7(b)(1) when CCC determines that it is applicable.

(c) A recipient must maintain the donated commodities in good condition from the time that it takes possession of such donated commodities at the designated discharge port, the point of entry, or the point of receipt from the originating carrier until their distribution, sale or barter.

(d) A recipient must comply with the following requirements in this paragraph, and the requirements specified in the agreement, regarding the acknowledgment of funding by USDA, the use of the USDA logo, and communications to the public:

(1) If a recipient arranges for the packaging or repackaging of donated commodities that are to be distributed, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the donated commodities;

(iii) Includes a statement indicating that the donated commodities are furnished by the Food for Progress Program of the United States Department of Agriculture; and

(iv) Includes a statement indicating that the donated commodities must not be sold, exchanged or bartered.

(2) If a recipient arranges for the processing and repackaging of donated commodities that are to be distributed, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the processed product;

(iii) Includes a statement indicating that the processed product was made with commodities furnished by the Food for Progress Program of the United States Department of Agriculture; and

(iv) Includes a statement indicating that the processed product must not be sold, exchanged or bartered.

(3) If a recipient distributes donated commodities that are not packaged, the recipient must display a sign at the distribution site that includes the name of the donated commodities, a statement indicating that the donated commodities are being furnished by the Food for Progress Program of the United States Department of Agriculture, and a statement indicating that the donated commodities must not be sold, exchanged, or bartered.

(4) A recipient must ensure that signs are displayed at all activity implementation and commodity distribution sites to inform beneficiaries that funding for the project was provided by the Food for Progress Program of the United States Department of Agriculture.

(5) A recipient must ensure that all communications to the public relating to the project, the activities, or the donated commodities, whether made through print, broadcast, digital, or other media, include a statement

acknowledging that funding was provided by the Food for Progress Program of the United States Department of Agriculture. This includes project descriptions, fact sheets, signs, websites, press releases, social media, videos, reports, and other communications to the public. A recipient must also ensure that the USDA logo is used in communications to the public in accordance with the agreement.

(e)(1) At the request of a recipient, CCC may waive compliance with one or more of the requirements in paragraph (d) of this section. A recipient may submit a written request for a waiver at any time after the agreement has been signed. Except as provided in paragraph (e)(2) of this section, the recipient must comply with the requirement(s) while awaiting a determination by CCC regarding its waiver request.

(2) If a recipient determines that compliance with one or more of the requirements in paragraph (d) of this section poses an imminent threat of injury, loss of life, or destruction of property in the target country, the recipient must submit a request to CCC for a waiver of such requirement(s), with an explanation of the safety or security risk, as soon as possible. The recipient will not have to comply with such requirement(s) while awaiting a determination by CCC regarding its waiver request.

(f) In exceptional circumstances, CCC may, on its own initiative, waive one or more of the requirements in paragraph (d) of this section for programmatic reasons.

■ 10. In § 1499.9, revise paragraphs (a) and (b), the sixth and ninth sentences of paragraph (c), paragraph (d)(3)(iii), and the first and second sentences of paragraph (e) introductory text to read as follows:

§ 1499.9 Damage to or loss of donated commodities.

(a) CCC will be responsible for the donated commodities prior to the transfer of title to the donated commodities to the recipient. The recipient will be responsible for the donated commodities while the recipient has title to the donated commodities. The title will transfer as specified in the agreement.

(b)(1) A recipient must inform CCC, in the manner set forth in the agreement, of any damage to or loss of donated commodities that occurs while the recipient has title to the donated commodities. The recipient must comply with the following procedures when reporting such damage to or loss of donated commodities:

(i) If the amount of the damage or loss is estimated to exceed $20,000, the recipient must notify CCC in writing immediately after becoming aware of such damage or loss and, in this notification, provide detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost donated commodities, and the amount of the damage or loss;

(ii) If the amount of the damage or loss is estimated to exceed $1,000 but not to exceed $20,000, the recipient must notify CCC in writing of the damage or loss within 15 days after the date that the recipient becomes aware of it and then provide detailed information about the damage or loss in the first report required to be filed under § 1499.13(c) that is due after the date that the recipient becomes aware of such damage or loss; and

(iii) If the amount of the damage or loss is estimated not to exceed $1,000, the recipient must notify CCC, and provide detailed information about the damage or loss, in the first report required to be filed under § 1499.13(c) that is due after the date that the recipient becomes aware of such damage or loss.

(2) The recipient must take all steps necessary to protect its interests and the interests of CCC with respect to any damage to or loss of the donated commodities that occurs while the recipient has title to the donated commodities.

(c) * * * All surveys obtained by the recipient must, to the extent practicable, be conducted jointly by the surveyor, the recipient, and the ocean carrier, and the survey report must be signed by all three parties. * * * CCC will reimburse the recipient for the reasonable costs of these services, as determined by CCC.

(d) * * *

(3) * * *

(iii) Estimates the quantity of cargo, if any, lost during discharge through ocean carrier negligence;

* * * * *

(e) If donated commodities to which a recipient has title sustain damage in excess of $5,000 at any time prior to their distribution or sale under the agreement, regardless of the party at fault, the recipient must immediately arrange for an inspection by a public health official or other competent authority approved by CCC and provide to CCC a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged donated commodities. The value of the donated commodities prior to the damage must be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities, as well as such costs incurred by the recipient and paid by CCC. * * *

* * * * *

■ 11. In § 1499.10:

■ a. Revise paragraphs (a) and (b) introductory text;

■ b. Remove paragraph (b)(1);

■ c. Redesignate paragraphs (b)(2), (3), and (4) as paragraphs (b)(1), (2), and (3);

■ d. Remove paragraph (c); and

■ e. Redesignate paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e).

The revisions read as follows:

§ 1499.10 Claims for damage to or loss of donated commodities.

(a) CCC will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities prior to the transfer of title to the donated commodities to the recipient. The recipient will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities while the recipient has title to the donated commodities.

(b) If the recipient has title to donated commodities that have been damaged or lost, and the amount of the damage or loss is estimated to exceed $20,000, the recipient must:

* * * * *

■ 12. In § 1499.11, revise paragraphs (e) and (h) to read as follows:

§ 1499.11 Use of donated commodities, sale proceeds, CCC-provided funds, and program income.

* * * * *

(e) A recipient must not use sale proceeds, CCC-provided funds, interest, or program income to acquire goods and services, either directly or indirectly through another party, in a manner that violates a U.S. Government economic sanctions program, as specified in the agreement.

* * * * *

(h)(1) Except as provided in paragraph (h)(2) of this section, a recipient may make adjustments within the agreement budget between direct cost line items without further approval, provided that the total amount of such adjustments does not exceed the amount specified in the agreement. Adjustments beyond these limits require the prior approval of CCC.

(2) A recipient must not transfer any funds budgeted for participant support costs, as defined in 2 CFR 200.1, to other categories of expense without the prior approval of CCC.

* * * * *

■ 13. Revise § 1499.13 to read as follows:

§ 1499.13 Reporting and record keeping requirements.

(a) A recipient must comply with the performance and financial monitoring and reporting requirements in the agreement and 2 CFR 200.328 through 200.330.

(b) A recipient must submit financial reports to CCC, by the dates and for the reporting periods specified in the agreement. Such reports must provide an accurate accounting of sale proceeds, CCC-provided funds, interest, program income, and voluntary committed cost sharing or matching contributions. When reporting financial information under the agreement, the recipient must include the amounts in U.S. dollars and, if funds are held in local currency, the exchange rate.

(c)(1) A recipient must submit performance reports to CCC, by the dates and for the reporting periods specified in the agreement. These reports must include the following:

(i) The information required in 2 CFR 200.329(c)(2), including additional pertinent information regarding the recipient's progress, measured against established indicators, baseline values, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the baseline values and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the recipient must provide an explanation in the report;

(ii) Information covering the receipt, handling, and disposition of the donated commodities, until all of the donated commodities have been distributed, sold, or bartered and such disposition has been reported to CCC; and

(iii) If the agreement authorizes the sale or barter of donated commodities, information covering the receipt and use of any sale proceeds, goods and services derived from barter, and program income, until all of the sale proceeds, goods and services derived from barter, and program income have been disbursed or used and reported to CCC.

(2) A recipient must ensure the accuracy and reliability of the performance data submitted to CCC in performance reports. At any time during the period of performance of the agreement, CCC may review the recipient's performance data to determine whether it is accurate and reliable. The recipient must comply with all requests made by CCC or an entity designated by CCC in relation to such reviews.

(d) Baseline, midterm, and final evaluation reports are required for all agreements, unless otherwise specified in the agreement. The reports must be submitted in accordance with the timeline in the CCC-approved evaluation plan. Evaluation reports submitted to CCC may be made public in an effort to increase accountability and transparency and share lessons learned and best practices.

(e) A recipient must, within 30 days after export of all or a portion of the donated commodities, submit evidence of such export to CCC, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by CCC or by providing the ocean carrier's on board bill of lading. The evidence of export must show the kind and quantity of commodities exported, the date of export, and the country where the commodities will be delivered. The date of export is the date that the ocean carrier carrying the donated commodities sails from the final U.S. load port.

(f) If requested by CCC, a recipient must provide to CCC additional information or reports relating to the agreement.

(g) If a recipient requires an extension of a reporting deadline, it must ensure that CCC receives an extension request at least five business days prior to the reporting deadline. CCC may decline to consider a request for an extension that it receives after this time period. CCC will consider requests for reporting deadline extensions on a case by case basis and make a decision based on the merits of each request. CCC will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

(h) A recipient must retain records and permit access to records in accordance with the requirements of 2 CFR 200.334 through 200.338. The date of submission of the final expenditure report, as referenced in 2 CFR 200.334, will be the date of submission of the final financial report required by paragraph (b) of this section, as prescribed by CCC. The recipient must retain copies of and make available to CCC all sales receipts, contracts, or other documents related to the sale or barter of donated commodities and any goods or services derived from such barter, as well as records of dispatch received from ocean carriers.

■ 14. In § 1499.14, revise the third sentence of paragraph (a), paragraph (b)(2), and the first sentence of paragraph (b)(4) to read as follows:

§ 1499.14 Subrecipients.

(a) * * * The recipient must enter into a written subagreement with the subrecipient and comply with the applicable provisions of 2 CFR 200.332. * * *

(b) * * *

(2) The subrecipient is prohibited from using sale proceeds, CCC-provided funds, interest, or program income to acquire goods and services, either directly or indirectly through another party, in a manner that violates a U.S. Government economic sanctions program, as specified in the agreement. * * * * *

(4) The subrecipient is responsible for complying with the applicable compliance requirements set forth in the subaward in accordance with § 1499.18 and 2 CFR 200.501(h). * * * * * * * * *

■ 15. In § 1499.15, revise the first sentence to read as follows:

§ 1499.15 Noncompliance with an agreement.

If a recipient fails to comply with a Federal statute or regulation or the terms and conditions of the agreement, and CCC determines that the noncompliance cannot be remedied by imposing additional conditions, CCC may take one or more of the actions set forth in 2 CFR 200.339 and, if appropriate, initiate a claim against the recipient. * * *

■ 16. In § 1499.16:

■ a. Revise paragraph (a);

■ b. Redesignate paragraph (b) as paragraph (c);

■ c. Add new paragraph (b); and

■ d. Revise newly redesignated paragraph (c)(3).

The revisions and addition read as follows:

§ 1499.16 Suspension and termination of agreements.

(a) CCC may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.339 or 200.340 for suspension or termination by CCC has been satisfied;

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or

(3) Storage facilities are inadequate to prevent spoilage or waste of the donated commodities, or distribution of the donated commodities will result in a substantial disincentive to or interference with domestic production or marketing in the target country.

(b) The termination provisions in 2 CFR 200.340 and 200.341 will apply to an agreement.

(c) * * *

(3) Must comply with any closeout and post-closeout provisions specified in the agreement and 2 CFR 200.344 and 200.345.

■ 17. In § 1499.19, revise the first sentence to read as follows:

§ 1499.19 Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and have been assigned OMB control number 0551–0035. * * *

Zach Ducheneaux,

Executive Vice President, Commodity Credit Corporation.

In concurrence with:

Clay Hamilton,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2022–18743 Filed 8–30–22; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3555

[Docket No. RHS–21–SFH–003]

RIN 0575–AD22

Single Family Housing Guaranteed Loan Program

AGENCY: Rural Housing Service, Agriculture Department (USDA).

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is implementing changes to the Single-Family Housing Guaranteed Loan Program (SFHGLP) to update the requirements for Federally supervised lenders, minimum net worth and experience for non-supervised lenders, approved lender participation requirements, handling of applicants with delinquent child support payments, and builder credit requirements.

DATES: This final rule is effective November 29, 2022.

FOR FURTHER INFORMATION CONTACT: Laurie Mohr, Finance and Loan Analyst, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, STOP 0784, Room 2250, South Agriculture Building, 1400 Independence Avenue SW, Washington, DC 20250–0784, telephone: (314) 679–6917; or email: *laurie.mohr@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Rural Housing Service (RHS or Agency) is an agency of the United States Department of Agriculture (USDA) and offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers and much more. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, State and Federal Government agencies, and local communities.

The RHS is issuing a final rule to amend the Single-Family Housing Guaranteed Loan Program (SFHGLP) regulation, 7 CFR part 3555, subparts B, C and D which will reinforce oversight and management of the growing SFHGLP portfolio. These changes will promote an efficient and robust management and oversight structure of lenders in the SFHGLP by strengthening underwriting practices, providing guidance for processing loan guarantees for applicants who are subject to administrative offset to collect delinquent child support payments, and streamline requirements for screening builder-contractors by lenders.

The updates align with the standards for managing credit programs recommended by the Office of Management and Budget (OMB) for Federally supervised lenders, minimum net worth, minimum line of credits, minimum experience, and approved lender participation requirements. These updates will also provide guidance for processing applications for individuals with delinquent child support payments and relaxes builder requirements to better align with the credit program requirements of other Federal agencies.

II. Discussion of Public Comments

RHS published a proposed rule on June 9, 2021 (86 FR 30555) to solicit comments on the proposed updated requirements for Federally supervised lenders, minimum net worth and experience for non-supervised lenders, approved lender participation requirements, treatment of applicants with delinquent child support payments, and builder credit requirements for SFHGLP (86 FR 30555). The Agency received comments from six respondents including individuals, mortgage companies, and interested parties. Three of the comments are not applicable to the contents of the rule.

The following is a summary of the relevant comments:

Comment 1: One respondent opposed eliminating the background checks for builders stating the builder's integrity could not be thoroughly checked to avoid court appearances and rebuilding homes.

Agency Response: The Agency still relies on the lender to review and approve construction contractors or builders. The Agency has determined that these credit requirements are not the industry standard. The builder-contractor's ability to participate in such projects should be based on the applicant's and lender's review of the builder-contractor's experience, reputation, and financial ability to complete the project in a timely, efficient, and competent manner. The Agency believes the stance is correctly stated and stands behind the rule changes.

Comment 2: One respondent replied in favor of the proposed rule stating obtaining background checks for builders were difficult to obtain and could potentially hurt a builder's reputation if, for some unforeseen reason, you could not obtain a builder approval.

Agency Response: The Agency has determined no action is required.

Comment 3: One respondent agreed with certain delinquent child support provisions in the rule, however, the respondent raised concerns that the proposed change would be unduly difficult for rural families and children who are already experiencing housing challenges. The respondent noted that employment in rural areas is limited and felt that there are other means to addressing delinquent child support.

Agency Response: The Agency believes the stance is correctly stated and stands behind the rule changes.

III. Summary of Rule Changes

A summary of the changes includes amending 7 CFR 3555.51(a)(8) to eliminate items (a)(8)(iv) because it refers to the Office of Thrift Supervision (OTS), which no longer exists. Furthermore, the current § 3555.51(a)(9) and (10) is intended to provide a path for lenders that are not regulated by state or federal agencies and do not meet the requirements of (a)(1) through (8) an opportunity to participate in the SFHGLP. Therefore, the introductory paragraph of § 3555.51(a)(9) and (10) will be amended to clarify that when

lenders cannot meet the demonstrated ability criteria outlined under § 3555.51(a)(1) through (8), those lenders must submit additional documentation to demonstrate their ability to originate loans.

The final rule will amend § 3555.51 by adding paragraph (a)(11) (i) and (ii) to reflect Financial Requirements for Non-Supervised Lenders. All lenders not supervised by federal entities listed in § 3555.51 (a)(8) must have: (i) A minimum adjusted net worth of $250,000, or at least $50,000 in working capital plus one percent of the total volume in excess of $25 million in guaranteed loans originated, serviced, or purchased during the lender's prior fiscal year, up to a maximum required adjusted net worth of $2.5 million and, (ii) one or more lines of credit with a minimum aggregate of $1 million. The proposed financial thresholds are based on recommendations analysis of participating lenders. § 3555.51(a). Establishing minimum financial requirements for non-supervised lenders would potentially reduce the Agency's risk of doing business with entities that have insufficient financial resources. Lenders that meet these minimum financial requirements demonstrate trustworthiness that would contribute to the success of the SFHGLP. The Agency took a combination approach when developing the minimum requirements, including the Veterans Administration (VA) base requirement and adding a volume component to it. This is structured and capped following the FHA standard. By taking this action, the Agency will align lender approval requirements with those of other Federal credit programs and incorporate [1] the best practice recommendations outlined in Office of Management and Budget (OMB) Circular A–129.[2]

Federally supervised lenders that meet the criteria of § 3555.51(a)(8) have demonstrated ability and will not be required to provide additional documentation. The Agency will require less documentation from the lender and make the process more efficient for Federally supervised lenders.

This final rule clarifies that lenders must meet applicable requirements in order to begin and continue participation in the SFHGLP. The Agency generally reviews each lender every two years to ensure compliance.

The Agency will amend § 3555.51 (b), SFHGLP participation requirements, to clarify by adding subparagraph (23) that lender eligibility will be reviewed every two years for continued participation in the SFHGLP. In addition, the Agency will clarify by adding subparagraph (24) that principal officers must have a minimum of two years of experience in originating or servicing mortgage loans as recommended in OMB Circular A–129. In order to be deemed eligible for continued lender participation in the SFHGLP, the lender and its principal officers must continue to meet all the criteria as outlined in § 3555.51, which, as amended, will include specific experience in underwriting and servicing loans, financial requirements for non-supervised lenders, and SFHGLP participation requirements.

The Agency has determined that obtaining builder-contractors credit and background checks is not an industry standard. The builder-contractor's ability to participate in such projects should be based on the applicant's and lender's review of the builder-contractor's experience, reputation, and financial ability to complete the project in a timely, efficient, and competent manner. The Agency will remove § 3555.105(b)(4) and (5) and thus streamline screening requirements, reduce administrative burden on the lender, and align with other Federal programs, including the agency's Direct Section 502 loan program, which does not have such requirements for builder-contractors.

Additionally, the Agency considers delinquent child support payments subject to administrative offset a significant derogatory obligation and an indication that an applicant does not have the reasonable ability or willingness to meet their obligations. It would be against the federal government's interest to guarantee a loan for an applicant from whom the federal government is simultaneously pursuing collection for a delinquent debt. This final rule will amend § 3555.151(i) (9) to specify that borrowers with delinquent child support payments, subject to collection by administrative offset, are ineligible unless the payments are brought current, the debt is paid in full, or otherwise satisfied.

IV. Regulatory Information

Statutory Authority

Section 510(k) of Title V the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12866, Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all state and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, and tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the

[2] Available at: *https://fiscal.treasury.gov/files/dms/circ-a129-upd-0113.pdf*. OMB requires credit granting agencies to establish and publish in the **Federal Register** specific eligibility criteria for lender or servicer participation in Federal credit programs, including qualification requirements for principal officers and staff of the lender or servicer. OMB Circular A–129, p. 12.

National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

The rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this final rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This Executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this final rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: *AIAN@usda.gov* to request such a consultation.

Programs Affected

The program affected by this final rule is listed in the Assistance Listing (AL) (*formerly Catalog of Federal Domestic Assistance*) under number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

This final rule contains no new reporting or recordkeeping burdens under OMB control number 0575–0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Civil Rights Impact Analysis

Rural Development has reviewed this final rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this final rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes, or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status.

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

USDA Non-Discrimination Policy

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.ocio.usda.gov/document/ad-3027,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: Program.Intake@usda.gov.*

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List of Subjects in 7 CFR Part 3555

Construction, Eligible loan purpose, Home improvement, Loan programs—housing and community development, Loan terms, Mortgage insurance, Mortgages, and Rural areas.

For the reasons discussed in the preamble, the Agency is proposing to amend 7 CFR part 3555 as follows:

PART 3555—GUARANTEED RURAL HOUSING PROGRAM

■ 1. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

Subpart B—Lender Participation

■ 2. Amend § 3555.51 by:
■ (a) Revising paragraph (a)(8), the introductory text of paragraph (a)(9) and the introductory text of paragraph(10).
■ (b) Adding paragraph (a)(11); and
■ (c) Adding paragraphs (b)(23) and (24).

The additions and revisions read as follows:

§ 3555.51 Lender eligibility.

* * * * *

(a) * * *

(8) A Federally supervised lender that provides documentation of its ability to

originate, underwrite, and service single-family loans. Acceptable sources of supervision include:

(i) Being a member of the Federal Reserve System.

(ii) The Federal Deposit Insurance Corporation (FDIC).

(iii) The National Credit Union Administration (NCUA).

(iv) The Office of the Comptroller of the Currency (OCC).

(v) The Federal Housing Finance Board regulating lenders within the Federal Home-Loan Bank (FHLB) system.

(9) If lenders cannot meet the requirements under paragraphs (a)(1) through (8) of this section, they may demonstrate its ability to originate and underwrite loans by submitting appropriate documentation, examples of which include, but are not limited to:

* * * * *

(10) A lender that proposes to service loans that cannot meet paragraphs (a)(1) through (8) of this section must demonstrate its ability by submitting appropriate documentation, examples of which include but are not limited to:

* * * * *

(11) The financial requirements for non-supervised lenders not covered in paragraph (a)(8), must have:

(i) A minimum adjusted net worth of $250,000, or $50,000 in working capital plus one percent of the total volume in excess of $25 million in guaranteed loans originated, serviced, or purchased during the lender's prior fiscal year, up to a maximum required adjusted net worth of $2.5 million, and

(ii) One or more lines of credit with a minimum aggregate of one million dollars.

(b) * * *

* * * * *

(23) Provide documentation as required by the Agency to be reviewed every two years for lender participation and,

(24) Provide evidence that principal officers have a minimum of two years of experience in originating or servicing guaranteed mortgage loans as recommended in OMB Circular A–129.

Subpart C—Loan Requirements

§ 3555.105 [Amended]

■ 3. Amend § 3555.105 paragraph (b) by removing paragraphs (b)(4) and (5) and redesignating paragraph (b)(6) as (b)(4).

Subpart D—Underwriting the Applicant

■ 4. Amend § 3555.151 by adding paragraph (i)(9) to read as follows:

§ 3555.151 Eligibility Requirements.

* * * * *

(i) * * *

(9) Applicants with delinquent child support payments subject to collection by administrative offset are ineligible unless the payments are brought current, the debt is paid in full, or otherwise satisfied.

* * * * *

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2022–18626 Filed 8–30–22; 8:45 am]

BILLING CODE 3410–XV–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–AA98

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the ''Commission'') is amending its Telemarketing Sales Rule (''TSR'') by updating the fees charged to entities accessing the National Do Not Call Registry (the ''Registry'') as required by the Do-Not-Call Registry Fee Extension Act of 2007.

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

ADDRESSES: Copies of this document are available on the internet at the Commission's website: *https://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Ami Joy Dziekan (202–326–2648), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Room CC–9225, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: To comply with the Do-Not-Call Registry Fee Extension Act of 2007 (15 U.S.C. 6152) (the ''Act''), the Commission is amending the TSR by updating the fees entities are charged for accessing the Registry as follows: the revised rule increases the annual fee for access to the Registry for each area code of data from $69 to $75 per area code; and increases the maximum amount that will be charged to any single entity for accessing area codes of data from $19,017 to $20,740. Entities may add area codes during the second six months of their annual subscription period and the fee for those additional area codes increases from $35 to $38.

These increases are in accordance with the Act, which specifies that beginning after fiscal year 2009, the dollar amounts charged shall be increased by an amount equal to the amounts specified in the Act, multiplied by the percentage (if any) by which the average of the monthly consumer price index (for all urban consumers published by the Department of Labor) (''CPI'') for the most recently ended 12-month period ending on June 30 exceeds the CPI for the 12-month period ending June 30, 2008. The Act also states any increase shall be rounded to the nearest dollar and there shall be no increase in the dollar amounts if the change in the CPI since the last fee increase is less than one percent. For fiscal year 2009, the Act specified that the original annual fee for access to the Registry for each area code of data was $54 per area code, or $27 per area code of data during the second six months of an entity's annual subscription period, and that the maximum amount that would be charged to any single entity for accessing area codes of data would be $14,850.

The determination whether a fee change is required and the amount of the fee change involves a two-step process. First, to determine whether a fee change is required, we measure the change in the CPI from the time of the previous increase in fees. There was an increase in the fees for fiscal year 2022. Accordingly, we calculated the change in the CPI since last year, and the increase was 9.10 percent. Because this change is over the one percent threshold, the fees will change for fiscal year 2023.

Second, to determine how much the fees should increase this fiscal year, we use the calculation specified by the Act set forth above: the percentage change in the baseline CPI applied to the original fees for fiscal year 2009. The average value of the CPI for July 1, 2007, to June 30, 2008y, was 211.702; the average value for July 1, 2021, to June 30, 2022, was 296.311, an increase of 39.97 percent. Applying the 39.97 percent increase to the base amount from fiscal year 2009 leads to a $75 fee for access to a single area code of data for a full year for fiscal year 2023, an increase of $6 from last year. The actual amount is $75.42 but when rounded, pursuant to the Act, $75 is the appropriate fee. The fee for accessing an additional area code for a half year increases by three dollars to $38 (rounded from $37.71). The maximum amount charged increases to $20,740 (rounded from $20,739.95).

Administrative Procedure Act; Regulatory Flexibility Act; Paperwork Reduction Act. The revisions to the Fee Rule are technical in nature and merely incorporate statutory changes to the TSR. These statutory changes have been adopted without change or interpretation, making public comment

unnecessary. Therefore, the Commission has determined that the notice and comment requirements of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b). For this reason, the requirements of the Regulatory Flexibility Act also do not apply. *See* 5 U.S.C. 603, 604.

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3521, the Office of Management and Budget (''OMB'') approved the information collection requirements in the Amended TSR and assigned the following existing OMB Control Number: 3084–0169. The amendments outlined in this Final Rule pertain only to the fee provision (§ 310.8) of the Amended TSR and will not establish or alter any record keeping, reporting, or third-party disclosure requirements elsewhere in the Amended TSR.

List of Subjects in 16 CFR Part 310

Advertising, Consumer protection, Reporting and recordkeeping requirements, Telephone, Trade practices.

Accordingly, the Federal Trade Commission amends part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

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

Authority: 15 U.S.C. 6101–6108; 15 U.S.C. 6151–6155.

■ 2. In § 310.8, revise paragraphs (c) and (d) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $75 for each area code of data accessed, up to a maximum of $20,740; *provided,* however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further,* that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under 47 CFR 64.1200, or any other Federal regulation or law. No person may participate in any arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in paragraph (c) of this section, each person excepted under paragraph (c) from paying the annual fee, and each person excepted from paying an annual fee under § 310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee (''the annual period''). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay $75 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under paragraph (c) of this section must first pay $38 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

* * * * *

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2022–18772 Filed 8–30–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice: 11809]

RIN 1400–AE71

Visas: Eligibility for Diplomatic Visa Issuance In the United States

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule is promulgated to add categories of nonimmigrants who may be issued nonimmigrant visas in the United States. This amendment will add a limited category of nonimmigrants who are born in the United States, but not subject to the jurisdiction thereof, to noncitizens maintaining A–1, A–2, C–2, C–3, G–1, G–3, G–4, or NATO nonimmigrant status and properly classifiable as such. The goal of these revisions is to codify the longstanding policy allowing such children to be issued diplomatic visas domestically to document their entitlement to A, C, G, or NATO nonimmigrant status.

DATES: This rule is effective August 31, 2022.

FOR FURTHER INFORMATION CONTACT: Andrea Lage, Acting Senior Regulatory Coordinator, Visa Services, Bureau of Consular Affairs, 600 19th Street NW, Washington, DC 20522, 202–485–7586, *VisaRegs@state.gov*.

SUPPLEMENTARY INFORMATION:

What changes to 22 CFR 41.111 does the Department propose?

This rule amends the regulation identifying categories of nonimmigrants who may be issued nonimmigrant visas in the United States, by adding a limited category of nonimmigrants who are born in the United States, but not subject to the jurisdiction thereof, as they were born to certain nonimmigrants maintaining A–1, A–2, C–2, C–3, G–1, G–3, G–4, or NATO status and properly classifiable as such.

Prior to this amendment, the regulation identifying categories of noncitizens authorized to obtain diplomatic nonimmigrant visas in the United States limited issuance to noncitizens ''currently maintaining status'' and ''properly classifiable'' in the A, C–2, C–3, G, or NATO nonimmigrant visa categories, and required that the noncitizens have evidence that they have ''been lawfully admitted in that status or have, after admission, had their classification changed to that status'' and their ''period of authorized stay in the United Sates in that status has not yet expired.'' 22 CFR 41.111(b)(1). The Department of State determines whether a noncitizen is maintaining A or G status, the most common visa categories impacted for purposes of the present rule. (See *e.g.,* 8 CFR 214.2(a)(1) and (g)(1), which provide that A and G nonimmigrants are admitted to the United States by the Department of Homeland Security for the ''duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status.'') Noncitizens previously admitted to the United States who are seeking domestic visa issuance satisfy the requirement, set out in the amended regulation, that they have been ''admitted [to the United States] in [A, C, G, or NATO] status'' or have ''had their classification changed to [A, C, G, or NATO] status'' by providing documentation from the Department of Homeland Security, such as an I–94.

Children born in the United States to parents maintaining certain A or G nonimmigrant status and benefiting

from diplomatic agent level immunities are not considered born subject to the jurisdiction of the United States and therefore do not acquire U.S. citizenship at birth under the Fourteenth Amendment. While not common, certain children born to parents in C–2, C–3 and NATO status also may not acquire U.S. citizenship at birth. This limited group of children would therefore be present in the United States without any documentation of their A, C–2, C–3, G or NATO nonimmigrant status. The Department's policy is that such children should be issued documentation of their A, C–2, C–3, G or NATO nonimmigrant status, as provided for by law for derivatives of the principal nonimmigrant. This amendment will codify existing policy permitting diplomatic visa issuance in the United States to this limited group of children, whose parents and other family members already are covered by the regulation describing issuance of diplomatic visas in the United States. This procedure is consistent with Department of State accreditation policy, which requires that derivative family members of those in A and G status possess a valid A or G visa.

In this rulemaking, the other categories of noncitizens eligible for visa issuance in the United States remain unchanged.

Regulatory Findings

A. Administrative Procedure Act

This rule is exempt from notice and comment as it involves a foreign affairs function of the United States. 5 U.S.C. 553(a).

An action will fall within the exception if it ''clearly and directly'' involves a foreign affairs function. *Capital Area Immigrants' Rights Coal.* v. *Trump,* 471 F. Supp. 3d 25, 53 (D.D.C. 2020) (''to be covered by the foreign affairs function exception, a rule must clearly and directly involve activities or actions characteristic to the conduct of international relations''). Cases that directly involve the conduct of foreign affairs include rules that regulate foreign diplomats in the United States. *E.B. et al.* v. *Dep't of State,* Civil Action 19–2856 at 11 (D.D.C. Feb. 4, 2022); *CAIR* v. *Trump,* 471 F. Supp. 3d 25, 54 (D.D.C. 2020). For example, in *City of N.Y.* v. *Permanent Mission of India to the U.N.,* the Second Circuit found that a State Department **Federal Register** Notice regarding exemptions from real property taxes imposed by state and local governments validly invoked the foreign affairs exemption because the regulation of ''quintessential foreign affairs functions such as diplomatic relations and the regulation of foreign missions [. . .] clearly and directly involves a 'foreign affairs function' '' *City of N.Y.* v. *Permanent Mission of India to the U.N.,* 618 F.3d 172, 202 (2d Cir. 2010).

This rule governs the issuance of visas to foreign diplomats and their family members in the United States and thus similarly implicates matters of diplomacy directly. It also is about a matter that is likely to have significant reciprocal consequences for the treatment of U.S. diplomatic personnel overseas. In the absence of a rule governing the domestic issuance of visas to the children of foreign mission officials born within the United States, the mission members may be required to travel overseas and apply for a visa for their child before reentering the United States to continue their assignment. These children may also face difficulties in traveling within the United States if they do not possess a valid visa. This rule regulates the treatment of foreign missions to allow for regular diplomatic relations between countries, and directly invokes a foreign affairs function. Requiring foreign mission personnel and their children to travel overseas and apply for a new diplomatic visa similarly invites reciprocal requirements on U.S. diplomatic personnel, significantly affecting the ability of U.S. diplomatic personnel to engage with foreign partners and conduct the work of foreign relations if they must depart the host country to obtain a new visa for the child. The State Department is best positioned to make determinations about such matters of international reciprocity—a point acknowledged by several district courts to justify the foreign affairs exception for rules such as this. *See CAIR,* 471 F. Supp. 3d at 54 (exempting such rules from notice and comment rulemaking ''makes sense'' because ''in the diplomatic context, agency action may be grounded in international reciprocity'').

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or Tribal governments, or by the private sector. This rule does not require the Department to prepare a statement because it will not result in any such expenditure, nor will it significantly or uniquely affect small governments. This rule involves visas, which involve individuals, and does not affect, state, local, or Tribal governments, or businesses.

D. Congressional Review Act of 1996

This rule is not a major rule as defined in 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

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

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These Executive Orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has examined this rule in light of Executive Order 13563 and has determined that the rulemaking is consistent with the guidance therein. The Department has reviewed this rulemaking to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. This rule will ensure consistency with U.S. and international law, and the benefits of the clarity will benefit the foreign relations of the United States. There are no anticipated costs to the public associated with this rule. This rule has been forwarded to the Office of Information and Regulatory Affairs and has been designated not significant under Executive Order 12866.

F. Executive Orders 12372 and 13132

This regulation will not have substantial direct effect on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

G. Executive Order 12988

The Department has reviewed the rule considering sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

H. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

I. Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Foreign officials, Immigration, Passports and Visas.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 41 is amended to read as follows:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 41 continues to read as follows:

Authority: 22 U.S.C. 2651a; 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

■ 2. Section 41.111 is amended by revising paragraph (b) to read as follows:

§ 41.111 Authority to issue visa.

* * * * *

(b) *Issuance in the United States in certain cases.* The Deputy Assistant Secretary for Visa Services and such officers of the Department as the former may designate are authorized, in their discretion, to issue nonimmigrant visas, including diplomatic visas, in the United States, to:

(1) Qualified applicants who are currently maintaining status and are properly classifiable in the A, C–2, C–3, G or NATO category and intend to reenter the United States in that status after a temporary absence abroad and who also present evidence that:

(i) They have been lawfully admitted in that status or have, after admission, had their classification changed to that status; and

(ii) Their period of authorized stay in the United States in that status has not expired; and

(2) Children who are born in the United States, but who are not subject to the jurisdiction thereof because they are born to certain qualified individuals who are currently maintaining status and are properly classifiable in the A, C–2, C–3, G or NATO category.

(3) Other qualified applicants who:

(i) Are currently maintaining status in the E, H, I, L, O, or P nonimmigrant category;

(ii) Intend to reenter the United States in that status after a temporary absence abroad; and

(iii) Who also present evidence that:

(A) They were previously issued visas at a consular office abroad and admitted to the United States in the status which they are currently maintaining; and

(B) Their period of authorized admission in that status has not expired.

Rena Bitter,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2022–18810 Filed 8–30–22; 8:45 am]

BILLING CODE 4710–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0641]

RIN 1625–AA00

Safety Zone; Firework Event, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Willamette River. This action is necessary to provide for the safety of life on these navigable waters between the Marquam Bridge to Hawthorne Bridge, Portland, Oregon, during a fireworks display on the evening of September 3, 2022. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Columbia River or a designated representative.

DATES: This rule is effective from 8:30 p.m. to 10 p.m. on September 3, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0641 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 about this rulemaking, call or email LT Sean Murphy, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On July 19, 2022, the Oregon Symphony notified the Coast Guard that it will be conducting a fireworks display from 9 to 9:30 p.m. on September 3, 2022. The fireworks are to be launched from a barge in the Willamette River between Marquam Bridge and Hawthorne Bridge, Portland, Oregon. In response, on August 3, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Firework Event, Willamette River, Portland, OR (87 FR 47659). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended August 19, 2022, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to protect persons and vessels from the safety hazards associated with the planned fireworks display on September 3, 2022.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Columbia River (COTP) has determined that potential hazards associated with the fireworks to be used in this September 3, 2022 display will be a safety concern for anyone within a 300-yard radius of the barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

As noted above, we received no comments on our NPRM published August 3, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 8:30 p.m. to 10 p.m. on September 3, 2022. The safety zone covers all navigable waters within a 300-yard radius of a barge in the Willamette River located between the Marquam Bridge and Hawthorne Bridge, Portland, OR. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9 p.m. to 9:30 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration, of the safety zone. The safety zone created by this rule is designed to minimize its impact on navigable waters. This rule prohibits entry into certain navigable waters of the Willamette River and is not anticipated to exceed two hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions vessels may still transit through the safety zone when permitted by the COTP. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard 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 safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule affects 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 does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 1.5 hours that would prohibit entry within 300 yards of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction

Manual 023–01–001–01, Rev. 1. A 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.T13–0641 to read as follows:

§ 165.T13–0641 Safety Zone; Willamette River, Portland, OR.

(a) *Location.* The following area is a safety zone: All navigable waters of the Willamette River, from surface to bottom, in a 300-yard radius from the fireworks barge located between the Marquam Bridge and Hawthorne Bridge, Portland, OR.

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

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Columbia River (COTP) in the enforcement of the regulations in this section.

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

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

(3) The COTP will provide advanced notice of the regulated area via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 8:30 p.m. to 10 p.m. on September 3, 2022. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: August 24, 2022.

M. Scott Jackson,

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

[FR Doc. 2022–18843 Filed 8–30–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0682]

RIN 1625–AA00

Safety Zone; North Hero-Grand Isle Bridge, Lake Champlain, VT

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is extending the effective period of the temporary safety zone for the navigable waters within a 50 yard radius from the center of the North Hero-Grand Isle Bridge, on Lake Champlain, VT. This rules extends the effective period of the existing safety zone for an additional two years. The safety zone will now end on September 1, 2024. When enforced, this regulation will continue to prohibit entry of vessels or persons into the safety zone unless authorized by Captain of the Port for Sector Northern New England or a designated representative. The safety zone is necessary to protect personnel, vessels, and marine environment from potential hazards created by the demolition, subsequent removal, and replacement of the North Hero-Grand Isle Bridge.

DATES: This rule is effective from September 2, 2022, through September 1, 2024.

Comments and related material must be received by the Coast Guard on or before October 31, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0682 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On October 9, 2018, the Coast Guard published a temporary interim rule (TIR) establishing a safety zone on the navigable waters within a 50 yard radius from the center of the North Hero-Grand Isle Bridge, on Lake Champlain, VT for the North Hero-Grand Isle Bridge replacement project (83 FR 50503). We received no comments on the published TIR. No public meeting was requested and none was held. Construction on the North Hero-Grand Isle Bridge began in October 2018.

The Coast Guard originally published this rule to be effective, and enforceable, through September 1, 2022, but is extending it to September 1, 2024, to complete all remaining contract operations in and over Lake Champlain, including, but not limited to steel erection, concrete bridge deck placements, installations of navigation lighting, and removal of the original North Hero-Grand Isle Bridge. This rule extends the effective period of the safety zone for two years until September 1, 2024, due to delays of the North Hero-Grand Isle Bridge replacement project.

The Captain of the Port Sector Northern New England (COTP) has determined that the potential hazards associated with the bridge replacement project will be a safety concern for anyone within a 50 yard radius from the center of the North Hero-Grand Isle Bridge, on Lake Champlain, VT. No

vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. If the project is completed prior to September 1, 2024, enforcement of the safety zone will be suspended and notice given via Broadcast Notice to Mariners, Local Notice to Mariners, or both.

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. The Coast Guard will consider comments in issuing a subsequent temporary interim rule or temporary final rule.

The notice allowing the construction project to proceed and providing updated timelines for the project was only recently finalized and provided to the Coast Guard, which did not give the Coast Guard enough time to publish a NPRM, take public comments, and issue a final rule before the existing regulation expires. Timely action is needed to respond to the potential safety hazards associated with removal of the original bridge and construction of a new replacement bridge. It would be impracticable and contrary to the public interest to publish a NPRM because we must extend the effective period of the safety zone as soon as possible to protect the safety of the waterway users, construction crew, and other personnel associated with the bridge project. A delay of the project to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the completion date of the bridge project and subsequent reopening of the North Hero-Grand Island Bridge for normal operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because timely action is needed to respond to the potential safety hazards associated with the removal of the original bridge and construction of a new replacement bridge. It would be impracticable and contrary to the public interest to publish to delay effectiveness because we must protect the safety of the waterway users, construction crew, and other personnel associated with the bridge project.

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 potential hazards associated with this bridge construction, and removal project that has already commenced, and will continue through September 1, 2024, will be a safety concern for anyone within the work zone. The construction and removal of the bridge continues to be extremely complex and presents many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and barges positioned along the length of the bridge. In order to mitigate the inherent risks involved with the removal of a bridge, and installation of the new bridge, it is necessary to control vessel movement through the area. The purpose of this TIR is to ensure the safety of the waterway users, the public, and construction workers for the duration of the new bridge construction and demolition. Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to minimize such unexpected or uncontrolled movement of water, any expeditous passage. No vessel may stop, moor, anchor, or loiter within the safety zone at any time unless they are working on the bridge construction operations. The rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the bridge construction project.

IV. Discussion of the Rule

This rule extends the effective period of the temporary interim rule for the navigable waters of Lake Champlain, VT, surrounding the North Hero-Grand Isle bridge for two additional years until September 1, 2024. There are no other changes to the regulatory text of this rule as cited in 33 CFR 165.T01–0682. This rule will continue to prohibit all persons and vessel traffic from the safety zone unless exceptions are authorized by the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the following reasons: (1) The safety zone only impacts a small designated area of Lake Champlain, (2) the safety zone will only be enforced when work equipment is present in the navigable channel as a result of bridge removal and replacement operations or if there is an emergency, (3) persons or vessels desiring to enter the safety zone may do so with permission from the COTP or a designated representative. The Coast Guard will notify the public of the enforcement of this rule via appropriate means, such as via Local Notice to Mariners and Broadcast Notice to Mariners via marine channel 16 (VHF–FM).

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this proposed 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 proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the

person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this 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 involves a temporary safety zone that will prohibit entry within a 50 yard radius from the center of the North Hero-Grand Isle Bridge during its removal and replacement. 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 preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locationg 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.

VI. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2018–0682 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

List of Subjects in 33 CFR Part 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. Amend § 165.T01–0682 by revising paragraph (c) to read as follows:

§ 165.T01–0682 Safety Zone; North Hero-Grand Isle Bridge, Lake Champlain, VT.

* * * * *

(c) *Effective and enforcement period.* This section is effective from September 2, 2022, through September 1, 2024, and

subject to enforcement 24 hours a day. When enforced, as deemed necessary by the COTP, vessels and persons will be prohibited from entering the safety zone unless granted permission from the COTP or the COTP's designated representative.

* * * * *

Dated: August 26, 2022.

A.E. Florentino,

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

[FR Doc. 2022–18823 Filed 8–30–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AR19

Social Security Number Fraud Prevention Act of 2017 Implementation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule

SUMMARY: The Department of Veterans Affairs is amending its regulations implementing the Privacy Act. These revisions clarify and update the language of procedural requirements pertaining to the inclusion of Social Security account numbers (SSN) on documents that the Department sends by mail. These revisions are also required by the Social Security Number Fraud Prevention Act of 2017, which restricts the inclusion of SSNs on documents sent by mail by the Federal Government.

DATES: This rule is effective September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Amy L. Rose, Program Analyst, VA Privacy Service, 005R1A, 811 Vermont Ave. NW, Washington, DC 20420, (202) 237–5070. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On October 6, 2021, VA published a proposed rule in the **Federal Register** (86 FR 55547) that would establish VA's statutory authority to implement the Social Security Number Fraud Prevention Act of 2017 (the Act) (Pub L.115–59; 42 U.S.C. 405 note). The public comment period ended on December 6, 2021, and VA received two comments in response to the proposed rule.

One comment supported the proposed rule but inquired if there would be any overlap between the proposed rule and the VA mail management policy (VA Directive and Handbook 6340). VA Directive 6340 broadly states that ''VA mail facilities must ensure all mail is handled appropriately to conform to the Freedom of Information Act (FOIA) and/or the Privacy Act.'' However, neither the Directive nor VA Handbook 6540 specifically address Public Law 115–59, which is the statutory authority for promulgating the proposed rule. There is no statutory overlap between VA mail management policy and the proposed rule at present (although VA may eventually update VA Directive and Handbook 6340 to reflect the final rule). For this reason, VA will make no changes to the rulemaking based on this comment.

One comment suggested that there should be an ''opt in'' option for ''older Veterans who rely on paperwork from the VA that has their SSN on it for different matters'' so that older Veterans could continue to receive mail with their SSN on it. The proposed rule includes the addition of sections to 38 CFR 1.575 that would enable VA to truncate SSNs for outgoing mail where it is not possible to eliminate the SSN (such as in the case of older Veterans whose case number contains their SSNs). This provision would address the concerns of providing smooth, continuous service better than placing the burden on older Veterans to specifically ''opt in'' to continue to receive mail with their SSN on it. For this reason, VA will make no changes to the rulemaking based on this comment.

Accordingly, the proposed rule is adopted as a final rule without change.

Executive Orders 12866 and 13563

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

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is that the regulation only governs the circumstances under which the Department includes SSNs in mail issued by the Department. The behavior of small entities is not addressed in the regulation and is therefore not impacted. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

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

Paperwork Reduction Act

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

Assistance Listing

There are no Assistance Listing numbers and titles for this rule.

List of Subjects in 38 CFR Part 1

Disability benefits, Pensions, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on August 25, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR 1.575, as set forth below:

CHAPTER 1—DEPARTMENT OF VETERANS AFFAIRS

PART 1—GENERAL PROVISIONS

§ 1.575 —Social Security Numbers in Veterans' Benefits Matters.

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

Authority: 38 U.S.C. 5101, and as noted in specific sections.

■ 2. Amend § 1.575 by adding paragraph (d) to read as follows:

§ 1.575 Social security numbers in veterans' benefits matters.

* * * * *

(d) A document the Department sends by mail may not include the social security number of an individual except as provided below:

(1) The social security number must be truncated to no more than the last four digits; or

(2) If truncation of the social security number is not feasible:

(i) The Senior Agency Official for Privacy, the Chief Privacy Officer, and the Social Security Number Advisory Board (SSNAB) must jointly determine that inclusion of the social security number on the document is necessary as required by law; to comply with another legal mandate; to identify a specific individual where no adequate substitute is available; or to fulfill a compelling Department business need;

(ii) The document that includes the complete social security number of an individual must be listed on the Complete Social Security Number Mailed Documents Listing on a publicly available website; and

(iii) No portion of the social security number may be visible on the outside of any mailing.

* * * * *

[FR Doc. 2022–18782 Filed 8–30–22; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2022–0347; FRL–9333–02–R3]

Federal Implementation Plan Addressing Reasonably Available Control Technology Requirements for Certain Sources in Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating a Federal implementation plan (FIP) for the Commonwealth of Pennsylvania (Pennsylvania or the Commonwealth). This FIP sets emission limits for nitrogen oxides (NO_X) emitted from coal-fired electric generating units (EGUs) equipped with selective catalytic reduction (SCR) in Pennsylvania in order to meet the reasonably available control technology (RACT) requirements for the 1997 and 2008 ozone national ambient air quality standards (NAAQS). This action is being taken in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on September 30, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2022–0347. 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 through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: David Talley, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2117. Mr. Talley can also be reached via electronic mail at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 25, 2022 (87 FR 31798), EPA published a notice of proposed rulemaking (NPRM) addressing NO_X emissions from coal-fired power plants in the Commonwealth of Pennsylvania. In the NPRM, EPA proposed a FIP in order to address the CAA's RACT requirements under the 1997 and 2008 ozone NAAQS for large, coal-fired EGUs equipped with SCR in Pennsylvania. As discussed in the NPRM, the FIP was proposed as an outgrowth of a decision by the United States Court of Appeals for the Third Circuit (''the Court''), which vacated and remanded to EPA a portion of our prior approval of Pennsylvania's ''RACT II'' rule which applied to the same universe of sources. See 87 FR 31798; 31799–39802.

The Court directed that ''[o]n remand, the agency must either approve a revised, compliant SIP within two years or formulate a new Federal implementation plan.'' *Sierra Club* v. *EPA,* 972 F.3d 290, 309 (3rd Circuit 2020) (''Sierra Club''). On September 15, 2021, EPA proposed disapproval of those portions of the prior approval which were vacated by the Court. See 86 FR 51315. EPA took final action to disapprove the vacated portions of our prior approval. 87 FR 50257, August 16, 2022. EPA is now finalizing a FIP to fulfill the Court's order.

The collection of sources addressed by the RACT analysis in this FIP has been determined by the scope of the Third Circuit's order in the Sierra Club case and EPA's subsequent disapproval action. Herein, EPA is finalizing RACT control requirements for the four facilities that remain open and active that were subject to the SIP provision that the Court vacated EPA's approval of and that EPA thereafter disapproved: Conemaugh, Homer City, Keystone, and Montour. EPA's prior approval action and the Court's decision related to source-specific RACT determinations for the Cheswick, Conemaugh, Homer City, Keystone, and Montour generating stations. The Bruce Mansfield and Cheswick facilities ceased operation, so there is no longer a need to address RACT requirements for those facilities, so are not at included in this final action. Accordingly, there are a total of nine affected EGUs/units at four facilities in this action: three at Homer City and two each at Conemaugh, Keystone and Montour.

The Pennsylvania Department of Environmental Protection (PADEP) undertook efforts to develop a SIP revision addressing the deficiencies identified by the Third Circuit in the *Sierra Club* decision. PADEP proceeded to develop source specific (''case-by-case'') RACT determinations for the generating stations at issue. By April 1, 2021, each of the facilities had submitted permit applications to PADEP with alternative RACT proposals in accordance with 25 Pa. Code 129.99. Subsequently, PADEP issued technical deficiency notices to obtain more information needed to support the facilities' proposed RACT determinations. Although additional information was provided in response to these notices, PADEP determined the proposals to be insufficient and began developing its own RACT determination for each facility. The outcome of this process was PADEP's issuance of draft permits for each facility, which were

developed with the intention of submitting each case-by-case RACT permit to be incorporated as a federally enforceable revision to the Pennsylvania SIP. Each draft permit underwent a 30-day public comment period,[1] during which EPA provided source-specific comments to PADEP for each permit. On May 26, 2022, PADEP submitted case-by-case RACT determinations for Keystone, Conemaugh, and Homer City as a revision to the Pennsylvania SIP. On June 9, 2022, PADEP submitted a case-by-case RACT determination for Montour as a revision to the Pennsylvania SIP. EPA has not yet fully evaluated those submittals and they are outside of the scope of this action. Any action on those proposed SIP revisions will be at a later date and under a separate action.

II. Summary of FIP and EPA Analysis

A. Overall Basis for Final Rule

This section presents a summary of the basis for the final FIP. The overall basis for the proposal was explained in detail in the NPRM. The overall basis is largely unchanged from proposal, though as explained in the responses to comments and section IV of this document on the final limits, some adjustments were made to the resulting limits. For more detail on what was proposed, please refer to the May 25, 2022 proposal publication (87 FR 31798).

The basis for the final rule begins with the RACT definition. As discussed in the NPRM, RACT is not defined in the CAA. However, EPA's longstanding definition of RACT is ''the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' [2] The Third Circuit decision ''assume[d] without deciding'' that EPA's definition of RACT is correct. *Sierra Club* at 294. EPA is using its longstanding definition of RACT to establish the limits in this FIP.

The EPA proposed that RACT limits in this FIP will apply throughout the year. As discussed further in Section III of this preamble in response to comments on this issue, the EPA is retaining year-round limits because the limits herein are technologically and economically feasible during the entire year. While other regulatory controls for ozone, such as the Cross State Air Pollution Rule (CSAPR) and its updates, may apply during a defined ozone season, the RACT limits finalized herein do not authorize seasonal exemptions based on atmospheric conditions or other factors. As explained, this action is being finalized to meet the statutory requirement to implement RACT in accordance with sections 182 and 184 of the Clean Air Act. Implementation of RACT, and the definition of what is RACT, is not constrained by the ozone season or atmospheric consideration. Therefore, the limits finalized here apply throughout the year since the RACT emissions rates are technologically and economically feasible year-round. To the degree that the EPA analyses underlying the RACT emissions limits here rely on past performance data, those calculations typically use ozone season data. This is because ozone season data generally represent the time period over which the NO_X emissions rate performance of these units is the best. Put another way, the ozone season data for the facilities subject to these limits are a reliable indicator of what is technologically and economically feasible for these facilities, and EPA has no reason to believe that achieving the same performance outside the ozone season would be technologically or economically infeasible. As explained further in the next section, no commenters presented compelling evidence to change EPA's conclusion on this point.

The EPA proposed to develop the FIP limits using a weighted rate approach, and is retaining that overall approach here. EPA received significant comments both for and against such an approach, which are discussed in detail in the next section. Overall, upon consideration of these comments, the EPA's judgment is that this approach is still the best approach for addressing the Court decision and addressing SCR operation during EGU cycling (the operation of EGUs turning on and off or operating at varying loads levels based on electric demand). As we discussed extensively at proposal, the cycling of units, combined with the role of flue gas temperature in SCR performance, prompted EPA to consider how best to establish RACT limits that address the Third Circuit's concerns about allowing less stringent limits when flue gas temperatures went below what it considered to be an arbitrary temperature threshold. This is a challenging factor to consider in cases when the operating temperature varies, and when the units spend some time at temperatures where SCR is very effective, and some time at temperatures where it is not.

At proposal, EPA provided an assessment of whether the units in this FIP exhibit a pattern of cycling between temperatures where SCR is effective and where it is not. EPA evaluated years of data submitted by these sources to EPA to characterize their variability in hours of operation or level of operation.[3] In particular, EPA used this information to identify whether, or to what degree, the EGUs have shifted from being ''baseload'' units (*i.e.,* a steady-state heat input rate generally within SCR optimal temperature range) to ''cycling'' units (*i.e.,* variable heat input rates, possibly including periods below the SCR optimal temperature range). All of these EGUs were designed and built as baseload units, meaning the boilers were designed to be operated at levels of heat input near their design capacity 24 hours per day, seven days per week, for much of the year. As a result, the SCRs installed in the early 2000s were designed and built to work in tandem with a baseload boiler.[4] In particular, the SCR catalyst and the reagent injection controls were designed for the consistently higher flue gas temperatures created by baseload boiler operation. In more recent years, for multiple reasons, these old, coal-fired baseload units have struggled to remain competitive when bidding into the PJM Interconnection (PJM) electricity market.[5] Nationally, total electric generation has generally remained consistent, but between 2010 and 2020, generation at coal-fired utilities has declined by 68%.[6] As a result, many of these units more recently have tended to cycle between high heat inputs, when electricity demand is high, and lower heat inputs or complete shutdowns,

[1] See 51 Pa.B. 5834, September 11, 2021 (Keystone); 51 Pa.B. 6259, October 2, 2021 (Conemaugh); 51 Pa.B. 6558, October 16, 2021 (Homer City); 51 Pa.B. 6930, November 6, 2021 (Montour); Allegheny County Health Department Public Notices, December 2, 2021 (Cheswick).

[2] See Memo, dated December 9, 1976, from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas,'' p. 2, available at *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19761209_strelow_ract.pdf* (Strelow Memo), and 44 FR 53761, at 53762, footnote 2 (September 17, 1979).

[3] See the Excel spreadsheet entitled ''PA–MD–DE SCR unit data 2002–2020.xlsx'' in the docket for this action.

[4] This point is not applicable to the Conemaugh facility where SCR was installed much later than other facilities at issue in this rule. According to Key-Con's comment letter, ''KEY–CON Management understood that compliance with the near-future MATS Rule and PADEP RACT II Rule would preclude unit operations that bypassed the SCRs at both stations.'' See Key-Con comments at 10.

[5] PJM is a regional transmission organization (RTO) or grid operator which provides wholesale electricity throughout 13 states and the District of Columbia.

[6] U.S. Energy Information Administration, ''Electric Power Annual 2020,'' Table 3.1.A. Net Generation by Energy Source, *https://www.eia.gov/electricity/annual/.*

when demand is low, sometimes on a daily basis. This cycling behavior can affect the ability of the EGUs to operate their SCRs because at lower heat inputs the temperature of the flue gas can drop below the operating temperature for which the SCR was designed.[7] Nothing in the comments undermined EPA's basic conclusion that this cycling pattern is occurring. Accordingly, the final rule establishes limits that account for the technical limits on SCR operation that can result from this cycling behavior.

In the proposal, we also noted that in RACT II, PADEP attempted to address this cycling behavior by creating tiered emissions limits for different modes of operation based on the flue gas temperature, which its RACT II rule expressed as a transition from the 0.12 pounds of NO_X per million British thermal units (lb/MMBtu) rate to much less stringent rates (between 0.35 and 0.4 lb/MMBtu, depending on the type of boiler) based on a temperature cutoff of 600 degrees, with the less stringent rate essentially representing a ''SCR-off'' mode (*i.e.,* an emission limit applicable at times when the SCR has been idled or bypassed and is not actively removing NO_X). The Third Circuit rejected this approach because the selection of the cutoff temperature was not sufficiently supported by the record. The Third Circuit decision also questioned the need for the less stringent rates, noting that nearby states do not have different emission rates based on inlet temperatures. EPA considered the Court's concerns as well as input received during the public comment period expressing both support for, and opposition to, a tiered limit. We also considered the practical and policy implications in structuring a tiered limit for these cycling EGUs based on operating temperature. EPA has decided to retain the proposed weighted approach instead of trying to develop a tiered limit. As noted at proposal, the effectiveness of SCR does not drop to zero at a single temperature point and defining the minimum reasonable temperature range to begin reducing SCR operation for the purposes of creating an enforceable RACT limit is a highly technical, unit-specific determination that depends on several varying factors.[8] We noted the complexity and detailed information necessary to produce a justified and enforceable tiered limit that represents RACT and addresses the Court's concerns about the basis and enforceability of the tiers, and as explained further in the next section, none of the comments, including those supporting the tiered limit, provided sufficient basis for EPA to change its approach.

In the proposal, EPA expressed an additional concern about addressing cycling operation through a tiered RACT limit based on operating temperature, which is that it would create an incentive for a source to cycle to temperatures where SCR is not required, in order to avoid SCR operating costs and potentially gain a competitive advantage. In the case of the Pennsylvania limits addressed by the Third Circuit's decision, there was no limit on how much time the units could spend in SCR-off mode. In section C of the TSD for the proposed action,[9] EPA shows that over the last decade, some affected sources have varied the gross load level to which they cycle down, hovering either just above or just below the threshold at which the SCR can likely operate effectively. Depending on the unit, this slight change in electricity output could significantly affect SCR operation and the resulting emissions output. Though instances of cycling below SCR thresholds occurred in some cases prior to the implementation of Pennsylvania's tiered RACT limit and thus the limit may not be the sole driver of the behavior following its implementation, the tiered limit certainly allows this behavior to occur. While EPA acknowledges the need for EGUs to operate at times in modes where SCR cannot operate, EPA believes its RACT limit should minimize incentives to do that, and a tiered rate structure that effectively has no limit on SCR-off operation tends to do the opposite. We received significant comments on this concern, which are addressed in the response to comments section. EPA remains concerned about essentially unlimited SCR-off operation, and continues to believe that this is a key reason to retain the weighted rate approach over a tiered approach.

On the other hand, EPA also expressed concerns in the proposal about a RACT limit that treats these EGUs as always operating as baseload units by imposing a NO_X emission rate that applies at all times but can technically be achieved only if the boiler is operating at high loads. Recent data indicate that these units are not operating as baseload units and are not likely to do so in the future.[10] Selecting the best baseload rate (the rate reflecting SCR operation in the optimal temperature range) and applying that rate at all times does not account for, and could essentially prohibit, some cycling operation of these units. Cycling has become more common at coal-fired EGUs because they are increasingly outcompeted for baseload power. In the past, these units were among the cheapest sources of electricity and would often run close to maximum capacity. Other EGUs can now generate electricity at lower costs than the coal-fired units.[11] Thus, the coal-fired units now cycle to lower loads during hours with relatively low system demand (often overnight and especially during the spring and fall ''shoulder'' seasons when space heating and cooling demand is minimized) when their power is more expensive than the marginal supply to meet lower load levels. Hence, they cycle up and down as load- and demand-driven power prices rise and fall, and they operate when the price meets or exceeds their cost to supply power. EPA acknowledges that cycling down to a SCR-off mode may sometimes happen, for example, when electricity demand drops unexpectedly, and other units provide the power at a lower cost. The consideration of the technical and economic feasibility of a given RACT limit should reflect, to the extent possible, consideration of the past, current, and future expected operating environment of a given unit. In electing to finalize its weighted rate approach, EPA considered these feasibility issues to establish a rate for each unit that reflects a reasonable level of load-following (cycling) (*e.g.,* a level consistent with similar SCR-equipped units) but that also accounts for the lower historic NO_X rates that these units have achieved. While the comments generally affirmed that a weighted rate could be structured to address cycling, we did receive comments on the appropriate considerations in choosing

[7] U.S. EPA, ''EPA Alternative Control Techniques Document for NO_X Emissions from Utility Boilers'' EPA–453/R–94–023, March 1994, p. 5–119, *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000INPN.txt.*

[8] See Chapter 2, subsection 2.2.2 of the SCR Cost Manual, 7th Edition, available at *https://www.epa.gov/sites/default/files/2017-12/documents/scrcostmanualchapter7thedition_2016revisions2017.pdf.*

[9] EPA is not revising the TSD. Any new technical analysis will be discussed directly in section III (EPA's Response to Comments) of this preamble.

[10] See section C of the TSD for the proposed action.

[11] The decreasing competitiveness of Pennsylvania's coal units is illustrated by the fact that their share of the state's total generation has declined from about 60% in 2001 to roughly 10% in 2021. See Energy Information Administration. Form EIA–923, Power Plant Operations Report (2001–2021).

the final rates, which are responded to later in this notice.

B. Weighted Rates

As discussed in the NPRM, in order to address the concerns discussed previously in this section about how to determine RACT for EGUs that cycle, EPA proposed to express the RACT NO_X limits for these units using a weighted rate limit. The weighted rate incorporates both a lower ''SCR-on'' limit and a higher ''SCR-off'' limit. Through assignment of weights to these two limits based on the proportion of operation in SCR-on and SCR-off modes during a historical period that encompasses the range of recent operation, the SCR-on and SCR-off limits are combined into a single RACT limit that applies at all times. The weight given to the proposed SCR-off limit (established as described later in this section) has the effect of limiting the portion of time a cycling source can operate in SCR-off mode and incentivizes a source to shift to SCR-on mode to preserve headroom under the limit. While driving SCR operation, the weighted limit accommodates the need for an EGU to occasionally cycle down to loads below which the SCR can operate effectively and does not prohibit SCR-off operation or dictate specific times when it must not occur. In this way, this approach avoids the difficulty of precisely establishing the minimum temperature point at which the SCR-off mode is triggered, effectively acknowledging the more gradual nature of the transition between modes where SCR is or is not effective. Finally, it is readily enforceable through existing Continuous Emission Monitoring Systems (CEMS), without the need for development of recordkeeping for additional parameters that define the SCR-off mode. The approach is described in more detail below.

As a starting point for developing the proposed weighted rates for each unit, EPA examined data related to the threshold at which these facilities can effectively operate their SCR. Then, EPA calculated both SCR-on and SCR-off rates using historic ozone season operating data for the unit to determine when the SCR was likely running and when it was likely not running, and then established rates based again on historic operating data that represent the lowest emission limit that the source is capable of meeting when the SCR is running and when it is not. EPA did this by using the estimated minimum SCR operation threshold as described in the proposed action, and then calculating average SCR-on and SCR-off rates for each unit based on historic ozone season operating data for that unit, when available, from 2003 to 2021. For more detail on the development of the proposed rates, see section D of the TSD for the proposed action. In particular, section D.1 addresses the proposed threshold analysis. The SCR-on rate is an average of all hours in which the SCR was likely running (operating above the threshold at which it can run the SCR with an hourly NO_X emission rate below 0.2 lb/MMBtu) during each unit's third-best ozone season from the period 2003 to 2021. The third-best ozone season was identified based on the unit's overall average NO_X emission rate during each ozone season from 2003 to 2021. This time period captures all years of SCR operation for each facility, though Conemaugh only installed SCR in late 2014. EPA included all these years of data in developing the proposed as well as the final limits because the Agency did not identify, and commenters did not provide, a compelling reason to exclude any of the years. This is in line with the Third Circuit's decision, which questioned EPA's review of only certain years of emissions data for these sources in determining whether to approve Pennsylvania's RACT II NO_X emission rate for these EGUs. The use of the third-best year accounts for degradation of control equipment over time, and it avoids biasing the limit with uncharacteristically low emitting days, or under uncharacteristically optimal operating conditions. EPA similarly used a third-best ozone season approach for the Revised CSAPR Update (86 FR 23054, April 30, 2021) (RCU) and the proposed Good Neighbor Plan for the 2015 Ozone NAAQS (87 FR 20036, April 6, 2022) (Good Neighbor Plan). The ''SCR-off'' rate used to develop the proposal is an average of all hours in which the unit's SCR was likely not running (operating below the threshold at which it can run the SCR with an hourly NO_X rate above 0.2 lb/MMBtu) during all ozone seasons from 2003–2021 (except for Conemaugh). All ozone seasons in the time period were used in order to increase the sample size of this subset of the data, as an individual ozone season likely contains significantly fewer data points of non-SCR operation.

EPA then calculated the SCR-on and SCR-off ''weights,'' which represent the amount of heat input spent above (SCR-on) or below (SCR-off) the SCR threshold, for each EGU. For the weights used at the proposal stage, EPA evaluated data from the 2011 to 2021 ozone seasons and selected the year in which the EGU had its third highest proportion of heat input spent above the SCR threshold during this time period, using that year's weight (the ''third-best weight'') together with the SCR-on/SCR-off rates described previously to calculate the weighted rate. The years 2011–2021 were analyzed for purposes of the proposal because they likely are representative of the time period that encompasses the years when the units began to exhibit a greater cycling pattern, and it is reasonable to expect that this pattern will continue for the foreseeable future.

Using these data, EPA proposed emissions limitations based on the following equation:

*(SCR-on weight * SCR-on mean rate)* + *(SCR off weight * SCR off mean rate)* = emissions limit in lb/MMBtu.

Using this equation, EPA proposed the NO_X emission limits listed in Table 1, based on a 30-day rolling average:

TABLE 1—PROPOSED NO_X EMISSION RATE LIMITS [12]

Facility name	Unit	Low range rate (lb/MMBtu)	High range rate (lb/MMBtu)	Weighted rate (lb/MMBtu)	Proposed facility-wide 30-day average rate limit (lb/MMBtu)
Cheswick	1	0.085	0.195	0.099	0.099
Conemaugh	1	0.071	0.132	0.091	0.091
Conemaugh	2	0.070	0.132	0.094	.....
Homer City	1	0.102	0.190	0.102	0.088
Homer City	2	0.088	0.126	0.088	.....
Homer City	3	0.096	0.136	0.097	.....
Keystone	1	0.046	0.170	0.076	0.074

TABLE 1—PROPOSED NO_X EMISSION RATE LIMITS [12]—Continued

Facility name	Unit	Low range rate (lb/MMBtu)	High range rate (lb/MMBtu)	Weighted rate (lb/MMBtu)	Proposed facility-wide 30-day average rate limit (lb/MMBtu)
Keystone	2	0.045	0.172	0.074	.....
Montour	1	0.047	0.131	0.069	0.069
Montour	2	0.048	0.145	0.070	.....

EPA solicited comment on the proposed facility-wide average rate limits, as well as the low and high range of potential limits. The limits are calculated as a 30-day rolling average, and apply at all times, including during operations when exhaust gas temperatures at the SCR inlet are too low for the SCR to operate, or operate optimally. For facilities with more than one unit, EPA proposed to allow facility-wide averaging for compliance, but proposed that the average limit be based on the weighted rate achieved by the best performing unit. A 30-day average ''smooths'' operational variability by averaging the current value with the prior values over a rolling 30-day period to determine compliance. While some period of lb/MMBtu values over the compliance rate can occur without triggering a violation, they must be offset by corresponding periods where the lb/MMBtu rate is lower than the compliance rate (*i.e.,* the 30-day rolling average rate). EPA is retaining its proposed overall approach to developing these limits, but for reasons discussed in Section III of this preamble, EPA is changing the way the rate calculation is done for facilities with more than one unit, and is making additional adjustments to the rate calculation in response to technical information received. These changes result in some changes to the final rates, which are discussed in section IV of this preamble.

C. Daily NO_X Mass Emission Rates

EPA also proposed a unit-specific daily NO_X mass emission limit (*i.e.,* lb/day) to complement the weighted facility-wide 30-day NO_X emission rate limit and further ensure RACT is applied continuously. High emissions days are a concern, given the 8-hour averaging time of the underlying 1997 and 2008 ozone NAAQS. The proposed daily NO_X mass emission limit was calculated by multiplying the proposed facility-wide 30-day rolling average NO_X emission limit (in lb/MMBtu) by each unit's heat input maximum permitted rate capacity (in MMBtu/hr) by 24 hours. While the 30-day average rate limit ensures that SCR is operated where feasible while reasonably accounting for cycling, EPA is concerned that units meeting this limit might still occasionally have higher daily mass emissions on one or more days where no or limited SCR operation occurs, which could trigger exceedances of the ozone NAAQS if these high mass emissions occur on days conducive to ozone formation, such as especially hot summer days. EPA proposed a daily mass limit that would govern over a full 24-hr, calendar day basis as an additional constraint on SCR-off operation within a single day. The proposed limit was designed to provide for some boiler operation without using the SCR, which may be unavoidable during part of any given day, but also to constrain such operation because the mass limit will necessitate SCR operation (for example by raising heat input to a level where the SCR can operate) if the unit is to continue to operate while remaining below this limit. This provides greater consistency with the RACT definition. Table 2 shows the unit-specific daily NO_X mass limits that were proposed in the NPRM.

TABLE 2—PROPOSED DAILY NO_X MASS LIMITS [13]

Facility name	Unit	Permitted max hourly heat input rate (MMBtu/hr) [14]	Proposed unit-specific mass limit (lb/day)
Cheswick	1	6,000	14,256
Conemaugh	1	8,280	18,084
Conemaugh	2	8,280	18,084
Homer City	1	6,792	14,345
Homer City	2	6,792	14,345
Homer City	3	7,260	15,333
Keystone	1	8,717	15,481
Keystone	2	8,717	15,481
Montour	1	7,317	12,117
Montour	2	7,239	11,988

EPA solicited comment on the proposed daily mass limits. As discussed in more detail in section III of this preamble, EPA considered the comments received and made some changes to the final limits. The final limits are discussed in section IV of this preamble.

III. EPA's Response to Comments Received

EPA received 10 sets of comments on our May 25, 2022 proposed FIP. A summary of the comments and EPA's response is provided herein. All comments received are included in the docket for this action.

Comment: Allegheny County Health Department (ACHD) submitted a

[12] See 87 FR 31806 (May 25, 2022).

[13] See 87 FR 31807 (May 25, 2022).

[14] Title V Permit maximum heat input rates.

comment clarifying the operating status of the Cheswick Generating Station.

Response: EPA acknowledges the comment provided by ACHD. In our NPRM, EPA described Cheswick as being in the process of closing, despite ACHD having issued a title V permit modification that included a provision requiring Boiler #1 to cease operations on April 1, 2022. While that deadline had come and gone by the time the NPRM was published, it was not entirely clear at the time of drafting the notice that the closure was permanent and enforceable. ACHD's comment addressed EPA's characterization of Cheswick's status in the NPRM and affirmed that ACHD has verified that Cheswick's main boiler and associated equipment have been permanently shut down. In the intervening months since the NPRM, EPA has confirmed, with assistance from ACHD, that the boiler has in fact ceased operating, and that Cheswick's title V operating permit has been terminated. Therefore, EPA finds that the closure is permanent and enforceable, and as such, is not finalizing any RACT limits for Cheswick as proposed in our NPRM.

Comment: Commenters assert that EPA must take action on PADEP's May 26, 2022 and June 9, 2022 SIP submittals, which included Pennsylvania's own source specific RACT determinations, and which were intended to address the deficiencies identified by the Third Circuit, prior to (or concurrently with) promulgating a FIP.

Response: Although EPA generally pursues a ''state first'' approach to air quality management, giving deference to states to determine the best strategy for addressing air quality concerns within their boundaries in the first instance, EPA does not agree with the commenters' assertion that EPA must act on PADEP's RACT SIP submittals prior to or concurrently with finalizing a FIP. On September 15, 2021, EPA proposed to disapprove those portions of Pennsylvania's May 16, 2016 SIP upon which EPA's prior approval had been vacated and remanded by the Third Circuit, and that are encompassed in this FIP action. 86 FR 51315. EPA recently finalized that disapproval. 87 FR 50257. CAA section 110(c)(1)(B) requires the Administrator to ''promulgate a Federal implementation plan *at any time* within 2 years after the Administrator disapproves a State implementation plan submission in whole or in part, unless the State corrects the deficiency *and the Administrator approves* the plan or plan revision, before the Administrator promulgates such Federal implementation plan'' (emphasis added). Following EPA's August 16, 2022 (87 FR 50257) final disapproval, EPA has authority to promulgate a FIP under CAA section 110(c) at any time because EPA has not approved a plan or plan revision from Pennsylvania correcting the deficiency. Nothing in the Clean Air Act requires EPA to act upon a SIP submitted by a state to address a deficiency identified in EPA's final disapproval prior to promulgating a FIP, and the commenters have not provided any statutory basis for such a position.

As explained in the NPRM for this action, EPA may promulgate a FIP contemporaneously with or immediately following the predicate final disapproval action on a SIP (or finding that no SIP was submitted). *EPA* v. *EME Homer City Generation, L.P.,* 572 U.S. 489, 509 (2014) (''EPA is not obliged to wait two years or postpone its action even a single day: The Act empowers the Agency to promulgate a FIP 'at any time' within the two-year limit'') (internal citations omitted). In order to provide for this, it cannot be true that EPA must take further action on SIP submittals from the state prior to undertaking rulemaking for a FIP. The practical effect of applying the procedure commenters allege, that EPA must consider a new SIP submittal from the state prior to promulgating a FIP, would be that EPA would either approve the state's new SIP revision (thereby nullifying the need for a FIP) or EPA would disapprove the state's new SIP revision, which would essentially require a double disapproval from EPA in such circumstances. This cannot be understood to be Congress's intent. When considering a similar question, the Federal Court of Appeals for the Tenth Circuit agreed with the interpretation EPA here states. Specifically, the Tenth Circuit stated: ''The statute itself makes clear that the mere *filing* of a SIP by Oklahoma does not relieve the EPA of its duty. And the petitioners do not point to any language that requires the EPA to delay its promulgation of a FIP until it rules on a proposed SIP. As the EPA points out, such a rule would essentially nullify any time limits the EPA placed on states. States could forestall the promulgation of a FIP by submitting one inadequate SIP after another.'' *Oklahoma* v. *EPA,* 723 F.3d 1201, 1223 (10th Cir. 2013) (emphasis in original).

EPA has not fully evaluated Pennsylvania's May 26 and June 9, 2022 submittals and has not yet proposed action on the SIP submittals. As explained, this does not alter EPA's authority to finalize this action promulgating a FIP. EPA intends to evaluate and take action on Pennsylvania's submittal in accordance with the timelines established in CAA section 110(k)(2). However, as noted in the NPRM, EPA submitted extensive comments on the draft permits. In those comments, EPA raised several concerns that remain unresolved, including whether Pennsylvania's continued use of tiered limits (*i.e.,* separate limits for SCR-on and SCR-off operation) could be squared with the Court's clear objection to our approval of such an approach in the past, and whether Pennsylvania's record was adequate to support the limits selected, the need for separate limits, and how to determine when each limit applied.

Comment: Several commenters asserted that EPA erred in the selection of SCR as RACT. PADEP asserts that EPA's proposal does not provide a source specific analysis of technological feasibility for each unit, and that it does not identify any specific control technology or technique as being technically feasible. They claim that EPA's approach fails to comport with previous RACT approaches. Keystone/Conemaugh (Key-Con) suggests that EPA overlooked the technical and economic circumstances of the individual sources in determining RACT. Additionally, one commenter, Talen Energy, alleged that EPA should have selected feasible controls that ''represent RACT for each mode of operation of the units, such as startup and shutdown.''

Response: EPA disagrees with those comments suggesting that EPA's FIP proposal did not follow the long-standing definition of RACT. Courts have repeatedly concluded that the term ''reasonably available'' is ambiguous and therefore the statute does not specify which emission controls must be considered ''reasonably available.'' *See, e.g., Natural Resources Defense Council* v. *EPA,* 571 F.3d 1245, 1252 (D.C. Cir. 2009) (stating ''the term 'reasonably available' within RACT is also ambiguous'' and ''[g]iven this ambiguity, the EPA has discretion reasonably to define the controls that will demonstrate compliance''). *See also, Sierra Club* v. *EPA,* 294 F.3d 155, 162–63 (D.C. Cir. 2002) (finding that the term ''reasonably available'' in the analogous ''reasonably available control measure'' is ambiguous and ''clearly bespeaks [the Congress's] intention that the EPA exercise discretion in determining which control measures must be implemented''). As stated in the proposal, EPA's longstanding interpretation is that RACT is defined as ''the lowest emission limitation that a particular source is capable of meeting

by the application of control technology that is reasonably available considering technological and economic feasibility.'' [15] Commenters correctly note that EPA has further explained that ''RACT for a particular source is determined on a case-by-case basis, considering the technological and economic circumstances of the individual source.'' [16]

EPA's action is in line with this longstanding guidance and other Agency actions concerning RACT under section 182 of the Clean Air Act. For each source, the EPA first selected a control technology that is reasonably available, considering technical and economic feasibility, and then identified the lowest emissions limitation that, in EPA's judgment, the particular source is capable of meeting by application of the technology (*i.e.,* that a plant operator applying the selected technology is capable of achieving economically and technologically). With respect to the first step, for this set of sources EPA selected SCR as the control technology that is reasonably available. For each of the sources addressed in this final rule, SCR has already been installed and each SCR has a clearly demonstrated operating history. Most of the sources installed these SCRs in the early 2000s, with the exception being Conemaugh, which only installed SCR in 2014. These facts alone prove that SCR is a control technology that is reasonably available for these sources. In the prior EPA-approved PADEP SIP revision, SCR was selected as the control technology and that selection was not disputed in comments on the action or in the subsequent litigation, to which this FIP is a response. Additionally, no one raised concerns about whether SCR was the appropriate control technology when EPA initially proposed approval of PADEP's RACT regulations, nor did anyone raise such concerns at the State level when PADEP undertook notice and comment rulemaking in order to adopt the regulation in the first place. To the extent that the commenters are challenging EPA's judgment in choosing the emission limit that each source is ''capable of meeting,'' those comments are addressed later in this section. However, if the commenters are asserting that EPA has selected a technology that is not ''reasonably available considering technological and economic feasibility,'' the EPA disagrees based on the fact that SCRs are present and operating at each of these sources.

Regarding the comment that EPA should select RACT limits for each mode of operation of the SCR, including startup and shutdown, the proposed FIP accounts for this. Given that these sources already have installed and operational SCRs, EPA determined it was appropriate to consider modes of operation, as applicable, during the selection of the emission limitation, rather than during the control technology selection. Indeed, EPA's proposed statistical approach to develop the rates is intended to select emissions limits that reasonably account for different modes, including consideration of modes where the selected RACT cannot be operated. As discussed in a comment response later in this document, EPA considered whether it was appropriate to create a tiered limit approach that also accounted for different modes in the different tiers, but as explained here and in the proposal, were EPA to define a mode where the chosen RACT technology need not operate but also fail to provide constraints on the use of that mode, that would essentially create an exemption from operating RACT when the source is clearly capable of meeting a lower rate, and would thereby create a regulatory incentive to operate at loads where the SCR is not in operation.

Comment: PADEP claims that it is inconsistent with RACT to use a statistical approach for the selection of emissions limits. Key-Con similarly claims that routine data are insufficient for a RACT analysis.

Response: As an initial matter, EPA affirms that a statistical approach is a valid way to select the lowest emissions limit that the source is capable of meeting through application of SCR. As explained in the response to the prior comment, once a technology is selected that is ''reasonably available considering technological and economic feasibility,'' the second step is selection of the emission limit that a plant operator applying the selected technology is economically and technologically capable of achieving. In order to select the emission limitation, EPA did an extensive statistical analysis of emissions data from the affected facilities. The rationale underlying that approach is outlined in significant detail in our proposal.

EPA does not always have the benefit of a robust historic data set that reflects actual operation of the selected control technology to consider in selecting emission limits for purposes of establishing RACT. When, as is the case here, we do have such data, it is reasonable to use them. The proposal acknowledged several factors that affect the degree to which the historic data set represents the lowest rate that the source is capable of meeting and explains the adjustments EPA made to its proposed emissions limits to account for those factors. There are specific comments that take issue with certain choices EPA made in applying the statistical approach, which EPA addresses later in this notice, but nothing in the CAA or EPA rules or guidance precludes EPA from using a statistical approach as it has done here.

Comment: PADEP takes issue with EPA's decision to not do a technical and economic feasibility analysis for other potential NO_X control technologies at these sources, such as installation of newer low-NO_X burners that achieve greater NO_X reductions during the combustion process. Key-Con provided similar comments, asserting that our failure to analyze each of these other potential NO_X control technologies for their economic and technological feasibility was not in keeping with RACT. These commenters took issue with EPA's presumption ''that the facilities have the flexibility to change their operations to emit less NO_X per unit of heat input.''

Response: The statements discussing other potential NO_X control technologies that could be adopted, but that EPA was not requiring, were provided as additional information, and as noted in the proposal, ''EPA did not evaluate these technologies in the context of our RACT analysis.'' Commenters appear to assume that EPA expressly accounted for installation or increased use of these technologies when determining limits that each source is capable of meeting. To the contrary, this discussion was intended to clarify that these other control techniques were not accounted for in EPA's development of each source's limits; neither the rates nor the weights were adjusted to require more use of these other control technologies. To the degree that a source was using such other control technologies during the period used in selecting the RACT limits, EPA's approach for developing the limits assumed that the sources continued to operate these other technologies without any change.

Also, although PADEP did an analysis of other NO_X control technologies available to each source when setting the limits in the permits, PADEP rejected all of these other control technologies except boiler tuning, either

[15] Memo, dated December 9, 1976, from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas,'' p. 2, available at *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19761209_strelow_ract.pdf* and 44 FR 53762, footnote 2 (September 17, 1979) (Strelow Memo). *See also Sierra Club* v. *EPA,* 972 F.3d 290.

[16] *Id.*

for technical feasibility or cost reasons, in setting the limits. This rejection of most of the other control technologies as RACT by PADEP essentially aligns with our own selection of SCR as RACT.

Comment: Homer City objects to applying the RACT limit from the lowest emitting of the three sources at the facility as a facility-wide RACT NO_X limit. Homer City asserts that the definition of RACT, *i.e.* ''. . .the lowest emission limit that a *particular source* [emphasis added] is capable of meeting. . .'' requires that EPA establish FIP limits on a unit by unit basis, rather than by a facility wide average.

Response: Longstanding EPA policies have allowed for averaging to meet RACT limits, including averaging across multiple emissions units. The 1992 NO_X supplement to the general preamble [17] states that it is appropriate for RACT to allow emissions averaging across facilities within a nonattainment area (or Ozone Transport Region (OTR) state, as is the case here). In practice EPA has allowed averaging across units on a facility-wide basis, and even across facilities in the same system under common control of the same owner/operator, including its approval of PADEP's prior EGU RACT rules.[18] EPA's implementation rule for the 2008 ozone NAAQS allows nonattainment areas to satisfy the NO_X RACT requirement by using averaged area-wide emissions reductions.[19] EPA reasonably allows averaging for compliance, so long as the underlying rates used as the basis for the average meet the definition of RACT. The comments do not provide a basis for EPA to reject its longstanding emissions averaging policies. To the contrary, these policies provide additional flexibility for sources to manage their SCR operation across units to ensure compliance with the limits.

Regarding the comments on EPA's proposal to base the facility-wide average rate on the best performing unit, the EPA is finalizing a minor change. In light of the unit-specific nature of EPA's weighted rate analysis, the EPA expects that the unit-specific rates already represent RACT for each unit, and that the most appropriate basis for a facility-wide average would be the weighted rates for each of the units at the facility. While some commenters felt that EPA should use the lowest single unit rate to drive facilities to use their best performing units most often, we expect that the stringent unit-specific rates, when averaged together, will still provide sufficient incentive to use the best performing units most often. See section IV of the notice for additional information.

Comment: Key-Con notes that only one of the designated nonattainment areas in Pennsylvania is currently violating the 2015 ozone NAAQS, and expresses concern that EPA appears to have inappropriately considered the potential for lower ozone levels in many areas in setting RACT, and states that the requirement for NO_X RACT is simply tied to Pennsylvania's inclusion in the OTR. Key-Con also asserts that it is more appropriate to use interstate transport rules, not RACT, to address concerns about states' obligations to eliminate significant contribution to nonattainment, or interference with maintenance of NAAQS in other states.

Response: The EPA agrees with the commenter's characterization that Pennsylvania must implement RACT level controls statewide due to the state's inclusion in the OTR, in accordance with CAA § 184. The statutory direction to require ''implementation of reasonably available control technology'' in states included in an ozone transport region, CAA §§ 182(f), 184(b), is the same in substance as the requirement for ozone nonattainment areas for ''implementation of reasonably available control technology,'' CAA § 182(b)(2). Therefore, EPA's analytical method to determine what level of control technology is reasonably available does not differ based on whether RACT is being implemented in an ozone nonattainment area or the OTR.

There are also areas of Pennsylvania that are still designated nonattainment for both prior and current ozone NAAQS. EPA notes that the implication of the commenter's statement, that an area's factual attainment of an ozone NAAQS, as perhaps shown by a Clean Data Determination, would have implications for whether that area needs to implement RACT, is incorrect. An area designated nonattainment must continue to meet the statutory requirement to implement RACT, if otherwise applicable, until the area is redesignated to attainment or unclassifiable under section 107(d)(3) of the CAA. While the EPA did identify improved air quality in many areas, including remaining ozone nonattainment areas, some of which are in other states, as a benefit of the FIP emissions limits, we did not determine RACT through the selection of control technology and identification of emission limitations that the sources are capable of meeting based on the air quality impact in any particular area(s). In other words, air quality improvement in nonattainment areas in Pennsylvania or other states was not a criterion in determining RACT in this action.

Comment: Several commenters claim that EPA's economic feasibility analysis for SCR optimization was flawed. First, commenters assert that the economic analysis was flawed because it only considered the costs of additional reagent, and ignored considerable capital costs such as increased catalyst maintenance and replacement, and modifications to ancillary equipment. Second, commenters assert that the actual $/ton NO_X costs far exceed what EPA's analysis claims, and are more likely in the $150,000–200,000/ton range. Additionally, commenters assert that EPA's analysis of reagent injection incorrectly assumes that reagent costs will return to historic, lower prices.

Response: EPA disagrees. First, commenters are incorrect in the assertion that EPA did not consider capital costs, such as catalyst maintenance and replacement. As discussed in the NPRM and TSD, EPA relied on certain data from the recent evaluation of variable operating and maintenance (VOM) costs (which include increased catalyst maintenance and replacement costs), associated with increased use of SCRs at EGUs used in a number of national rulemaking actions related to the CAA's interstate transport requirements, including most recently the proposed Good Neighbor Plan for the 2015 ozone NAAQS. In the ''EGU NO_X Mitigation Strategies Proposed Rule TSD'' (Good Neighbor Plan TSD) for the proposed Good Neighbor Plan (included in the docket for this action), EPA used the capital expenses and operation and maintenance costs for installing and fully operating emission controls based on the cost equations used within the Integrated Planning Model (IPM) that were researched by Sargent & Lundy, a nationally

[17] 57 FR 55620, November 25, 1992

[18] See 25 Pa Code §§ 129.94 and 129.98, which allow sources which cannot meet a presumptive RACT limit to average with lower emitting sources, provided that aggregate emissions do not exceed what would have been allowed under the presumptive limits.

[19] 80 FR at 12278–79 (''states may demonstrate as part of their NO_X RACT SIP submittal that the weighted average NO_X emission rate from all sources in the nonattainment area subject to RACT meets NO_X RACT requirements''). This portion of the 2008 ozone SIP requirements rule was challenged, with petitioners arguing that such a rule violated the Clean Air Act because the statute at § 182(b)(2) requires each individual source to meet the NO_X RACT requirement. The D.C. Circuit rejected this argument, finding that the Clean Air Act ''does not specify that 'each one of' the individual sources within the category of 'all' 'major sources' must implement RACT.'' *South Coast Air Quality Mgmt Dist.* v. *EPA,* 882 F.3d 1138, 1154 (D.C. Cir. 2018).

recognized architect/engineering firm with EGU sector expertise. See 87 FR 31808; TSD at 16–18. EPA's cost analysis for the proposed FIP only related to increased use, or optimization, of the SCRs, since each facility already had SCR installed. While that analysis was presented on a national, fleetwide basis, for this action EPA used site specific data in the ''Retrofit Cost Analyzer'' [20] to perform a bounding analysis to demonstrate that the cost assumptions made in the RCU and Good Neighbor Plan were still accurate and reasonable for the current RACT analysis. Using that methodology, EPA estimated a cost per ton for these sources that ranged from $2,590 to $2,757, depending on the unit. As previously stated, these estimates did include capital costs associated with increased catalyst maintenance and replacement. Reagent costs have actually dropped since the May 25, 2022 NPRM,[21] and the cost per ton of NO_X removed is still well within a range that should be considered economically feasible.

In Table 4 of the TSD for the proposed FIP, EPA calculated the potential change in NO_X mass emissions, based on the proposed 30-day average NO_X emission limits.[22] Then, in Table 5 of the proposed TSD, EPA calculated the cost per ton of NO_X removed based on the additional amount of reagent needed to meet to those limits.[23] EPA has made slight adjustments in finalizing the emission limits after considering comments. Detailed discussion of the rationale for and of the limits themselves can be found elsewhere, but particularly in section IV of this preamble. Table 3 of this preamble shows the reductions these limits will realize when compared to 2021 emissions data.

TABLE 3—2021 ANNUAL NO_X EMISSIONS AND RATES COMPARED TO FIP RATES

Facility	2021 Average NO_X rate (lb/MMBtu)	30-Day NO_X rate (lb/MMBtu)	30-Day NO_X rate vs. 2021 average (%)	2021 NO_X emissions (tons)	Potential change in NO_X Mass Emissions (tons)	
Conemaugh	0.149	0.072	−52	5,506	−2,837	
Homer City	0.133	0.096	−28	3,144	−871	
Keystone	0.142	0.075	−47	5,481	−2,579	
Montour	0.110	0.102	−7	649	−46	
Net	.....	.....	.....	14,781	−6,333	−43%

Based on the revised limits, and an updated cost of reagent, EPA calculated the cost per ton of NO_X removed for the final limits:

TABLE 4—COST PER NO_X ($/TON) REMOVED BASED ON ADDITIONAL REAGENT

Facility	Predicted reduction (tons NO_X per year from 2021 baseline)	Additional reagent (tons per year from 2021 baseline) *	Total annual cost for additional reagent ∧	Cost per ton of NO_X removed for additional reagent ($/ton) +
Conemaugh	2,837	1,617	$2,263,800	$798
Homer City	871	496	694,400	797
Keystone	2,579	1,470	2,058,000	798
Montour	46	26	36,400	791
Average cost/ton	.....	.....	.....	796

* Additional reagent = predicted reduction (tons) × 0.57 tons reagent/ton NO_X reduction.
∧ Total cost = additional reagent × $1400/ton reagent.
+ Cost per ton = total cost/predicted reduction.

With respect to the assertion by commenters that the $/ton value is actually in the $150,000–$200,000/ton of NO_X removed range, commenters have not supplied adequate data or analysis to substantiate that assertion. Commenters (in this case, Montour) merely assert that in order to meet the proposed limits, the units will need to run for extended periods of time following a startup, even when electricity is not being sold to the grid, in order to achieve a certain number of hours of low hourly NO_X emissions rates to offset the higher hourly NO_X emission rates during startup, or else the source will not meet the proposed emission limits in the FIP. Montour claims that it has more frequent start-ups and shut-downs during which it cannot operate the SCRs. EPA notes that the comment did not provide any analysis of potential alternate methods of compliant operation, and merely submitted data relating to the extra cost of fuel oil during the period of time they assert they will be required to run. For example, it may be possible for the units to ramp up more quickly following startup so as to spend less time in SCR-off mode. Additionally, it may be possible for the units to spend more time ''hovering'' at a higher heat input (*i.e.* SCR-on) in anticipation of a need for quick dispatch. EPA acknowledges that the limits in the FIP may result in

[20] See TSD for proposed FIP at 16–18.

[21] Reagent prices have decreased since publication of the NPRM, from an average of $1515/ton anhydrous ammonia to slightly less than $1400/ton. See appendix 3 of the TSD for this action, and *https://mymarketnews.ams.usda.gov/filerepo/sites/default/files/3195/2022-07-28/614317/ams_3195_00065.pdf*.

[22] See *Id*. at 15.

[23] See *Id*. at 19.

the sources' needing to re-evaluate how they operate their EGUs in order to meet the new RACT limit, which may require adjusting the prices and certain operating parameters they specify to PJM when bidding into the market. However, EPA views these as free-market considerations, rather than an appropriate component of a RACT determination. EPA has long held that ''[e]conomic feasibility rests very little on the ability of a particular source to 'afford' to reduce emissions to the level of similar sources. Less efficient sources would be rewarded by having to bear lower emission reduction costs if affordability were given high consideration. Rather, economic feasibility . . . is largely determined by evidence that other sources in a source category have in fact applied the control technology in question.'' [24]

EPA continues to believe that optimization of the SCRs to achieve the NO_X emission limits in this FIP is economically feasible. Nothing submitted in the comments provided adequate justification or data to make a determination to the contrary. Indeed, evidence from the units' operating history supports EPA's view that when it is economically advantageous to do so, these units have no trouble meeting lower limits. Some of the lowest NO_X emissions EPA observed coincided with high NO_X allowance prices associated with the NO_X SIP call which went into effect in 2003.[25] Additionally, data for some of these units from May through June of the 2022 ozone season generally indicate SCR operating patterns (and, as a result, NO_X emissions) that match or are among their best in the recent data record. EPA believes this is due, at least in part, to the market prices of NO_X allowances needed for compliance with the RCU during this period, which were reported to range between $20,000 and $40,000 per ton.[26]

Comment: Commenters assert that EPA ignored equipment failure issues and failed to consider the deleterious effects on both control equipment and on the environment (ammonia slip, decreased mercury removal) of excess ammonia injection, particularly when operating below the catalysts' minimum effective temperature range. Commenters further assert that EPA failed to consider an engineering analysis submitted by Key-Con that PADEP relied upon in developing their case-by-case limit for Key-Con.

Response: EPA disagrees. First, EPA did not presume that the proposed FIP limits would be met by simply injecting more reagent during sub-optimal SCR operating conditions, and the FIP does not require it. EPA continues to recognize that the NO_X reduction capabilities of the SCRs are flue gas temperature dependent, and that the NO_X removal efficiency curve decreases with flue gas temperature until a point is reached where the SCR offers little or no NO_X control above what is achieved by the low NO_X burners (LNB) and overfire air (OFA) that are also installed on all of the units subject to this FIP. We also recognize that catalyst fouling, catalyst poisoning, ammonia slip and damage to downstream equipment are all potential outcomes of excessive reagent injection or injection during low temperature conditions. We further recognize that there have been changes in the electricity market in more recent years that result in greater periods of time when the units are operating in SCR-off mode. EPA believes that because the calculation of the limits uses actual past performance data from the sources, which include times at low heat input and therefore time with the SCR off, sources can meet these limits without injecting excessive amounts of ammonia during unfavorable SCR operating conditions. Additionally, using the third-best weight means that the SCR-off weight is based on a recent year that is not the extreme SCR-on case in the last decade and thus provides additional buffer.

The data show that during times when boilers are operating at high heat inputs and therefore SCRs are at optimum performance temperatures, sources have shown that they are capable of achieving limits in the 0.05 to 0.07 lb/MMBtu range, so they could achieve additional reductions during times when the SCR can be optimized to offset higher emissions during times when the SCR may not be optimized, so as to meet their 30-day rolling average and daily mass limit.

Also, EPA did review and consider the Key-Con engineering report referenced by the commenters. The information presented in that report appears to have been submitted to Pennsylvania to contest condition E.009 in PADEP's draft case-by-case RACT permit for Keystone, which would have required Keystone to set the SCR controllers at a target NO_X emission rate of 0.06 lb/MMBtu.[27] According to Attachment 3 of Key-Con's comment letter, they additionally evaluated operational data from 2019, which they claim is the last year of typical operations.[28] The report evaluated ammonia injection rates, and purported to show that due to ammonia slip and fouling of downstream appurtenances, the SCR could not and should not operate at a set-point of 0.06 lb NO_X/MMBtu. The report then determined that ''a NO_X rate of 0.09 lb/MMBtu is tolerable and will not require air heater washes nearly as frequently as 0.08 lb/MMBtu [29] or less would.'' See page 10 of Appendix 3 to Key-Con's July 11, 2022 comment letter. The report also states that Key-Con conducted testing on Conemaugh unit 1 during 18 days in May 2017 to determine if continuous operation at a NO_X setpoint of 0.04 lb/MMBtu was sustainable. The report claimed that it was not, because emissions of mercury spiked to a point where it appeared that Unit 1 would exceed its Mercury Air Toxics Standard (MATS) limit, and the NO_X setpoint had to be increased to 0.07 lb/MMBtu to lower mercury emissions. A similar test was conducted on Conemaugh Unit 2 towards the end of the 2017 ozone season to determine if the 0.05 lb/MMBtu setpoint was sustainable, and the report claims that after 25 days at the 0.05 setpoint, mercury emissions increased abruptly and nearly exceeded the MATS limit, so the NO_X setpoint had to be ''relaxed'' an unspecified amount to decrease mercury emissions. P. 7 of Attachment 3.

In response to the report, EPA notes that unlike Pennsylvania's proposed RACT permit terms, EPA is not requiring that the sources operate their SCRs at a certain set point below the 30-day rolling daily average NO_X rate limit, so the validity and relevance of this testing to EPA's proposed limits is questionable. EPA is expecting that the operators of Keystone and Conemaugh will operate their SCRs in a way that balances concerns about catalyst and preheater fouling and mercury emissions with the emission rates set by EPA—rates which are based on operating data from these sources indicating achievement of these emission rates in the past, including the recent past. Also, we note that EPA's pounds of NO_X per MMBtu of heat

[24] E.P.A., State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental, 57 FR 18,070, 18,073 (proposed April 28, 1992) (first introducing RACT as a standard to regulate emissions from existing sources).

[25] Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone (NO_X SIP Call), 63 FR 57356 (October 27, 1998) (codified in relevant part at 40 CFR 51.121 and 51.122).

[26] See S&P Global Capital IQ, *capitaliq.spglobal.com* (subscription required).

[27] Per condition E.10 of the draft permit for Conemaugh, their target was 0.05 lb NO_X/MMBtu

[28] Commenters assert that 2020 and 2021 were excluded due to low electricity demand and lack of coal supply, respectively.

[29] PADEP's proposed RACT limit.

input emission rate limit is a 30-day rolling daily average emission rate limit, whereas its daily limit is a mass limit. In contrast, Pennsylvania's RACT permit had a daily (24 hour) average NO_X emissions rate, so EPA's 30-day rolling average emission rate limit gives the source operators more flexibility in how they operate the SCRs. That is, the operators do not need to keep the setpoint for the SCRs at a very low level each day for an extended period of time, as they would to meet Pennsylvania's daily average NO_X rate. The ability to average NO_X hourly emission rates over 30 days allows the sources greater flexibility to vary NO_X emission rates from their SCRs, raising NO_X emission rates up or down in order to balance the various factors that must be taken into account, such as catalyst or preheater fouling and mercury emissions.

Finally, EPA notes that the commenter did not perform a ''thorough review of EPA's NO_X emissions analyses'' because of EPA's alleged technical failures and failure to understand current and expected unit utilizations.[30] However, the commenter did not provide any information regarding expected unit utilization, and instead criticized EPA's proposed rates as unobtainable during startup events by providing 25 hours of minimal data regarding one cold-start of Keystone Unit 1 in January 2022. Given that this data covered only 25 hours of startup, and was not then averaged with 29 other days of emission data to arrive at a 30-day average hourly emission rate, it is not proof that this one unit could not meet EPA's 30-day average rate. Absent more robust data to support commenter's claim, EPA declines to amend its proposed rates for the four units at Keystone and Conemaugh based on the thin data presented.

Comment: PADEP asserts that EPA's weighted rate approach is flawed because it relies on an analysis of past averages, which is contrary to the court's instruction that ''. . . an average of the current emissions being generated by existing systems will not usually be sufficient to satisfy the RACT standard.''

Response: EPA disagrees with the commenter's contention that the analysis underlying EPA's RACT limits is flawed simply due to the fact that EPA uses the mathematical function of averaging as part of the Agency's overall calculation. As the commenter notes, the *Sierra Club* decision does include language noting that ''an average of the current emissions being generated by existing systems, will not usually be sufficient to satisfy the RACT standard.'' 972 F.3d at 300. However, in the preceding sentence, the court provides necessary context for its statement and a helpful summary of what Pennsylvania provided in its prior SIP, EPA's approval of which the Court was vacating. The Court notes that the chosen emission limitation ''was selected as it represents the average pollution output of the three plants that are already compliant over the past five years.'' *Id.* Therefore, the court did not take issue with the mathematical function of averaging; it took issue with the quantity being averaged, and its application in setting RACT. EPA does not believe that the court meant to forbid the use of any averaging in the determination of RACT, so long as it fit within the definition of RACT and the use of such averaging was adequately and reasonably explained in the record.

As explained elsewhere in this action, EPA has used a statistical approach to establish the emission limitations contained in this FIP, which necessarily involves averaging. However, there are significant and meaningful differences between EPA's use of averaging and how PADEP previously used averaging to determine the RACT limits at issue in the *Sierra Club* decision. While Pennsylvania's limit was based on a five-year ozone season average from three plants that were then averaged together again to calculate a single limit required at five different sources, EPA's approach uses a source-specific third-best ozone season rate from a larger range of data. EPA's approach is consistent with the RACT definition, including the interpretation of RACT contained in the *Sierra Club* decision, because it is aimed at representing the lowest rate the source is technologically and economically capable of achieving, not the average rate it has already achieved. (As explained elsewhere in this action, EPA used third-best to represent the source's current capability, but the approach is still aimed at defining the lowest rate, rather than a 5-year overall average).

Comment: PADEP asserts that EPA's FIP is flawed because it relies on the third-best approach used in the RCU and Good Neighbor Plan, which is inappropriate because those rules evaluated more current data sets, and that EPA's data set selection is not driven by RACT regulations or guidance and does not set source specific limits considering technological and economic feasibility.

Response: EPA proposed to use the third-best ozone season rate for each source based on the idea, which was also cited in both the RCU and the Good Neighbor Plan, that the performance of SCRs degrades over time, and that usually only one layer of catalyst is changed/refurbished per year. Therefore, the SCRs may never be able to achieve the same emission reduction rate as when they started operating and all three catalyst layers were new. With the exception of the Conemaugh plant, which installed its SCRs in late 2014, the other sources installed their SCR by 2003.[31] Thus, many other parts of the overall SCR system, such as the reagent injection system, may also have deteriorated in performance. The use of the third-best year for each source is consistent with EPA's past practices in other rulemakings, and also has a basis in the performance data of each source. The third-best approach is a reasonable way of determining appropriate RACT limits. It avoids biasing the SCR-on limit with uncharacteristically low emitting ozone seasons, or under uncharacteristically optimal operating conditions. As stated in the April 6, 2022 proposed Good Neighbor Plan, the EPA found it prudent not to consider lowest or second lowest ozone season NO_X emissions rates, which may reflect SCR systems that have all new components. Such data are potentially not representative of ongoing achievable NO_X emission rates considering broken-in components and routine maintenance schedules. Additionally, the fact that CSAPR and the Good Neighbor Plan establish caps rather than limits does not preclude the use of the third-best approach for the purposes of the FIP. EPA is finalizing the use of the third-best year for all of the facilities except Conemaugh. As discussed elsewhere in this action, EPA has determined it is appropriate to use a different approach for establishing final RACT limits for Conemaugh due to the fact that Conemaugh has newer SCRs. As further discussed in section IV of this preamble, Conemaugh's final limit was calculated using the second-best rate and the second-best weight due to the more limited data set of years available for this facility based on the more recent installation of SCR.[32]

Regarding the claim that the RCU and Good Neighbor Plan used more current data sets, this is because those rulemakings were undertaken under a completely different statutory provision with different requirements and purpose than this FIP. Both the RCU and Good

[30] P. 11 of Key-Con's July 11, 2022 comments.

[31] As noted in the NPRM, the limits proposed for Conemaugh were based on the second-best ozone season, since Conemaugh's SCR was only installed in late 2014 and EPA therefore doesn't have the same volume of operating data as for the other sources.

[32] The proposed limit used the second best rate and the third best weight.

Neighbor Plan FIPs were addressing the requirement in section 110(a)(2)(D)(i)(I) of the CAA to ensure that emissions from upwind sources, including EGUs, were not significantly contributing to nonattainment or interfering with maintenance in downwind areas. The RCU addressed upwind significant contributions to downwind areas for the 2008 ozone NAAQS, while the proposed Good Neighbor Plan addressed upwind emissions for the 2015 ozone NAAQS. As such, for both rules, EPA needed to use the most recently available and up-to-date data for both source emissions and ambient air monitoring results in order to identify upwind emissions currently affecting downwind monitors for the 2008 and 2015 ozone NAAQS. Here, the purpose is to identify RACT, as required under subsections 182(b)(2), 182 (f)(1), and 184 of the CAA, which requires that major sources of NO_X and/or VOCs in nonattainment areas, or in the OTR, meet RACT, which EPA defines as ''the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' Given this different purpose, the examination of historic operating data for the SCRs is relevant to the determination of the NO_X emission rates each source attained while running their SCRs, and which the source was therefore capable of meeting. Also, EPA did consider ozone season emission rates from each source through 2021, which was the most recent data available at the time of the proposal, so PADEP's claim that EPA did not consider recent data is incorrect.

Comment: PADEP further asserts that EPA's FIP is flawed because it only considers ozone season data, so fails to consider emissions for a major part of the year. Commenters claim the court acknowledged that their presumptive limit did account for seasonal variability. They cite to *Motor Vehicles Mfrs. Ass'n of the U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (''State Farm'')* (Providing that ''the agency must examine the relevant data and articulate a satisfactory explanation for its action including a ''rational connection between the facts found and the choice made,'' and claim that because EPA failed to consider the majority of the operational emissions data (*i.e.,* non-ozone season), EPA failed to adequately demonstrate that the proposed limits are technically and economically feasible year-round.

Response: EPA disagrees with PADEP's claim that EPA should consider non-ozone season data for several reasons. Although these sources were subject to the CAIR annual NO_X requirements starting in 2009 and the CSAPR annual NO_X requirements starting in 2015, these cap and trade programs initially set annual NO_X emission budgets for states based on a NO_X emission rate of 0.15 lb/MMBtu starting in 2009, then based on a cost-effectiveness level starting in 2015, and allowed individual sources to exceed their allocated allowances by a certain percent by purchasing additional NO_X allowances from other sources. As such, the non-ozone season emissions data beginning in 2009 does not necessarily reflect the NO_X emission rates these SCRs are capable of achieving outside of the ozone season because the SCRs were not required to meet a specific NO_X emission rate. Second, post-2017 (when Pennsylvania's RACT II limit of 0.12lb/MMBtu was effective), data show the sources generally did not operate the SCRs for significant time periods outside of ozone season. Hourly operating data submitted by Keystone and Conemaugh to PADEP show that in 2017, the SCRs did not consistently operate outside of ozone season, with the units at each source often cycling down to low heat inputs at night and therefore not operating their SCRs.[33] Third, Pennsylvania also based the 0.12 lb/MMBtu emission rate in its RACT II rule solely on ozone season emissions data. Finally, PADEP does not explain why EPA's determination of RACT for these sources would be altered by consideration of non-ozone season data.

Comment: Several commenters objected to EPA's methodology (and thus, results) in calculating the SCR-on/SCR-off thresholds. PADEP in particular asserts that by assigning an operating threshold for SCR operation at each facility, EPA has run afoul of the Court's objection to the 600-degree threshold in Pennsylvania's original RACT II regulation. Further, PADEP asserts that because EPA had only limited information from Key-Con and none from the other facilities, and because we failed to seek such information from the other facilities, the resulting emission limits are unsupported. Another commenter asserted that EPA's visual evaluation of scatterplot data to develop the thresholds was flawed, and that rather than accurately depicting the SCR-on/SCR-off thresholds, the diagrams actually depict the minimum sustainable load for the unit, which is ''. . . typically the level at which PJM places a unit at low load for spinning reserve during periods of low demand.'' See Homer City Comments at 2. Additionally, commenters assert that the use of 0.2 lb/MMBtu as an indicator of when the SCRs are or are not running is arbitrary, since there are times when an SCR is off, but the NO_X emissions are below 0.2 lb/MMBtu, and conversely, there are times when an SCR is running, but the NO_X emissions are greater than 0.2 lb/MMBtu.

Response: First, EPA disagrees with Pennsylvania's assertion that the methodology for determining the SCR-on and SCR-off weights and rates using observed SCR thresholds in the data for purposes of developing an emissions limit that would restrict SCR-off operation is substantially similar to PADEP's use of the 600-degree threshold to justify essentially unlimited SCR-off operation. EPA further disagrees that the *Sierra Club* adverse decision concerning the 600-degree threshold has direct relevance to the permissibility of the approach used by EPA in utilizing SCR-on and SCR-off weights and rates. The Court found that Pennsylvania's blanket 600-degree temperature threshold, which Pennsylvania applied uniformly to all the sources regardless of the differences in SCRs at each source, was inadequately explained or supported by the record. 972 F.3d at 303 (''Regarding the threshold, neither the EPA nor DEP can explain why it is necessary at all. . . . [E]ven assuming such a temperature threshold were reasonable, the record does not support the conclusion that 600 degrees Fahrenheit is the proper limit.'') EPA's SCR-on and SCR-off thresholds were derived through careful unit-by-unit observation of actual operating data. Furthermore, rather than drawing a regulatory line below which less stringent emissions limits apply without any restriction on operating time, EPA used the 0.2 lb/MMBtu threshold to divide the operational data into SCR-on and SCR-off categories, then used those data to establish both average SCR-on and -off rates for each unit, and to identify the unit's past percentage of ozone season time with the SCR on or off to establish the weight applied to the respective rates. As such, the 0.2 lb/MMBtu is not an enforceable limit, but merely a data point that was one component of EPA's approach to use historical operating data to derive the lowest emission limit that these particular sources are capable

[33] For examples of this SCR-off operation, see the xl spreadsheet in the docket entitled ''KEY_Hourly emissions and operating data 2017–2020_06–24–21.'' For Keystone Unit 1, see February 5th to 28th, 2017, and for Unit 2 see October 1 through 30th, 2017. For Conemaugh, see the spreadsheet in the docket entitled ''CON_Hourly emissions and operating data 2017–2020_6–24–21.'' For Unit 1, see January 21 through 23rd, 2017 and for Unit 2 see April 15th through 17th, 2017.

of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

As for the assertion that the 0.2 lb/MMBtu cutpoint is arbitrary, EPA conducted a fleetwide analysis of EGUs with combustion and post-combustion NO_X controls and found that this rate indicates that the SCR is running to some extent.[34] Nevertheless, in response to our May 25, 2022 (87 FR 31798) proposal, EPA did in fact receive additional information from certain sources (Montour and Homer City) regarding what they consider the proper megawatt (MW) threshold for operation of their SCRs. As described in section IV of this preamble, we have taken that information into account in developing the NO_X emission limits finalized in this action.

Comment: PADEP asserts that EPA's statistical approach to RACT in this case has led to absurd results, specifically a higher limit for Conemaugh than for Homer City and Keystone, despite the fact that Conemaugh's SCRs are newer and technically capable of achieving lower NO_X emission rates.

Response: EPA has developed the emissions limits for each source based on analysis of historical data for each source demonstrating what emissions the sources are capable of achieving through operation of their installed SCR equipment. The emission limits being established for Keystone are based on analysis of historical data extending back to 2003, while the emissions limits being established for Conemaugh are based on historical data extending only back to 2015 due to the more recent SCR installations at Conemaugh. Because the shorter historical period of the Conemaugh data set does not contain periods with high NO_X allowance prices that would necessarily have motivated Conemaugh to try to achieve the lowest possible emissions, it is possible that EPA's resulting emissions limits for Conemaugh are less stringent than would have been established with a more extensive data set. However, the limitations of the data available for Conemaugh in no way render the Keystone emission limits unreasonable. Nevertheless, the comment does illustrate that EPA should adjust its approach to account for the more limited Conemaugh data. As further discussed in section IV of this preamble, in response to comments received, EPA is finalizing limits that differ slightly from what was proposed, including an adjustment for Conemaugh that better accounts for the more limited set of ozone seasons from which to draw data for this source, while also addressing the circumstances that prompted the PADEP comment regarding absurd results. The Agency determined that for Conemaugh, it is reasonable to use the second-best weight instead of the third-best.

Comment: PADEP asserts that EPA should have considered tiered limits as they did, and that such a limit structure would, in fact, result in optimized SCR operation.

Response: EPA disagrees that we needed to establish a tiered limit structure like the one that was vacated by the Court, or the similar approach used by PADEP in their case-by-case permits. As explained in the proposal and the earlier section of this preamble, EPA did consider the appropriateness of tiered limits and opted to not propose such an approach for several reasons. First, while the Court did not explicitly preclude the threshold approach, they were clearly suspicious of its appropriateness: ''Regarding the threshold, neither the EPA nor DEP can explain why it is necessary at all. It is not a common exemption.'' *Sierra at 20.* Upon reconsideration, EPA believes that it is not necessary. EPA continues to believe that constraining SCR-off operation to the extent possible based on data reflecting the recent operations of each source is the appropriate means of implementing emission limits consistent with RACT. As EPA raised in the on-record comments we submitted to PADEP on draft permits,[35] it is not clear to EPA how a tiered limit approach constrains SCR-off operation in any meaningful or enforceable way.[36] Moreover, unconstrained SCR-off operation would be inconsistent with the Court's directive that the RACT limit must be technology-forcing.[37] A set of limits that does not place limits on the source operating without its NO_X control technology is not technology-forcing. Accordingly, EPA has chosen to forgo the tiered limit approach, and instead use a weighted rate approach, which we continue to believe provides the sources flexibility to address current operational realities (*i.e.,* increased cycling), while at the same time providing meaningful constraint on SCR-off operation and objective enforceability.

Comment: Talen Energy (Montour) asserts that EPA's limits are so restrictive that they extend the regulatory regime beyond the customary regulation of air pollutant emissions, and in effect dictate operation of units and may severely limit the ability of the units to run as directed by PJM and potentially compromise grid reliability.

Response: EPA disagrees that these FIP limits are too restrictive or that they extend the regulatory regime beyond EPA's Clean Air Act authority or customary EPA action in a way that is inappropriate or inconsistent with past CAA implementation. Emission limitations are, by definition, a limitation on the amount of pollutants that may be emitted by a source and therefore all emission limits place restrictions on how sources operate in some fashion. For example, states or EPA may place enforceable requirements on sources for throughput limitations; federally enforceable requirements of this nature are a standard practice that substitutes for major source applicability of new source review (NSR) or national emission standards for hazardous air pollutants (NESHAPs). Some emission limitations may also take the form of work practice standards, which could place requirements on the type of fuel a source may use or limit the amount of time a source may operate under a certain status. These FIP limits do not prescribe when or how the affected units should operate in order to generate electricity. Rather, these limits ensure that when the units are operating, their already installed SCRs are also operated in a way that achieves the lowest emission rates that are technically and economically feasible.

As discussed previously in this notice, EPA acknowledges that the weight given to the proposed SCR-off limit has the effect of limiting the portion of time a cycling source can operate in SCR-off mode and incentivizes a source to shift to SCR-on mode to preserve headroom under the limit. While driving SCR operation, the weighted limit accommodates the need for an EGU to occasionally cycle down to loads below which SCR can operate effectively. Nothing in the FIP being finalized in this document is intended to prohibit SCR-off operation, nor does it dictate specific times when SCR-off operation would not be permitted to occur.

Comment: Montour commented that the compliance date should be extended and not be the same date as the effective

[34] See ''Attachment 3–1 NO_X Rate Development in EPA Platform v6'' for EPA's Power Sector Modeling Platform (IPM) at *https://www.epa.gov/system/files/documents/2022-02/attachment-3-1-nox-rate-development-in-epa-platform-v6-summer-2021-reference-case.pdf.*

[35] See document ID EPA–R03–OAR–2022–0347–0067 in the docket for this action at *www.regulations.gov.*

[36] EPA has not yet evaluated and is not predetermining the approvability Pennsylvania's ultimate SIP revisions, which were submitted on May 26, 2020 and June 9, 2022.

[37] Sierra Club at 309.

date of the regulation. Citing the need to identify and evaluate the updates/changes necessary, update programming for the CEMS and process control equipment, provide training to staff, and complete operational trials, Montour suggested extending the compliance date by six months. Other sources commented that EPA should not proceed at all with a final rule at this time and instead seek an extension from the Court to reconsider the proposed limits.

Response: Before addressing the substance of this comment, EPA would like to correct an error in the NPRM regarding the effective date of the FIP. The effective date of the regulation was intended to be conveyed as an editorial note that the rule would be effective 30 days after publication of the final rule. Instead, the editorial note was converted into an actual date by the publisher, which was 30 days after the date the proposed rulemaking was published: June 24, 2022. This was a typographical error that produced an absurd result: the rule could not possibly be effective before a final approval, or indeed, even before the public comment period had ended (on July 11, 2022). The proposed compliance date was accurately described to ''commence immediately upon the effective date.'' [38]

With regard to Montour's request to extend the compliance date, EPA agrees there will be a certain amount of time required for the facilities to adjust to the new requirements and make certain technical and administrative changes to ensure operations comply with the new RACT limits. After considering comments received on this rulemaking, EPA has determined that it is appropriate to extend the compliance date past the initial proposal of 30 days after the effective date of these regulations. The commenters have raised compelling concerns about being able to meet new, more stringent limits on the accelerated timeline. In light of the comment received from Montour, EPA is finalizing a compliance date of 180 days after the effective date of the FIP. EPA is under Court Order to ''. . . either approve a revised, compliant SIP within two years or formulate a new [FIP],'' which EPA interprets as requiring a final rule by August 27, 2022. Therefore, EPA will finalize the final rule in compliance with the Court.

Comment: Homer City asserted that EPA's description of the methodology for determining SCR-on and SCR-off weighting is inadequate to allow for independent verification. Also, Homer City also commented that there is no explanation as to why the SCR-off weights (0.00 or 0.01) are so small, which leave no margin for SCR-off operation.

Response: The commenter did not provide adequate explanation as to why or where it had difficulty in understanding or replicating the calculations EPA outlined in the proposed notice. Homer City also did not submit its attempted calculations for EPA's consideration. All of the data EPA used to develop the proposed emission limits (including that which was used to establish the SCR-on and SCR-off weights) was either available in the docket, or, because of file type and size limitations of *www.regulations.gov,* was available upon request.[39] Other commenters were able to replicate and/or modify EPA's methodology. Homer City's weights are representative of their ozone season operation over the time period analyzed for the weights (2011 to 2021). Further discussion of their revised weights can be found in section IV of this preamble.

Comment: Sierra Club asserts that the requirement that the sources submit reports of their compliance every six months should be shortened to every three months (quarterly), because the information needed to demonstrate compliance with the FIP is already submitted to EPA for various purposes on a quarterly basis, and that it does not make sense for the FIP to require less frequent (biannual) reporting. In addition, if EPA elects to keep the FIP reporting data separate from reporting to the Clean Air Markets Division, Sierra Club requests that EPA put a mechanism into the FIP by which the public can readily access this data to ensure compliance, such as posting that data to the Clean Air Markets Program Data tool. Finally, the commenter requests that the FIP recordkeeping requirements be updated to include information about SCR runtime and/or bypass as well as reagent usage.

Response: EPA selected the six-month reporting period in order to be consistent and streamlined with the sources' existing title V reporting requirements. These title V reports are submitted to EPA Region 3 and the state for review. The fact that certain data used to determine compliance with the FIP requirements are also reported quarterly to other EPA offices under various programs, such as the Acid Rain program and Cross State Air Pollution Rule, and then placed into EPA's Clean Air Markets Data Program online tool, does not provide a sufficient basis to increase the frequency of reporting compliance with the FIP requirements to match the reporting frequency for the underlying data. There is nothing about the FIP limits that would necessitate a reporting frequency greater than the reporting frequency required by title V. The FIP does require deviation reports to be submitted to EPA when NO_X emission limits have been exceeded for three or more days in any 30-day period.

With respect to the assertion that the reporting requirements should be updated to include SCR runtime and reagent injection data, EPA believes that reporting of CEMS data consistent with title V requirements is sufficient for compliance demonstration purposes. EPA has not tied the emission limits directly to SCR operating parameters in a way that would necessitate the submission of additional SCR data. Compliance with the emission limits is the ultimate regulatory requirement, and this is adequately demonstrated through submission of CEMS data. EPA does not believe it is appropriate at this time to include reporting requirements to this FIP that are not directly necessary to show compliance with the regulatory requirements finalized herein.

Regarding the assertion that EPA should provide mechanism by which the public can readily access additional data beyond the regularly reported emissions data to ensure compliance, such as posting that additional data to the Clean Air Markets Program Data tool, EPA is not taking that step at this time. There is nothing about the NO_X limits in this FIP which would require EPA to provide a novel approach to providing access to additional compliance data. Further, the tools EPA makes available for providing the public with access to reported emissions data are not at issue in this proceeding, and comments requesting changes to those tools are outside the scope of the rule.

Comment: Sierra Club asserts that EPA should have used the best year, rather than the third-best, which is what EPA used in establishing the SCR-on rate. First, they assert that EPA has not established that control equipment degrades over time, and that by selecting the third-best ozone season, EPA is allowing sources to forgo maintenance and good operating practices that would allow them to otherwise meet limits that were established on a best ozone season basis. Further, pointing to the rates achieved during the period of 2003–2010 when NO_X allowance prices were high due to

[38] The proposal erroneously published the effective date of the rule as June 24, 2022 and not as an editorial note that the rule would be effective 30 days after the publication of the final rule. See 87 FR 31813.

[39] See ''Memo to Docket—Availability of Additional Information,'' document number EPA–R03–OAR–2022–0347–0060.

the NO_X SIP call, Sierra Club asserts that the decline in SCR performance is due not to equipment degradation, but to the lack of a regulatory requirement to achieve better emissions. Finally, Sierra Club asserts that an examination of the best performing years does not support the idea that equipment degradation due to the passage of time necessarily leads to an inability to meet lower limits, and again asserts that higher emissions rates are tied to less stringent regulatory requirements rather than equipment degradation.

Response: EPA disagrees that we should have used the best ozone season instead of the third-best to establish the SCR-on rate. First, although equipment degradation is not the only consideration we evaluated when selecting the third-best approach, it is certainly a contributing factor. While degradation can be slowed or mitigated through proper operation, there is little question that it occurs and can impact the removal efficiency. EPA has explained this previously that ''[o]ver time, . . . the catalyst activity decreases, requiring replacement, washing/cleaning, rejuvenation, or regeneration of the catalyst.'' [40] EPA acknowledges that catalyst management practices can be adapted to address catalyst degradation, but that does not mean that the degradation does not occur.

In addition, EPA's longstanding interpretation of RACT does not require RACT-level controls to be equivalent to the ''best.'' The Court agreed with this interpretation in the *Sierra Club* decision: ''we do not suggest that Pennsylvania must achieve the absolute lowest level of emissions that is technologically possible for the approved limit to satisfy RACT.'' [41] As explained in the NPRM and in response to the previous comment, EPA believes that the third-best approach is a reasonable way of establishing appropriate RACT limits. Use of the third-best year avoids biasing the limit with uncharacteristically low emitting ozone seasons, or under uncharacteristically optimal operating conditions.

EPA does agree with the commenter that there does appear to be a correlation between increased SCR operation (and correspondingly lower NO_X emissions), and periods when new regulatory requirements such as CAIR, CSAPR, the CSAPR Update, and the RCU, have created meaningfully more stringent NO_X emission budgets. More stringent emissions budgets can compel EGUs to operate their SCRs more often and at lower NO_X emission rates to meet these new budgets. They accomplish this result by raising the cost of NO_X allowances, creating an economic incentive for EGUs to operate their SCRs more often and at lower NO_X emission rates to either avoid having to purchase costly allowances or to generate NO_X allowances to sell. EPA continues to believe that our proposed weighted rate approach takes these factors into consideration and establishes appropriate limits that are consistent with the CAA's RACT requirements.

Comment: Similar to comments relating to EPA's consideration of operating data from years when the units were operating in a base load capacity, commenters assert that ozone season operations are not consistent with year-round operations and therefore should not be the sole timeframe considered in development of the limits that apply all the time. Further, Key-Con in particular noted that the SCRs at Keystone were designed to only run during ozone season, and that in the past, they had considerable down time for cleaning and maintenance of the controls. Additionally, they assert that ammonium bisulfate salts (ABS) form more readily in colder ambient temperatures, leading to increased fouling.

Response: EPA acknowledges some of the technical challenges associated with temperature and SCR activity. Because of this, among other reasons, we performed an analysis of actual operating and emissions data and developed reasonable limits to account for challenges such as seasonal ambient temperature changes and increased cycling operation rather than selecting the absolute lowest rates that these units have ever achieved. EPA primarily used ozone season data to develop these limits, which is appropriate, not only because the ozone season generally represents a period of increased electricity demand and operation at these sources, but also because it is indicative of what these units can achieve when there are additional regulatory constraints and economic disincentives against sub-optimal SCR operation in place.

To the degree that the comment is suggesting that this RACT FIP should create seasonal limits that do not require SCR operations in non-ozone-season months, the EPA does not believe that this would be consistent with the CAA RACT requirement. As noted in the background of this preamble, NO_X RACT for major sources is required to be applied year-round. There are numerous coal-fired EGUs operating in the OTR that operate SCR controls on an annual basis. Additionally, there are coal-fired EGUs operating outside the OTR subject to other regulations that mandate SCR controls be operated throughout the year as well. Like the four Pennsylvania facilities addressed in this notice, many of these other coal-fired EGUs were built in the same era (1960s and 1970s) and then later retrofitted with SCRs in response to the EPA interstate transport requirements for ozone season NO_X emissions, which began in 2003. So, while EPA has applied RACT on a case-by-case, source-specific basis, EPA cannot ignore the fact that there are many coal-fired EGUs, outside of Pennsylvania, that can, and do, operate their SCR controls year-round with NO_X emission limits similar to the final limits determined in this notice for the purposes of NO_X RACT as well as for other regulatory requirements.[42]

EPA also disagrees that the Keystone units cannot operate their SCRs effectively outside of the ozone season or that the rates must be further adjusted to account for seasonal effects. In response to Keystone's comment, EPA further reviewed non-ozone season emissions data reports for Keystone units and found that between 2009 and 2010, both Keystone units operated their SCRs in non-ozone season months for extended periods whereby their NO_X emissions were generally below the final NO_X emission limits determined in this notice.[43] Therefore, EPA cannot justify exempting Keystone from operating its SCRs, with reasonable effectiveness, for NO_X RACT during non-ozone season months.

Comment: Key-Con asserts that EPA's limits severely and inappropriately limit the amount of time either facility can operate without ammonia injection, especially during start-up and low load

[40] See *https://www.epa.gov/sites/default/files/2017-12/documents/scrcostmanualchapter7thedition_2016revisions2017.pdf* at 16.

[41] 972 F.3d at 302.

[42] Delaware Administrative Code, Title 7 Natural Resources & Environmental Control, 1100 Air Quality Management Section, 1146 ''Electric Generating Unit (EGU) Multi-Pollutant Regulation''.

Maryland—Code of Maryland Regulations (COMAR), Title 26 Department of the Environment, Subtitle 11 Air Quality, Chapter 38, ''Control of NO_X Emissions from Coal-Fired Electric Generating Units''.

New Jersey State Department of Environmental Protection, New Jersey Administrative Code, Title 7, Chapter 27, Subchapter 19, ''Control and Prohibition of Air Pollution from Oxides of Nitrogen''.

''Coal-Fired Power Plant Enforcement'' US EPA, retrieved August 2022. See *https://www.epa.gov/enforcement/coal-fired-power-plant-enforcement.*

[43] ''Custom Data Download'' US EPA Clean Air Markets Program Data, retrieved August 2022, see *https://campd.epa.gov/data/custom-data-download.*

operation. They further assert that the duration of a cold start-up is 18–24 hours, and that at loads between the minimum sustainable load (340 MW) and the unit load (which they do not identify) where the minimum continuous operating temperature (MCOT) of the SCR is reached, emissions can reach 0.35 lb/MMBtu for Keystone units, and 0.30 lb/MMBtu for Conemaugh. They assert that Keystone units 1 and 2 in particular would be unable to demonstrate compliance if there was one cold start-up in a 30-day period, even if they spent the rest of the time operating at the proposed limit of 0.074 lb/MMBtu.

Response: Key-Con's comment is not sufficient to demonstrate an inability to meet the proposed FIP limits. Key-Con presented no data to justify the amount of time spent in a cold start-up during which the unit load is above the sustainable limit, but below whatever threshold is necessary to bring flue gas up to the MCOT of the SCR and begin ammonia injection. As noted in a previous response, Key-Con did not provide any information regarding expected unit utilization, and instead criticized EPA's proposed rates as unobtainable during startup events by providing 25 hours of minimal data regarding one cold-start of Keystone Unit 1 in January 2022. Given that this data covered only 25 hours of startup, and was not then averaged with 29 other days of emission data to arrive at a 30-day average hourly emission rate, it is not proof that this one unit could not meet EPA's 30-day average rate.

In response to this comment, EPA further reviewed startup data for Keystone in non-ozone season months. On November 5, 2009, Keystone Unit 1 started operations after having been inoperable since October 20, 2009. During the first three days of operation, the daily NO_X emission rates were 0.229, 0.160, and 0.058 lb/MMBtu respectively. During the subsequent days of operation, up until reaching 30 operating days, the daily NO_X emissions varied from a low of 0.046 to a high of 0.116 lb/MMBtu. The resultant 30-day NO_X emission rate after 30 days of operation was 0.064 lb/MMBtu.[44] This is well below the final NO_X emission rate limit determined in this notice of 0.075 lb/MMBtu. This example illustrates that the unit is entirely capable of achieving the emission rate limits in this notice, with startup periods, provided the normal operating days are sufficiently controlled and the facility was able to achieve these results without a specific 30-day regulatory requirement to do so. Moreover, EPA has purposely granted an emission rate averaged over 30 days, which is the maximum averaging time EPA can grant for NO_X RACT. EPA has also issued facility-wide emission rate limits to allow the facilities to further average the emission rates amongst their units. This amount of dual averaging, in terms of averaging days and then units, affords Key-Con, and the other facilities, additional flexibility to manage startup operations.

Further, even if we are to accept this claim on its face, Key-Con's argument fails because they merely point out the obvious mathematical certainty that any appreciable amount of time spent operating above the average limit would lead to a violation if the entirety of the remaining averaging period was spent operating exactly at the limit. The entire purpose of establishing average limits (and in this case a 30-day average) is to smooth out the peaks and valleys of shorter-term emissions and arrive at a limit that can be met by offsetting periods when the units emit above the limit (generally, SCR-off periods), with periods of optimal operation where the units emit below the limit (generally, SCR-on periods). This is one of the reasons that we did not select the lowest achievable SCR-on rate as RACT. EPA's limits provide for some level of SCR-off operation, while still representing the lowest rate the source is capable of meeting over such period through the application of control technology that is reasonably available considering technological and economic feasibility. To the degree that this limit acts as a constraint on low-load operation without the SCR, the commenter did not explain why such a constraint is inappropriate. In light of the high NO_X emissions that can occur with such operation, the EPA believes this is a reasonable approach to define a limit that represents the application of RACT. Moreover, Key-Con's own analysis appears to support an ability to meet 0.075 lb/MMBtu, even based on cold start-ups taking place in January.[45] As discussed in section IV of this preamble, EPA has re-evaluated our proposed limits, with the resulting limits being consistent with what Key-Con's comments appear to show is attainable.

Comment: Homer City asserts that because the proposed 24-hour mass limits are based on the 30-day average rate limits, the mass limits do not provide adequate margin for periods of start-up and shut down.

Response: EPA disagrees. First, as previously discussed, the 30-day rate-based limits upon which the daily mass limits are based were derived in such a way as to incorporate several layers of flexibility, or margin, including emissions during periods of startup and shutdown. We used weighted averages considering years when the units were operating in more of a load-following mode rather than as baseload, we used a 30-day averaging period to ''smooth'' variability of shorter-term emissions, and we used the ''third-best'' rather than the ''best'' approach in order to add additional buffer and still establish limits that represent RACT. Additionally, it is not clear what period of time the commenter is considering as ''startup,'' nor have they established that they could not begin operating the SCRs sooner. While emission rates during the startup process do tend to be higher before the control equipment is fully operational, mass emissions are typically lower for most startup hours, since startup generally happens at lower levels of fuel combustion. Finally, commenters have not presented any actual operating data to demonstrate that they cannot meet the proposed limits. Indeed, EPA's review of historical data, and in fact, some data from the 2022 ozone season reported so far, supports a determination that the sources can achieve EPA's final 30-day NO_X emission rate limits, and that when the units operate in compliance with the 30-day rate limit, they have generally operated below the final daily NO_X mass emission limits.

Comment: Homer City claims that EPA's proposed limits are not technically feasible because, they assert, from 2010–2021, only Keystone and Conemaugh Units 1 and 2 have been able to achieve EPA's proposed limits on a 30-day basis, and even then, it was only 7 instances or 6.36% of the time.

Response: First, if sources were not meeting the proposed limits in the selected years during which there was no regulatory requirement or economic incentive to do so, it is not necessarily proof that they could not have. Nor is it proof that they cannot in the future. EPA notes that in rejecting EPA's approval of PADEP's original 0.12 lb/MMBtu limit as ''a mere acceptance of the status quo,'' 972 F.3d at 302, the Court in *Sierra Club* affirmed that ''an average of the current emissions being generated by existing systems, will not usually be sufficient to satisfy the RACT standard,'' *id.* at 300. Homer City rejects EPA's limits, but presents no data or analysis that demonstrates what they are in fact capable of achieving, and what EPA should establish as RACT for these

[44] See ''Keystone winter-time SCR use unit 1.xlsx'' in the docket for this action.

[45] *Id.*

units. EPA has demonstrated that the limits are achievable when the regulatory environment requires it, and that the limits in the FIP represent RACT for these sources.

Comment: PADEP asserts that EPA's FIP is based on an incomplete record. First, PADEP asserts that EPA ignored information that the Department obtained from the sources and failed to obtain additional information that would be necessary to conduct a source specific RACT analysis. Additionally, PADEP claims that meetings between EPA staff and the Maryland Department of the Environment (MDE) prior to our proposal may be relevant to the development of the FIP, and that records from that meeting should have been in the docket.

Response: EPA disagrees. First, to the extent it was relevant to our approach, we did consider the information that PADEP obtained and submitted, and in fact cited to it on numerous occasions, and included it in the record as appropriate. EPA had a sufficient technical basis, that is thoroughly documented in the rulemaking record, to support the RACT limits included in this FIP. To the extent that PADEP or the sources at issue in this rulemaking believe the Agency should have considered additional or alternative data, the 45-day comment period provided an opportunity for the sources to submit such information. EPA considered all of the additional information submitted prior to finalizing the FIP. With respect to the assertion that records from EPA's discussions with MDE prior to EPA proposing this action should have been contained in the record, EPA disagrees. All documentation and information that EPA relied upon in developing this rule action have been included in the record. The cited discussion with MDE did not contain information that was relied upon for development of the FIP approach and limits.

Comment: Montour submitted a technical analysis which built upon EPA's methodology in the May 25, 2022 (87 FR 31798) NPRM in order to demonstrate what they felt are more achievable limits, based on a dataset that represents what Montour contends are more consistent with current operating parameters. Montour asserts that EPA should have only considered ozone season data from 2017–2021, that the correct SCR threshold is 440MW, and that as a result, Montour should have a facility-wide, 30-day NO_X emission rate limit of 0.099 lb/MMBtu, with daily mass-based limits of 17,385 and 17,200 lb NO_X/day for Units 1 and 2, respectively.

Response: As further discussed in section IV of this preamble, as a result of comments received and while largely retaining the methodology described in the NPRM, EPA has revised some of the limits from the proposal based on the submittal of additional data or the reconsideration of some of the weights in the case of Conemaugh. Specifically, in cases such as Montour where a facility submitted SCR threshold data to counter that which EPA used in the proposal, EPA recalculated the NO_X rate limits using the facility's information, but EPA's original methodology. In the case of Montour, this recalculation resulted in limits that are very much in line with the alternate limits proposed by the facility in its technical analysis. Specifically, EPA's methodology resulted in a facility-wide, 30-day NO_X emission rate limit of 0.102 lb/MMBtu, and daily, mass-based limits of 17,912 and 17,732 lbs NO_X/day for Units 1 and 2, respectively. In the interest of consistency, EPA is finalizing the limits derived from our original methodology rather than the alternate limits proposed by Montour. Additionally, because EPA's limits are in line with, and in fact very slightly higher than what Montour proposed, EPA is not evaluating the remainder of Montour's technical analysis.

Comment: Several commenters assert that because achieving compliance with MATS has a negative effect on NO_X reduction efficiency, EPA should not have considered years prior to MATS requirements, and that the limits are therefore too stringent.

Response: EPA recognizes the co-benefits of SCRs regarding the oxidation and ultimate removal of mercury from flue gas. Commenters suggest that there is a trade-off between NO_X and mercury removal, resulting in higher NO_X rates to ensure sufficient mercury capture. EPA has conducted analysis to evaluate this contention in a previous rulemaking. Specifically, to respond to comments received on the proposed CSAPR Update, EPA examined ozone-season NO_X rates from 86 units subject to the MATS rule with SCR and rates below 0.12 lbs NO_X/MMBtu in 2015 (*i.e.,* units that were removing the necessary mercury while operating their SCRs during the 2015 ozone season). EPA selected the rate cut-off of 0.12 lbs NO_X/mmBtu to clearly identify units that were operating their SCR. EPA found that the average 2015 NO_X rate at these 86 units was 0.072 lb/MMBtu. The average rate for these same units in previous years was 0.080 and 0.078 lb/MMBtu for 2014 and 2013, which was prior to the MATS compliance date when the units would have only needed to optimize operations for purposes of NO_X removal rather than mercury removal. The 2014 and 2013 rates were each statistically significantly higher than the rate in 2015 when these units were complying with the MATS rule (Student's t-test probability (p) <0.03 and 0.03). Based on the CSAPR Update analysis, which is included in the docket for this rulemaking,[46] EPA concludes that units are able to simultaneously comply with MATS (*i.e.,* remove mercury from flue gas) while maintaining or even lowering their NO_X rates, and that the comment therefore does not provide a sufficient basis for EPA to exclude data from years before MATS implementation from the analysis conducted for this rule.

Comment: Several commenters note the role PJM plays in directing the units' dispatch and then assert various implications concerning the feasibility or cost of the proposed emissions limits. For example, Talen states that ''PJM retains complete and unilateral discretion for calling the units to run at certain load profiles. In addition to directing Montour SES when to start up the units, PJM's typical dispatch also includes the lowering of the unit output down to minimum load during off-peak periods daily.'' Talen further states that ''PJM dispatch information can dictate the ramp rate of the unit after a startup. It is not wholly in Montour SES's control to adjust unit operation to fit EPA's proposed model.'' Homer City states that ''operations today are, in large part, determined by PJM and are beyond control of the source operators'' and that the proposed emissions limits would not accommodate emissions during ''startups, shutdowns, and low-load operations directed by PJM.'' Homer City also asserts that sometimes ''[PJM's] direction requires Homer City to operate at levels . . . which [do] not allow for operation of the SCR.'' Key-Con states that, ''in general'' dispatch of units in the PJM market ''is controlled by PJM, not the EGU owner or operator.'' Key-Con suggests EPA has assumed that unit owners can choose to ignore PJM's dispatch instructions. Key-Con also states that the proposed emission rates ''will require Key-Con to forfeit most dispatch opportunities at lower electrical loads as directed by PJM and suffer resultant revenue impacts in order to maintain compliance with the limits.''

Response: The fact that PJM generally directs the day-to-day and hour-to-hour dispatch of the units subject to this rule is not in dispute, and any comments

[46] See MATS Compliance Impact on SCR Control Rates.xlsx.

suggesting that EPA has assumed otherwise mischaracterize the proposal.[47] However, in EPA's view, the consequences that commenters assert could result from requirements to follow PJM's dispatch instructions are unrealistic because the commenters largely fail to acknowledge sources' considerable ability to influence those instructions through the offer prices and operating parameters that the sources provide to PJM for use in PJM's decision-making process. In particular, EPA does not agree with commenters' suggestions that PJM's dispatch instructions would create a material obstacle to the sources' efforts to comply with the limits in an economic manner. Rather, EPA believes it is entirely reasonable to assume, first, that the source owners will have the opportunity to consider their emission limits when developing the information they supply to PJM for use in PJM's decision-making process and, second, that PJM's subsequent dispatch instructions will consider the information supplied by the owners when determining the dispatch instructions. In other words, contrary to the commenter's suggestions, EPA believes that the sources' role as suppliers of inputs to PJM's decision-making process means that the sources in fact are well positioned to prevent PJM's dispatch instructions from interfering with the sources' compliance strategies.

A few examples of the information that sources can specify to PJM for use in PJM's decision-making illustrate how the sources covered by this rule could cause PJM to issue dispatch instructions that are generally compatible with what the source owners consider necessary to facilitate effective SCR operation. First, the operating parameters that a source can specify include ''Economic Min (MW),'' representing the owner's specification of ''the minimum energy available, in MW, from the unit for economic dispatch'' under non-emergency conditions.[48] If a source is concerned about the possibility that PJM otherwise might direct the unit to run extensively—for example, during all or most overnight off-peak hours—at low load levels that would be insufficient to maintain SCR inlet temperatures high enough for effective SCR performance, the source can avoid that outcome by specifying higher values for Economic Min (MW). Second, the operating parameters include ''Ramp Rate (MW/Min),'' representing the default rate, in MW per minute, for increasing or decreasing a unit's output.[49] If a source is concerned about the possibility that PJM would otherwise frequently direct the unit to increase or decrease its output at rates that would cause difficulty in sustaining consistent SCR performance, the source can avoid that outcome by specifying lower values for Ramp Rates. Third, sources can submit cost-based or price-based values for a variety of parameters associated with unit start-ups, such as ''Cold Startup Cost,'' ''Intermediate Startup Cost,'' and ''Hot Startup Cost,'' representing the cost-based or price-based offers for the source's compensation for each start-up, differentiated according to the unit's temperature before the start-up.[50] If a source believes that its compliance strategy should include efforts to reduce start-up emissions by substituting gas or oil for some of the coal that would otherwise be combusted during the start-up process, the source generally can revise its offered Startup Cost values to reflect any resulting changes in start-up fuel cost.

EPA recognizes that under certain emergency system conditions, PJM may issue dispatch instructions that reflect various ''emergency'' parameters rather than the parameters discussed above that would be used for economic dispatch under more typical system conditions. EPA further recognizes that dispatch instructions issued by PJM in an emergency could theoretically require a unit to temporarily operate in a manner that precludes effective SCR operation until the emergency ends or until PJM can implement alternative measures to address the emergency. EPA is also aware that PJM's procedures include lead times that may affect how soon sources could change certain elements of the information they provide to PJM for use in PJM's decision-making. However, EPA believes these considerations are sufficiently addressed by the fact that the emission rate limits established in this rule are defined as 30-day rolling averages and the fact that EPA is not making the requirements established in this rule effective until 180 days after the rule's effective date.

EPA found no information in the comments indicating that the sources could not improve their abilities to run their SCRs continuously or at improved overall emissions rates by taking advantage of opportunities to optimize the values they provide to PJM for offer prices and operating parameters, potentially including but not limited to Economic Min (MW), Ramp Rate (MW/Min), and Cold, Intermediate, and Hot Startup Cost.[51] Rather, in suggesting that PJM's dispatch instructions could conflict with the proposed emission limits, commenters relied solely on the fact that the sources generally must comply with PJM's instructions once the instructions are issued, with no discussion of the process by which PJM determines what its instructions should be and no discussion of the sources' own opportunities to influence that process.[52]

Finally, EPA notes that changes in the emissions and operating data reported

[47] For example, EPA views Key-Con's extended argument that sources do not have incentives to violate PJM's dispatch instructions not as an attempt to rebut anything EPA actually said in the proposal but rather as the creation and subsequent rebuttal of Key-Con's own strawman.

[48] See the PJM Markets Gateway User Guide (PJM Guide), available at *https://pjm.com/~/media/etools/markets-gateway/markets-gateway-user-guide.ashx,* at 35.

[49] See PJM Guide at 35. Different Ramp Rate values can be specified for different portions of a unit's overall load output range, and different values can be specified for output increases and output decreases. Id. at 38–40.

[50] See PJM Guide at 51–53.

[51] In addition to Economic Min (MW), sources can also specify ''Economic Max (MW),'' representing the owner's specification of the maximum energy available from the unit for economic dispatch under non-emergency conditions. See PJM Guide at 35. PJM evaluates whether the ratio of the value submitted for Economic Max (MW) to the value submitted for Economic Min (MW)—known as the ''Turn Down Ratio,'' see PJM Guide at 103, falls below a default floor value established by PJM for that type of unit. If so, the source must obtain PJM's approval for the submitted Economic Min and Economic Max parameter values (*i.e.,* an ''exception'' to the Turn Down Ratio default floor value) by providing additional information to justify the source's submitted values. In an attachment to its comments, Key-Con has indicated its awareness of the availability of such exceptions and its expectation that PJM would likely be willing to approve exceptions if needed to facilitate continuous SCR operation during overnight off-peak periods. See Key-Con comments, attachment 3 at 20–22. Moreover, the operating data reported for Keystone to EPA for May and June of 2022 appear to show that Key-Con has in fact received approval of such an exception, because the Keystone units' ratios of daytime maximum load levels to overnight minimum load levels for much of this period fall below the ratio's default floor value that would apply to the units in the absence of an exception.

[52] The commenters generally chose not to discuss their opportunities to influence PJM's dispatch instructions. However, the comments do include some implicit recognition that those opportunities exist, most of which consist of qualifiers such as ''in general,'' ''not wholly,'' or ''in large part'' to various statements. The clearest confirmation that those opportunities exist is found in a statement by Key-Con that the proposed emission rates ''will require Key-Con to forfeit most dispatch opportunities at lower electrical loads as directed by PJM and suffer resultant revenue impacts in order to maintain compliance with the limits.'' EPA views this statement as an implicit admission that Key-Con has the ability to ''forfeit . . . dispatch opportunities'' when it believes such forfeiture is in its interest. Given PJM's undisputed role in directing units' dispatch, the only mechanism for a source to accomplish such a ''forfeiture'' would be for the source to provide information to PJM that causes PJM to issue dispatch instructions that do not require the units to dispatch at low load levels.

by the Conemaugh and Keystone units for the first half of the 2022 ozone season relative to the data reported by these units for the 2021 ozone season appear to corroborate EPA's understanding that sources have the ability to influence PJM's dispatch decisions. During the periods of the 2021 ozone season when these units operated, a frequent operating pattern for each of the units was to cycle between a full load level of approximately 900 MW during daytime peak hours and a lower load level of approximately 440 MW during overnight off-peak hours, running their SCRs at the higher daytime loads and turning off their SCRs at the lower nighttime loads. During the periods of the first half of the 2022 ozone season when the units operated, while they continued to display the same general daytime-nighttime cycling pattern, the load levels to which they cycled down overnight were higher than in 2021, apparently producing flue gas temperatures sufficient to allow the units to run their SCRs overnight. Specifically, during May and June 2022 the Conemaugh units generally cycled down to a load level of approximately 545 MW, and the Keystone units generally cycled down to a load level of approximately 700 MW. EPA believes the reason for the change in overnight load levels is that the sources must have provided higher values of Economic Min (MW) to PJM for use in making dispatch decisions during the 2022 ozone season. Taking such a step would have increased the likelihood that the units would be given dispatch instructions that would allow them to run their SCRs continuously and would have been a rational response by the sources to the higher reported NO_X allowance prices during the 2022 ozone season.[53] In summary, EPA finds these comments unpersuasive when appropriately evaluated in the context of sources' extensive ability to influence PJM's decision-making, which is unchallenged in the comments.

IV. EPA's Final RACT Analysis and Emission Limits

After consideration of all public comments, the EPA is establishing the 30-day NO_X Emission Rate Limits in Table 5 and Daily NO_X Mass Emission Limits in Table 8 for the four facilities covered by this FIP to meet the statutory requirement to implement RACT for the 1997 and 2008 ozone NAAQS.

TABLE 5—FACILITY-WIDE 30-DAY ROLLING AVERAGE NO_X EMISSION RATE LIMITS

Facility name	Facility-wide 30-day average rate limit (lb/MMBtu)
Conemaugh	0.072
Homer City	0.096
Keystone	0.075
Montour	0.102

The limits in Table 5 are based on a 30-day rolling average, and apply at all times, including during operations when exhaust gas temperatures at the SCR inlet are too low for the SCR to operate, or operate optimally. As discussed in the proposal and in response to comments, a 30-day average ''smooths'' operational variability by averaging the current value with the prior values over a rolling 30-day period to determine compliance. While some period of lb/MMBtu values over the target rate can occur without triggering a violation, they must be offset by corresponding periods where the lb/MMBtu rate is lower than the compliance rate (*i.e.,* the 30-day rolling average rate).

To calculate the final 30-day rates, EPA used the same weighted rate methodology from the proposal, with three key changes. The data underlying the weighted rates calculation for each unit is shown in Table 6 below.

TABLE 6—UNIT-SPECIFIC WEIGHTED RATES DATA

Facility name	Unit	SCR on rate	SCR on weight (%)	SCR off rate	SCR off weight (%)	Weighted rate	Facility-wide average weighted rate
Conemaugh	1	0.070	98.5	0.255	1.5	0.073	0.072
Conemaugh	2	0.070	99.8	0.258	0.2	0.071	
Homer City	1	0.103	99.8	0.341	0.2	0.103	0.096
Homer City	2	0.087	99.3	0.322	0.7	0.088	
Homer City	3	0.096	99.6	0.292	0.4	0.097	
Keystone	1	0.041	86.7	0.309	13.3	0.076	0.075
Keystone	2	0.043	88.4	0.312	11.6	0.074	
Montour	1	0.045	81.5	0.384	18.5	0.108	0.102
Montour	2	0.047	85.7	0.396	14.3	0.096	

First, using information from the comments, EPA revised the SCR thresholds for certain sources. As explained previously, these thresholds are applied to the historical data set for the purpose of calculating SCR-on and SCR-off rates and weights to calculate the final weighted rates. EPA revised the thresholds for Homer City Units 1 and 2 and Montour Units 1 and 2. Homer City did not provide a revised threshold for Unit 3, so the same threshold from

[53] For the complete hourly data discussed in this paragraph, see PA SCR unit 2021–2022 hourly ozone season data.xlsx, available in the docket for this action. The spreadsheet contains graphs for each unit illustrating the changes in load levels and SCR operation described here. EPA notes that the 2022 data have not been used to set the emission limits being finalized in this rule but are being presented to support EPA's response to the sources' comments relating to PJM's control of dispatch decisions.

the proposal was used for the final calculation for that unit. Key-Con also did not provide updated thresholds for Keystone and Conemaugh, though their thresholds from the proposal were based on comments from Key-Con on the recommendation submitted to EPA by the Ozone Transport Commission (OTC) under CAA § 184(c).[54] [55] Table 7 of this preamble shows the thresholds used for the final calculation. As previously discussed, based on additional information received during the public comment period, the thresholds for Homer City Units 1 and 2 increased slightly, while the thresholds for Montour increased more significantly, as compared to the proposal.

TABLE 7—SCR THRESHOLDS USED IN WEIGHTED RATES ANALYSIS

[Proposal vs. final]

Facility name	Unit	SCR threshold, proposal (MW)	SCR threshold, final (MW)
Conemaugh	1	450	450
Conemaugh	2	450	450
Homer City	1	320	340
Homer City	2	320	335
Homer City	3	320	320
Keystone	1	660	660
Keystone	2	660	660
Montour	1	380	440
Montour	2	380	440

The threshold changes result in some changes to the data underlying the weighted rate calculation for Homer City Units 1 and 2 and Montour Units 1 and 2 from the proposal.[56] The changes to the SCR thresholds changed the SCR-on and -off rates for these units very slightly, as some hours went from being classified as SCR-on to SCR-off. The SCR-on and -off rates for the other units do not change from the proposal, and EPA is still using the rate based on the EGU's third-best ozone season average from 2003 to 2021 (second-best ozone season average for Conemaugh due to its more limited years of SCR data as compared to other units). The threshold changes altered the SCR-on and -off weights slightly for the Homer City units and substantially for the Montour units.

Second, while EPA is retaining the use of the third-best weight (the ozone season in which the EGU had its third highest proportion of heat input spent above the SCR threshold) from the period 2011 to 2021 for Homer City, Keystone, and Montour, EPA is using the second-best weight (the ozone season in which the EGU had its second highest proportion of heat input spent above the SCR threshold) for Conemaugh. As discussed previously in this action and in the proposal, Conemaugh installed its SCR much later than the other sources. In response to comments pointing out that Conemaugh's proposed limit was the highest despite having the newest SCR as well as to account for the more limited set of ozone seasons from which to draw data, the Agency believes it is reasonable to use the second-best weight instead of the third-best. EPA believes that the atypical result pointed out by the commenter stems mainly from the fact that using a third-best weight from a 7-year data set (as opposed to a third-best weight from an 11-year data set used for the other sources with more years of SCR data) would be more analogous to a mean rate, rather than the lowest rate the source was capable of achieving as RACT requires. Given EPA's determination, informed by the Court decision, that RACT should represent a better rate than a mean rate, we believe that for Conemaugh, the second-best weight would provide a more comparable weight, while still excluding the low end. This results in a tightening of Conemaugh's final limit, as compared to the proposal. EPA still believes it is reasonable to use the time period 2011 to 2021 from which to draw the weights for Homer City, Keystone, and Montour for the final limit. EPA re-examined the occurrence of cycling at these facilities and found that the drop in time spent above the SCR threshold begins within this time period for these sources.

Third, as discussed in section III of this preamble, because of the unit-specific nature of EPA's weighted rate analysis, the EPA expects that the unit-specific rates already represent RACT for each unit, and that the most appropriate basis for a facility-wide average would be the weighted rates for each of the units at the facility. Therefore, EPA is calculating the final facility-wide 30-day limits as an arithmetic average of the results of the weighted rates calculation for each unit at the facility, instead of applying the best unit-specific weighted rate facility-wide.

[54] CAA section 184(a) establishes a commission for the OTR, the OTC, consisting of the Governor of each state or their designees, the Administrator or their designee, the Regional Administrators for the EPA regional offices affected (or the Administrator's designees), and an air pollution control official representing each state in the region, appointed by the Governor. Section 184(c) specifies a procedure for the OTC to develop recommendations for additional control measures to be applied within all or a part of the OTR if the OTC determines that such measures are necessary to bring any area in the OTR into attainment for ozone by the applicable attainment deadlines. On June 8, 2020, the OTC submitted a recommendation to EPA for additional control measures at certain coal-fired EGUs in Pennsylvania. See 85 FR 41972; July 13, 2020.

[55] Conemaugh and Keystone submitted data in response to the OTC's CAA section 184(c) recommendation identifying the MW input at which it typically operates or can operate the SCRs. EPA reviewed the historic operating data for these facilities as it did for Homer City, Montour, and Cheswick, and found that Keystone and Conemaugh's stated thresholds were consistent with the data. EPA thus relied upon the stated values for Keystone and Conemaugh in the development of this action's proposed rates.

[56] See Appendix 2 of the TSD for the proposal to compare the proposed weights and rates to the final values in Table 6 of this preamble.

TABLE 8—REVISED UNIT-SPECIFIC DAILY NO_X MASS EMISSIONS LIMITS

Facility name	Unit	Unit-specific mass limit (lb/day)
Conemaugh	1	14,308
Conemaugh	2	14,308
Homer City	1	15,649
Homer City	2	15,649
Homer City	3	16,727
Keystone	1	15,691
Keystone	2	15,691
Montour	1	17,912
Montour	2	17,721

The final daily limits in Table 8, which complement the facility-wide 30-day rate and further ensure RACT is applied continuously, are calculated using the same methodology as the proposal but with the updated final 30-day limits as shown in Table 5 of this preamble. The final 30-day limits are multiplied by each unit's maximum permitted heat input (in MMBtu/hr) by 24 hours.

V. Final Action

Based on the considerations outlined at proposal, consideration of all public comments, and for the reasons described in this action, EPA is establishing the 30-day NO_X emission rate limits in Table 5 of this preamble, Daily NO_X mass emission limits in Table 8 of this preamble, and accompanying regulatory language added to 40 CFR 52.2065, as major stationary source NO_X RACT requirements for the 1997 and 2008 ozone NAAQS at four facilities in Pennsylvania: Conemaugh; Homer City; Keystone; and Montour.

VI. Statutory and Executive Order Reviews

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

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

This final action is a rule of particular applicability and therefore is exempt from Office of Management and Budget (OMB) review.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA).[57] A ''collection of information'' under the PRA means ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, *ten or more persons,* whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.'' [58] Because this proposed rule includes RACT reporting requirements for four facilities, the PRA does not apply.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action does not affect small governmental jurisdictions or small organizations, and the affected entities are not small businesses as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201. Therefore, this action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments,'' requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' [59] This rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it implements a previously promulgated health-based Federal standard. Further, the EPA believes that the ozone-related benefits from this final rule will further improve children's health.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

[57] 44 U.S.C. 3501 *et seq.*

[58] 5 CFR 1320.3(c) (emphasis added).

[59] 65 FR 67249, 67250 (November 9, 2000).

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

Executive Order 12898 establishes Federal executive policy on environmental justice.[60] Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898. EPA reviewed the Regulatory Impact Analysis (RIA) prepared for the recently proposed 2015 Ozone NAAQS transport FIP, and in particular the Ozone Exposure Analysis at section 7.4 of the RIA.[61] Although that analysis projected reductions in overall AS–MO3 ozone concentrations in each state for all affected demographic groups resulting from newly proposed limits on EGUs and non-EGUs (See Figure 7–3 of the RIA), it also found that emission reductions from only EGUs would result in national reductions in AS–MO3 ozone concentrations for all demographic groups analyzed (See Figure 7–2 of the RIA). In summation, based on the analysis contained in that RIA, EPA has concluded that the FIP is expected to lower ozone in many areas, including residual ozone nonattainment areas, and thus mitigate some pre-existing health risks of ozone across all populations evaluated (RIA, p. 7–32). Further, EPA reviewed an analysis of vulnerable groups near the Conemaugh, Homer City, and Keystone EGUs found in the TSD for EPA's proposed disapproval of the SO_2 attainment plan for the Indiana, PA SO_2 nonattainment area.[62]

K. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability.

[60] Executive Order 12898 can be found 59 FR 7629 (February 16, 1994).

[61] The RIA for that separate EPA action can be found at *www.regulations.gov* under the docket number EPA–HQ–OAR–2021–0668. Section 7.4 begins on page 7–9.

[62] See *www.regulations.gov,* Docket EPA–R03–OAR–2017–0615–0059, pp. 14 –17.

VII. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 31, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action setting RACT limits for certain EGUs in Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Continuous emission monitoring, Electric power plants, Incorporation by reference, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. Section 52.2065 is added to subpart NN to read as follows:

§ 52.2065 Federal implementation plan addressing reasonably available control technology requirements for certain sources.

(a) *Applicability.* This section shall apply to Conemaugh, Homer City, Keystone, and Montour, as defined in this section, as well as any of their successors or assigns. Each of the four listed facilities are individually subject to the requirements of this section.

(b) *Effective date.* The effective date of this section is September 30, 2022.

(c) *Compliance date.* Compliance with the requirements in this section shall commence on March 29, 2023, except the Facility-wide 30-Day Rolling Average NO_X Emission Rate Limit requirement in (f)(1) of this section will commence for the Facility on the day that Facility has operated for thirty (30) Operating Days after, and possibly including, the compliance date of March 29, 2023.

(d) *General provisions.* This section is not a permit. Compliance with the terms of this section does not guarantee compliance with all applicable Federal, state, or local laws or regulations. The emission rates and mass emissions limits set forth in this section do not relieve the facility from any obligation to comply with other State and Federal requirements under the Clean Air Act, including the Facility's obligation to satisfy any State requirements set forth in the applicable SIP.

(e) *Definitions.* Every term expressly defined by this section shall have the meaning given to that term within this section. Every other term used in this section that is also a term used under the Act or in Federal regulations in this chapter implementing the Act shall mean in this section what such term means under the Act or the regulations in this chapter.

CEMS or *Continuous Emission Monitoring System,* means, for obligations involving the monitoring of NO_X emissions under this section, the devices defined in 40 CFR 72.2 and installed and maintained as required by 40 CFR part 75.

Clean Air Act or *Act* means the Federal Clean Air Act, 42 U.S.C. 7401–7671q, and its implementing regulations in this chapter.

Conemaugh means, for purposes of this section, Keystone Conemaugh Project LLC's Conemaugh Generating Station consisting of two coal-fired units designated as Unit 1 (8,280 MMBtu/hr) and Unit 2 (8,280 MMBtu/hr), located in West Wheatfield Township, Indiana County, Pennsylvania.

Day or *daily* means calendar day unless otherwise specified in this section.

EGU means electric generating unit.

EPA means the United States Environmental Protection Agency.

Facility means each of the following as defined in this section: Conemaugh; Homer City; Keystone; and Montour.

Facility-wide 30-Day Rolling Average NO_X Emission Rate for the Facility shall be expressed in lb/MMBtu and calculated in accordance with the following procedure: first, sum the total pounds of NO_X emitted from all Units during the current Operating Day and the previous twenty-nine (29) Operating Days; second, sum the total heat input from all Units in MMBtu during the current Unit Operating Day and the previous twenty-nine (29) Operating Days; and third, divide the total number of pounds of NO_X emitted *from all Units* during the thirty (30) Operating Days by the total heat input during the thirty

(30) Operating Days. A new Facility-wide 30-Day Rolling Average NO_X Emission Rate shall be calculated for each new Operating Day. Each 30-Day Rolling Average NO_X Emission Rate shall include all emissions that occur during all periods within any Operating Day, including, but not limited to, emissions from startup, shutdown, and malfunction.

Fossil fuel means any hydrocarbon fuel, including coal, petroleum coke, petroleum oil, fuel oil, or natural gas.

Homer City means, for purposes of this section, Homer City Generation LP's Homer City Generating Station consisting of three coal-fired units designated as Unit 1 (6,792 MMBtu/hr), Unit 2 (6,792 MMBtu/hr), and Unit 3 (7,260 MMBtu/hr), located in Center Township, Indiana County, Pennsylvania.

Keystone means, for purposes of this section, Keystone Conemaugh Project LLC's Keystone Generating Station consisting of two coal-fired units designated as Unit 1 (8,717 MMBtu/hr) and Unit 2 (8,717 MMBtu/hr), located in Plumcreek Township, Armstrong County, Pennsylvania.

lb/MMBtu means one pound per million British thermal units.

Montour means, for purposes of this section, Talen Energy Corporation's Montour Steam Electric Station consisting of two coal-fired units designated as Unit 1 (7,317 MMBtu/hr) and Unit 2 (7,239 MMBtu/hr), located in Derry Township, Montour County, Pennsylvania.

''*NO_X*'' means oxides of nitrogen, measured in accordance with the provisions of this section. ''*NO_X emission rate*'' means the number of pounds of NO_X emitted per million British thermal units of heat input (lb/MMBtu), calculated in accordance with this section.

Operating day means any calendar day on which a Unit fires Fossil Fuel.

Title V Permit means the permit required for major sources pursuant to Subchapter V of the Act, 42 U.S.C. 7661–7661e.

Unit means collectively, the coal pulverizer, stationary equipment that feeds coal to the boiler, the boiler that produces steam for the steam turbine, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine, and boiler, and all ancillary equipment, including pollution control equipment and systems necessary for production of electricity. An electric steam generating station may be comprised of one or more Units.

Unit-specific daily NO_X mass emissions shall be expressed in lb/day and calculated as the sum of total pounds of NO_X emitted from the Unit during the Unit Operating Day. Each Unit-specific Daily NO_X Mass Emissions shall include all emissions that occur during all periods within any Operating Day, including emissions from startup, shutdown, and malfunction.

(f) *NO_X emission limitations.* (1) The Facility shall achieve and maintain their Facility-wide 30-Day Rolling Average NO_X Emission Rate to not exceed their Facility limit in Table 1 to this paragraph (f)(1).

TABLE 1 TO PARAGRAPH (f)(1)—FACILITY-WIDE 30-DAY ROLLING AVERAGE NO_X EMISSION RATE LIMITS

Facility	Facility-wide 30-day rolling average NO_X emission rate limit (lb/MMBtu)
Conemaugh	0.072
Homer City	0.096
Keystone	0.075
Montour	0.102

(2) The Facility shall achieve and maintain their Unit-specific Daily NO_X Mass Emissions to not exceed the Unit-specific limit in Table 2 to this paragraph (f)(2).

TABLE 2 TO PARAGRAPH (f)(2)—UNIT-SPECIFIC DAILY NO_X MASS EMISSIONS LIMITS

Facility	Unit	Unit-specific daily NO_X mass emissions limit (lb/day)
Conemaugh	1	14,308
Conemaugh	2	14,308
Homer City	1	15,649
Homer City	2	15,649
Homer City	3	16,727
Keystone	1	15,691
Keystone	2	15,691
Montour	1	17,912
Montour	2	17,721

(g) *Monitoring of NO_X* emissions. (1) In determining the Facility-wide 30-Day Rolling Average NO_X Emission Rate, the Facility shall use CEMS in accordance with the procedures of 40 CFR parts 60 and 75, appendix F, Procedure 1.

(2) For purposes of calculating the Unit-specific Daily NO_X Mass Emissions Limits, the Facility shall use CEMS in accordance with the procedures at 40 CFR part 75. Emissions rates, mass emissions, and other quantitative standards set by or under this section must be met to the number of significant digits in which the standard or limit is expressed. For example, an Emission Rate of 0.100 is not met if the actual Emission Rate is 0.101. The Facility shall round the fourth significant digit to the nearest third significant digit, or

the sixth significant digit to the nearest fifth significant digit, depending upon whether the limit is expressed to three or five significant digits. For example, if an actual emission rate is 0.1004, that shall be reported as 0.100, and shall be in compliance with an emission rate of 0.100, and if an actual emission rate is 0.1005, that shall be reported as 0.101, and shall not be in compliance with an emission eate of 0.100. The Facility shall report data to the number of significant digits in which the standard or limit is expressed.

(h) *Recordkeeping and periodic peporting.* (1) The Facility shall electronically submit to EPA a periodic report, within thirty (30) Days after the end of each six-month reporting period (January through June, July through December in each calendar year). The portion of the periodic report containing the data required to be reported by this paragraph (h) shall be in an unlocked electronic spreadsheet format, such as Excel or other widely-used software, and contain data for each Operating Day during the reporting period, including, but not limited to: Facility ID (ORISPL); Facility name; Unit ID; Date; Unit-specific total Daily Operating Time (hours); Unit-specific Daily NO_X Mass Emissions (lbs); Unit-specific total Daily Heat Input (MMBtu); Unit-specific Daily NO_X Emission Rate (lb/MMBtu); Facility-wide 30-Day Rolling Average NO_X Emission Rate (lb/MMBtu); Owner; Operator; Representative (Primary); and Representative (Secondary). In addition, the Facility shall maintain the following information for 5 years from the date of creation of the data and make such information available to EPA if requested: Unit-specific hourly heat input, Unit-specific hourly ammonia injection amounts, and Unit-specific hourly NO_X emission rate.

(2) In any periodic report submitted pursuant to this section, the Facility may incorporate by reference information previously submitted to EPA under its Title V permitting requirements, so long as that information is adequate to determine compliance with the emission limits and in the same electronic format as required for the periodic report, and provided that the Facility attaches the Title V Permit report (or the pertinent portions of such report) and provides a specific reference to the provisions of the Title V Permit report that are responsive to the information required in the periodic report.

(3) In addition to the reports required pursuant to this section, if the Facility exceeds the Facility-wide 30-day rolling average NO_X emission limit on three or more days during any 30-day period, or exceeds the Unit-specific daily mass emission limit for any Unit on three or more days during any 30-day period, the Facility shall electronically submit to EPA a report on the exceedances within ten (10) business days after the Facility knew or should have known of the event. In the report, the Facility shall explain the cause or causes of the exceedances and any measures taken or to be taken to cure the reported exceedances or to prevent such exceedances in the future. If, at any time, the provisions of this section are included in Title V Permits, consistent with the requirements for such inclusion in this section, then the deviation reports required under applicable Title V regulations shall be deemed to satisfy all the requirements of this paragraph (h)(3).

(4) Each report shall be signed by the Responsible Official as defined in Title V of the Clean Air Act, or his or her equivalent or designee of at least the rank of Vice President. The signatory shall also electronically submit the following certification, which may be contained in a separate document:

''This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.''

(5) Whenever notifications, submissions, or communications are required by this section, they shall be made electronically to the attention of the Air Enforcement Manager via email to the following address: *R3_ORC_mailbox@epa.gov.*

[FR Doc. 2022–18669 Filed 8–30–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2021–0057; FF09M30000–223–FXMB1231099BPP0]

RIN 1018–BF07

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2022–23 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to Tribal requests for U.S. Fish and Wildlife Service (hereinafter ''Service'' or ''we'') recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on August 31, 2022.

ADDRESSES: You may inspect comments received on the migratory bird hunting regulations at *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2021–0057. You may obtain copies of referenced reports from the Division of Migratory Bird Management's website at *https://www.fws.gov/program/migratory-birds* or at *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2021–0057.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–2606.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the June 14, 2022, **Federal Register** (87 FR 35942), we proposed special

migratory bird hunting regulations for the 2022–23 hunting season for certain Indian Tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to Tribal requests for Service recognition of their reserved hunting rights, and for some Tribes, recognition of their authority to regulate hunting by both Tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both Tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by Tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by Tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the August 31, 2021, **Federal Register** (86 FR 48649), we requested that Tribes desiring special hunting regulations in the 2022–23 hunting season submit a proposal including details on:

(1) Harvest anticipated under the requested regulations;

(2) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(3) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(4) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a Tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (53 FR 31612, August 18, 1988).

The final rule described here is the final in the series of proposed and final rulemaking documents for migratory bird hunting regulations on certain Federal Indian reservations and ceded lands for the 2022–23 season. This rule sets hunting seasons, hours, areas, and limits for migratory game bird species on reservations and ceded territories. This final rule is the culmination of the rulemaking process for the Tribal migratory game bird hunting seasons, which started with the August 31, 2021, proposed rule. This final rule sets the migratory bird hunting regulations on certain Federal Indian reservations and ceded lands for the 2022–23 season.

Population Status and Harvest

Each year we publish reports that provide detailed information on the status and harvest of certain migratory game bird species. These reports are available at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our website at *https://www.fws.gov/library/collections/population-status,* or *https://www.fws.gov/library/collections/migratory-bird-hunting-activity-and-harvest-reports*.

We used the following annual reports published in August 2021 in the development of proposed frameworks for the migratory bird hunting regulations: Adaptive Harvest Management, 2022 Hunting Season; American Woodcock Population Status, 2021; Band-tailed Pigeon Population Status, 2021; Migratory Bird Hunting Activity and Harvest During the 2019–20 and 2020–21 Hunting Seasons; Mourning Dove Population Status, 2021; Status and Harvests of Sandhill Cranes, Mid-continent, Rocky Mountain, Lower Colorado River Valley and Eastern Populations, 2021; and Waterfowl Population Status, 2021.

Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, we conclude that the hunting seasons provided for herein are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received during the public comment period.

Comments and Issues Concerning Tribal Proposals

For the 2022–23 migratory bird hunting season, we proposed regulations (87 FR 35942, June 14, 2022) for 29 Tribes or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking.

The comment period for the June 14, 2022, proposed rule closed on July 14, 2022. We received one comment on our proposed rule; the commenter requested not to allow the killing of migratory birds. The Service appreciates the opportunity to establish special migratory bird hunting regulations in recognition of the Tribes' reserved hunting rights, and for some Tribes, recognition of their authority to regulate hunting by both Tribal members and nonmembers on their reservations. We addressed this one comment in our final rule to set 2022–23 frameworks for migratory bird hunting regulations (87 FR 42598, July 15, 2022).

Required Determinations

National Environmental Policy Act (NEPA) Consideration

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our record of decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2022–23,'' with its corresponding March 2022 finding of no significant impact. In addition, an environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the person listed above under the caption **FOR FURTHER INFORMATION CONTACT**.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that the Secretary shall insure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat. After we published the August 31, 2021, proposed rule, we conducted formal consultations to ensure that actions resulting from these regulations would

not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. The biological opinion resulting from this section 7 consultation is available for public inspection at the address indicated under **ADDRESSES**.

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that the annual migratory bird hunting regulations are significant because they have an annual effect of $100 million or more on the economy.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2022–23 migratory bird hunting season. This analysis was based on data from the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (National Survey), the most recent year for which data are available (see discussion under *Regulatory Flexibility Act,* below). This analysis estimated consumer surplus for three alternatives for duck hunting regulations. As defined by OMB Circular A–4, consumers' surplus is the difference between what a consumer pays for a unit of a good or service and the maximum amount the consumer would be willing to pay for that unit. The duck hunting regulatory alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2021–22 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations similar to the regulations in the 2021–22 season. For the 2022–23 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $329 million. We also chose alternative 3 for the 2009–10 through 2021–22 seasons. The 2022–23 analysis is part of the record for this rule and is available at *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2021–0057.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We prepare regulatory flexibility analyses, updated annually, to analyze the economic impacts of the annual hunting regulations on small business entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Survey, which is generally conducted at 5-year intervals. The 2022 analysis is based on the 2016 National Survey and the U.S. Department of Commerce's County Business Patterns, from which it is estimated that migratory bird hunters would spend approximately $2.2 billion at small businesses in 2022. Copies of the analysis are available upon request from the person listed above under the caption **FOR FURTHER INFORMATION CONTACT**, or from *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2021–0057.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, which are time sensitive, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with migratory bird surveys and the procedures for establishing annual migratory bird hunting seasons under the following OMB control numbers:

- 1018–0019, ''North American Woodcock Singing Ground Survey'' (expires 02/29/2024).
- 1018–0023, ''Migratory Bird Surveys, 50 CFR 20.20'' (expires 04/30/2023). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.
- 1018–0171, ''Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR part 20'' (expires 10/31/2024).

You may view the information collection request(s) at *http://www.reginfo.gov/public/do/PRAMain.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment

In accordance with E.O. 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges and, therefore, will reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

E.O. 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. While this rule is a significant regulatory action under E.O. 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian Tribes and have determined that there are *de minimis* effects on Indian trust resources. We solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2022–23 migratory bird hunting season in the August 31, 2021, proposed rule (86 FR 48649). The resulting proposals were published in a separate proposed rule (87 FR 35942, June 14, 2022). Through this process to establish annual hunting regulations, we regularly coordinate with Tribes that are affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive in its regulations than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulations Promulgation

The rulemaking process for migratory game bird hunting, by its nature, operates under a time constraint as seasons must be established each year or hunting seasons remain closed. However, we intend that the public be provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements (5 U.S.C. 551 *et seq.*). Thus, when the preliminary proposed rulemaking was published on August 31, 2021 (86 FR 48649), we established what we concluded were the longest periods possible for public comment and the most opportunities for public involvement. We also provided notification of our participation in multiple Flyway Council meetings, opportunities for additional public review and comment on all Flyway Council proposals for regulatory change, and opportunities for additional public review during the Service Regulations Committee meeting. Therefore, sufficient public notice and opportunity for involvement have been given to affected persons regarding the migratory bird hunting frameworks for the 2022–23 hunting season.

For the reasons cited above, we find that ''good cause'' exists, within the terms of the Administrative Procedure Act at 5 U.S.C. 553(d)(3) for these regulations to take effect immediately upon publication.

Accordingly, with each participating Tribe having had an opportunity to participate in selecting the hunting seasons desired for its reservation or ceded territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Signing Authority

On August 25, 2022, Shannon Estenoz, Assistant Secretary for Fish and Wildlife and Parks, approved this action for publication. On August 25, 2022, Shannon Estenoz also authorized the undersigned to sign this document electronically and submit it to the Office of the Federal Register for publication as an official document of the Department of the Interior.

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—MIGRATORY BIRD HUNTING

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703 et seq., and 16 U.S.C. 742a–j.

(**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature).

■ 2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

Unless specifically provided for in the following entries, all of the regulations contained in 50 CFR part 20 apply to the seasons listed herein.

(a) *Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Members and Nontribal Hunters).*

Tribal Members Only

Ducks (Including Mergansers), Coots, and Geese

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Nontribal Hunters

Ducks (Including Mergansers), Coots, and Geese

Season Dates: Same as Pacific Flyway portion of Montana.

Daily Bag and Possession Limits: Same as Pacific Flyway portion of Montana.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(b) *Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only).*

Ducks

1. 1854 and 1837 Ceded Territories:

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 18 ducks, including no more than 12 mallards or 9 of any other species.

2. Reservation:

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 12 ducks, including no more than 8 mallards or 6 of any other species.

Mergansers

1. 1854 and 1837 Ceded Territories:

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 15 mergansers, including no more than 6 hooded mergansers.

2. Reservation:

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 10 mergansers, including no more than 4 hooded mergansers.

Canada/Cackling Geese: All Areas

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 20 Canada/cackling geese.

Sandhill Cranes: 1854 and 1837 Ceded Territories Only

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 3 sandhill cranes. A crane carcass tag is required prior to hunting.

Tundra and Trumpeter Swans: Reservation Only

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 2 swans. Swan carcass tags are required prior to hunting.

Coots and Common Gallinules: All Areas

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 20 coots and common gallinules in the aggregate.

Sora and Virginia Rails: All Areas

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 25 sora and Virginia rails in the aggregate.

Snipe: All Areas

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 8 snipe.

Woodcock: All Areas

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 3 woodcock.

Mourning Doves: All Areas

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 30 mourning doves.

General Conditions:

1. While hunting waterfowl, a Tribal member must carry on his/her person a valid Ceded Territory License.

2. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset.

3. Except as otherwise noted, Tribal members will be required to comply with Tribal codes that will be no less restrictive than the provisions of chapter 10 of the Model Off-Reservation Code. Except as modified by Service rules, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

4. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. There are no possession limits for migratory birds. For purposes of enforcing bag limits, all migratory birds in the possession or custody of Band members on ceded lands will be considered to have been taken on those lands unless tagged by a Tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(c) *Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only).*

Ducks

Season Dates: September 1, 2022–January 20, 2023.

Daily Bag Limits: 35 ducks, including no more than 8 pintail, 4 canvasbacks, 5 hooded mergansers, 8 black ducks, 10 wood ducks, 8 redheads, and 20 mallards (only 10 of which may be females).

Canada/Cackling Geese and Snow Geese

Season Dates: September 1, 2022–February 15, 2023.

Daily Bag Limits: 15 geese.

White-Fronted Geese and Brant

Season Dates: September 20–December 30, 2022.

Daily Bag Limits: 5 geese.

Rails (Sora and Virginia Rail), Snipe, and Woodcock

Season Dates: September 1–November 14, 2022.

Daily Bag Limits: 10 rails, 10 snipe, and 5 woodcock.

Mourning Doves

Season Dates: September 1–November 14, 2022.

Daily Bag Limits: 25 mourning doves.

Sandhill Cranes

Season Dates: September 1–November 14, 2022.

Daily Bag and Possession Limits: 2 sandhill cranes, with a season limit of 4.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset. All other basic regulations contained in 50 CFR part 20 are valid. Other Tribal regulations apply and may be obtained at the Tribal office in Suttons Bay, Michigan.

(d) *Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).*

The 2022–23 waterfowl hunting season regulations apply to all treaty areas (except where noted):

Ducks

Season Dates: September 1–December 31, 2022.

Daily Bag Limits: 50 ducks in the 1837 and 1842 Treaty Area; 30 ducks in the 1836 Treaty Area.

Mergansers

Season Dates: September 1–December 31, 2022.

Daily Bag Limits: 10 mergansers.

Geese

Season Dates: September 1–December 31, 2022. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting outside of these dates will also be open concurrently for Tribal members.

Daily Bag Limits: 20 geese in the aggregate.

Coots and Common Gallinules

Season Dates: September 1–December 31, 2022.

Daily Bag Limits: 20 coots and common gallinules in the aggregate.

Sora and Virginia Rails

Season Dates: September 1–December 31, 2022.

Daily Bag and Possession Limits: The daily bag limit is 20 sora and Virginia rails in the aggregate, and the possession limit is 25 sora and Virginia rails in the aggregate.

Snipe

Season Dates: September 1–December 31, 2022.

Daily Bag Limits: 16 snipe.

Woodcock

Season Dates: 1836 Ceded Territory: September 1–December 31, 2022; 1837 and 1842 Ceded Territories: September 3–December 31, 2022.

Daily Bag Limits: 10 woodcock.

Mourning Doves: 1837 and 1842 Ceded Territories only

Season Dates: September 1–November 29, 2022.

Daily Bag Limits: 15 mourning doves.

Sandhill Cranes

Season Dates: September 1–December 31, 2022.

Daily Bag Limits: 10 sandhill cranes and no seasonal bag limit in the 1837 and 1842 Treaty areas; 3 sandhill cranes and no seasonal bag limit in the 1836 Treaty area.

Swans: 1837 and 1842 Ceded Territories only

Season Dates: September 1–December 31, 2022.

Daily Bag Limits: 5 swans. All harvested swans must be registered by presenting the fully feathered carcass to a Tribal registration station or GLIFWC warden. If the total number of trumpeter swans harvested reaches 20, the swan season will be closed by emergency Tribal rule.

General Conditions:

1. All Tribal members who wish to hunt are required to obtain a valid Tribal waterfowl hunting permit.

2. Except as otherwise noted, Tribal members must comply with Tribal codes that are no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations.

3. Particular regulations of note include:

A. Nontoxic shot is required for all waterfowl hunting by Tribal members.

B. Tribal members in each zone must comply with Tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

C. There are no possession limits, with the exception of 25 rails (in the aggregate) and 20 trumpeter swans total. For purposes of enforcing bag limits, all migratory birds in the possession and custody of Tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a Tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

D. There are no shell limit restrictions.

E. Hunting hours are from 30 minutes before sunrise to 30 minutes after sunset, except that, within the 1837 and 1842 Ceded Territories, hunters may use non-mechanical nets or snares that are operated by hand to take those birds subject to an open hunting season at any time (see further explanation provided in G.). Capturing, without the aid of other devices (*i.e.,* by hand), and immediately killing birds subject to an open season may also be done regardless of the time of day.

F. Within the 1837 and 1842 Ceded Territories, Tribal members may use electronic calls. Individuals using these devices must complete a hunt survey for each hunt where electronic calls are used. Required information includes the date, time, and location of the hunt; number of hunters; the number of each species harvested per hunting event; if other hunters were in the area, any interactions with other hunters; and other information deemed appropriate. Survey results must be summarized and documented in a Commission report, which will be submitted to the Service. This application will be replicated for 2 years (through the 2023–24 season), after which a full evaluation will be completed.

G. Within the 1837 and 1842 Ceded Territories, Tribal members may use non-mechanical, hand-operated nets (*i.e.,* throw/cast nets or handheld nets typically used to land fish) and hand-operated snares and may chase and capture migratory birds without the aid of hunting devices (*i.e.,* by hand). Non-attended nets or snares are not authorized. Tribal members using nets or snares to take migratory birds, or taking birds by hand, must complete a hunt survey for each hunt where these methods are used and submit the data to the Commission when requested at the end of the season. Required information includes the date, time, and location of the hunt; number of hunters; the number of each species harvested per hunting event; and other information deemed appropriate. Results must be summarized and documented in a Commission report, which will be submitted to the Service. This application will be replicated for 2 years (through the 2023–24 season), after which a full evaluation will be completed.

(e) *Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters).*

Ducks (Including Mergansers)

Season Dates: October 8–November 30, 2022.

Daily Bag and Possession Limits: The daily bag limit is 7, including no more than 2 hen mallards, 1 pintail, 2 redheads, 2 canvasback, and 2 scaup. The possession limit is three times the daily bag limit.

Canada/Cackling Geese

Season Dates: October 8–November 30, 2022.

Daily Bag and Possession Limits: 2 and 4, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(f) *Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters).*

Tribal Members on Reservation Lands

Ducks and Geese

Season Dates: September 24, 2022–January 31, 2023.

Tribal Members on Ceded Lands

Ducks

Season Dates: October 1, 2022–January 31, 2023.

Geese

Season Dates: September 3, 2022–January 31, 2023.

Daily Bag and Possession Limits: Same as those for the duck and goose seasons in the State of Washington.

Nontribal Hunters on Tribally Managed Lands

Ducks

Season Dates: September 24–25, 2022, and October 1, 2022–January 8, 2023.

Geese

Season Dates: The earliest possible opening date and to remain open for the maximum number of days allowed by

Federal frameworks (107 days from September 24, 2022–January 8, 2023). Hunters should obtain further information on specific hunt days from the Kalispel Tribe.

Daily Bag and Possession Limits: Same as those for the duck and goose seasons in the State of Washington.

General Conditions: All other State and Federal regulations contained in 50 CFR part 20, such as use of nontoxic shot and possession of a signed Migratory Bird Hunting and Conservation Stamp (Duck Stamp), apply.

(g) *Klamath Tribe, Chiloquin, Oregon (Tribal Members Only).*

Ducks, Coots, and Geese

Season Dates: October 5, 2022–January 31, 2023.

Daily Bag and Possession Limits: 9 ducks, 9 coots, and 9 geese, with possession limits two times the daily bag limit.

General Conditions: Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

(h) *Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only).*

Ducks

Season Dates: September 3–December 31, 2022.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 pintail, 5 canvasbacks, and 5 black ducks. Possession limits are two times the daily bag limit.

Geese

Season Dates: September 3–December 31, 2022.

Daily Bag and Possession Limits: 10 geese. Possession limits are two times the daily bag limit.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Only steel or other approved nontoxic shot may be used to harvest waterfowl. Waterfowl may not be pursued or taken while under the power of a motorized watercraft. Use of live decoys, bait, and commercial use of migratory birds is prohibited. No hunting is allowed on or near a wild rice bed that is being actively harvested. No travel by boat is allowed within a wild rice bed. Nonnative species must be removed from watercraft and hunting equipment before leaving an access point. Several waterfowl refuges are closed to the taking of waterfowl.

(i) *Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only).*

Ducks and Merganser

Season Dates: September 1, 2022–January 31, 2023.

Daily Bag and Possession Limits: 12 ducks, including no more than 2 pintail, 4 canvasbacks, 4 black ducks, 6 wood ducks, 4 redheads, 8 mallards (only 4 of which may be female), 10 common and red-breasted mergansers, and 2 hooded mergansers. Possession limits are three times the daily bag limit.

Coots and Gallinules

Season Dates: September 14, 2022–January 31, 2023.

Daily Bag and Possession Limits: 30 coots and gallinules and 60 in possession.

Geese

Season Dates: September 1, 2022–February 15, 2023.

Daily Bag and Possession Limits: 10 geese. Possession limits are three times the daily bag limit.

Woodcock, Snipe, and Rails (Sora and Virginia Rails)

Season Dates: September 1–December 31, 2022.

Daily Bag and Possession Limits: 5 woodcock and 25 snipe or rails in the aggregate. Possession limits for all species are three times the daily bag limit.

Mourning Doves

Season Dates: September 1, 2022–March 1, 2023.

Daily Bag and Possession Limits: 25 mourning doves. The possession limit is three times the daily bag limit.

Sandhill Cranes

Season Dates: September 1–December 31, 2022.

Daily Bag and Possession Limits: 2 sandhill cranes. The possession limit is three times the daily bag limit.

General Conditions:

1. All Tribal members who wish to hunt are required to obtain a valid Tribal resource card and 2022–23 hunting license.

2. Except as modified by Service rules, these amended regulations parallel all Federal regulations contained in 50 CFR part 20. Shooting hours are from one-half hour before sunrise to sunset.

3. Particular regulations of note include:

A. Nontoxic shot is required for all waterfowl hunting by Tribal members.

B. Tribal members in each zone must comply with Tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

4. Tribal members hunting in Michigan will comply with Tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(j) *The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only).*

Ducks and Mergansers

Season Dates: September 1, 2022–January 31, 2023.

Daily Bag Limits: 20 ducks and 10 mergansers, including no more than 5 female mallards, 5 pintail, 5 canvasbacks, 5 scaup, 5 hooded mergansers, 5 black ducks, 5 wood ducks, and 5 redheads.

Canada/Cackling Geese

Season Dates: September 1, 2022–February 8, 2023.

Daily Bag Limits: 20 Canada/cackling geese.

Woodcock

Season Dates: September 1–December 1, 2022.

Daily Bag Limits: 10 woodcock.

Snipe

Season Dates: September 1–December 31, 2022.

Daily Bag Limits: 15 snipe.

Mourning Doves

Season Dates: September 1–November 14, 2022.

Daily Bag Limits: 15 mourning doves.

Sora and Virginia Rails

Season Dates: September 1–December 31, 2022.

Daily Bag Limits: 20 sora and 20 Virginia rails.

Coots and Gallinules

Season Dates: September 1–December 31, 2022.

Daily Bag Limits: 20 coots and 20 gallinules.

Sandhill Crane

Season Dates: September 1–December 1, 2022.

Daily Bag Limit: 2 sandhill cranes.

General Conditions: Possession limits are twice the daily bag limits. All other Federal regulations contained in 50 CFR part 20 apply, except the Tribe allows the use of electronic calls for all species. The Tribe has agreed to extend the experimental Memorandum of Agreement with the Service regarding

the use of electronic calling through the 2022–23 season

(k) *Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters).*

Nontribal Hunters

Ducks, Mergansers, and Coots

Season Dates: October 1, 2022–January 5, 2023.

Daily Bag and Possession Limits: 6 ducks (including mergansers), including no more than 2 female mallards and 5 mallards in total, 2 pintail, 2 redheads, 2 canvasbacks, 3 wood duck, 3 scaup, and 1 mottled duck. Two bonus blue-winged teal are allowed during October 1–16, 2022. Coot daily bag limits are 15. Possession limits are three times the daily bag limits.

Canada/Cackling Geese

Season Dates: October 29, 2022–February 12, 2023.

Daily Bag and Possession Limits: 6 Canada/cackling geese, and possession limits are three times the daily bag limit.

White-Fronted Geese

Season Dates: October 22, 2022–January 17, 2023.

Daily Bag and Possession Limits: 2 white-fronted geese, and possession limits are three times the daily bag limit.

Light Geese

Season Dates: October 22, 2022–February 5, 2023.

Daily Bag and Possession Limits: 50 light geese, with no possession limits.

Doves

Season Dates: September 1–November 29, 2022.

Daily Bag and Possession Limits: 15 doves, and possession limits are three times the daily bag limit.

Tribal Members

Duck, Mergansers, and Coots

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag and Possession Limits: 6 ducks, including no more than 2 female mallards and 5 mallards in total, 1 pintail, 2 redheads, 2 canvasbacks, 3 wood ducks, 3 scaup, 2 bonus teal during the first 16 days of the season, and 2 mottled ducks; 5 mergansers, only 2 of which can be hooded mergansers; and 15 coot. Possession limits are three times the daily bag limits.

Canada/Cackling Geese

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag and Possession Limits: 6 Canada/cackling geese. The possession limits are three times the daily bag limit.

White-Fronted Geese

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag and Possession Limits: 3 white-fronted geese. The possession limits are three times the daily bag limit.

Light Geese

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag and Possession Limits: 50 light geese, with no possession limits.

Doves

Season Dates: September 1, 2022–January 31, 2023.

Daily Bag and Possession Limits: 15 doves. The possession limits are three times the daily bag limit.

General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot and shooting hours. Nontribal hunters must possess a valid Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code to which hunters must adhere when hunting in areas subject to control by the Tribe.

(l) *Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only).*

Ducks (Including Mergansers), and Coots

Season Dates: September 4, 2022–January 2, 2023.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 1 pintail, 1 canvasback, and 2 redheads. The daily bag and possession limit of harlequin ducks is 1 per season. The coot daily bag limits are 25. The possession limits are two times the daily bag limit, except as noted above.

Geese

Season Dates: September 4, 2022–January 2, 2023.

Daily Bag and Possession Limits: No more than 3 light geese. The season on Aleutian Canada/cackling geese is closed.

Brant

Season Dates: Season closed.

Mourning Doves and Band-Tailed Pigeons

Season Dates: September 1, 2022–February 27, 2023.

Daily Bag and Possession Limits: 10 mourning doves and 2 band-tailed pigeons. The possession limits are two times the daily bag limits.

Snipe

Season Dates: September 4, 2022–January 2, 2023.

Daily Bag and Possession Limits: 8 snipe. The possession limits are two times the daily bag limit.

General Conditions: All Tribal hunters authorized to hunt migratory birds are required to obtain a Tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to Tribal law. Hunting hours are from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl. Tribal reservation police and Tribal fisheries enforcement officers have the authority to enforce these migratory bird hunting regulations for the Lower Elwha Klallam Tribe.

(m) *Makah Indian Tribe, Neah Bay, Washington (Tribal Members Only).*

Ducks and Coots

Season Dates: September 24, 2022–January 31, 2023.

Daily Bag Limits: 7 ducks, including no more than 7 mallards (only 2 female mallards), 2 canvasbacks, 1 pintail, 3 scaup, and 2 redheads. The daily bag limit for coots is 25. The Tribe has a year-round closure on wood ducks and harlequin ducks.

Geese

Season Dates: September 24, 2022–January 31, 2023.

Daily Bag Limits: 4 Canada/cackling geese, 10 white-fronted geese, 10 light geese, and 2 brant. The Tribe notes that there is a year-round closure on dusky Canada geese.

Band-Tailed Pigeons

Season Dates: September 15–23, 2022.

Daily Bag Limits: 2 band-tailed pigeons.

General Conditions: All other Federal regulations contained in 50 CFR part 20 apply. The following restrictions also apply:

1. As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 300 feet of an occupied building, occupied area, or active logging operation.

2. Hunters must be eligible enrolled Makah Tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. See Makah General Hunting Regulations.

3. The Makah Reservation Area is open except in designated wilderness areas, or within 1 mile of Cape Flattery

and Shi-Shi Trails, or in any area that is closed to hunting by another ordinance or regulation.

4. The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited.

5. Only approved nontoxic shot is allowed for waterfowl; the use of lead shot is prohibited.

6. The use of dogs is permitted to hunt all species of waterfowl.

7. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

8. Hunters must report any neck or leg bands placed by the Federal Government to Natural Resources Enforcement or by calling 1–800–327–BAND.

(n) *Muckleshoot Indian Tribe, Auburn, Washington (Tribal Members Only).*

Ducks, Mergansers, and Coots

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag Limits: 7, including no more than 2 female mallards, 2 canvasbacks, 2 pintail, 3 scaup, 2 redheads, 2 scoters, 2 long-tailed ducks, and 2 goldeneyes. The daily bag limit for coots is 25. The limit on harlequin ducks is 1 per season.

Geese

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag Limits: 4 Canada/cackling geese, 6 light geese, 10 white-fronted geese, and 2 brant. The season on dusky Canada geese is closed.

Band-Tailed Pigeons, Mourning Doves, and Snipe

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag Limits: 2 band-tailed pigeons, 15 mourning doves, and 8 snipe.

General Conditions: The possession limits are three times the daily bag limits on all species unless otherwise noted. All other Federal regulations contained in 50 CFR part 20 apply. The following restrictions also apply:

1. Hunting can occur on reservation and off reservation on lands where the Tribe has treaty-reserved hunting rights or has documented traditional use.

2. Shooting hours for all species of waterfowl are one-half hour before sunrise to one-half after sunset.

3. Hunters must be eligible enrolled Muckleshoot Tribal members and must carry their Tribal identification while hunting.

4. Tribal members hunting migratory birds must also have a combined Migratory Bird Hunting Permit and Harvest Report Card.

5. The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited.

6. Hunting for migratory birds is with shotgun only. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

(o) *Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters).*

Ducks, Mergansers, Canada/Cackling Geese, and Coots

Season Dates: Earliest opening dates with a split season to end on the last day of the season.

Daily Bag and Possession Limits: Same as State of Arizona.

Mourning Doves

Season Dates: September 1–30, 2022.

Daily Bag and Possession Limits: 10 mourning doves. Possession limits are two times the daily bag limits.

Band-Tailed Pigeons

Season Dates: September 1–14, 2022.

Daily Bag and Possession Limits: 2 band-tailed pigeons. Possession limits are two times the daily bag limits.

General Conditions: Tribal members and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter aged 16 or older must carry on his/her person a valid Duck Stamp, which must be signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(p) *Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only).*

Ducks

Season Dates: September 10–December 4, 2022.

Daily Bag and Possession Limits: 6 ducks, which can include no more than 3 female mallards, 2 redheads, 2 pintail, and 2 hooded mergansers. The possession limit is 24 ducks in the aggregate.

Geese

Season Dates: September 1–December 31, 2022.

Daily Bag and Possession Limits: 5 geese (Canada/cackling geese, snow/blue geese, Ross's geese, and brant) and 20 in the aggregate. If 500 geese are harvested before the season concludes, the Tribe will recommend closing the season early.

Woodcock

Season Dates: September 1–November 6, 2022.

Daily Bag and Possession Limits: 2 and 4, respectively.

Mourning Doves

Season Dates: September 1–November 6, 2022.

Daily Bag and Possession Limits: 10 and 20, respectively.

General Conditions: Shooting hours are one-half hour before sunrise to 15 minutes after sunset. Nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including shooting hours of one-half hour before sunrise to sunset, season dates, and daily bag limits. Tribal members and nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Oneida members are exempt from the purchase of the Duck Stamp, and shotgun capacity is not limited to three shells.

(q) *Point No Point Treaty Council Tribes, Kingston, Washington (Tribal Members Only).*

Ducks, Mergansers, and Coots

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag and Possession Limits: 7 ducks and mergansers. The daily bag and possession limits on harlequin ducks are 1 per season. The daily bag limits are 7 for coots. Possession limits are three times the daily bag limits.

Geese

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag and Possession Limits: 5 Canada/cackling geese, 6 light geese, and 10 white-fronted geese. There is a year-round closure on dusky Canada geese.

Brant

Season Dates: January 1–31, 2023, for the Port Gamble S'Klallam Tribe, and January 15–31, 2023, for the Jamestown S'Klallam Tribe.

Daily Bag and Possession Limits: 2 brant. Possession limits are three times the daily bag limits.

Band-Tailed Pigeons

Season Dates: September 15–November 30, 2022.

Daily Bag and Possession Limits: 2 band-tailed pigeons. Possession limits are three times the daily bag limits.

Snipe

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag and Possession Limits: 8 snipe. Possession limits are three times the daily bag limits.

Mourning Doves

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag and Possession Limits: 10 mourning doves. Possession limits are three times the daily bag limits.

General Conditions: Tribal members must possess a Tribal hunting permit from the Point No Point Tribal Council pursuant to Tribal law. Hunting hours are from one-half hour before sunrise to sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20. The Tribal fish and wildlife enforcement officers have the authority to enforce these Tribal regulations.

(r) *Saginaw Tribe of Chippewa Indians, Mt. Pleasant, Michigan (Tribal Members Only).*

Ducks, Mergansers, and Snipe

Season Dates: September 1, 2022–January 31, 2023.

Daily Bag Limits: 20 ducks, which can include no more than 5 each of the following: female mallards, wood ducks, black ducks, pintail, redhead, scaup, and canvasbacks. The possession limit is 40 ducks. The daily bag limit for mergansers is 10, no more than 5 of which may be hooded mergansers, and 16 snipe.

Geese, Coots, Gallinules, Sora, and Virginia Rails

Season Dates: September 1, 2022–January 31, 2023.

Daily Bag Limits: 20 geese, 20 coots and gallinules in aggregate, 20 sora and Virginia rails in aggregate.

Woodcock and Mourning Doves

Season Dates: September 1, 2022–January 31, 2023.

Daily Bag Limits: 10 woodcock and 25 mourning doves.

Sandhill Cranes

Season Dates: September 1, 2022–January 31, 2023.

Daily Bag Limits: 1 sandhill crane.

General Conditions: Possession limits are twice the daily bag limits except for rails, of which the possession limit equals the daily bag limit (20). Tribal members must possess a Tribal hunting permit from the Saginaw Tribe pursuant to Tribal law. Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of only nontoxic shot for hunting waterfowl.

(s) *Sauk-Suiattle Indian Tribe, Darrington, Washington (Tribal Members Only).*

Ducks, Geese, Brant, Coots, Mourning Doves, and Band-Tailed Pigeons

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag and Possession Limits: 20 ducks, 10 geese, 5 brant, and 25 coots. The daily bag limit for mourning doves and band-tailed pigeons is 20 in the aggregate. The possession limits are two times the daily bag limits.

General Conditions: Hunting hours are from one-half hour before sunrise to one-half hour after sunset. All other regulations in 50 CFR part 20 apply, including the use of only nontoxic shot for hunting waterfowl.

(t) *Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan (Tribal Members Only).*

Ducks, Mergansers, and Snipe

Season Dates: September 1–December 31, 2022.

Daily Bag Limits: 20 ducks, which can include no more than 10 mallards (5 female mallards), 5 wood ducks, 5 black ducks, and 5 canvasbacks. The daily bag limits are 10 for mergansers and 16 for snipe.

Geese, Coots, Gallinules, Sora, and Virginia Rails

Season Dates: September 1–December 31, 2022. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 31 is also opened concurrently for Tribal members.

Daily Bag Limits: 20 geese, 20 coots and gallinules in the aggregate, 20 sora and Virginia rails in the aggregate.

Woodcock

Season Dates: September 2–December 1, 2022.

Daily Bag Limits: 10 woodcock.

Mourning Doves

Season Dates: September 1–November 14, 2022.

Daily Bag Limits: 10 mourning doves.

General Conditions: Possession limits are twice the daily bag limits except for rails, of which the possession limit equals the daily bag limit (20). Tribal members who wish to hunt must possess a Tribal hunting permit from the Sault Ste. Marie Tribe pursuant to Tribal law. Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of only nontoxic shot for hunting waterfowl.

(u) *Skokomish Tribe, Shelton, Washington (Tribal Members Only).*

Ducks and Coots

Season Dates: September 16, 2022–February 28, 2023.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 1 pintail, 1 canvasback, and 2 redheads. The daily bag and possession limits for harlequin ducks are 1 per season. The daily bag limits for coots are 25. The possession limits are two times the daily bag limits, except as noted above.

Geese

Season Dates: September 16, 2022–February 28, 2023.

Daily Bag and Possession Limits: 4, including no more than 3 light geese. The possession limits are two times the daily bag limits. Closed season on Aleutian Canada geese.

Brant

Season Dates: November 1, 2022–February 15, 2023.

Daily Bag and Possession Limits: 2 brant. The possession limits are two times the daily bag limits.

Mourning Doves, Band-Tailed Pigeons, and Snipe

Season Dates: September 16, 2022–February 28, 2023.

Daily Bag and Possession Limits: 10 mourning doves, 2 band-tailed pigeons, and 8 snipe. The possession limits are two times the daily bag limits.

General Conditions: All Tribal members authorized to hunt migratory birds are required to obtain a Tribal hunting permit from the Skokomish Tribe pursuant to Tribal law. Shooting hours are from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl. The Skokomish Public Safety Office enforcement officers have the authority to enforce these migratory bird hunting regulations.

(v) *Spokane Tribe of Indians, Spokane Indian Reservation, Wellpinit, Washington (Tribal Members Only).*

Ducks

Season Dates: September 2, 2022–January 31, 2023.

Daily Bag and Possession Limits: Same as State of Washington.

Geese

Season Dates: September 2, 2022–January 31, 2023.

Daily Bag and Possession Limits: Same as State of Washington.

General Conditions: Tribal members must possess a Tribal hunting permit from the Spokane Indian Tribe pursuant to Tribal law. Shooting hours are one-half hour before sunrise until sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(w) *Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only).*

Ducks and Geese

Season Dates: October 1, 2022–March 10, 2023.

Daily Bag and Possession Limits: 10 ducks (including sea ducks and mergansers), no more than 7 mallards (3 of which may be female), 3 pintail, 3 redheads, 3 scaup, 4 hooded mergansers, and 3 canvasbacks. Possession limits are two times the daily bag limits. Six Canada/cackling geese, 12 white-fronted geese, and 8 light geese. The possession limits are three times the daily bag limits. The season on brant is closed.

Coots, Snipe, and Swans

Season Dates: October 1, 2022–January 31, 2023.

Daily Bag and Possession Limits: 25 coots and 10 snipe. The possession limits are two times the daily bag limits. The daily bag and possession limits for swans are 2 per season. Swan hunters must have a swan hunting permit issued by the Tribe.

General Conditions: Tribal members hunting on lands must observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations. The swan season is by special draw permit only.

(x) *Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only).*

Ducks (Including Mergansers), Geese, Coots, Snipe, Brant, Mourning Doves, and Band-Tailed Pigeon

Season Dates: September 1, 2022–March 10, 2023.

Daily Bag and Possession Limits: 20 ducks, 10 geese, 5 brant, 25 coots, 15 snipe, 15 mourning doves, and 3 band-tailed pigeons. The possession limits are two times the daily bag limits, except that the possession limit for coots is three times the daily bag limit.

General Conditions: Shooting hours are from 30 minutes before official sunrise until 30 minutes after official sunset. Tribal members must use steel shot or a nontoxic shot as required by Federal regulations. Lead shot is prohibited. All Tribal regulations will be enforced by Tribal fish and game officers.

(y) *The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members Only).*

Ducks (Including Mergansers), Coots, and Snipe

Season Dates: September 1, 2022–February 28, 2023.

Daily Bag and Possession Limits: 15 ducks and 30 in possession, except for blue-winged teal, canvasbacks, harlequin ducks, pintail, and wood ducks. Daily bag and possession limits are the same as the limits established by the State of Washington. 25 coots and 75 in possession. 8 snipe and 24 in possession. Ceremonial hunting may be authorized by the Department of Natural Resources at any time upon application of a qualified Tribal member. Such a hunt must have a bag limit designed to limit harvest only to those birds necessary to provide for the ceremony.

Geese

Season Dates: September 1, 2022–February 28, 2023.

Daily Bag and Possession Limits: 10 geese and 30 in possession, except that the bag limits for cackling geese and dusky Canada geese are the same as the limits established by the State of Washington. 5 brant and 10 in possession.

Mourning Doves and Band-Tailed Pigeons

Season Dates: September 1, 2022–February 28, 2023.

Daily Bag and Possession Limits: 15 mourning doves and 45 in possession. 4 band-tailed pigeons and 12 in possession.

General Conditions: All hunters on Tulalip Tribal lands must adhere to shooting hour regulations set at one-half hour before sunrise to sunset, the use of federally approved nontoxic shot, special Tribal permit requirements, and a number of other Tribal regulations enforced by the Tribe. Each nontribal hunter 16 years of age and older hunting pursuant to Tulalip Tribes' Ordinance No. 67 must possess a valid Federal Duck Stamp and a valid State of Washington Migratory Waterfowl Stamp. Each hunter must validate the stamp by signing across the face.

(z) *Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only).*

Ducks

Season Dates: October 1, 2022–February 28, 2023.

Daily Bag and Possession Limits: 15 ducks and 20 in possession.

Coots

Season Dates: October 1, 2022–February 15, 2023.

Daily Bag and Possession Limits: 20 coots and 30 in possession.

Geese

Season Dates: October 1, 2022–February 28, 2023.

Daily Bag and Possession Limits: 7 geese and 10 in possession.

Brant

Season Dates: November 1–10, 2022.

Daily Bag and Possession Limits: 2 brant and 2 in possession.

Mourning Doves

Season Dates: September 1–December 31, 2022.

Daily Bag and Possession Limits: 12 mourning doves and 15 in possession.

General Conditions: Tribal members must have the Tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours are 15 minutes before official sunrise to 15 minutes after official sunset.

(aa) *Ute Indian Tribe of the Uintah and Ouray Reservation (Tribal Members Only).*

Sandhill Cranes

Season Dates: October 1–December 11, 2022.

Daily Bag and Possession Limits: 1 sandhill crane per member/permit (10 permits total).

Swans (Tundra/Trumpeter)

Season Dates: September 17–October 1, 2022.

Daily Bag and Possession Limits: 1 swan per member/permit (5 permits total). The Tribe requires all swan hunters to successfully complete an educational course on swan identification and conservation to minimize take of trumpeter swans during the swan season. All hunters that harvest a swan must have the swan or species-determinant parts examined by a biologist or other designated representative of the Tribe within 72 hours of harvest for species

determination. The Tribe will evaluate hunter participation, species-specific swan harvest, and hunter compliance in providing species-determinant parts (at least the intact head) of harvested swans for species identification. The Tribe will use appropriate measures to maximize hunter compliance with the Tribe's program for swan harvest reporting. The Tribe will provide to the Service by June 30 following the swan season a report detailing hunter participation, species-specific swan harvest, and hunter compliance in reporting harvest.

General Conditions: No rifles, revolvers, pistols, or shotgun pellets larger than #2 birdshot may be used in pursuit of migratory game birds. Only Service-approved nontoxic shot may be used to take migratory game birds. No baiting is allowed, including no take of sandhill cranes on or over lands where standing crops have been manipulated to distribute or scatter grain or other feed on the land where it was grown. The Tribe hunts other migratory game birds but follows the State of Utah (Uintah and Duchesne Counties) for seasons and bag limits except for in some cases where the Tribe may be more restrictive. For additional information, see the Ute Indian Tribes General Hunting Regulations.

(bb) *White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only).*

Ducks

Season Dates: September 10–December 11, 2022.

Daily Bag Limits: 10 ducks, including no more than 2 female mallards, 2 pintail, and 2 canvasbacks.

Mergansers

Season Dates: September 10–December 11, 2022.

Daily Bag Limits: 5 mergansers, no more than 2 of which may be hooded mergansers.

Geese

Season Dates: Early season is September 1–23, 2022, and late season is September 24–December 18, 2022.

Daily Bag Limits: 10 geese in the early season and 7 geese in the late season.

Coots

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 20 coots.

Snipe, Woodcock, Rails, and Mourning Doves

Season Dates: September 1–November 30, 2022.

Daily Bag Limits: 10 snipe, 10 woodcock, 25 rails, and 25 mourning doves.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. The White Earth Reservation Tribal Council employs four full-time conservation officers to enforce migratory bird regulations.

(cc) *White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters).*

Ducks (Except Scaup), Coots, Mergansers, Gallinules

Season Dates: October 15, 2022–January 22, 2023 (scaup November 5, 2022–January 22, 2023).

Daily Bag Limits: 7 ducks (including mergansers), which may include no more than 2 redheads, 1 pintail, 2 scaup (when open), 2 female mallards, and 2 canvasbacks. The daily bag limit for coots and gallinules is 25 in the aggregate.

Canada/Cackling Geese

Season Dates: October 15, 2022–January 22, 2023.

Daily Bag Limits: 3 Canada/cackling geese.

General Conditions: Possession limits are two times the daily bag limits. Shooting hours are from one-half hour before sunrise to sunset. There is no open season for mourning doves, band-tailed pigeons, sandhill cranes, rails, and snipe. Tribal members and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20. Special regulations that apply to Tribal members and nontribal hunters may be obtained from the White Mountain Apache Tribe Game and Fish Department.

Maureen D. Foster,

Chief of Staff, Office of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–18747 Filed 8–30–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200124–0029: RTID 0648–XC320

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2022 Red Snapper Private Angling Component Closure in Federal Waters off Texas

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces a closure for the 2022 fishing season for the red snapper private angling component in the exclusive economic zone (EEZ) off Texas in the Gulf of Mexico (Gulf) through this temporary rule. The red snapper recreational private angling component in the Gulf EEZ off Texas closes on September 3, 2022 until 12:01 a.m., local time, on January 1, 2023. This closure is necessary to prevent the private angling component from exceeding the Texas regional management area annual catch limit (ACL) and to prevent overfishing of the Gulf red snapper resource.

DATES: This closure is effective from 12:01 a.m., local time, on September 3, 2022 until 12:01 a.m., local time, on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Luers, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *daniel.luers@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The final rule implementing Amendment 40 to the FMP established two components within the recreational sector fishing for Gulf red snapper: the private angling component, and the Federal for-hire component (80 FR 22422, April 22, 2015). Amendment 40 also allocated the red snapper recreational ACL (recreational quota) between the components and established separate seasonal closures for the two components. On February 6, 2020, NMFS implemented Amendments 50 A–F to the FMP, which delegated authority to the Gulf states (Louisiana, Mississippi, Alabama, Florida, and Texas) to establish specific management measures for the harvest of red snapper in Federal waters of the Gulf by the private angling component of the recreational sector (85 FR 6819, February 6, 2020). These amendments allocate a portion of the private angling ACL to each state, and each state is required to constrain landings to its allocation.

As described at 50 CFR 622.23(c), a Gulf state with an active delegation may

request that NMFS close all, or an area of, Federal waters off that state to the harvest and possession of red snapper by private anglers. The state is required to request the closure by letter to NMFS, providing dates and geographic coordinates for the closure. If the request is within the scope of the analysis in Amendment 50A, NMFS publishes a notice in the **Federal Register** implementing the closure for the fishing year. Based on the analysis in Amendment 50A, Texas may request a closure of all Federal waters off the state to allow a year-round fishing season in state waters. As described at 50 CFR 622.2, ''off Texas'' is defined as the waters in the Gulf west of a rhumb line from 29°32.1′ N lat., 93°47.7′ W long. to 26°11.4′ N lat., 92°53′ W long., which line is an extension of the boundary between Louisiana and Texas.

On December 3, 2021, NMFS received a request from the Texas Parks and Wildlife Department (TPWD) to close the EEZ off Texas to the red snapper private angling component for the first part of the 2022 fishing year. Texas requested that the closure be effective from January 1, 2022, until June 1, 2022. NMFS determined that the TPWD request was within the scope of analysis contained within Amendment 50A, and subsequently published a temporary rule in the **Federal Register** implementing that closure request (86 FR 70985, December 14, 2021). In that temporary rule, NMFS noted that TPWD would monitor private recreational landings, and if necessary, request that NMFS again close the EEZ in 2022 to ensure the Texas regional management area ACL is not exceeded.

On August 24, 2022, NMFS received a new request from the TPWD to close the EEZ off Texas to the red snapper private angling component for the remainder of the 2022 fishing year. Texas requested that the closure be effective on September 3, 2022, through the end of the 2022 fishing year. NMFS has determined that this request is within the scope of analysis contained within Amendment 50A, which analyzed the potential impacts of a closure of all Federal waters off Texas when a portion of the Texas quota has been landed. As explained in Amendment 50A, Texas intends to maintain a year-round fishing season in state waters, during which the remaining part of Texas' ACL could be caught.

Therefore, the red snapper recreational private angling component in the Gulf EEZ off Texas will close from 12:01 a.m., local time, on September 3, 2022, until 12:01 a.m., local time, on January 1, 2023. This closure applies to all private-anglers (those on board vessels that have not been issued a valid charter vessel/headboat permit for Gulf reef fish) regardless of which state they are from or where they intend to land.

On and after the effective dates of the closure in the EEZ off Texas, the harvest and possession of red snapper in the EEZ off Texas by the private angling component is prohibited and the bag and possession limits for the red snapper private angling component in the closed area is zero.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.23(c), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest.

Such procedures are unnecessary because the rule implementing the area closure authority and the state-specific private angling ACLs has already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because a failure to implement the closure immediately would be inconsistent with Texas's state management plan and may result in less access to red snapper in state waters.

For the aforementioned reasons, there is good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: August 29, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–18951 Filed 8–29–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140501394–5279–02; RTID 0648–XC303]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2022 Commercial Closure for Blueline Tilefish in the South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure for blueline tilefish in the exclusive economic zone (EEZ) of the South Atlantic. NMFS projects commercial landings of blueline tilefish have reached the commercial annual catch limit (ACL) for the 2022 fishing year. Therefore, NMFS is closing the commercial sector for blueline tilefish in the South Atlantic EEZ. This closure is necessary to protect the blueline tilefish resource.

DATES: This temporary rule is effective from 12:01 a.m., eastern time, on September 3, 2022, through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes blueline tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The South Atlantic Fishery Management Council and NMFS prepared the FMP, and the FMP is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights in this temporary rule are given in round weight.

As specified at 50 CFR 622.193(z)(1)(i), the commercial ACL for blueline tilefish is 117,148 lb (53,137 kg). The commercial accountability measure for blueline tilefish requires NMFS to close the commercial sector when its ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has projected that for the 2022 fishing year, the commercial ACL for South Atlantic blueline tilefish

will be reached by September 3, 2022. Accordingly, the commercial sector for South Atlantic blueline tilefish is closed effective at 12:01 a.m., eastern time, on September 3, 2022, through December 31, 2022.

During the commercial closure, all sale or purchase of blueline tilefish is prohibited. The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper having blueline tilefish on board must have landed and bartered, traded, or sold such blueline tilefish prior to September 3, 2022.

In addition, recreational harvest for blueline tilefish closed on July 26, 2022, and the bag and possession limits are zero (87 FR 18739, March 31, 2022). Therefore, during the commercial closure for blueline tilefish, all harvest, possession, purchase, and sale of blueline tilefish in or from the South Atlantic EEZ is prohibited for the remainder of the 2022 fishing year. These restrictions for blueline tilefish apply in both state and Federal waters of the South Atlantic on board a vessel with a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper [50 CFR 622.193(z)(1)(i)].

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(z)(1)(i), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the closure of the blueline tilefish commercial sector at 50 CFR 622.193(z)(1)(i) have already been subject to notice and public comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment are contrary to the public interest because there is a need to immediately implement this action to protect blueline tilefish, because the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL.

For the reasons stated earlier, the Assistant Administrator also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: August 26, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–18832 Filed 8–29–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XC308]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Trawl Catcher Vessels in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2022 Pacific cod total allowable catch apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2022, through 2400 hours, A.l.t., December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2022 Pacific cod total allowable catch (TAC) apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA is 2,579 metric tons (mt), as established by the final 2022 and 2023 harvest specifications for groundfish of the GOA (87 FR 11599, March 2, 2022).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2022 Pacific cod TAC apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,379 mt and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 25, 2022.

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

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

Dated: August 26, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–18826 Filed 8–30–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XC307]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Hook-and-Line Gear in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using hook-and-line (HAL) gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2022 total allowable catch of Pacific cod by catcher vessels using HAL gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2022, through 2400 hours, A.l.t., December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

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

The 2022 Pacific cod total allowable catch (TAC) apportioned to catcher vessels using HAL gear in the Western Regulatory Area of the GOA is 94 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022). The Regional Administrator has determined that the 2022 TAC apportioned to catcher vessels using HAL gear in the Western Regulatory Area of the GOA is necessary to account for the incidental catch of this species in other anticipated groundfish fisheries for the 2022 fishing year. Therefore, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowance for catcher vessels using HAL gear in the Western Regulatory Area of the GOA as zero mt. Consequently, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for catcher vessels using HAL gear in the Western Regulatory Area of the GOA.

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

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels using HAL gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 25, 2022.

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

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

Dated: August 26, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–18825 Filed 8–30–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 168
Wednesday, August 31, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0874; Project Identifier AD–2022–00337–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain center wing lower stringers are subject to widespread fatigue damage (WFD). WFD analysis found that fatigue cracks could grow to a critical length after the structural modification point (SMP) for these center wing lower stringers. This proposed AD would require replacing certain left and right side center wing lower stringers. 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 October 17, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0874.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0874; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Sean Newell, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5266; email: *sean.m.newell@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–2022–0874; Project Identifier AD–2022–00337–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sean Newell, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5266; email: *sean.m.newell@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Fatigue damage can occur locally, in small areas or structural design details, or globally, in widespread areas. Multiple-site damage is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as WFD. It is associated with general degradation of large areas of structure with similar

structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

An FAA final rule (''Aging Airplane Program: Widespread Fatigue Damage;'' 75 FR 69746, November 15, 2010) became effective on January 14, 2011, and amended 14 CFR parts 25, 26, 121, and 129 (commonly known as the WFD rule). The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. DAHs of existing and future airplanes subject to the WFD rule are required to establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

The FAA has received a report indicating that cracking was found in the left and/or right side center wing lower stringers S–13, S–15, S–16, and S–17. Based on that report, the FAA issued AD 2020–10–10, Amendment 39–19913 (85 FR 31046, May 22, 2020) (AD 2020–10–10). AD 2020–10–10 was prompted by a report of cracks at certain stringers and associated end fittings, and skins in the center wing fuel tank where the stringers meet the end fittings. AD 2020–10–10 requires repetitive inspections for cracking in the left and right side center wing lower skin at stringers S–18 through S–20, the fastener holes common to stringers S–11 through S–22, and the forward and aft skins, and repair. Since the FAA issued AD 2020–10–10, Boeing did additional WFD analysis and found that the actions required by AD 2020–10–10 are adequate to address the unsafe condition until the airplane reaches the SMP (the point in time when a structural area must be modified or replaced to preclude WFD) at 81,740 flight cycles. However, fatigue cracks could grow to a critical length at any point after the SMP for center wing lower stringers S–11 through S–22. If not addressed, undetected fatigue cracks in the right or left side center wing lower stringers S–11 through S–22 between wing stations Xcw=13 and Xcw=15 could grow to a critical length after the SMP at 81,740 total flight cycles. Any undetected cracks in three or more adjacent stringers in the right or left side center wing lower stringers S–11 through S–22 may result in a principal structural element's inability to sustain limit load, which could adversely affect the structural integrity of the airplane. Performing the replacement required by this proposed AD would terminate the repetitive inspections required by AD 2020–10–10.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin MD80–57A246 RB, dated December 17, 2021. This service information specifies procedures for replacement of the center wing lower stringers S–11 through S–22 between Xcw=0 and Xcw=121.688, left and right sides.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described and except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0874.

Explanation of Compliance Time

The compliance time for the replacement specified in this proposed AD for addressing WFD was established to ensure that discrepant structure is replaced before WFD develops in airplanes. Standard inspection techniques cannot be relied on to detect WFD before it becomes a hazard to flight. The FAA will not grant any extensions of the compliance time to complete any AD-mandated service bulletin related to WFD without extensive new data that would substantiate and clearly warrant such an extension.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 22 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	1,572 work-hours × $85 per hour = $133,620	$216,000	$349,620	$7,691,640

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA

with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2022–0874; Project Identifier AD–2022–00337–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 17, 2022.

(b) Affected ADs

This AD affects AD 2020–10–10, Amendment 39–19913 (85 FR 31046, May 22, 2020) (AD 2020–10–10).

(c) Applicability

This AD applies to The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin MD80–57A246 RB, dated December 17, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the center wing lower stringers S–11 through S–22 are subject to widespread fatigue damage (WFD). The FAA is issuing this AD to address fatigue cracking of the right and left side center wing lower stringers S–11 through S–22 between wing stations Xcw=13 and Xcw=15. If not addressed, undetected fatigue cracks could grow to a critical length after the structural modification point (SMP) at 81,740 total flight cycles. Any undetected cracks in three or more adjacent stringers in the right or left side center wing lower stringers S–11 through S–22 may result in a principal structural element's inability to sustain limit load, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin MD80–57A246 RB, dated December 17, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin MD80–57A246 RB, dated December 17, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin MD80–57A246, dated December 17, 2021, which is referred to in Boeing Alert Requirements Bulletin MD80–57A246 RB, dated December 17, 2021.

(h) Exceptions to Service Information Specifications

Where Boeing Alert Requirements Bulletin MD80–57A246 RB, dated December 17, 2021, specifies contacting Boeing for replacement instructions: This AD requires doing the replacement using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Terminating Action for AD 2020–10–10

Accomplishment of the replacement specified in the Accomplishment Instructions of Boeing Alert Requirements Bulletin MD80–57A246 RB, dated December 17, 2021, terminates all of the requirements of AD 2020–10–10.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(k) Related Information

(1) For more information about this AD, contact Sean Newell, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5266; email: *sean.m.newell@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on July 8, 2022.

Christina Underwood,

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

[FR Doc. 2022–18759 Filed 8–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1065; Project Identifier MCAI–2022–00280–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–2A12 airplanes. This proposed AD was prompted by a report that the flightcrew and passenger oxygen system's refill and capillary lines may have been contaminated by sealant and cotton fibers. This proposed AD would require an inspection to determine the serial numbers of the oxygen cylinders installed and replacement of each affected oxygen cylinder and regulator assembly (OCRA). 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 October 17, 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 *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet bombardier.com. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1065; 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: Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1065; Project Identifier MCAI–2022–00280–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2022–07, dated March 1, 2022 (TCCA AD CF–2022–07) (also referred to after this as the MCAI), to correct an unsafe condition for certain Bombardier, Inc., Model BD–700–2A12 airplanes. You may examine the MCAI in the AD docket at regulations.gov by searching for and locating Docket No. FAA–2022–1065.

This proposed AD was prompted by a report that the flightcrew and passenger oxygen system's refill and capillary lines may have been contaminated by sealant and cotton fibers. Any contamination is expected to collect in the OCRA filters. The FAA is proposing this AD to address the contamination, which may cause a blockage of the oxygen system components and result in a reduction of oxygen flow, reduce the total amount of available oxygen, or create a fire hazard. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 700–35–7502, dated January 26, 2022. This service information describes procedures for an inspection to determine the serial numbers of the oxygen cylinders installed and replacement of each affected OCRA with a new or reworked OCRA. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Difference Between This NPRM and the MCAI

Although TCCA AD CF–2022–07 does not specify prohibiting the installation of any affected oxygen cylinder having certain serial numbers on any airplane, this proposed AD would include such a prohibition.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 16 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
5 work-hours × $85 per hour = $425	$3,069	$3,494	$55,904

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2022–1065; Project Identifier MCAI–2022–00280–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 17, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–2A12 airplanes, certificated in any category, having serial numbers 70006, 70008, 70009 through 70016 inclusive, 70019, 70020, 70025, 70026, 70028, 70032 through 70035 inclusive, 70038 through 70043 inclusive, 70046, 70048, 70050, 70051, 70054, 70063, and 70073.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by a report that the flightcrew and passenger oxygen system's refill and capillary lines may have been contaminated by sealant and cotton fibers. The FAA is issuing this AD to address the contamination, which may cause a blockage of the oxygen system components and result in a reduction of oxygen flow, reduce the total amount of available oxygen, or create a fire hazard.

(f) Compliance

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

(g) Inspection and Replacement

Within 36 months after the effective date of this AD: Do an inspection to determine the serial numbers of the oxygen cylinders installed in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 700–35–7502, dated January 26, 2022. If any affected oxygen cylinder and regulator assembly (OCRA) is installed, before further flight replace the affected part with a new or reworked OCRA, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 700–35–7502, dated January 26, 2022.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install any affected oxygen cylinder having a serial number specified in paragraph 1.A. of Bombardier Service Bulletin 700–35–7502, dated January 26, 2022, on any airplane.

(i) No Reporting Requirement

Although Bombardier Service Bulletin 700–35–7502, dated January 26, 2022, specifies to report certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector,

the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Additional Information

(1) Refer to TCCA AD CF–2022–07, dated March 1, 2022, for related information. This TCCA AD may be found in the AD docket on the internet at *regulations.gov* by searching for and locating Docket No. FAA–2022–1065.

(2) For more information about this AD, contact Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet *bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on August 25, 2022.

Christina Underwood,

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

[FR Doc. 2022–18750 Filed 8–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0672; Project Identifier MCAI–2020–01606–T]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is revising a notice of proposed rulemaking (NPRM) to supersede Airworthiness Directive (AD) 2020–04–20, which applies to certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. This action revises the NPRM by including an additional retained requirement and revising the terminating action to apply to additional airplanes. The FAA is proposing this AD to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, the FAA is reopening the comment period to allow the public the chance to comment on these changes.

DATES: The FAA must receive comments on this SNPRM by October 17, 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 *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this SNPRM, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone North America (toll-free): 855–310–1013, Direct: 647–277–582; email *thd@dehavilland.com;* internet *dehavilland.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0672; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains, the NPRM, this SNPRM, 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: Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

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–2022–0672; Project Identifier MCAI–2020–01606–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 *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this SNPRM.

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 SNPRM 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 SNPRM, 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 SNPRM. Submissions containing CBI should be sent to Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov.* 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 2020–04–20, Amendment 39–19857 (85 FR 17473, March 30, 2020) (AD 2020–04–20) for certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. AD 2020–04–20 requires

repetitive inspections of certain parts for discrepancies that meet specified criteria, and replacement as necessary; repetitive inspections of certain parts for damage and wear, and rework of parts; and electrical bonding checks of certain couplings. AD 2020–04–20 also requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. For certain airplanes, AD 2020–04–20 allows a modification that terminates the repetitive inspections. The FAA issued AD 2020–04–20 to address wear on fuel couplings, bonding springs, and sleeves as well as fuel tube end ferrules and fuel component end ferrules, which could reduce the integrity of the electrical bonding paths through the fuel line and components, and ultimately lead to fuel tank ignition in the event of a lightning strike.

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD to supersede AD 2020–04–20 that would apply to certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on June 9, 2022 (87 FR 35128) (the NPRM). The NPRM was prompted by MCAI originated by Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada. TCCA issued AD CF–2017–04R3 to correct an unsafe condition identified as wear on fuel couplings, bonding springs, and sleeves as well as fuel tube end ferrules and fuel component end ferrules. The NPRM proposed to continue to require the actions in AD 2020–04–20, revise the applicability by adding airplanes, and require, for certain airplanes, the previously optional rework and retrofit of certain parts of the fuel system.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, the FAA determined that the NPRM inadvertently limited the proposed new terminating rework and retrofit to airplanes that had accomplished certain service information. In addition, the FAA determined that the optional terminating action specified in AD 2020–04–20, and corresponding credit, should be carried over to this proposed AD. These changes match the intent of TCCA AD CF–2017–04R3.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0672.

Comments

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

Additional Changes Made to This Proposed AD

The FAA has replaced the content of paragraph (n)(3) of the proposed AD (in the NPRM) (which is paragraph (o)(3) of this proposed AD). Since this NPRM now includes the optional terminating action specified in AD 2020–04–02, the credit for that optional terminating action is now specified in paragraph (o)(3) of this proposed AD. In addition, the FAA has determined that the credit specified in paragraph (n)(3) of the proposed AD (in the NPRM) is a new provision and has moved the credit to paragraph (q) of this proposed AD and updated the wording for clarity and accuracy.

Related Service Information Under 1 CFR Part 51

This proposed AD would require the following service information, which the Director of the Federal Register approved for incorporation by reference as of May 4, 2020 (85 FR 17473, March 30, 2020).

- Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018.
- Bombardier Service Bulletin 84–28–21, Revision C, dated July 13, 2018.
- Bombardier Service Bulletin 84–28–26, Revision A, dated November 29, 2018.
- Q400 Dash 8 (Bombardier) Temporary Revision ALI–0192, dated April 24, 2018.
- Q400 Dash 8 (Bombardier) Temporary Revision ALI–0193, dated April 24, 2018.

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

FAA's Determination

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

Certain changes described above expand the scope of the NPRM. As a result, it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Proposed Requirements of This SNPRM

This proposed AD would retain all of the requirements of AD 2020–04–20. This proposed AD would require reworking and retrofitting certain parts of the fuel system. Doing the rework and retrofit would terminate the inspections in this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 54 airplanes of U.S. registry.

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

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2020–04–20	268 work-hours × $85 per hour = $22,780.	$0	$22,780	$1,230,120.
New proposed actions	Up to 1,747 work-hours × $85 per hour = Up to $148,495.	87,385	Up to $235,880	Up to $12,737,520.

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

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates

the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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) 2020–04–20, Amendment 39–19857 (85 FR 17473, March 30, 2020); and

■ b. Adding the following new AD:

De Havilland Aircraft of Canada Limited (Type Certificate previously held by Bombardier, Inc.): Docket No. FAA–2022–0672; Project Identifier MCAI–2020–01606–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 17, 2022.

(b) Affected ADs

This AD replaces AD 2020–04–20, Amendment 39–19857 (85 FR 17473, March 30, 2020) (AD 2020–04–20).

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited Model DHC–8–400, –401, and –402 airplanes, certificated in any category, manufacturer serial numbers 4001 and 4003 and subsequent.

(d) Subject

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

(e) Reason

This AD was prompted by reports of wear on fuel couplings, bonding springs, and sleeves as well as fuel tube end ferrules and fuel component end ferrules, and by a determination that a more robust lightning ignition protection design is necessary. The FAA is issuing this AD to address such wear, which could reduce the integrity of the electrical bonding paths through the fuel line and components, and ultimately lead to fuel tank ignition in the event of a lightning strike.

(f) Compliance

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

(g) Retained Initial Inspection Compliance Times, With New Terminating Action

This paragraph restates the requirements of paragraph (g) of AD 2020–04–20, with new terminating action. For airplanes having serial numbers 4001 and 4003 through 4575 inclusive that, as of May 4, 2020 (the effective date of AD 2020–04–20), have not done the actions specified in Bombardier Service Bulletin 84–28–21: At the applicable times specified in paragraph (g)(1) or (2) of this AD, do the actions specified in paragraphs (h)(1) and (2) of this AD. Accomplishing the terminating action required by paragraph (p) of this AD terminates the initial inspection required by this paragraph.

(1) For all airplanes except those identified in paragraph (g)(2) of this AD: Within 6,000 flight hours or 36 months, whichever occurs first after May 4, 2020 (the effective date of AD 2020–04–20).

(2) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or after May 4, 2020 (the effective date of AD 2020–04–20): Within 6,000 flight hours or 36 months, whichever occurs first after the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(h) Retained Repetitive Inspections and Corrective Actions, With New Terminating Action

This paragraph restates the requirements of paragraph (h) of AD 2020–04–20, with new terminating action. For airplanes having serial numbers 4001 and 4003 through 4575 inclusive that, as of May 4, 2020 (the effective date of AD 2020–04–20), have not done the actions specified in Bombardier Service Bulletin 84–28–21: At the applicable times specified in paragraph (g)(1) or (2) of this AD, do the actions specified in paragraphs (h)(1) and (2) of this AD. Repeat the actions thereafter at intervals not to exceed 6,000 flight hours or 36 months, whichever occurs first. Accomplishing the terminating action required by paragraph (p) of this AD terminates the repetitive inspections required by this paragraph.

(1) Do a detailed inspection of the clamshell coupling bonding wires, fuel couplings, and associated sleeves for discrepancies that meet specified criteria, as identified in, and in accordance with, paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018. If any conditions are found meeting the criteria specified in Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018, before further flight, replace affected parts with new couplings and sleeves of the same part number, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Bulletin 84–28–20, Revision D, dated November 23, 2018.

(2) Do a detailed inspection of the fuel tube end ferrules, fuel component end ferrules, and ferrule O-ring flanges for damage and wear, and rework (repair, replace, or blend, as applicable) the parts, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018.

(i) Retained Optional Terminating Action for Repetitive Inspections With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2020–04–20, with no changes. For airplanes having serial numbers 4001 and 4003 through 4575 inclusive: Doing a detailed inspection of the fuel tube end ferrules, fuel component end ferrules, and ferrule O-ring flanges for damage and wear, and reworking (repair, replace, or blend, as applicable) the parts; and doing a retrofit (structural rework) of the fuel couplings, isolators, and structural provisions, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–21, Revision C, dated July 13, 2018, terminates the inspections specified in paragraphs (h)(1) and (2) of this AD.

(j) Retained Electrical Bonding Checks/ Detailed Inspection, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2020–04–20, with no changes. For airplanes having serial numbers 4001, 4003 through 4489 inclusive, and 4491 through 4575 inclusive that, as of May 4, 2020 (the effective date of AD 2020–04–20), have done the actions specified in Bombardier Service Bulletin 84–28–21, Revision A, dated September 29, 2017; and airplanes having serial numbers 4576 through 4581 inclusive: Within 6,000 flight hours or 36 months after May 4, 2020, whichever occurs first, do the actions specified in paragraph (j)(1) or (2) of this AD.

(1) Accomplish electrical bonding checks of all threaded couplings on the inboard vent lines in the left and right wings, in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–26, Revision A, dated November 29, 2018.

(2) Do a detailed inspection of the fuel tube end ferrules, fuel component end ferrules, and ferrule O-ring flanges for damage and wear, and rework (repair, replace, or blend, as applicable) the parts; and a retrofit (structural rework) of the fuel couplings, isolators, and structural provisions; in accordance with paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–21, Revision C, dated July 13, 2018.

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

This paragraph restates the requirements of paragraph (k) of AD 2020–04–20, with no changes. Within 30 days after May 4, 2020 (the effective date of AD 2020–04–20), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Q400 Dash 8 (Bombardier) Temporary Revision ALI–0192, dated April 24, 2018; and Q400 Dash 8 (Bombardier) Temporary Revision ALI–0193, dated April 24, 2018. Except as specified in paragraph (l) of this AD, the initial compliance time for doing the tasks in Q400 Dash 8 (Bombardier) Temporary Revision ALI–0192, dated April 24, 2018, is at the time specified in Q400 Dash 8 (Bombardier) Temporary Revision ALI–0192, dated April 24, 2018, or within 30 days after May 4, 2020, whichever occurs later.

(l) Retained Initial Compliance Time for Task 284000–419, With No Changes

This paragraph restates the requirements of paragraph (l) of AD 2020–04–20, with no changes. The initial compliance time for task 284000–419 is at the time specified in paragraph (l)(1) or (2) of this AD, as applicable, or within 30 days after May 4, 2020 (the effective date of AD 2020–04–20), whichever occurs later.

(1) For airplanes having serial numbers 4001 and 4003 through 4575 inclusive: Within 18,000 flight hours or 108 months, whichever occurs first, after the earliest date of embodiment of Bombardier Service Bulletin 84–28–21 on the airplane.

(2) For airplanes having serial numbers 4576 and subsequent: Within 18,000 flight hours or 108 months, whichever occurs first, from the date of issuance of the original airworthiness certificate or original export certificate of airworthiness.

(m) Retained No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs), With No Changes

This paragraph restates the requirements of paragraph (m) of AD 2020–04–20, with no changes. After the existing maintenance or inspection program has been revised as required by paragraph (k) 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 alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (r)(1) of this AD.

(n) Retained No Reporting Provisions, With No Changes

This paragraph restates the provisions of paragraph (n) of AD 2020–04–20, with no changes. Although Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(o) Retained Credit for Previous Actions, With No Changes

(1) This paragraph restates the provisions of paragraph (o) of AD 2020–04–20, with no changes. This paragraph provides credit for the actions required by paragraphs (h)(1) and (2) of this AD, if those actions were performed before May 4, 2020 (the effective date of AD 2020–04–20), using the service information specified in paragraph (o)(1)(i) through (iii) of this AD.

(i) Bombardier Service Bulletin 84–28–20, Revision A, dated December 14, 2016.

(ii) Bombardier Service Bulletin 84–28–20, Revision B, dated February 13, 2017.

(iii) Bombardier Service Bulletin 84–28–20, Revision C, dated April 28, 2017.

(2) For the airplane having serial number 4164, this paragraph provides credit for the initial inspections required by paragraphs (h)(1) and (2) of this AD, if those actions were performed before May 4, 2020 (the effective date of AD 2020–04–20), using Bombardier Service Bulletin 84–28–20, dated September 30, 2016.

(3) This paragraph provides credit for the actions specified in paragraph (i) of this AD if those actions were performed before May 4, 2020 (the effective date of AD 2020–04–20), using the service information specified in paragraph (o)(3)(i) through (iii) of this AD.

(i) Bombardier Service Bulletin 84–28–21, dated August 31, 2017.

(ii) Bombardier Service Bulletin 84–28–21, Revision A, dated September 29, 2017.

(iii) Bombardier Service Bulletin 84–28–21, Revision B, dated June 8, 2018.

(4) This paragraph provides credit for the actions required by paragraph (j)(1) of this AD if those actions were performed before May 4, 2020 (the effective date of AD 2020–04–20), using Bombardier Service Bulletin 84–28–26, dated August 14, 2018.

(5) This paragraph provides credit for the actions required by paragraph (j)(2) of this AD if those actions were performed before May 4, 2020 (the effective date of AD 2020–04–20), using Bombardier Service Bulletin 84–28–21, Revision B, dated June 8, 2018.

(6) For airplanes having serial numbers 4001, 4003 through 4489 inclusive, and 4491 through 4575 inclusive, and that are post Bombardier Service Bulletin 84–28–21, Revision A, dated September 29, 2017: This paragraph provides credit for the actions required by paragraph (j) of this AD if those actions were performed before May 4, 2020 (the effective date of AD 2020–04–20), using the service information specified in paragraph (o)(6)(i) or (ii) of this AD.

(i) Bombardier Modification Summary Package (ModSum) IS4Q2800032, dated February 1, 2018.

(ii) Any airworthiness limitation change request (ACR) specified in figure 1 to paragraph (o)(6)(ii) of this AD.

Figure 1 to paragraph (o)(6)(ii) – *ACRs*

ACR Number	Dated
400-072	January 24, 2018
400-073	January 23, 2018
400-074	January 24, 2018
400-077	February 27, 2018
400-078	March 21, 2018
400-079	April 18, 2018
400-080	April 30, 2018
400-081	May 4, 2018
400-082	May 4, 2018
400-083	June 4, 2018
400-084	May 18, 2018

(p) New Rework and Retrofit

For airplanes having serial numbers 4001 and 4003 through 4575 inclusive: At the applicable time specified in paragraph (p)(1) or (2) of this AD, rework (repair, replace, or blend, as applicable) the parts (fuel tube end ferrules, fuel component end ferrules, and ferrule O-ring flanges); and do a retrofit (structural rework) of the fuel couplings, isolators, and structural provisions; in accordance with Part B of paragraph 3.B., ''Procedure,'' of the Accomplishment Instructions of Bombardier Service Bulletin 84–28–21, Revision C, dated July 13, 2018. Accomplishing these actions terminates the initial and repetitive inspections required by paragraphs (g) and (h) of this AD.

(1) For airplanes with greater than 20,000 total flight hours as of the effective date of this AD: Do the actions within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first.

(2) For airplanes with less than or equal to 20,000 total flight hours as of the effective date of this AD: Do the actions within 8,000 flight hours or 48 months after the effective date of this AD, whichever occurs first.

(q) New Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (p) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (q)(1), (2), or (3) of this AD.

(1) Bombardier Service Bulletin 84–28–21, dated August 31, 2017.

(2) Bombardier Service Bulletin 84–28–21, Revision A, dated September 29, 2017.

(3) Bombardier Service Bulletin 84–28–21, Revision B, dated June 8, 2018.

(r) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the New York ACO Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (s)(2) of this AD or email to: *9-avs-nyaco-cos@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(s) Additional Information

(1) Refer to TCCA AD CF–2017–04R3, dated April 1, 2020, for related information. This TCCA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–0672.

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

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (t)(4) and (5) of this AD.

(t) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on May 4, 2020 (85 FR 17473, March 30, 2020).

(i) Bombardier Service Bulletin 84–28–20, Revision D, dated November 23, 2018.

(ii) Bombardier Service Bulletin 84–28–21, Revision C, dated July 13, 2018.

(iii) Bombardier Service Bulletin 84–28–26, Revision A, dated November 29, 2018.

(iv) Bombardier Q400 Dash 8 (Bombardier) Temporary Revision ALI–0192, dated April 24, 2018.

(v) Q400 Dash 8 (Bombardier) Temporary Revision ALI–0193, dated April 24, 2018.

(4) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Dash 8 Series Customer Response Centre, 5800 Explorer Drive, Mississauga, Ontario, L4W 5K9, Canada; telephone North America (toll-free): 855–310–1013, Direct: 647–277–5820; email *thd@dehavilland.com;* internet *dehavilland.com.*

(5) 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.

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

Issued on August 25, 2022.

Christina Underwood,

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

[FR Doc. 2022–18749 Filed 8–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2022–0061; FXES1113090FEDR–223–FF09E22000]

RIN 1018–BF61

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Guam Kingfisher, or Sihek, on Palmyra Atoll, USA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), propose to release (meaning introduce) the Guam kingfisher (*Todiramphus cinnamominus*), known locally as the sihek, on Palmyra Atoll as an experimental population under the Endangered Species Act of 1973, as amended (Act). Currently, the sihek exists only in captivity and has been extinct in the wild for more than 30 years. The proposed introduction on Palmyra Atoll is outside the sihek's historical range because its primary habitat within its native range on Guam has been indefinitely altered by the accidental introduction of the predatory brown treesnake (*Boiga irregularis*) in the mid-twentieth century. Tools to manage brown treesnakes at a landscape level are under development, but these tools are unlikely to be available for broad use within the foreseeable future. The introduction of sihek to Palmyra Atoll is not intended to be a permanent introduction that would support a self-sustaining population; rather, it is intended to facilitate the gathering of information and analysis to optimize efforts for reestablishment of the species on Guam once brown treesnakes can be sufficiently controlled at a landscape scale. The introduction of sihek to Palmyra Atoll is also likely to help increase the global population of this extinct-in-the-wild species in advance of a reintroduction effort on Guam. We propose to classify the population as a nonessential experimental population (NEP) under the Act and propose regulations for the take of sihek within the NEP area. The best available data indicate the introduction of sihek to Palmyra Atoll is biologically feasible and will promote the conservation of the species. We are seeking comments on this proposal.

DATES: We will accept comments received or postmarked on or before September 30, 2022. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. eastern time on this date.

ADDRESSES: *Written Comments:* You may submit comments on this proposed rule by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R1–ES–2022–0061, which is the docket number for this rulemaking. Then, click the Search button. In the Search panel on the left side of the screen, under the Document Type heading, click on the box next to Proposed Rules to locate this document. You may submit a comment by clicking on ''Comment.''
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2022–0061; U.S. Fish and Wildlife Service; MS: PRB (JAO/3W); 5275 Leesburg Pike, Falls Church, VA 22041–3803. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Copies of Documents: The proposed rule is available on *https://www.regulations.gov* under Docket No. FWS–R1–ES–2022–0061.

FOR FURTHER INFORMATION CONTACT: Megan Laut, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., Rm 3–122, Honolulu, HI 96850; telephone 808–779–9939. 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:

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and effective as possible. Therefore, we invite governmental agencies, the scientific community, the CHamoru community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule. Comments should be as specific as possible.

To issue a final rule to implement this proposed action, we will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

You may submit your comments and materials concerning the proposed rule by one of these methods listed in **ADDRESSES**. Comments must be submitted to *https://www.regulations.gov* before 11:59 p.m. (eastern time) on the date specified in **DATES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES.**

We will post your entire comment—including your personal identifying information—on *https://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as some of the supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov,* or by appointment during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

We are specifically seeking comments concerning:

- Information pertaining to the sihek as it relates to the proposed introduction;
- Effects of the proposed introduction on native species and the ecosystem on Palmyra Atoll; and

• Adequacy of the proposed regulations for the sihek NEP.

We are accepting comments for 30 days as indicated above in **DATES**. A 30-day comment period is consistent with the rulemaking action that established the regulations for establishing NEPs (49 FR 33886, August 27, 1984; p. 33885), which stated that a rulemaking under section 10(j) of the Act will provide a minimum 30-day comment period. We believe that a 30-day public comment period is sufficient for this rulemaking action because the introduction will occur on a remote atoll with very little access. As a result, this rulemaking action will have little public effect, and we expect to receive few if any public comments. More importantly, however, the need to remove the birds from captivity and introduce them into the wild is urgent. Streamlining the rulemaking process as much as possible is necessary to best ensure the welfare of the birds and subsequent success of the introduction.

Peer Review

In accordance with our Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities, which was published on July 1, 1994 (59 FR 34270), and the internal memorandum clarifying the Service's interpretation and implementation of that policy (USFWS in litt. 2016), we will seek the expert opinion of at least three appropriate and independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, the final decision may differ from this proposal.

Background

Statutory and Regulatory Framework for Experimental Populations

Species listed as endangered or threatened are afforded protection primarily through the prohibitions in section 9 of the Act. Section 9 of the Act, among other things, prohibits take of endangered wildlife. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The 1982 amendments to the Act (16 U.S.C. 1531 *et seq.*) included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' The provisions of section 10(j) were enacted to ameliorate concerns that reintroduced populations will negatively impact landowners and other private parties, by giving the Secretary greater regulatory flexibility and discretion in managing the reintroduced species to encourage recovery in collaboration with partners, especially private landowners. Under section 10(j) of the Act, and our regulations in title 50 of the Code of Federal Regulations at 50 CFR 17.81, the Service may designate an endangered or threatened species that has been or will be released within its probable historical range as an experimental population. The Service may also designate an experimental population for an endangered or threatened species outside of the species' probable historical range in extreme cases when the Director of the Service finds that the primary habitat of the species within its historical range has been unsuitably and irreversibly altered or destroyed. All experimental populations are classified as ''nonessential'' unless we determine that the loss of the experimental population would be likely to appreciably reduce the likelihood of the survival of the species in the wild. We propose to classify the sihek released to Palmyra Atoll as nonessential.

The NEP designation allows us to develop tailored ''take'' prohibitions that are necessary and advisable to provide for the conservation of the species. The protective regulations adopted for an experimental population in a section 10(j) rule contain the applicable prohibitions and exceptions for that population and apply to all areas described for the nonessential population.

Section 7(a)(2) of the Act requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. For the purposes of section 7 of the Act, we treat an NEP as a threatened species when the population is located within a National Wildlife Refuge or unit of the National Park Service. When NEPs are located outside of a National Wildlife Refuge or National Park Service unit, for the purposes of section 7, we treat the population as proposed for listing and only sections 7(a)(1) and 7(a)(4) of the Act apply. In these instances, NEPs provide additional flexibility in managing the nonessential population because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed.

Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish an NEP.

Before authorizing the release as an experimental population of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation, that the release will further the conservation of the species. In making such a finding, the Service uses the best scientific and commercial data available to consider the following factors (see 50 CFR 17.81(b)):

(1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere (see Donor Stock Assessment and Effects on Donor Population, below);

(2) the likelihood that any such experimental population will become established and survive in the foreseeable future (see Likelihood of Population Establishment and Survival, below);

(3) the relative effects that establishment of an experimental population will have on the recovery of the species (see Importance of the NEP to Recovery Efforts, below); and

(4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area (see Management, below).

Furthermore, as set forth at 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) of the Act must provide:

(1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population (see Location and Boundaries of the Proposed NEP Area, below);

(2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild (see Is the Proposed Experimental Population Essential or Nonessential?, below);

(3) management restrictions, protective measures, or other special management concerns for that population, which may include, but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from natural populations (see Management, below; and

(4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species (see Monitoring and Evaluation, below).

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population.

Legal Status of the Species and Previous Federal Actions

We listed the sihek as an endangered species under the Act on August 27, 1984 (49 FR 33881). At the time of listing, the sihek was known as the Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*). We designated critical habitat for the sihek on October 28, 2004 (69 FR 62944), consisting of 376 ac (153 ha) on northern Guam. We finalized the Native Forest Birds of Guam and Rota of the Commonwealth of the Northern Mariana Islands Recovery Plan in 1990 and the Revised Recovery Plan for the Sihek or Guam Micronesian Kingfisher (*Halcyon cinnamomina cinnamomina*) in 2008 (73 FR 67541, November 14, 2008). In 2015, we attempted to revise the taxonomy for sihek under the Act through a direct final rule (see 80 FR 35860, June 23, 2015), but due to a minor administrative error in that rule the sihek's corrected taxonomy is not yet reflected on our List of Endangered and Threatened Wildlife (List; 50 CFR 17.11). We are currently in the process of updating 50 CFR 17.11 to reflect that the Guam Micronesian Kingfisher (*Halcyon cinnamomina cinnamomina*) should be the Guam kingfisher (*Todiramphus cinnamominus*) on the List. Throughout this document, we refer to the species as the sihek because that is the locally used common name on Guam.

Biological Information

Species Description

The sihek is a sexually dimorphic (the sexes are outwardly different in appearance) forest kingfisher (Baker 1951, p. 229). The adult male has a brown head, neck, upper back, and underparts. A black line extends around the nape (back of the neck), and the eye ring is black. The lower back, lesser and underwing coverts, and shoulder feathers are greenish-blue, and the tail is blue. The bill is black. The female's markings are similar to the adult male, but the upper breast, chin, and throat are paler, and the remaining underparts are white instead of cinnamon. Sihek are relatively small, about 8 inches (in) (20 centimeters (cm)) in length (Del Hoyo et al. 2001, p. 220). Adult sihek range in weight from 53 to 85 grams (g) (1.7–3.0 ounces (oz)) (Baker 1951, p. 228; Jenkins 1983, p. 21).

Historical and Current Range

The sihek is a nonmigratory species endemic to Guam and historically occurred in all habitats throughout Guam except pure savanna and wetlands (Marshall 1949, p. 210, Baker 1951 p. 229; Jenkins 1983, pp. 22–23). They were described as ''fairly common'' by Baker (1951, p. 229). However, the population declined rapidly in the mid-twentieth century due primarily to predation by the brown treesnake. The last remaining wild sihek were taken into captivity between 1984 and 1986, and sihek were considered extinct in the wild by 1988 (Wiles et al. 2003, p. 1357). For more than 30 years, the species has existed only in captivity, as discussed further in the *Recovery Efforts to Date* section, below.

Life Cycle

Sihek are socially monogamous, and breeding activity appears to be concentrated from December to July (Marshall 1949, p. 210; Baker 1951, p. 228; Jenkins 1983, p. 23). They nest in cavities, with nests documented in a variety of trees, including *Ficus* spp. (banyan), *Cocos nucifera* (coconut), *Artocarpus* spp. (breadfruit), *Pisonia grandis* (umumu), and *Tristiropsis obtusangula* (faniok) (Baker 1951, p. 228; Jenkins 1983, p. 24; Marshall 1989, p. 473). Both male and female sihek incubate eggs and brood and feed nestlings (Jenkins 1983, p. 24). Eggs are white and reported clutch sizes from wild populations (n = 3) were either one or two eggs (Baker 1951, p. 228; Jenkins 1983, p. 24; Marshall 1989, p. 474). Incubation, nestling, and fledgling periods for sihek in the wild are unknown. However, incubation and nestling periods of captive birds averaged 22 and 33 days, respectively (Bahner et al. in litt. 1998, p. 21).

Sihek feed entirely on animal matter including skinks (Scincidae), geckos (Gekkonidae), various insects, segmented worms (Annelida), and hermit crabs (*Coenobita* spp.) (Marshall 1949, p. 210; Baker 1951, pp. 228–229; Jenkins 1983, pp. 23–24). Seale (1901, p. 45) also reported that sihek were known to prey on the chicks of domestic fowl, and Marshall (1949, p. 210) noted fish scales in the stomach contents of collected sihek. They typically forage by perching motionless on exposed branches or telephone lines and swooping down to capture prey off the ground with their bill (Jenkins 1983, pp. 23–34). They will also capture prey off nearby foliage and have been observed gleaning insects from bark (Maben 1982, p. 78).

Habitat Use

Relatively little is known about the habitat use of sihek. Mature forests with appropriate nest sites were probably an important component for successful reproduction and survival. The sihek is a cavity nester and apparently requires large, standing dead trees. Nest trees were reported as averaging 43 centimeters (17 inches) in diameter (Marshall 1989, p. 475). Sihek also appear to require diverse vegetative structure capable of providing a wide range of both invertebrate and vertebrate prey as well as exposed perches and areas of open ground for foraging (USFWS 2002, p. 63739). Good-quality sihek habitat would therefore provide a combination of closed canopy forest with large, standing dead trees for nesting, and areas of open understory or

forest edges for foraging (Jenkins 1983, pp. 22–23; Marshall 1989, pp. 475–476; USFWS 2002, p. 63739).

Movement Ecology

Records of distributions and intraspecific territorial behaviors for sihek suggest they maintained exclusive year-round territories (Jenkins 1983, pp. 24–25). Little else is known about their movement ecology. On the island of Pohnpei, Micronesian kingfishers (*Todiramphus reichenbachii*), a species from the same genus as sihek, demonstrated an average territory size of 8.1 hectares (ha) (20 acres (ac)) and showed stable boundaries within and between years (Kesler and Haig 2007, p. 387); birds dispersing from their home territory were observed to establish new territories a maximum distance of 4,501 feet (1,372 meters) from the original site (Kesler and Haig 2007, p. 389). The sihek is an island endemic and has not been observed flying over open ocean.

Causes of Decline and Threats

The primary cause of the sihek's extinction in the wild was due to predation by the introduced brown treesnake (USFWS 2008, p. 21). This invasive species probably arrived on Guam prior to 1950 as stowaways on shipping materials (Savidge 1987, p. 662). Brown treesnakes were likely introduced in southern Guam and expanded their range, reaching the northernmost point of the island by 1968 (Savidge 1987, p. 663). Sihek were last recorded from southern Guam in the 1970s (Drahos 1977, pp. 153–154), and by 1985, Marshall (1989, p. 476) reported only 30 sihek in the northern part of the island. Sihek were considered extinct in the wild by 1988 (Wiles et al. 2003, p. 1357). The continued islandwide presence of brown treesnakes on Guam precludes consideration of Guam as a viable reintroduction site for sihek for the foreseeable future.

Other factors that likely impacted sihek on Guam include predation by feral cats (*Felis catus*), rats (*Rattus* spp.), and monitor lizards (*Varanus tsukamotoi*), habitat degradation from development and typhoons, human persecution, contaminants, and competition with and harassment by black drongos (*Dicrurus macrocercus*) (USFWS 2008, pp. 16–17). Our Revised Recovery Plan for the Sihek or Guam Micronesian Kingfisher (USFWS 2008, pp. 16–26) provides further description of these threats.

Recovery Efforts to Date

Criteria for reclassifying the sihek from an endangered to threatened species (''downlisting'') include establishing two subpopulations on Guam (one in the north and one in the south) of at least 500 individuals each that are stable to increasing over at least 5 consecutive years; sufficient habitat is protected and managed to achieve the population criteria; and brown treesnakes and other introduced predators are managed at levels sufficient to meet the population criteria. The criteria to delist (remove protections of the Act for) the sihek include two subpopulations on Guam of at least 1,000 individuals each (one in the north and one in the south) that are stable or increasing, with sufficient habitat and predator control to support the population criteria (USFWS 2008, pp. 40–43). Our recovery plan acknowledged that the interim step of introducing sihek outside of its historical range may be necessary before we are able to reestablish sihek populations on Guam (USFWS 2008, p. 40).

Habitat Protection

Over the past 30 years, the Service has worked with a number of stakeholders to provide habitat protection in support of recovering Guam's native species. The habitat protections described below were intended for federally listed species on Guam in anticipation of our eventual ability to control brown treesnakes and allow the reintroduction of sihek and other locally extinct species. In 1993, the U.S. Air Force, U.S. Navy, and Service entered into a memorandum of understanding to create the Guam National Wildlife Refuge. As per the terms of the memorandum of understanding, the two military branches entered into cooperative agreements with the Service in 1994 to designate Department of Defense lands as overlay units in the Guam National Wildlife Refuge (*i.e.,* these overlay units of Refuge lands are under the jurisdiction of the Department of Defense but managed by the Service as part of the Refuge). Currently the Guam National Wildlife Refuge includes 152 ha (376 ac) of lands under the jurisdiction of the Service and 9,300 ha (22,980 ac) of overlay lands under the jurisdiction of the U.S. Navy and U.S. Air Force, and all are managed by the Service as the Refuge.

Additionally, the Government of Guam established four reserves for habitat protection. These lands are under the jurisdiction of the CHamoru Land Trust Commission of the Government of Guam. The Commission has the authority to change the status of these lands to non-conservation areas as they deem appropriate. Please see the Revised Recovery Plan for the Sihek or Guam Micronesian Kingfisher (USFWS 2008, pp. 33–37) for further description and maps of the Department of Defense and Government of Guam protected areas.

More recently, the Department of Defense and the Service entered into two agreements to protect or manage habitat for sihek and other federally listed species on Guam. A 2020 memorandum of understanding between Joint Region Marianas and the Service outlined a mutual understanding regarding the intentions and future considerations of a Department of Defense readiness and environmental protection integration initiative to address conservation of upland vegetation communities for the sihek as well as other federally listed species on Guam. In 2015 a memorandum of agreement between the Department of the Navy and the Service designated 2,118 ha (5,234 ac) of habitat for the recovery and survival of the sihek in Northern Guam in response to loss of habitat described in the Service's 2015 Marine Corps Relocation Biological Opinion (USFWS 2015, entire).

Brown Treesnake Control

We currently lack tools to eradicate brown treesnakes from Guam, and the continued presence of brown treesnakes throughout the landscape prevents the successful reestablishment of sihek on Guam in the foreseeable future. However, we have made some incremental progress in addressing this threat. Since 2010, the interagency Brown Treesnake Technical Working Group has advanced landscape-scale brown treesnake suppression capabilities with the development and refinement of an aerial delivery system for toxicant baiting, comprising an automated bait manufacturing system and an automated dispensing module for applying baits from aircraft. Aerial toxicant baiting has recently been evaluated in both fenced and non-fenced 55 ha (136 ac) sites; brown treesnake suppression, but not eradication, has been validated using this technique (Siers et al. in litt. 2020, p. 4). Further, simulated aerial baiting for brown treesnake eradication within a 5 ha (12 ac) brown treesnake exclusion area indicates that some brown treesnake size classes do not consume baits and additional control tools are needed to achieve suppression objectives and/or eradication (Siers et al. in litt. 2020, p. 4).

Island-wide eradication of invasive vertebrates has been achieved on 965 islands for various taxonomic groups (see Keitt et al. 2011, *https://diise.islandconservation.org/*); however, snake eradication efforts are rare, and there is only one other documented ongoing effort to eradicate snakes from an island (*https://diise.islandconservation.org/*). Additional technological and methodological advancements along with community engagement are still needed to achieve landscape-scale eradication of brown treesnakes on Guam. The aerial delivery system tools are operational, but full operational implementation of the aerial suppression program will require further understanding of site-specific effects of the technology and development of efficient monitoring protocols. Therefore, while technological advances to control brown treesnakes show promise as a tool, they currently do not control snakes to a level sufficient to allow the return of sihek to Guam in the foreseeable future (*i.e.,* before significant declines in the ex situ population of sihek are likely to occur). Thus, interim conservation measures for sihek are necessary to reduce its extinction risk while brown treesnake suppression and eradication methods are perfected and implemented.

Captive Breeding Efforts

In 1983, the Association of Zoos & Aquariums (AZA) initiated the Guam Bird Rescue Project in response to the widespread decline of Guam's native birds. The sihek was one of the Guam birds selected under this program for captive (ex situ) conservation efforts (Hutchins et al. in litt. 1996, p. 4). Between 1984 and 1986, 29 sihek were translocated from Guam to several zoos in the mainland United States. The program was established with the intent of being a short-term rescue but ultimately led to a breeding program due to the continued presence of brown treesnakes on Guam, which have prevented the reestablishment of sihek within their native range. By 1990, the ex situ population increased to 61 sihek in 12 mainland zoos. Currently, an estimated 152 sihek are held at 24 AZA institutions and in a facility at the Guam Department of Agriculture's Division of Aquatic and Wildlife Resources (DAWR) (Newland, S., in litt. 2021a).

A Species Survival Plan Program for sihek, developed by the AZA, has been in place since 1986. In general, Species Survival Plan Programs are established to oversee the population management of species within AZA-accredited facilities. The plans typically include a population studbook and an annual breeding and transfer plan to ensure the genetic and demographic health of the population. The donor population is carefully managed through the Species Survival Plan Program to ensure the population's long-term viability.

Sihek are relatively difficult to manage in zoos because of their aggressive territorial behavior and moderately expensive diet. In addition, little forward progress toward a recovery program in the wild has led to few new institutions willing to hold or breed the species, which ultimately limits population growth. The small founding population, as well as the limited ability to increase the population beyond its current size, has serious implications for long-term survival of sihek.

Two separate population viability analyses (PVAs) demonstrated rapid declines in the population under current conditions (Johnson et al. in litt. 2015, p. 8; Trask et al. 2021, p. 6). Without changes to management practices that increase reproduction (*i.e.,* reproductive output stays the same), the sihek population is predicted to decline to below 100 individuals by the year 2040 (Johnson et al. 2015, p. 8); and with a slight decrease in reproductive output of just 7 percent, the population is projected to decrease to 25 individuals by 2040 (Johnson et al. 2015, p. 9). The PVA developed by Trask et al. (2021, entire) incorporated an inbreeding coefficient into their models and demonstrated, among other things, a rapid decline in the population without an increase in reproductive output such that in 50 years the mean population size is projected to decline to approximately 30 individuals. The ex situ population of sihek is therefore sensitive to even slight reductions in reproductive output and is at a heightened risk of extinction due to small population dynamics in their existing limited breeding and holding space. However, a small increase in average annual reproductive output (from 2.54 hatchlings per female per year to 2.70 hatchlings per female per year) could support long-term (50-year) sihek population viability as well as a release program (Trask et al. 2021, p. 6).

Breeding facilities for sihek are currently at capacity. Without the ability to release sihek, the species' population growth is constrained. The sihek's current small population size puts the species at risk from stochastic environmental events (*e.g.,* disease outbreaks in the ex situ population or changes in the ability of facilities to house and breed sihek) and demographic threats (*e.g.,* sex-ratio biases, as well as from genetic threats from increasing rates of loss of genetic diversity and accumulation of inbreeding). Further, maintaining the species entirely under captive environmental conditions puts the species at risk from genetic adaptations to captivity (Frankham 2008, entire). This situation could result in individuals having reduced fitness under wild conditions and could negatively impact the success of efforts to ultimately recover the species on Guam.

Reintroduction

No efforts have been made to reintroduce the sihek to its native range on Guam due to the continued presence of brown treesnakes, the primary threat that caused its extinction in the wild. Further, until recently, the ex situ population of sihek was not large enough to sustain a release program. Analyses by Trask et al. 2021 (p. 7) have shown that, with captive management aimed at increasing reproductive output, the ex situ population can support the releases proposed for an experimental population on Palmyra Atoll.

Location and Boundaries of the Proposed NEP Area

The proposed NEP area for sihek occurs outside the species' historical range and encompasses the 250 ha (618 ac) of emergent land distributed among the 25 islands that make up Palmyra Atoll (Collen et al. 2009, p. 712), and inclusive of the lagoons surrounding those islands. The islands vary in size from approximately 0.1 to 97.9 ha (0.24 to 242 ac). Palmyra Atoll is located in the Northern Line Islands, approximately 1,000 miles (1,609 km) south of Honolulu, Hawaii, and 3,647 miles (5,869 km) east of Guam (5°53′ N latitude, 162°05′ W longitude). Palmyra Atoll is considered a wet atoll with high humidity, typically greater than 90 percent, and temperatures between 75 and 81 °F (24–27 °C) and rainfall averages 175 inches (in) (444.5 centimeters (cm)) per year (Hathaway et al. 2011, p. 6), without a specific rainy season. Temperatures on Guam are slightly higher, ranging 75–90 °F (24–32 °C), with rainfall averaging 98 in (249 cm), with the greatest rainfall occurring between July and November (*https://www.weather-us.com/en/guam-usa-climate*).

The closest landmass is more than 232 km (144 mi) from Palmyra. Given this and the fact that sihek are an island endemic not known to undertake long-distance flights over open ocean, it is extremely unlikely that sihek would

move outside of the NEP area and survive. Also, no other kingfisher species occur on Palmyra Atoll, thus all kingfishers on the atoll will be members of the NEP.

Land Ownership

Palmyra Atoll is currently owned and managed by the Service, The Nature Conservancy, and the Cooper family. The majority of the islands (158 ha (390 ac)), waters, and the coral reefs surrounding Palmyra Atoll, up to 12 nautical miles to sea, are owned by the United States and managed by the Service as a National Wildlife Refuge. Palmyra Atoll National Wildlife Refuge was established in 2001 to protect, restore, and enhance migratory birds, coral reefs, and threatened and endangered species in their natural setting. The Nature Conservancy owns two islands, Cooper and Menge (91.5 ha (226 ac)) and cooperatively manages the atoll with the Service. Home Island (0.71 ha (1.8 ac)) is under private fractional ownership by the Cooper family, and the Service provides stewardship for this island, providing it the same protections as Refuge property (Kropidlowski, in litt. 2021). Palmyra Atoll is also part of the Pacific Remote Islands Marine National Monument, which was established in 2009 and is co-managed by the Service and the National Ocean and Atmospheric Administration.

Likelihood of Population Establishment and Survival

In late 2020, we established a recovery team for sihek whose purpose is to assist the Service in developing and implementing a conservation strategy for reestablishing sihek in the wild. Members of this team developed a phased approach whereby learning sites (sites used to test conservation translocation procedures as well as demographic and behavioral responses of target species) help achieve the overarching objectives of reducing global sihek extinction risk, while also refining techniques to establish viable wild populations on Guam. Based on habitat suitability, food resource availability, and willing partners, we have identified Palmyra Atoll as a proposed learning site.

The best available scientific data indicate that the introduction of sihek into suitable habitat is biologically feasible and would promote the conservation of the species. Coarse-scale modeling indicated Palmyra could support up to 15 breeding pairs (Laws and Kesler in litt. 2011, p. 65). We evaluated the ecological suitability of Palmyra Atoll and concluded sufficient habitat conditions and food resources are available to support the small number of sihek needed for a temporary training site (USFWS unpub.). Further, we developed a proposed release and monitoring program that includes interventions such as supplemental feeding if needed to increase the chances of survival. To minimize risk associated with the introduction, we are assessing potential environmental impacts in the proposed NEP area in a draft environmental assessment (See *National Environmental Policy Act* section, below) and will monitor for these potential impacts as part of the release program.

Potential Effects of Activities on Palmyra Atoll on Introduced Sihek

The effects of Federal, State, or private actions and activities on Palmyra Atoll that are ongoing and expected to continue are not likely to adversely affect the sihek within the proposed NEP area. Public access to Palmyra Atoll is extremely limited and available in only the following ways: (1) working for, contracting with, or volunteering for the Service or The Nature Conservancy; (2) conducting scientific research via Service special use permits; (3) invitation through the Service or The Nature Conservancy; or (4) by private recreational sailboat or motorboat. With prior approval by the Service, privately owned vessels are permitted to access the Palmyra Atoll National Wildlife Refuge. A maximum of two vessels are allowed at one time. Access to Cooper Island must be arranged and secured through The Nature Conservancy. Activities currently occurring in the proposed NEP area, and those likely to occur, are not likely to impede the introduction effort. Current activities on Palmyra Atoll include an ongoing rainforest restoration project, operation of a research station, and limited recreation. The rainforest restoration project includes control of nonnative coconut trees, and opportunistic planting and seeding of native tree species. The Nature Conservancy manages a research station, and visiting scientists are required to obtain a permit from the Service to ensure compatibility with the mission of the Refuge. The Nature Conservancy also provides guided recreational activities (fishing, kayaking) to a small number of visitors to the Atoll. No significant development is planned on the Atoll for the foreseeable future.

Importance of the NEP to Recovery Efforts

We are proposing to introduce a nonessential experimental population of sihek on Palmyra Atoll to promote the conservation and recovery of the species. The International Union for the Conservation of Nature's Guidelines for Reintroduction and Other Conservation Translocations (2013, p. 4) identifies several criteria to consider prior to undertaking a reintroduction, including ''strong evidence that the threat(s) that caused any previous extinction have been correctly identified and removed or sufficiently reduced.'' Although the basic habitat components required by the sihek on Guam are still present, they have been made unavailable to the sihek in the foreseeable future due to the ongoing and pervasive threat of brown treesnakes (see *Recovery Efforts to Date*). Innovations in brown treesnake management show promise for controlling their populations at a landscape level but not within the time needed to prevent further deleterious impacts to the ex situ sihek population. Also the current captive-only sihek population is at high risk of extinction, and a moderate decline in reproductive output is likely to have long-term negative consequences on the survival probability for this species (see *Captive Breeding Efforts* and *Reintroduction*). The number of breeding institutions participating in sihek management is limited and declining (Newland in litt. 2021b), further increasing the risk of reduced breeding effort and its associated population decline. Advancements in brown treesnake control show promise for reintroducing sihek to its native range on Guam in the future, but current control methods are not likely to be able to eradicate this threat prior to substantial forecasted declines in the sihek population.

We propose to release sihek onto Palmyra Atoll, which is outside its historical range, for the following purposes: (1) invigorate the ex situ conservation program to increase reproductive output by increasing breeding space at existing facilities and/or recruiting additional facilities to join the ex situ conservation program; and (2) develop and refine release and monitoring methods to be applied when reestablishing a population on Guam to recover the species. Release of sihek on Palmyra Atoll will improve the likelihood of successful reintroduction and recovery on Guam by: (1) providing the opportunity to develop and test release and monitoring techniques, (2) providing information on the sihek's ability to survive in the wild,

(3) assessing how much human intervention is required to support a wild population, (4) increasing the global population of sihek as an extension of the ex situ population as well as invigorating the breeding program, and (5) potentially serving as a source of wild-hatched birds for future releases on Guam or other sites.

Is the proposed experimental population essential or nonessential?

When we establish experimental populations under section 10(j) of the Act, we must determine whether that population is essential or nonessential to the continued existence of the species. This determination is based solely on the best scientific and commercial data available. Our regulations (50 CFR 17.80(b)) state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild. We are proposing to designate the population of sihek on Palmyra Atoll as nonessential for the following reasons:

(1) No populations of sihek occur in the wild currently;

(2) the proposed experimental population area is too small to support a self-sustaining wild population of sihek (Laws and Kesler 2011, p. 63) and is intended only as a temporary training site (*i.e.,* approximately 10 or more years) for us to improve release techniques, monitoring, and adaptive management for population establishment on Guam, when its habitat is available; and

(3) loss of the experimental population would not preclude other recovery options, including future efforts to establish sihek populations elsewhere.

In addition, we evaluated the potential impacts of the establishment of the experimental population on the ex situ population. Establishment of the proposed experimental population will not affect the potential to establish a future, self-sustaining, wild population of sihek on Guam for the following reasons:

(1) The majority of the sihek population will remain in an ex situ population distributed among 25 facilities, where they are carefully managed according to the Species Survival Plan Program (Newland in litt. 2021a); and

(2) only a small number of individuals will be removed from the ex situ population for release on Palmyra Atoll, and these removals are expected to have minimal impact on the survival of the ex situ population (see Donor Stock Assessment and Effects on Donor Population, below).

As mentioned above in Importance of the NEP to Recovery Efforts, the proposed introduction on Palmyra Atoll will further the conservation of sihek both in terms of improving the status of the ex situ population and in increasing the likelihood of success in establishing wild populations. In the near term, we anticipate that the introduction of sihek to Palmyra Atoll will invigorate the ex situ breeding program and result in more breeding space at existing facilities, more institutions joining the program, or both, ultimately resulting in a larger population if additional institutions join. Space is a limiting factor for this extinct-in-the-wild species and demonstrating our intent to recover it in the wild will likely increase interest in the species (Newland in litt. 2022). In the longer term, the information gathered from observing the species under wild conditions, development of suitable release and monitoring methods, and assessment of how much human intervention might be needed to support a wild population will improve future release efforts. Lastly, wild-hatched sihek could be a complementary source, alongside captive-bred birds, for translocation to Guam or other sites.

Release Procedures

Late-stage nestlings or recent fledglings will be flown to Palmyra Atoll where they will be held in release aviaries for up to one month. Three sets of three flight aviaries will be established across Palmyra Atoll at, or close to, locations where habitat appears most suitable. During this time, they will undergo acclimation and training to respond to supplementary feeding signals. Prior to release, all sihek will be fitted with a radio transmitter consistent with the Bird Banding Laboratory of North America's guidelines that transmitters be no more than 3 percent of a bird's body weight (Gustafson et al. 1997).

Releases from aviaries will be via opening of a panel in the aviary wall to allow individuals to come and go freely. We will monitor each sihek daily, immediately after release and throughout their first year of release. After the first year, we may reduce the intensity of monitoring if no problems are observed. Sihek monitoring will cover a range of components, including general behavior (maintenance, foraging, locomotion, conspecific interactions); health (weights collected remotely at feeding stations, fecal samples, semiannual capture and assessment); and breeding (pairing, territoriality, nest excavation, nest building, egg laying and clutch size, hatch date, nestling survival, and fledge success). Additional details of the release procedures are provided in the Sihek Management Plan (see Andrews et al. in litt. 2022).

Donor Stock Assessment and Effects on Donor Population

The donor population for the proposed introduction of sihek to Palmyra Atoll is the ex situ population of sihek. This population is distributed among 25 breeding facilities in the U.S. mainland and on Guam (24 AZA institutions and 1 Guam Department of Agriculture (DAWR) facility), with the population being managed through the Sihek Species Survival Plan Program (see *Captive Breeding Efforts*). The most recent population count documented 152 birds (Newland in litt. 2021a). The population size remains below the target of 200 individuals identified in the 2020 Species Survival Plan Program (Newland et al. 2020, p. 2) in large part due to limited holding capacity across the breeding facilities. Recent funding for the construction of another facility at Brookfield Zoo, as well as for the transfer and maintenance of sihek to the facility, has expanded capacity to allow for growth of the population. The current Species Survival Plan Program coordinator is actively seeking additional AZA institutions to participate in the sihek breeding effort, and this solicitation will likely be aided by releases to Palmyra Atoll and the recent progress in recovery planning for the species.

Population models indicate that an increase in breeding (*i.e.,* production of hatchlings) is required to ensure the sustainable removal of individuals from the ex situ population for release to Palmyra (Johnson et al. 2015, p. 13, and Trask et al. 2021, p. 6). In the past, we have observed measurable population increases with focused management to increase productivity in the ex situ population. Between 2004 and 2013, the sihek population increased from 61 birds to a peak of 157 birds as a result of increased reproductive output using multiple clutching (when a breeding pair is induced to produce more than one clutch of eggs per year by removing and artificially incubating the first clutch of eggs) (Newland et al. *in litt* 2020, pp. 4–5). The best available information indicates that increasing ex situ reproductive output to rates seen between 2004 and 2013 is likely to support a release program on Palmyra without negatively impacting the long-term viability of the species (Trask et al. 2021, p. 6).

Only a small number of sihek will be removed from the ex situ population for release on Palmyra Atoll. We plan to remove up to 9 in the first year, and fewer than 9 in subsequent years to ultimately achieve a target of 10 breeding pairs. The release cohort will consist of hatch-year sihek that will be reared under pathogen- and vector-free conditions. All individuals will be health-screened prior to release. Release cohorts will consist of sihek that are relatively unrelated to each other (*i.e.,* sihek with low mean kinship), and that have a relatively low individual inbreeding coefficient. In addition to genetic considerations for released individuals, retaining maximum genetic diversity within the ex situ population is a priority; therefore, individuals identified as genetically valuable (*i.e.,* with a low mean kinship coefficient, such that they are genetically underrepresented in the ex situ population) will be retained in the ex situ population. We will assess selection of individuals in release cohorts for follow up translocations based on both the sex ratio and genetics of the introduced population on Palmyra Atoll, as well as that of the donor population.

Species Survival Plan Program annual reports (see *Captive Breeding Efforts*) will continue throughout the releases, and will be reviewed to ensure that removal of individuals for release will not be detrimental to the stability of the ex situ population. If negative impacts on the donor population are detected, we will pause releases while donor population health is improved. Given the careful management of the donor population, the ability to artificially increase its productivity, and the relatively small number of sihek that will be released annually, negative impacts to the donor population are expected to be minimal.

Management

We will collaborate with Guam DAWR, Zoological Society of London, AZA, Calgary Zoo, Palmyra Atoll National Wildlife Refuge, and The Nature Conservancy on releases, monitoring, coordination, and other tasks as needed to ensure successful introduction of the species to Palmyra Atoll. A few specific management considerations are addressed below.

Incidental Take: Experimental population rules contain specific prohibitions and exceptions regarding the taking of individual animals under the Act. These rules are compatible with most routine human activities in the proposed NEP area (*e.g.,* resource monitoring, invasive species management, and research; see Importance of the NEP to Recovery Efforts, above). Section 3(19) of the Act defines ''take'' as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' ''Incidental take'' is further defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. If we adopt the 10(j) rule as proposed, incidental take of sihek within the experimental population area would be allowed, provided that the take is unintentional and not due to negligent conduct.

Special Handling/Intentional Take: If we adopt the 10(j) rule as proposed, employees of the Service, Guam DAWR, The Nature Conservancy, Zoological Society of London, the Calgary Zoo, AZA facilities holding sihek, and authorized agents acting on behalf of the Service or these other entities, may intentionally take sihek through handling sihek for scientific purposes; relocating individuals or bringing individuals into captivity for the purposes of increasing sihek survival or fecundity; aiding sick or injured sihek; salvaging dead sihek; disposing of a dead specimen; or aiding in law enforcement investigations involving the sihek. Any other person would need to acquire a permit from the Service for these activities.

Interagency Consultation: For purposes of section 7(a)(2) of the Act, section 10(j) of the Act and our regulations (50 CFR 17.83) provide that nonessential experimental populations are treated as species proposed for listing under the Act except on National Park Service and National Wildlife Refuge System lands, where they are treated as threatened species for the purposes of section 7(a)(2) of the Act. We intend to address our section 7(a)(2) consultation obligations for sihek within the Palmyra National Wildlife Refuge through a programmatic intra-Service consultation prior to finalizing this rule. Any activities outside of those analyzed in our programmatic consultation that may affect sihek within the NEP area would be addressed through future individual intra-Service section 7 consultations.

Public Awareness and Cooperation: On November 18, 2021, in cooperation with Guam DAWR, we engaged the Governor of Guam and constituents to inform them of the proposed introduction of sihek to Palmyra Atoll. We have coordinated closely with the co-manager of Palmyra Atoll (The Nature Conservancy) throughout the planning process, and we expect our coordination with them will continue through the duration of the project. Public comments received on this proposed rule and our forthcoming draft environmental assessment will be considered in our final determinations.

Monitoring and Evaluation

We will monitor the health, habitat use, behavior, foraging activity, movement, breeding, and survival of all sihek released and hatched at Palmyra Atoll. We will attempt to weigh sihek daily at supplementary feeding platforms with inbuilt scales. Passive collection of fecal material from these supplementary feeding platform visits will be screened for gastrointestinal parasite loads and examination of diet. We will attempt to capture individuals twice each year for a more thorough physical examination (weight, condition, ectoparasite load, feather fault bar analysis). During these captures, we will take a blood sample, which will be stored in ethanol for later diagnostics of blood parasites, and a blood smear made for visual examination of blood parasites and white blood cell count analysis. Further, we will collect a fecal sample opportunistically and a cloacal swab for later bacterial culture.

Once each sihek is released, we will track it and attempt to log its location at least once daily to document post-release movement patterns and territory establishment. Individuals will be located via radio transmitter tracking or visual searches. During observations, we will record behaviors including maintenance, perching, ingestion, excretion, locomotion, vocalizations, and interactions. We will record food items whenever feeding is observed in free-flying sihek.

We will attempt to closely monitor all breeding attempts to determine timing of pairing, nest building, egg laying and clutch size, hatch date, nestling survival, and fledge success. Unhatched eggs will be collected for analysis of fertility and embryo development. Recovered dead nestlings will be necropsied in the field and samples taken for later laboratory analysis for cause of death. Where possible, surviving nestlings will be weighed every third day throughout development until banding age. During banding, we will collect a range of samples as specified above for adult health sampling.

We will create a resighting history for each sihek released or hatched into the population. We intend to monitor sihek and their prey species with the full-time presence of staff on Palmyra, at least until intensive monitoring shows: (1) sihek are foraging independently and

exhibiting behaviors typical of *Todiramphus* species; and (2) sihek are not having unacceptable impacts on prey species populations (unacceptable impacts are described further in the sections below). If the two situations described above occur, then we may reduce staffing to less than full time and monitor sihek and the environment less intensively.

Ecosystem Impacts

As Palmyra Atoll is outside the native range of the sihek, introduction of sihek to Palmyra Atoll could have potential impacts on native species. The International Union for the Conservation of Nature, Species Specialist Commission, Invasive Species Specialist Group recognizes a number of different mechanisms of impact that introduced species (which others have sometimes called alien species) can have on native ecosystems (Pagad et al. 2015 pp. 130–132). These include impacts through predation, competition, hybridization, or transmission of disease-causing pathogens to native species (Blackburn et al. 2014, pp. 4–7).

To assess the potential impacts that sihek may have on Palmyra Atoll and the mechanisms through which these impacts may occur, researchers on the recovery team conducted an environmental impact assessment, based on the Environmental Impact Classification for Alien Taxa (EICAT) (Blackburn et al. 2014, entire) and the Generic Impact Scoring System (Nentwig et al. 2010, entire). This process involved consulting with a range of relevant experts (n=19), who were asked to provide their judgment on the level of impact sihek may have through each potential impact mechanism. Impact levels were described in a range from the lowest level of ''minimal,'' where effects are negligible, to the highest level of ''massive,'' where impacts result in local extinction(s) and community-level changes are irreversible. We are evaluating the relative risk of competition, hybridization, predation impacts, and disease transmission, and the results will be summarized in our draft environmental assessment for this project.

In the EICAT assessment, experts considered predation to be the most likely impact of sihek introduction to Palmyra (although the magnitude of this factor was judged to be moderate at most). No listed species occur on Palmyra Atoll, and the EICAT assessment experts' scoring generally assessed the introduction of a novel avian predator. Therefore, we will focus post-release environmental monitoring on potential sihek prey species that are native to Palmyra Atoll. We will obtain sihek diet information through behavioral observation and fecal samples, as described above (Release Procedures and Monitoring and Evaluation). This information will highlight major components of sihek post-release diet and help guide more focused monitoring.

At a minimum, we will coordinate with The Nature Conservancy and Palmyra National Wildlife Refuge to carry out annual monitoring on a range of suitable prey items, as described above. We will use the most appropriate survey methods for different taxa. In the event that dietary and behavioral observations of released sihek suggest a particular prevalence and abundance of specific prey items that are of conservation concern, we will establish more frequent monitoring surveys. We will analyze post-release monitoring data to obtain estimates of abundance and density for reference taxa. These estimates will then be compared with pre-release monitoring data, collected in the weeks prior to release, with estimates from paired locations across the island in a before-after, control-impact experimental design. In the event we find estimated impacts to be unacceptably high, such as preferential prey selection for one species such that it has population-level effects, we will activate an appropriate response (see *Exit Strategy,* below). Annual reports that summarize monitoring and management activities will be developed by the Zoological Society of London in collaboration with the Service, The Nature Conservancy, and the Sihek Recovery Team.

Exit Strategy

Depending on the circumstances, the Service may either terminate the release program, or temporarily pause the release program to address identified issues before resuming. These scenarios and the Service's expected response are detailed below.

The Service will terminate the release program on Palmyra Atoll if:

(1) Monitoring indicates the benefits from the Palmyra population (including learning and refining release and support strategies for eventual releases on Guam) no longer outweigh the risks to the species or the welfare of the NEP or ex situ population; or

(2) monitoring shows unacceptable impacts on the ecosystem that can be clearly causally linked to the introduction of sihek.

In addition to these ''must terminate'' scenarios, the Service may also terminate the release program:

(3) When the purposes of the program have been realized (*e.g.,* we have developed successful release and monitoring methodologies to apply to future release efforts or we have demonstrated sihek can survive and reproduce in the wild without human intervention, see Importance of the NEP to Recovery Efforts), although we do not anticipate this scenario until 10 or more years after the first release.

The Service may also temporarily suspend the program to address issues that arise before program termination. The monitoring team will summarize information they collect on a regular basis and will share it with the recovery team and the managers of Palmyra Atoll (the Service and The Nature Conservancy). If results indicate the program is approaching scenario (1) or (2) above, then the Service, in consultation with the recovery team and The Nature Conservancy, will determine if terminating the program is the best way to avoid these outcomes, or whether the program should be paused and adaptive steps taken to address them before resuming the program.

Regular monitoring and reporting will also inform progress toward achieving program goals and scenario (3) above: The Service will determine—in consultation with the recovery team and The Nature Conservancy—when the purpose of the NEP has been achieved such that the program can come to an end. When the Service terminates the program, the Service will also address what will happen with any remaining individuals in the NEP, *i.e.,* whether they will be relocated to captivity, relocated to other suitable habitat, or remain on Palmyra, based on the circumstances at the time of termination.

Findings

Based on the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing sihek onto Palmyra Atoll with the regulatory provisions in this proposed rulemaking will further the conservation of the species. We find that the continued presence of the brown treesnake on Guam means that the sihek's native habitat has been unsuitably and irreversibly altered or destroyed for the foreseeable future such that the proposed introduction of the sihek to Palmyra Atoll outside of its probable historical range is warranted and consistent with our regulations at 50 CFR 17.81. The nonessential experimental population status is appropriate for the introduced population; the potential loss of the experimental population would not

appreciably reduce the likelihood of the survival of the species in the wild because there are currently no sihek remaining in the wild.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

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

The areas that would be affected under this proposed rule are restricted to Palmyra Atoll. Because of the regulatory flexibility for Federal agency actions provided by the NEP designation and the exemption for incidental take in the rule, we do not expect this proposed rule to have significant effects on any activities within Federal, State, or private lands within the NEP area. In regard to section 7(a)(2) of the Act, the population would be treated as proposed for listing, and, therefore, Federal action agencies would not be required to consult on their activities, except on National Wildlife Refuge System lands, where the NEP would be treated as a threatened species for the purposes of section 7 of the Act.

Section 7(a)(4) of the Act requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed for listing. However, because the NEP is, by definition, not essential to the survival of the species, and there are no sihek in the wild outside of the NEP area that could be impacted, conferring will likely never be required for the sihek population within the NEP area. Furthermore, the results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. Section 7(a)(1) of the Act requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the NEP area. On National Wildlife Refuge System lands within the NEP area, the sihek would be treated as a threatened species for the purposes of section 7 of the Act. As a result, and in accordance with our regulations, some modifications to proposed Federal actions within National Wildlife Refuge System lands may occur to benefit the sihek, but we do not expect projects to be substantially modified because these lands are already administered in a manner that is compatible with sihek conservation.

This proposed rule if finalized would broadly authorize incidental take of the sihek within the NEP area. The regulations implementing the Act define ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity, such as habitat management, infrastructure maintenance, and other activities in the NEP area that are in accordance with Federal, Tribal, State, and local laws and regulations. Intentional take for authorized data collection or recovery purposes by authorized personnel are also allowed under the NEP designation. Other forms of intentional take would require a section 10(a)(1)(A) recovery permit under the Act.

The only private landowners on Palmyra Atoll are The Nature Conservancy and the Cooper family. The principal activities on private property near the proposed release site are associated with scientific field station operations, including the operation of a landing strip for aircraft, and some limited recreation. The presence of the sihek is not likely to significantly affect the use of lands for these purposes because there will be no new or additional economic or regulatory restrictions imposed upon private landowners due to the presence of the sihek. Therefore, this proposed rulemaking is not expected to have any significant adverse impacts to activities on private lands within the NEP area.

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

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

(1) This rule would not ''significantly or uniquely'' affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, that, if adopted, this rulemaking would not impose a cost of $100 million or more in any given year on local or State governments or private entities. A small government agency plan is not required. Small governments would not be affected because the proposed NEP designation would not place additional requirements on any city, county, or other local municipalities.

(2) This rule would not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). This proposed NEP designation for the sihek would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. When introduced populations of federally listed species are designated as nonessential experimental populations, the Act's regulatory requirements regarding the introduced population are significantly reduced. This proposed rule would allow for the taking of sihek when such take is incidental to an otherwise legal activity.

A takings implication assessment is not required because this proposed rule: (1) Would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This proposed rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant federalism effects and have determined that a federalism assessment is not required. This proposed rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in Guam. Achieving the recovery goals for this species will contribute to its eventual delisting. No intrusion on Territory policy or administration is expected, roles or responsibilities of Federal or Territory governments would not change, and fiscal capacity would not be substantially directly affected. The proposed rule operates to maintain the existing relationship between the Territory and the Federal Government and is being undertaken in coordination with the Territory of Guam. We have cooperated with the Guam Department of Agriculture in the preparation of this proposed rule. Therefore, this proposed rule does not have significant federalism effects or implications to warrant the preparation of a federalism assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988 (February 7, 1996, 61 FR 4729), the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with permitting and reporting requirements associated with native endangered and threatened species, and experimental populations, and assigned the following OMB Control Numbers:

- 1018–0094, ''Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species; 50 CFR parts 10, 13, and 17'' (expires 01/31/2024), and
- 1018–0095, ''Endangered and Threatened Wildlife, Experimental Populations, 50 CFR 17.84'' (expires 9/30/2023).

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.

National Environmental Policy Act

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA), we are in the process of analyzing the impact of this proposed rule. Based on this analysis and any new information resulting from public comment on the proposed action and our impact analysis, we will determine if there are any significant impacts or effects that would be caused by this rule. In cooperation with The Nature Conservancy, we are preparing a draft environmental assessment, which will be made available for public inspection and comment when it is complete. All appropriate NEPA documents will be finalized before this rule is finalized.

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

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no statement of energy effects is required.

Clarity of This Regulation (E.O. 12866)

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

(a) Be logically organized;

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

(c) Use clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

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

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or online at *https://www.regulations.gov* in Docket No. FWS–R1–ES–2022–0061.

Author

The primary author of this proposed rule is Megan Laut of the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR 17

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

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. Amend § 17.11 in paragraph (h) in the List of Endangered and Threatened Wildlife under BIRDS by removing the entry for ''Kingfisher, Guam Micronesian (*Halcyon cinnamomina cinnamomina*)'' and adding in its place two entries for ''Kingfisher, Guam (*Todiramphus cinnamominus*)'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	* *
		Birds		
*	*	*	*	* *
Kingfisher, Guam (sihek)	*Todiramphus cinnamominus*	U.S.A. only, except where listed as an experimental population.	E	49 FR 33881, 8/27/1984; 50 CFR 17.95(b) [CH].
Kingfisher, Guam (sihek)	*Todiramphus cinnamominus*	U.S.A. (Palmyra Atoll)	XN	[**Federal Register** citation of the final rule]; 50 CFR 17.84(a)[10j].
*	*	*	*	* *

■ 3. Amend § 17.84 by adding a new paragraph (a) to read as follows:

§ 17.84 Special rules—vertebrates.

(a) Guam kingfisher, sihek (*Todiramphus cinnamominus*).

(1) *Where is the occurrence of sihek designated as a nonessential experimental population (NEP)?* The nonessential experimental population (NEP) area for the sihek is Palmyra Atoll. Palmyra Atoll is located in the Northern Line Islands, approximately 1,000 miles (1,609 km) south of Honolulu, Hawaii (5°53′ N latitude, 162°05′ W longitude). The extent of the NEP area for sihek is the 250 ha (618 ac) of emergent land distributed among 25 islands, inclusive of the lagoons surrounding those islands.

(2) *What take of sihek is allowed in the NEP area?* (i) Throughout the sihek NEP area, you will not be in violation of the Act if you take a sihek, provided such take is nonnegligent and incidental to a lawful activity, such as habitat management, invasive species management, or scientific research and monitoring, and you report the take as soon as possible as provided under paragraph (a)(2)(iii) of this section.

(ii) Any person with a valid permit issued by the Service under § 17.32 may take sihek in the NEP area, pursuant to the terms of the permit. Additionally, any employee or authorized agent of the Service, Guam Division of Aquatic and Wildlife Resources, The Nature Conservancy, Zoological Society of London, Association of Zoos and Aquariums, and Calgary Zoo who is designated and trained to capture, handle, band, attach transmitters, and collect biological samples, when acting in the course of official duties, may take a sihek within the NEP area if such action is necessary to:

(A) Handle birds for scientific purposes such as banding, measuring, and sample collection;

(B) Relocate individuals or bring individuals into captivity for the purposes of increasing sihek survival or fecundity;

(C) Aid a sick, injured, or orphaned sihek;

(D) Salvage a dead specimen that may be useful for scientific study;

(E) Dispose of a dead specimen;

(F) Aid in law enforcement investigations involving the sihek; or

(G) Take sihek into captivity in accordance with the exit strategy of the program (see paragraph (i)(5) of this section).

(iii) Any take pursuant to paragraphs (a)(2)(i) or (a)(2)(ii)(C) through (E) of this section must be reported as soon as possible to the Permits Coordinator, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850 (808/792–9400), who will determine the disposition of any live or dead specimens.

(3) *What take of sihek is not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (a)(2) of this section, all of the provisions of § 17.31(a) and (b) apply to the sihek in areas identified in paragraph (a)(1) of this section, and any manner of take of a member of the NEP not described under paragraph (a)(2) of this section is prohibited.

(ii) You must not possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any sihek or part thereof from the experimental population taken in violation of the regulations in this paragraph (a) or in violation of applicable Territorial laws or regulations or the Act.

(iii) It is unlawful for you to attempt to commit, solicit another to commit, or cause to be committed, any take of sihek, except as expressly allowed in paragraph (a)(2) of this section.

(4) *How will the effectiveness of this introduction be monitored?* The Service will evaluate the introduction on an annual basis. This evaluation will include, but will not be limited to, a review and assessment of management issues, sihek movements, and post-release behavior; food resources and dependence of sihek on supplemental food; fecundity of the population; causes and rates of mortality; program costs; impacts to the ex situ population; and information gathered to inform releases on Guam or other sites.

(5) *When will this introduction end?* Depending on the circumstances, the Service may either terminate the release program or temporarily pause the release program to address identified issues before resuming. When the Service terminates the program, the Service will address the disposition of any remaining individuals in the NEP, *i.e.,* whether they will be relocated to captivity or to other suitable habitat or whether they would remain on Palmyra, based on the circumstances at the time of termination.

(i) The Service will terminate the release program on Palmyra Atoll if monitoring indicates that:

(A) The benefits from the Palmyra population (including developing and refining release and support strategies for eventual releases on Guam) no longer outweigh the risks to the species or the welfare of the NEP or ex situ population; or

(B) Unacceptable impacts on the ecosystem can be clearly causally linked to the introduction of sihek.

(ii) The Service may also terminate the release program when one or more of the objectives of the program have been achieved (*e.g.,* we have developed successful release and monitoring methodologies to apply to future release efforts or we have demonstrated that sihek can survive and reproduce in the wild without human intervention).

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–18571 Filed 8–30–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 87, No. 168
Wednesday, August 31, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID: FSA–2022–0007]

Information Collection Request; Direct Loan Making

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on a revision and an extension of a currently approved information collection associated with Direct Loan Making Program. The collected information is used in eligibility and feasibility determinations on farm loan applications.

DATES: We will consider comments that we receive by October 31, 2022.

ADDRESSES: We invite you to submit comments in response to this notice. FSA prefers that the comments are submitted electronically through the Federal eRulemaking Portal, identified by Docket ID No. FSA–2022–0007, go to *https://www.regulations.gov* and search for docket ID FSA–2022–0007. Follow the online instructions for submitting comments.

All comments received will be posted without change and made publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Raenata Walker-Cohen; telephone; (202) 205–0682; email: *raenata.walker-cohen@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice) or (844) 433–2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Title: Farm Loan Programs, Direct Loan Making.

OMB Control Number: 0560–0237.

Expiration Date: October 31, 2022.

Type of Request: Revision and Extension.

Abstract: FSA's Farm Loan Programs provide loans to family farmers to purchase real estate and equipment, and to finance agricultural production. Direct Loan Making and Direct Farm Ownership Microloan (DFOML) regulations in 7 CFR part 764 provide the requirements and process for determining an applicant's eligibility for a direct loan.

There were changes to the numbers in the request because the figures were miscalculated in the previous report. Consequently, the burden hours increased by 67,345, and the number of responses increased by 6,330. The numbers are currently reflected in the information collection request.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per responses hours multiplied by the estimated total annual responses.

Estimate of Average Time to Respond: Public reporting burden for the information collection is estimated to average 0.405 hours per response.

Type of Respondents: Individuals or households, businesses or other for-profit farms.

Estimated Annual Number of Respondents: 184,871.

Estimated Number of Reponses per Respondent: 3.8.

Estimated Total Annual Responses: 704,724.

Estimated Average Time per Response: 0.405 hours.

Estimated Total Annual Burden on Respondents: 285,272 hours.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Marcus Graham,

Acting Administrator, Farm Service Agency.

[FR Doc. 2022–18869 Filed 8–30–22; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Adjustment of Appendices Under the Dairy Tariff-Rate Quota Import Licensing Regulation

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the transfer of amounts for certain dairy articles from the historical license category (Appendix 1) to the lottery (nonhistorical) license category (Appendix 2) pursuant to the Dairy Tariff-Rate Quota Import Licensing regulations for the 2022 quota year.

DATES: August 31, 2022.

FOR FURTHER INFORMATION CONTACT: Elizabeth Riley, (202) 720–6868, *Elizabeth.riley@usda.gov.*

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service, under a delegation of authority from the Under Secretary for Trade and Foreign Agricultural Affairs, administers the Dairy Tariff-Rate Import Quota Licensing Regulation codified at 7 CFR 6.20–6.36 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule (HTS) of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the

license holder to import a specified quantity and type of dairy article from a specified country of origin. The Imports Program, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and, in conjunction with U.S. Customs and Border Protection, U.S. Department of Homeland Security, monitors their use.

The regulation at 7 CFR 6.34(a) states that whenever a historical license (Appendix 1) is permanently surrendered, revoked by the Licensing Authority, or not issued to an applicant pursuant to the provisions of § 6.23, then the amount of such license will be transferred to Appendix 2. Section 6.34(b) provides that the cumulative annual transfers will be published by notice in the **Federal Register**. Accordingly, this document sets forth the revised Appendices in the table below. Although there are no changes to the quantities for designated licenses (Appendix 3 and Appendix 4), those numbers are also included in the table below for completeness.

Aileen Mannix,

Acting Licensing Authority, Foreign Agricultural Service.

ARTICLES SUBJECT TO DAIRY IMPORT LICENSES (KILOGRAMS) [1]

	Historical licenses (Appendix 1) [2]	Lottery licenses (Appendix 2) [3]	Sum of appendix 1 & 2 [4]	Designated licenses (Tokyo round, Appendix 3) [4]	Designated licenses (Uruguay Round, Appendix 4) [4]	Total [4]
NON–CHEESE ARTICLES, Notes 6, 7, 8, 12, 14 (Appendix 1 reduction)						
BUTTER (NOTE 6, Commodity Code G) (−5,529 kg)	4,200,466	2,776,534	6,977,000			6,977,000
EU–27	53,445	28,654	82,099			
New Zealand	76,503	74,090	150,593			
United Kingdom (−2,010 kg)	7,144	6,918	14,062			
Other Countries (−3,519 kg)	31,863	42,072	73,935			
Any Country	4,031,511	2,624,800	6,656,311			
DRIED SKIM MILK (NOTE 7, Commodity Code K)	0	5,261,000	5,261,000			5,261,000
Australia	0	600,076	600,076			
Canada	0	219,565	219,565			
Any Country	0	4,441,359	4,441,359			
DRIED WHOLE MILK (NOTE 8, Commodity Code H)	0	3,321,300	3,321,300			3,321,300
New Zealand	0	3,175	3,175			
Any Country	0	3,318,125	3,318,125			
DRIED BUTTERMILK/WHEY (NOTE 12, Commodity Code M)	0	224,981	224,981			224,981
Canada	0	161,161	161,161			
New Zealand	0	63,820	63,820			
BUTTER SUBSTITUTES CONTAINING OVER 45 PERCENT OF BUTTERFAT AND/OR BUTTER OIL (NOTE 14, Commodity Code SU)	0	6,080,500	6,080,500			6,080,500
Any Country	0	6,080,500	6,080,500			
TOTAL: NON–CHEESE ARTICLES (−5,529 kg)	4,200,466	17,664,315	21,864,781			21,864,781
CHEESE ARTICLES (Notes 16, 17, 18, 19, 20, 21, 22, 23, 25)						
CHEESE AND SUBSTITUTES FOR CHEESE (NOTE 16, Commodity Code OT) (−138,001 kg)	16,883,403	14,586,328	31,469,731	9,661,128	7,496,000	48,626,859
Argentina	0	7,690	7,690	92,310		100,000
Australia	13,122	528,048	541,170	758,830	1,750,000	3,050,000
Canada (−13,616 kg)	882,039	258,961	1,141,000			1,141,000
Costa Rica	0	0	0		1,550,000	1,550,000
EU–27 (not including Portugal) (−67,071 kg)	12,702,881	8,572,686	21,275,567	835,707	3,168,576	25,279,850
Portugal	65,838	63,471	129,309	223,691		353,000
Israel	79,696	0	79,696	593,304		673,000
Iceland	29,054	0	294,000	29,000		323,000
New Zealand (−18,155 kg)	1,314,690	3,500,782	4,815,472	6,506,528		11,322,000
Norway	122,860	27,140	150,000			150,000
Switzerland (−6,304 kg)	505,880	165,532	671,412	548,588	500,000	1,720,000
Uruguay	0	0	0		250,000	250,000
United Kingdom (−32,855 kg)	1,085,216	777,564	1,862,780	73,170	277,424	2,213,374
Other Countries	82,127	119,508	201,635			201,635
Any Country	0	300,000	300,000			300,000
BLUE–MOLD CHEESE (NOTE 17, Commodity Code B) (−7,846 kg)	1,922,980	558,021	2,481,001		430,000	2,911,001
Argentina	2,000	0	2,000			2,000
EU–27 (−4,467 kg)	1,908,257	550,048	2,458,305		347,078	2,805,383
Chile	0	0	0		80,000	80,000
United Kingdom (−3,379 kg)	12,723	7,972	20,695		2,922	23,617
Other Countries	0	1	1			1
CHEDDAR CHEESE (NOTE 18, Commodity Code C) (−30,504 kg)	2,256,491	2,027,365	4,283,856	519,033	7,620,000	12,422,889
Australia (−9,352 kg)	872,542	111,957	984,499	215,501	1,250,000	2,450,000
Chile	0	0	0	0	220,000	220,000
EU–27 (−3,026 kg)	13,619	69,918	83,537	0	333,515	417,052
New Zealand	1,265,070	1,531,398	2,796,468	303,532	5,100,000	8,200,000
United Kingdom (−9,753 kg)	26,006	153,457	179,463	0	716,485	895,948
Other Countries (−8,373 kg)	79,254	60,635	139,889			139,889
Any Country	0	100,000	100,000			100,000
AMERICAN–TYPE CHEESE (NOTE 19, Commodity Code A) (−9,474 kg)	1,137,424	2,028,129	3,165,553	357,003	0	3,522,556

ARTICLES SUBJECT TO DAIRY IMPORT LICENSES (KILOGRAMS) [1]—Continued

	Historical licenses (Appendix 1) [2]	Lottery licenses (Appendix 2) [3]	Sum of appendix 1 & 2 [4]	Designated licenses (Tokyo round, Appendix 3) [4]	Designated licenses (Uruguay Round, Appendix 4) [4]	Total [4]
Australia (−4,939 kg)	748,639	132,359	880,998	119,002	.....	1,000,000
EU–27	131,539	222,461	354,000	.....	.....	354,000
New Zealand (−4,535 kg)	154,190	1,607,809	1,761,999	238,001	.....	2,000,000
Other Countries	103,056	65,500	168,556	.....	.....	168,556
EDAM AND GOUDA CHEESE (NOTE 20, Commodity Code D) (−31,432 kg)	4,239,135	1,367,267	5,606,402	0	1,210,000	6,816,402
Argentina	105,418	19,582	125,000	.....	110,000	235,000
EU–27 (−31,432 kg)	4,017,909	1,271,091	5,289,000	.....	1,100,000	6,389,000
Norway	111,046	55,954	167,000	.....	.....	167,000
Other Countries	4,762	20,640	25,402	.....	.....	25,402
ITALIAN–TYPE CHEESES (NOTE 21, Commodity Code D) (−40,879 kg)	5,826,550	1,693,997	7,520,547	795,517	5,165,000	13,481,064
Argentina (−22,688 kg)	3,507,548	617,935	4,125,483	367,517	1,890,000	6,383,000
EU–27 (−18,191 kg)	2,319,002	1,062,998	3,382,000	.....	2,025,000	5,407,000
Romania	0	0	0	.....	500,000	500,000
Uruguay	0	0	0	428,000	750,000	1,178,000
Other Countries	0	13,064	13,064	.....	.....	13,064
SWISS OR EMMENTHALER CHEESE (NOTE 22, Commodity Code GR) (−845,981 kg)	3,382,914	3,268,400	6,651,314	823,519	380,000	7,854,833
EU–27 (−818,903 kg)	2,160,448	2,991,546	5,151,994	393,006	380,000	5,925,000
Switzerland (−4,740 kg)	1,211,306	208,181	1,419,487	430,513	.....	1,850,000
Other Countries (−22,338 kg)	11,160	68,673	79,833	.....	.....	79,833
LOWFAT CHEESE (NOTE 23, Commodity Code LF)	1,173,766	3,251,142	4,424,908	1,050,000	0	5,474,908
EU–27	1,173,766	3,251,141	4,424,907	.....	.....	4,424,907
Israel	0	0	0	50,000	.....	50,000
New Zealand	0	0	0	1,000,000	.....	1,000,000
Other Countries	0	1	1	.....	.....	1
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION (NOTE 25, Commodity Code SW) (−119,036 kg)	12,864,355	9,432,976	22,297,331	9,557,945	2,620,000	34,475,276
Argentina	0	9,115	9,115	70,885	.....	80,000
Australia	209,698	0	209,698	290,302	.....	500,000
Canada	0	0	0	70,000	.....	70,000
EU–27 (−9,148 kg)	9,644,594	6,832,234	16,476,828	4,003,172	2,420,000	22,900,000
Iceland	0	149,999	149,999	150,001	.....	300,000
Israel (−27,000 kg)	0	27,000	27,000	.....	.....	27,000
Norway (−77,456 kg)	2,207,873	1,447,437	3,655,310	3,227,690	.....	6,883,000
Switzerland	759,369	924,736	1,684,105	1,745,895	200,000	3,630,000
Other Countries (−5,432 kg)	42,821	42,455	85,276	.....	.....	85,276
TOTAL: CHEESE ARTICLES (−1,223,153 kg)	49,687,018	38,213,625	87,900,643	22,764,145	24,921,000	135,585,788
TOTAL: CHEESE & NON–CHEESE	53,887,484	55,877,940	109,765,424	22,764,145	24,921,000	157,450,569

[1] Source of the total TRQs is the U.S. Harmonized Tariff Schedule, Chapter 4, in the corresponding Additional U.S. Notes.
[2] Reduced from 2021 by a total of –1,228,682 kg.
[3] Increased from 2021 by a total of 1,228,682 kg.
[4] No change.

[FR Doc. 2022–18745 Filed 8–30–22; 8:45 am]
BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #: RBS–22–BUSINESS–0015]

Notice of Solicitation of Applications for Inviting Applications for the Rural Economic Development Loan and Grant Programs for Fiscal Year 2023

AGENCY: Rural Business-Cooperative Service, Department of Agriculture.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (Agency), an agency of the United States Department of Agriculture (USDA) invites applications for loans and grants under the Rural Economic Development Loan and Grant Programs (REDLG or Programs) for fiscal year (FY) 2023, subject to the availability of funding. This notice is being issued prior to the passage of a FY 23 Appropriations Act, which may or may not provide funding for this program, to allow applicants sufficient time to leverage financing, prepare and submit their applications, and give the Agency time to process applications within FY 2023. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through appropriations. An announcement on the Agency website at *https://www.rd.usda.gov/newsroom/federal-funding-opportunities* will identify the amount received in the FY 23 appropriations.

DATES: The deadlines for completed applications to be received in the USDA Rural Development (RD) State Office for quarterly funding competitions are no later than 4:30 p.m. (local time) on: First Quarter, September 30, 2022; Second Quarter, December 31, 2022; Third Quarter, March 31, 2023 and Fourth Quarter, June 30, 2023.

The application dates and times are firm. The Agency will not consider any application received after the deadline for funding competition in that fiscal quarter.

Applicants intending to mail applications must allow sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery.

Facsimile (FAX) or postage due applications will not be accepted.

ADDRESSES: Applications must be submitted to the USDA RD State Office for the state where the project is located. Applications may be submitted in paper or electronic format to the appropriate RD State Office and must be received by 4:30 p.m. local time on the deadline date(s). Applicants are encouraged to contact their respective State Office for an email contact to submit an electronic application prior to the submission deadline date(s). A list of the USDA RD State Office contacts can be found at: *https://www.rd.usda.gov/contact-us/state-offices.* This notice will also be announced at: *https://grants.gov.*

FOR FURTHER INFORMATION CONTACT: Cindy Mason at *cindy.mason@usda.gov,* Program Management Division, Business Programs, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 3226, Room 5160-South, Washington, DC 20250–3226, or call (202) 720–1400. For further information on this notice, please contact the USDA Rural Development State Office in the state which the applicant's headquarters is located. A list of RD State Office contacts is provided at the following link: *https://www.rd.usda.gov/contact-us/state-offices.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency Name: Rural Business-Cooperative Service.

Funding Opportunity Type: Rural Economic Development Loans and Grants.

Announcement Type: Initial Solicitation Announcement.

Assistance ListingNumber: 10.854.

Funding Opportunity Number: RD–RBCS–23–REDLG.

Dates: The deadlines for complete applications to be received in the USDA RD State Office for quarterly funding competitions are no later than 4:30 p.m. (local time) on: First Quarter, September 30, 2022; Second Quarter, December 31, 2022; Third Quarter, March 31, 2023 and Fourth Quarter, June 30, 2023.

Administrative:

(i) The Agency encourages applicants to consider projects that will advance the key priorities below:

- Assisting rural communities to recover economically through more and better market opportunities and through improved infrastructure.
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects.
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

(ii) The Agency advises all interested parties that the applicant bears the burden in preparing and submitting an application in response to this notice whether or not funding is appropriated for these programs in FY 2023.

(iii) If the proposal involves new construction; large increases in employment; hazardous waste; a change in use, size, capacity, purpose, or location from an original facility; or is publicly controversial, the following is required: environmental documentation in accordance with 7 CFR part 1970; financial and statistical information; and written project description.

(iv) The Further Consolidated Appropriations Act, 2022, SEC. 736 designates funding for projects in persistent poverty counties. Persistent poverty counties as defined in SEC. 736 is ''any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and 2007–2011 American Community Survey 5-year average, or any territory or possession of the United States''. Another provision in SEC. 736 expands the eligible population in persistent poverty counties to include any county seat of such a persistent poverty county that has a population that does not exceed the authorized population limit by more than 10 percent. This provision expands the current 50,000 population limit to 55,000 for only county seats located in persistent poverty counties. Therefore, applicants and/or beneficiaries of technical assistance services located in persistent poverty county seats with populations up to 55,000 (per the 2010 Census) are eligible.

A. Program Description

(1) *Purpose of the Program.* The Rural Economic Development Loan (REDL) and Grant (REDG) Programs (REDLG or Program(s)) provide financing to eligible Rural Utilities Service (RUS) electric or telecommunications borrowers (Intermediaries) to promote rural economic development and job creation projects. Assistance provided to rural and Tribal areas, as defined, under this program may include business startup costs, business expansion, business incubators, technical assistance feasibility studies, advanced telecommunications services and computer networks for medical, educational, and job training services, and Community Facilities, as defined at 7 CFR 4280.3, projects for economic development.

(2) *Statutory Authority.* These Programs are authorized under 7 U.S.C. 940c–2 and 7 CFR part 4280, subpart A.

(3) *Definition of Terms.* The definitions applicable to this notice are published at 7 CFR 4280.3.

(4) *Application of Awards.* The Agency will review, evaluate, and score applications received in response to this notice based on the provisions found in 7 CFR part 4280, subpart A, and as indicated in this notice.

B. Federal Award Information

Type of Awards: Loans and Grants.

Fiscal Year Funds: FY 2023.

Available Funds: Anyone interested in submitting an application for funding under these Programs are encouraged to consult the RD Notices of Solicitation of Applications website at *https://www.rd.usda.gov/newsroom/federal-funding-opportunities.*

Maximum Award: The Agency anticipates the following maximum amounts per award: Loans—$2,000,000; Grants—$300,000.

Anticipated Award Dates: First Quarter, November 30, 2022; Second Quarter, February 28, 2023; Third Quarter, May 31, 2023; and Fourth Quarter, August 31, 2023.

Performance Period: December 1, 2022, through September 30, 2024.

Renewal or Supplemental Awards: None.

C. Eligibility Information

(1) *Eligible Applicants.* Loans and grants may be made to any entity that is identified by USDA RD as an eligible borrower under the Rural Electrification Act of 1936, as amended (Act). In accordance with 7 CFR 4280.13, applicants that are not delinquent on any Federal debt or not otherwise disqualified from participation in these Programs are eligible to apply. An applicant must be eligible under 7 U.S.C. 940c. Notwithstanding any other provision of law, any former RUS borrower that has repaid or prepaid an insured, direct, or guaranteed loan under the Act, or any not-for-profit utility that is eligible to receive an insured or direct loan under such Act shall be eligible for assistance under section 313(b)(2)(B) of such Act in the same manner as a borrower under such Act. All other restrictions in this notice will apply.

(2) *Cost Sharing or Matching.* For loans, either the ultimate recipient or the intermediary must provide supplemental funds for the project equal to at least 20 percent of the loan to the intermediary. For grants, the intermediary must establish a revolving loan fund and contribute an amount

equal to at least 20 percent of the grant. The supplemental contribution must come from the intermediary's funds which may not be from other Federal grants, unless permitted by law.

(3) *Other.*

(i) There are no ''responsiveness'' or ''threshold'' eligibility criteria for these loans and grants. There is no limit on the number of applications an applicant may submit under this announcement.

(ii) None of the funds made available by this or any other Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation that:

(a) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

(b) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

(4) *Completeness Eligibility.* Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

D. Application and Submission Information

(1) *Address to Request Application Package.* For further information, entities wishing to apply for assistance should contact the USDA RD State Office provided in the **ADDRESSES** section of this notice to obtain copies of the application package.

Prior to official submission of grant applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made at least 15 days prior to each quarter submission date. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

Applications may be submitted in paper or electronic format to the appropriate RD State Office and must be received by 4:30 p.m. local time on the deadline date(s) to compete for available funds in that quarter. Applicants are encouraged to contact their respective State Office for an email contact to submit an electronic application prior to the submission deadline date(s). Applications may be submitted to a RD State Office at any time but must be received by 4:30 p.m. local time on deadline(s) to compete for the available funds in that fiscal quarter.

(2) *Content and Form of Application Submission.* An application must contain all of the required elements. Each selection priority criterion outlined in 7 CFR 4280.42(b) must be addressed in the application. Failure to address any of the criterion will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 4280, subpart A, will be provided to any interested applicant making a request to a RD State Office. An original copy of the application package must be filed with the RD State Office for the State where the intermediary is located.

(i) A complete application must include, but is not limited to, the following:

(a) An original and one copy of Form SF 424, ''Application for Federal Assistance (for non-construction)'';

(b) Copies of applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the Programs;

(c) A resolution of the Board of Directors;

(d) SF–LLL, ''Restrictions on Lobbying'';

(e) RD Form 400–1, ''Equal Opportunity Agreement'' (if construction);

(f) Evidence of compliance with the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 *et seq.*), ''Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction'';

(g) Documentation required in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures'';

(h) A proposed scope of work, including a description of the proposed project, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the project, and the estimated time it will take from approval to beginning of project implementation;

(i) A written narrative that includes, at a minimum, the following items:

(1) An explanation of why the project is needed, the benefits of the proposed project, and how the project meets the grant eligible purposes, if applicable;

(2) Area to be served, identifying each governmental unit, *i.e.,* tribe, town, county, etc., to be affected by the project;

(3) Description of how the project will coordinate economic development activities with other economic development activities within the project area;

(4) Businesses to be assisted, if appropriate, and economic development to be accomplished;

(5) An explanation of how the proposed project will result in newly created, increased, or supported jobs in the area and the number of projected new and supported jobs within the next 3 years;

(6) A description of the applicant's demonstrated capability and experience in providing the proposed project assistance, including experience of key staff members and persons who will be providing the proposed project activities and managing the project;

(7) The method and rationale used to select the areas and businesses that will receive the service;

(8) A brief description of how the work will be performed, including whether organizational staff or consultants or contractors will be used; and

(9) Other information the Agency may request to assist it in making an award determination.

(j) The last 3 years of financial information to show the applicant's financial capacity to carry out the proposed work. If the applicant is less than 3 years old, at a minimum, the information should include all balance sheet(s), income statement(s), and cash flow statement(s). A current audited report is required, if available;

(k) Documentation regarding the availability and amount of other funds to be used in conjunction with the funds from REDLG; and

(l) A budget which includes salaries, fringe benefits, consultant costs, indirect costs, and other appropriate direct costs for the project.

(ii) The applicant documentation and forms needed for a complete application are listed above and at 7 CFR 4280.39. Applicants may request forms and addresses from the **ADDRESSES** section of this notice.

(iii) There are no specific limitations on the number of pages, font size and type face, margins, paper size, number of copies, and the sequence or assembly requirements.

(iv) The component pieces of this application should contain original signatures on the original application. Any form that requires an original signature but is signed electronically in the application submission, must be signed in ink by the authorized person prior to the disbursement of funds.

(3) *System for Award Management and Unique Entity Identifier.* At the time of application, each applicant must have an active registration in the System for Award (SAM) before submitting its application in accordance with 2 CFR 25. In order to register in SAM, entities will be required to create Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

(i) Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(ii) Applicant must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(iii) Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

(iv) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

(4) *Submission Dates and Times.*

(i) Application Funding Competition Deadlines: No later than 4:30 p.m. (local time) on: First Quarter, September 30, 2022; Second Quarter, December 31, 2022; Third Quarter, March 31, 2023; and Fourth Quarter, June 30, 2023.

Explanation of Dates: Applications must be in the USDA RD State Office by the dates and times as indicated above. If the due date falls on a Saturday, Sunday, or Federal holiday, the application is due the next business day.

(ii) The deadline date means that the completed application package must be received in the USDA RD State Office by the deadline date and time established above. All application documents identified in this notice are required.

(iii) If completed applications are not received by the deadline established above, the application will neither be reviewed nor considered in that quarter under any circumstances.

(iv) The grantee may utilize a previously approved indirect cost rate. Otherwise, the applicant may elect to charge the 10 percent indirect cost permitted under 2 CFR 200.414(f). An indirect cost rate determination may be requested with the application; however, due to the time required to evaluate indirect cost rates, it is likely that all funds will be awarded before the indirect cost rate is determined. No foreign travel is permitted. Pre-Federal award costs will only be permitted with prior written approval by the Agency.

(v) Applicants may submit applications in hard copy or electronic format as previously indicated in the Application and Submission Information section of this notice. If the applicant wishes to hand deliver its application, the addresses for these deliveries can be located in the **ADDRESSES** section of this notice.

(vi) If you require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

(5) *Intergovernmental Review.* This program is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. RD conducts intergovernmental consultation as implemented with 2 CFR part 415, subpart C. Not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/.*

E. Application Review Information

(1) *Criteria.* All eligible and complete applications will be evaluated and scored based on the selection criteria and weights contained in 7 CFR part 4280, subpart A. Failure to address any one of the criteria by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding.

(2) *Review and Selection Process.* The State Offices will review applications to determine if they are eligible for assistance based on requirements contained in 7 CFR part 4280, subpart A. If determined eligible, your application will be submitted to the National Office. Funding of projects is subject to the intermediary's satisfactory submission of the additional items required by that subpart and the USDA RD Letter of Conditions. Discretionary priority points, under 7 CFR 4280.43(e), may be awarded with documented justification for the following categories:

(i) Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure. Applicant would receive priority points if the project is located in or serving one of the top 10 percent of counties or county equivalents based upon county risk score in the United States. The website, *https://www.rd.usda.gov/priority-points*, has the data to confirm if your project location qualifies for these discretionary points.

(ii) Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects. Applicant would receive priority points if the project is located in or serving a community with a score 0.75 or above on the Center for Disease Control's Social Vulnerability Index. The website, *https://www.rd.usda.gov/priority-points,* has the data to confirm if your project location qualifies for these discretionary points.

(iii) Reduce climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities. Applicants will receive points through one of two options. See the website, *https://www.rd.usda.gov/priority-points, for options.*

To ensure the broad geographic distribution of funding, the highest scoring application from each state will be grouped together and then ranked from highest to lowest score, with funds awarded in ranking order. If funds are available, the process of grouping, ranking, and awarding of funds will continue with the second highest scoring application from each state. The process will continue in this manner until all available funds have been awarded.

F. Federal Award Administration Information

(1) *Federal Award Notices.* Successful applicants will receive notification for funding from the RD State Office. Applicants must comply with all applicable statutes and regulations before the loan/grant award can be approved. Provided the application and

eligibility requirements have not changed, an eligible application not selected will be reconsidered in three subsequent quarterly funding competitions for a total of four competitions. If an application is withdrawn by the applicant, it can be resubmitted and will be evaluated as a new application.

(2) *Administrative and National Policy Requirements.* Additional requirements that apply to intermediaries or grantees selected for these programs can be found in 7 CFR part 4280, subpart A. Awards are subject to USDA grant regulations at 2 CFR part 400 which adopts the Office of Management and Budget (OMB) regulations 2 CFR part 200.

All successful applicants will be notified by letter which will include a Letter of Conditions, and a Letter of Intent to Meet Conditions. This letter is not an authorization to begin performance. If the applicant wishes to consider beginning performance prior to the loan or grant being officially closed, all pre-award costs must be approved in writing and in advance by the Agency. The loan or grant will be considered officially awarded when all conditions in the Letter of Conditions have been met and the Agency obligates the funding for the project.

Additional requirements that apply to intermediaries or grantees selected for these Programs can be found in 7 CFR 4280, subpart A; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards of the U.S. Department of Agriculture codified in 2 CFR 400.1 to 400.2, and 2 CFR part 415 to 422, and successor regulations to these parts.

In addition, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)).

The following additional requirements apply to intermediaries or grantees selected for these Programs:

(i) Form RD 4280–2 ''Rural Business-Cooperative Service Financial Assistance Agreement.''

(ii) Letter of Conditions.

(iii) Form RD 1940–1, ''Request for Obligation of Funds.''

(iv) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(v) LLL, ''Disclosure of Lobbying Activities,'' if applicable.

(vi) Form SF 270, ''Request for Advance or Reimbursement.''

(vii) Form RD 400–4, ''Assurance Agreement'' must be completed by the applicant and each prospective ultimate recipient.

(viii) Intermediaries or grantees must collect and maintain data provided by ultimate recipients on race, sex, and national origin and ensure ultimate recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

(ix) The applicant and the ultimate recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

(3) *Reporting.*

(i) A financial status report and a project performance activity report will be required of all grantees on a quarterly basis until initial funds are expended and yearly thereafter, if applicable, based on the Federal fiscal year. The grantee will complete the project within the total time available to it in accordance with the scope of work and any necessary modifications thereof prepared by the grantee and approved by the Agency. A final project performance report will be required with the final financial status report. The final report may serve as the last quarterly report. The final report must provide complete information regarding the jobs created and supported as a result of the grant if applicable. Grantees must continuously monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees must submit an original of each report to the Agency no later than 30 days after the end of the quarter. The project performance reports must include, but not be limited to, the following:

(a) A comparison of actual accomplishments to the objectives established for that period;

(b) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(c) Objectives and timetable established for the next reporting period.

(d) Any special reporting requirements, such as jobs supported and created, businesses assisted, or economic development which results in improvements in median household incomes, and any other specific requirements, should be placed in the reporting section of the Letter of Conditions.

(e) Within 90 days after the conclusion of the project, the intermediary will provide a final project evaluation report. The last quarterly payment will be withheld until the final report is received and approved by the Agency. Even though the intermediary may request reimbursement on a monthly basis, the last 3 months of reimbursements will be withheld until a final report, project performance, and financial status report are received and approved by the Agency.

(ii) In addition to any reports required by 2 CFR part 200 and 2 CFR 400.1 to 400.2 and 2 CFR part 415 to 422, the intermediary or grantee must provide reports as required by 7 CFR part 4280, subpart A.

G. Federal Awarding Agency Contact(s)

For general questions about this announcement, please contact your USDA RD State Office provided in the **ADDRESSES** section of this notice.

H. Build America, Buy America

Awards under this announcement for Infrastructure projects to Non-Federal entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABA) within the Infrastructure Investment and Jobs Act, and its implementing regulations. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

(1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage

through the application of coatings, occurred in the United States.

(2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

(3) All construction materials (excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

I. Other Information

(1) *Civil Rights Requirements.* All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

(2) *Paperwork Reduction Act.* In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this notice has been approved by OMB under OMB Control Number 0570–0070.

(3) *National Environmental Policy Act.* All recipients under this notice are subject to the requirements of 7 CFR 1970, available at: *https://rd.usda.gov/resources/environmental-studies/environmental-guidance.*

(4) *Nondiscrimination Statement.* In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/sites/default/files/documents/usda-program-discrimination-complaint-form.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

Karama Neal,

Administrator, Rural Business-Cooperative Service, USDA Rural Development.

[FR Doc. 2022–18773 Filed 8–30–22; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #: RBS–22–BUSINESS–0019]

Notice of Solicitation of Applications for Inviting Applications for the Rural Microentrepreneur Assistance Program for Fiscal Year 2023

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (Agency), an agency of the United States Department of Agriculture (USDA), Rural Development (RD), is making an initial announcement to invite applications for loans and grants under the Rural Microentrepreneur Assistance Program (RMAP) for fiscal year (FY) 2023, subject to the availability of funding. This notice is being issued prior to the passage of a FY 23 Appropriations Act, which may or may not provide funding for this program, in order to allow applicants sufficient time to leverage financing, prepare and submit their applications, and give the Agency time to process applications within FY23. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through appropriations. RMAP provides the following types of support: loan only, combination loan and technical assistance grant, and subsequent technical assistance grants to Microenterprise Development Organizations (MDO). An announcement will be made on the Agency website: *https://www.rd.usda.gov/newsroom/federal-funding-opportunities* regarding any amount received in the FY23 appropriations. All applicants are responsible for any expenses incurred in developing their applications or any costs incurred prior to the obligation date.

DATES: The deadlines for completed applications to be received in the USDA RD State Office for quarterly funding competitions are no later than 11:59 p.m. Eastern time on: First Quarter, September 30, 2022; Second Quarter, December 31, 2022; Third Quarter, March 31, 2023; and Fourth Quarter, June 30, 2023. If the due date falls on a Saturday, Sunday, or Federal holiday, the application is due the next business day.

The subsequent microlender technical assistance grant (existing MDOs with a microentrepreneur revolving loan fund)

will be made, non-competitively, based on the microlender's microlending activity and availability of funds. To determine the microlender technical assistance grant awards for FY23, if available, the Agency will use the microlender's outstanding balance of microloans as of June 30, 2023, to calculate the eligible grant amount. MDOs that are in compliance with the terms of their loan agreement may apply for this annual grant.

ADDRESSES: Applications must be submitted electronically to the USDA RD State Office for the state where the project is located. Applicants are encouraged to contact their respective RD State Office for an email contact to submit an electronic application prior to the submission deadline date(s). A list of the USDA RD State Office contacts can be found at: *http://www.rd.usda.gov/contact-us/state-offices.*

This funding opportunity will be made available for informational purposes on *www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Shamika Johnson at *shamika.johnson@usda.gov,* Program Management Division, Business Programs, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Mail Stop 3226, Room 5160–S, Washington, DC 20250–3226, or call (202) 720–1400. For further information on this notice, please contact the USDA RD State Office in the State in which the applicant's headquarters is located. A list of RD State Office contacts is provided at the following link: *http://www.rd.usda.gov/contact-us/state-offices.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency Name: Rural Business-Cooperative Service.

Funding Opportunity Title: Rural Microentrepreneur Assistance Program.

Announcement Type: Initial Announcement.

Assistance Listing (formally Catalog of Federal Domestic Assistance Number): 10.870.

Funding Opportunity Number (grants.gov): RD–RBCS–23–RMAP.

Dates: The deadlines for completed applications to be received in the USDA RD State Office for quarterly funding competitions are no later than 11:59 p.m. Eastern time on: First Quarter, September 30, 2022; Second Quarter, December 31, 2022; Third Quarter, March 31, 2023, and Fourth Quarter, June 30, 2023.

Administrative: If two or more applications have the same score and funds are not available to fund both projects, the Administrator may prioritize applications to help the program achieve overall geographic diversity.

The Agency encourages applicants to consider projects that will advance the following key priorities:

- Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure;
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

More details on the key priorities may be found at: *https://www.rd.usda.gov/priority-points.*

I. Program Description

(a) *Purpose of the Program.* The purpose of RMAP is to support the development and ongoing success of rural Microentrepreneurs and Microenterprises, each as defined in 7 CFR 4280.302. The regulation can be accessed online at *https://www.ecfr.gov.* To accomplish this purpose, RMAP provides direct loans and grants to MDOs. Loan funds are used by the MDO to establish or recapitalize a revolving loan program for making microloans to a rural microentrepreneur business. Grant funds are used by the MDO to provide technical assistance and entrepreneurship training to rural individuals and businesses.

(b) *Statutory Authority.* RMAP is authorized by section 379E of the Consolidated Farm and Rural Development Act (Pub. L. 87–128), as amended, and is codified as 7 U.S.C. 2008s. Regulations are contained in 7 CFR part 4280, subpart D and can be found online at *https://www.ecfr.gov.* Assistance provided to rural areas under this program may include the provision of loans and grants to rural MDOs for the provision of microloans to rural microenterprises and microentrepreneurs; provision of business-based training and technical assistance to rural microborrowers and potential microborrowers; and other such activities as deemed appropriate by the Secretary to ensure the development and ongoing success of rural microenterprises. Awards are made on a competitive basis using specific selection criteria contained in 7 CFR part 4280, subpart D.

(c) *Definition of Terms.* The definitions applicable to this notice are published at 7 CFR 4280.302.

(d) *Application Awards.* The Agency will review, evaluate, and score applications received in response to this notice based on the provisions found in 7 CFR part 4280, subpart D, and as indicated in this notice. However, the Agency advises all interested parties that the applicant bears the burden in preparing and submitting an application in response to this notice whether or not funding is appropriated for this program in FY 2023. Information required to be in the application is specified in 7 CFR 4280.315. For entities applying for program loan funds to become an RMAP microlender only, the following items are also required: (1) Form RD 1910–11, ''Applicant Certification Federal Collection Policies for Consumer or Commercial Debts;'' available at *https://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1910-11.PDF;* (2) Demonstration that the applicant is eligible to apply to participate in this program; and (3) Certification by the applicant that it cannot obtain sufficient credit elsewhere to fund the activities called for under this program with similar rates and terms.

Current MDO entities may be eligible for subsequent annual microlender technical assistance grants that are awarded subject to funding availability and determined non-competitively based on Agency appropriations for the fiscal year. The MDO must submit a prescribed worksheet, listing the outstanding balance of their microloans and unexpended grant funds as of June 30, 2023, and a letter certifying that their organization still meets all the requirements set forth in 7 CFR part 4280, subpart D, and that no significant changes have occurred within the last year that would affect its ability to carry out the MDO functions. In addition, all MDOs who request Subsequent Annual Microlender Technical Assistance Grants must complete their reporting into the Lenders Interactive Network Connection (LINC) for the Federal fiscal quarter ending June 30, 2023 which will verify the outstanding balance of their microloans as stated in their request for grant funds. The deadline for reporting into LINC and requesting a technical assistance grant is no later than 4:30 p.m. (Eastern time) on August 1, 2023.

II. Federal Award Information

Type of Awards: Loans and/or Grants.

Fiscal Year Funds: FY 2023.

Available Funds. Anyone interested in submitting an application for funding under these Programs is encouraged to consult the RD Notices of Solicitation of Applications website at *https://www.rd.usda.gov/newsroom/federal-funding-opportunities.*

Maximum Award: The Agency anticipates the following maximum amounts per award: Loans—$500,000; Grants—$100,000.

Application Funding Competition Dates: First Quarter, September 30, 2022; Second Quarter, December 31, 2022; Third Quarter, March 31, 2023 and Fourth Quarter, June 30, 2023.

III. Eligibility Information

(a) *Eligible Applicants.* Eligible applicants are domestic organizations that are non-profit entities, Indian tribes (25 U.S.C. 5304(c)) or public institutions of higher education. Eligible applicants must provide training and technical assistance, make microloans, facilitate access to capital, or have an effective plan or program to deliver such services. The applicant must meet the eligibility requirements in 7 CFR 4280.310 and must not be delinquent on any Federal debt or otherwise disqualified from participation in this program to be eligible to apply. The Agency will check the System for Award Management (SAM) to determine if the applicant has been debarred or suspended at the time of application and also prior to funding any grant award. All other restrictions in this notice will apply.

(b) *Cost Sharing or Matching.* The Federal share of the eligible project cost of a microborrower's project funded under this notice shall not exceed 75 percent. The cost share requirement shall be met by the microlender in accordance with the requirements specified in 7 CFR 4280.311(d).

The MDO is required to provide a match of not less than 15 percent of the total amount of the grant in the form of matching funds, indirect costs, or in-kind goods or services.

(c) *Other Eligibility Requirements.* Applications will only be accepted from eligible MDOs. Eligible MDOs must score a minimum of 60 points out of 100 points to be considered to receive an award. Applicable scoring criteria is described in 7 CFR 4280.316. Awards for each Federal fiscal quarter will be based on ranking with the highest-scoring applications being funded first, subject to available funding.

(d) *Completeness Eligibility.* All applications must be submitted as a complete application, in one package. Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are otherwise not suitable for evaluation. Such applications will be withdrawn and not considered for funding.

IV. Application and Submission Information

(a) *Address to Request Application Package.* For further information, entities wishing to apply for assistance should contact the RD State Office as identified in the **ADDRESSES** section of this notice to obtain an electronic copy of the application package.

An MDO may submit an initial application for a loan with a microlender technical assistance grant, or an initial or subsequent loan-only (without a microlender technical assistance grant). Loan applications must be submitted electronically to the State Office where the project is located and must be organized in the same order set forth in 7 CFR 4280.315. Applicants are strongly encouraged to contact their respective RD State Office for an email contact to submit an electronic application prior to the submission deadline date(s).

(b) *Content and Form of Application Submission.* An application must contain all of the required elements outlined in 7 CFR 4280.315. Each application must address the applicable scoring criteria presented in 7 CFR 4280.316 for the type of funding being requested.

(c) *System for Award Management and Unique Entity Identifier.*

(i) At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25. In order to register in SAM, entities will be required to create a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

(ii) Applicants must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(iii) Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(iv) Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

(v) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

The Agency will not make an award until the applicant has complied with all applicable UEI and SAM requirements. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

(d) *Submission Dates and Times.* Competitions for the available loan and grant funds will be made quarterly for applications that are received no later than 11:59 p.m. Eastern time on: First Quarter, September 30, 2022; Second Quarter, December 31, 2022; Third Quarter, March 31, 2023; and Fourth Quarter, June 30, 2023.

Unless withdrawn by the applicant, completed applications that receive a score of at least 60 (the minimum required to be considered for funding) but have not yet been funded, will be retained by the Agency for consideration in subsequent reviews through a total of four consecutive quarterly reviews. Applications that remain unfunded after four quarterly reviews, including the initial quarter in which the application was competed, will not be considered further for an award.

(e) *Explanation of Dates.* Applications must be in the USDA RD State Office by the dates and times as indicated above to compete for available funds in that fiscal quarter. If the due date falls on a Saturday, Sunday, or Federal holiday, the application is due the next business day.

(f) *Intergovernmental Review.* This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation will occur for the assistance to MDOs in accordance with the process and procedures outlined in 2 CFR part 415, subpart C. Assistance to rural microenterprises will not require intergovernmental review. Applications from Federally recognized Indian tribes are not subject to this requirement.

Rural Development will conduct intergovernmental consultation using RD Instruction 1970–I ''Intergovernmental Review,'' available in any RD office, on the internet at *http://www.rd.usda.gov/sites/default/files/1970i.pdf* and in 2 CFR part 415, subpart C. Note that not all States have chosen to participate in the intergovernmental review process. A list

of participating States is available at the following website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/.*

(g) *Funding Restrictions.* No funds made available under this notice shall be used for those ineligible purposes outlined in 7 CFR 4280.313(e).

V. Application Review Information

(a) *Criteria.* All eligible and complete applications for new loan and grant funds will be evaluated and scored based on the selection criteria and weights contained in 7 CFR part 4280, subpart D. A copy of the regulation can be accessed online at *https://www.ecfr.gov.* Failure to address any one of the criteria by the application deadline will result in the application being determined ineligible and the application will not be considered for funding. An application must receive at least 60 points in the scoring criteria stated in 7 CFR 4280.316 to be considered for funding in the quarter in which it is scored.

(b) *Review and Selection Process.* The State Offices will review applications to determine if they are eligible for assistance based on requirements contained in 7 CFR part 4280, subpart D. If determined eligible, the application will be submitted to the National Office, where it will be reviewed and prioritized by ranking each application received in that quarter, from highest to lowest score order. All applications will be funded from the highest to lowest score until funds have been exhausted for each funding cycle. Funding of projects is subject to the MDO's satisfactory submission of the additional items required by that subpart and the USDA RD Letter of Conditions.

VI. Federal Award Administration Information

(a) *Award Notices.* Successful applicants will receive notification for funding from the USDA RD State Office. Applicants must comply with all applicable statutes and regulations before the award will be approved. Provided the application and eligibility requirements have not changed, an application not selected will be reconsidered for three subsequent funding competitions for a total of four competitions. If an application is withdrawn, it can be resubmitted and will be evaluated as a new application. Unsuccessful applications will receive notification by mail, detailing why the application was unsuccessful.

(b) *Administrative and National Policy Requirements.* Additional requirements that apply to MDOs selected for this program can be found in 7 CFR part 4280, subpart D. The USDA and the Agency have adopted the USDA grant regulations at 2 CFR chapter IV. This regulation incorporates the new Office of Management and Budget regulations 2 CFR part 200 and 2 CFR part 400 for monitoring and servicing RMAP funding.

(c) *National Environmental Policy Act.* All recipients under this Notice are subject to the requirements of 7 CFR part 1970.

(d) *Reporting.* In addition to any reports required by 2 CFR part 200 and 2 CFR part 400, the MDO must provide reports as required by 7 CFR part 4280, subpart D. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)).

Intermediaries must collect and maintain data provided by Ultimate Recipients on race, sex, and national origin and must also ensure that Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

The applicant and the Ultimate Recipients must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

VII. Federal Awarding Agency Contacts

For general questions about this notice, please contact your USDA RD State Office as provided in the **ADDRESSES** section of this notice.

VIII. Buy America

Awards under this announcement for Infrastructure projects to Non-Federal entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABA) within the Infrastructure, Investment and Jobs Act (IIJA), and its implementing regulations. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

(1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

(3) All construction materials (excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with RMAP, as covered in this notice, have been approved by OMB under OMB Control Number 0570–0062.

V. Nondiscrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/sites/default/files/documents/usda-program-discrimination-complaint-form.pdf* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Karama Neal,

Administrator, Rural Business-Cooperative Service, USDA Rural Development.

[FR Doc. 2022–18779 Filed 8–30–22; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[DOCKET#: RBS–22–BUSINESS–0014]

Notice of Solicitation of Applications for Inviting Applications for the Intermediary Relending Program for Fiscal Year 2023

AGENCY: Rural Business-Cooperative Service, USDA Rural Development.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (Agency), an agency of the United States Department of Agriculture (USDA) invites applications under the Intermediary Relending Program (IRP) for fiscal year (FY) 2023, subject to availability of funding. This Notice is being issued prior to passage of a FY 2023 Appropriations Act in order to allow applicants enough time to leverage financing, prepare and submit their applications, and give the Agency time to process program applications within FY 2023. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through appropriations. An announcement on the website at *https://www.rd.usda.gov/newsroom/federal-funding-opportunities* will identify the amount received in the appropriations. The Agency advises that all interested parties bear the financial burden of preparing and submitting an application in response to the notice whether or not funding is appropriated for this Program in FY 2023.

DATES: The deadlines for completed applications to be received in the USDA Rural Development (RD) State Office for quarterly funding competitions is no later than 4:30 p.m. (local time) on: First Quarter—September 30, 2022, Second Quarter—December 31, 2022, Third Quarter—March 31, 2023, and Fourth Quarter—June 30, 2023.

ADDRESSES: Applications must be submitted to the USDA RD State Office for the state where the applicant is located. Applications may be submitted in paper or electronic format to the appropriate RD State Office and must be received by 4:30 p.m. local time on the deadline date(s) to compete for available funds in the fiscal quarter. Applicants are encouraged to contact their respective RD State Office for an email contact to submit an electronic application prior to the submission deadline date(s). A list of the USDA RD State Office contacts can be found at: *https://www.rd.usda.gov/about-rd/state-offices.*

FOR FURTHER INFORMATION CONTACT: Lori Pittman, Program Management Division, Business Programs, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, MS 3226, Room 5160–S, Washington, DC 20250–3226, *lori.pittman1@usda.gov* or call (202) 720–9815. For further information on this notice, please contact the USDA RD State Office in the State in which the applicant's headquarters is located. A list of RD State Office contacts is provided at the following link: *https://www.rd.usda.gov/about-rd/state-offices.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Business-Cooperative Service.

Funding Opportunity Title: Intermediary Relending Program.

Announcement Type: Solicitation of Applications for FY 2023 loan funds.

Assistance Listing Number: 10.767.

Dates: The deadlines for completed applications to be received in the USDA RD State Office for quarterly funding competitions is no later than 4:30 p.m. (local time) on: First Quarter—September 30, 2022, Second Quarter—December 31, 2022, Third Quarter—March 31, 2023, and Fourth Quarter—June 30, 2023.

Administrative

1. *Rural Development Priorities:* The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *https://www.rd.usda.gov/priority-points*):

(a) Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure;

(b) Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and

(c) Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

2. *Set-Aside Funding:* The Consolidated Appropriations Act, 2021 authorized set-aside funding to projects and intermediaries serving Federally-Recognized Tribes, and for Mississippi Delta Region Counties (as determined in accordance with Pub. L. 100–460). Eligible applicants for the set-aside funds, assuming that similar set-aside funds are appropriated for Fiscal Year 2023, must demonstrate that at least 75 percent of the benefits of an approved loan in this program will assist ultimate recipients in the designated areas. Applications for set-aside funds must be submitted to the RD State Office where

the project is located by 4:30 p.m. (local time) on the following deadline dates. The completed application deadline for the Federally Recognized Tribes and Mississippi Delta Region Counties projects is May 31, 2023. It is possible that funds may also be appropriated by Congress for projects located in Rural Empowerment Zone/Enterprise Communities/Rural Economic Area Partnership areas. Completed applications for these projects, subject to available funding, must be submitted by July 15, 2023.

A. Program Description

1. *Purpose of the Program.* The purpose of the program is to provide direct loans to intermediaries that establish revolving loan programs for the purpose of providing loans to ultimate recipients for business purposes and community development in a rural area as defined in 7 CFR 4274.302. All applicable program requirements in their entirety can be found at 7 CFR part 4274, subpart D.

2. *Statutory and Regulatory Authority.* This program is authorized under Section 310H of the Consolidated Farm and Rural Development Act (7 U.S.C. 1936b) and is administered through regulations at 7 CFR part 4274, subpart D.

3. *Definitions.* The definitions applicable to this notice are published at 7 CFR 4274.302.

4. *Application of Awards.* The Agency will review, evaluate and score applications received in response to this notice based on the provisions found in 7 CFR 4274.341.

B. Federal Award Information

Type of Award: Loan.

Fiscal Year Funds: FY 2023.

Available Funds: Funding for the IRP program in FY 2023 will be determined in an Appropriations Act for FY 2023.

Award Amounts: The Agency anticipates a maximum award of $1 Million for eligible Intermediaries submitting a loan request.

Due Date for Applications: The deadlines for completed applications to be received in the USDA RD State Office for quarterly funding competitions is no later than 4:30 p.m. (local time) on: First Quarter—September 30, 2022, Second Quarter—December 31, 2022, Third Quarter—March 31, 2023, and Fourth Quarter—June 30, 2023.

Anticipated Award Dates—

1. *Regular Funding:* First Quarter—December 1, 2022, Second Quarter—March 1, 2023, Third Quarter—June 1, 2023, Fourth Quarter—September 1, 2023.

2. *Federally Recognized Tribes and Mississippi Delta Region Counties Funding:* June 15, 2023.

3. *Empowerment Zones/Enterprise Communities/Rural Economic Area Partnership Funding:* August 1, 2023.

Performance Period: None.

Renewal or Supplemental Awards: None.

Type of Assistance Instrument: Direct Loan

C. Eligibility Information

1. *Eligible Applicants.* IRP loans may be made to a private non-profit corporation, a public agency, an Indian Tribe, or a cooperative entity, identified as eligible intermediary in accordance with 7 CFR 4274.310.

2. *Cost Share or Matching.* The IRP revolving fund share of the eligible project cost of an ultimate recipient's project funded under this Notice shall not exceed the lesser of (a) $400,000; and (b) Fifty percent of the originally-approved Agency IRP loan amount to an intermediary. No more than 75 percent of the total cost of an ultimate recipient's project can be funded from Agency IRP loan funds. Points awarded for leveraging will be considered in accordance with the requirements specified in 7 CFR 4274.341(b)(4).

3. *Discretionary Points.* The Administrator may assign up to 10 discretionary points to an application when under their approval authority. Permissible justifications in accordance with 7 CFR 4274.341(b)(10) are geographic distribution of funds or special President/Secretary of Agriculture initiatives such as local foods, regional development, persistent poverty, energy-related, etc. The number of points to be awarded will be awarded for either or both items. Secretary of Agriculture initiatives include:

(a) Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure. Applicant may receive priority points if the project is located in or serving one of the top 10 percent of counties or county equivalents based upon county risk score in the United States. The website, *https://www.rd.usda.gov/priority-points,* has the data to confirm if your location qualifies or not.

(b) Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects. Applicant may receive priority points if the project is located in or serving a community with a score of 0.75 or above on the Centers for Disease Control and Prevention Social Vulnerability Index. The website, *https://www.rd.usda.gov/priority-points,* has the data to confirm if your location qualifies or not.

(c) Reduce climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities. Applicants may receive points through one of two options. The website, *https://www.rd.usda.gov/priority-points,* has the options and data to confirm if your location qualifies or not.

4. *Other.* Applications will only be accepted from eligible intermediaries that will establish, or have established, revolving loan programs for the purpose of providing loans to ultimate recipients for business purposes and community developments in a rural area.

There are no ''responsiveness'' or ''threshold'' eligibility criteria for these loans. However, not more than one loan will be approved by the Agency for an intermediary in any single fiscal year unless the additional request is from this program's set-aside funding.

Applications will not be considered for funding if they do not provide enough information to determine eligibility, are not suitable for evaluation, or are missing required elements as stated in 7 CFR 4274.340.

D. Application and Submission Information

1. *Address to Request Application Package.* For further information, entities wishing to apply for assistance should contact the USDA RD State Office where they are located, provided in the **ADDRESSES** section of this notice, to obtain copies of the application package. Applicants are also encouraged to contact their respective RD State office for an email contact to submit an electronic application prior to the submission deadline date(s). Please note that applicants may locate the downloadable application package for this program by the Assistance Listing Number provided in the Overview Section above.

2. *Content and Form of Application Submission.* An application must contain all the required elements and each selection priority criterion outlined in 7 CFR 4274.340 must be addressed in the application. An original copy of the application must be filed with a RD State Office for the state where the Intermediary is located.

The applicant documentation and forms needed for a complete application are located in 7 CFR 4274.340. There are no specific formats or limitations on the number of pages required for an application narrative, and applicants may request any Agency forms and addresses from the **ADDRESSES** section of this notice. Any form that requires an

original signature, but is signed electronically in the application submission, must be signed in ink by the authorized person prior to the disbursement of funds.

3. *System for Award Management and Unique Entity Identifier.* At the time of application, each applicant must have an active registration in the System for Award (SAM) before submitting its application in accordance with 2 CFR part 25. In order to register in SAM, entities will be required to create a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

(a) Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(b) Applicant must ensure it completes the Financial Assistance General Certifications and Representations in SAM.

(c) Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

(d) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times.* Applications, including applications for set aside funding, must be received by the specified USDA RD State Office by the dates and times as indicated above to compete for available funds in a fiscal quarter. If the due date falls on a Saturday, Sunday or federal holiday, the application is due the next business day. The Agency will determine the application receipt date based on the actual date an application is received electronically, in person, or when a paper application is postmarked.

5. *Intergovernmental Review.* Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/.* If your State has a SPOC, you may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your state has not established a SPOC, you may submit your application directly to the Agency. Indian Tribes are exempt from this requirement.

6. *Funding Restrictions.* The intent of the Intermediary Relending Program is identified above in Section A. 1 above. There are no funding restrictions beyond that the loan proceeds be used for eligible type purposes stated in RD Instruction 4274–D, § 4274.320. Building construction is an eligible use of funds under the program and all projects must be located in a rural area of a State. Any administrative costs must be approved annually by the Agency.

7. *Other Submission Requirements.* Please note that applicants may locate the downloadable application package for this program by the Assistance Listing Number provided in the Application and Submission Information, Content and Form of Application Submission Section above.

E. Application Review Information

1. *Criteria.* All eligible and complete applications will be evaluated and scored based on the selection criteria and weights contained in 7 CFR 4274.341(b). Failure to address any of the application criteria by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding.

2. *Review and Selection Process.* The RD State Offices will review applications to determine if they are eligible for assistance based on the requirements contained in 7 CFR part 4274, subpart D. If determined eligible, your application will be submitted to the National Office for funding competition with all eligible applications received by the quarterly application deadline. The Agency Administrator reserves the right to award up to 10 discretionary points as identified under 7 CFR 4274.341(b)(10).

In order to distribute funds among the greatest number of projects possible, State application submissions will be reviewed, organized and ranked in order from highest to lowest and funded up to the maximum funding available.

F. Federal Award Administration Information

1. *Federal Award Notices.* Successful applicants will receive notification for funding from the USDA RD State Office. Applicants must comply with all applicable statutes and regulations before the loan award will be obligated. An eligible application competing for regular IRP funds, but not selected, will be reconsidered in three subsequent quarterly funding competitions, for a total of four competitions (and may be considered in a following fiscal year), provided the application and eligibility requirements have not changed. After competing in four quarterly competitions, any unsuccessful applicant for regular funds will receive written notification indicating that its application will no longer be considered for funding. Applicants competing for set-aside funding have only one application period per fiscal year to apply for set-aside funding. Unsuccessful applicants for set-aside funding will receive written notification indicating that their application was not successful. An unsuccessful applicant for set-aside funding may elect, in writing, to submit its project for IRP regular fund competitions commencing with the next quarterly application period.

2. *Administrative and National Policy Requirements.* Additional requirements that apply to intermediaries selected for this Program can be found in 7 CFR part 4274, subpart D. All successful applicants will be notified by letter which will include a Letter of Conditions, and a Letter of Intent to Meet Conditions, which are not approval determinations. The loan will be considered approved when all conditions in the Letter of Conditions have been met and the Agency obligates the funding for the project.

3. *Reporting.* In addition, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)).

Intermediaries must collect and maintain data provided by Ultimate Recipients on race, sex, and national origin and also ensure that Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with the Office

of Management and Budget (OMB) **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

The applicant and the Ultimate Recipients must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

G. Federal Awarding Agency Contact(s)

For general questions about this notice, please contact Lori Pittman, Business Loan & Grant Analyst, Program Management Division, Business Programs, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, MS 3226, Room 5160–S, Washington, DC 20250–3226, *lori.pittman1@usda.gov* or call (202) 720–9815.

H. Buy America Requirements

Awards under this announcement for Infrastructure projects to Non-Federal entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian Tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABA) within the Infrastructure Investment and Jobs Act (IIJA), and its implementing regulations. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2. All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

3. All construction materials (excludes cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

I. Other Information

1. *Paperwork Reduction Act.* In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this notice is approved by OMB under OMB Control Number 0570–0021.

2. *National Environmental Policy Act:* All recipients under this Notice are subject to the requirements of 7 CFR part 1970 and must comply in accordance with 7 CFR 4274.305(b),

3. Federal Funding Accountability and Transparency Act. All applicants, in accordance with 2 CFR part 25, must be registered in SAM and have a UEI number as stated in Section D.3. of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

4. *Nondiscrimination Statement.* In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/sites/default/files/documents/usda-program-discrimination-complaint-form.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

Karama Neal,

Administrator, Rural Business-Cooperative Service, USDA Rural Development.

[FR Doc. 2022–18783 Filed 8–30–22; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Solicitation of Nominations To Serve on the BEA Advisory Committee

AGENCY: Bureau of Economic Analysis, Department of Commerce.

ACTION: Solicitation of nominations.

SUMMARY: The Director of the Bureau of Economic Analysis (BEA) requests nominations of individuals to the

Bureau of Economic Analysis Advisory Committee (BEAAC) to fill upcoming vacancies. The Director will consider nominations received in response to this notice, as well as from other sources.

DATES: Please submit nominations by September 30, 2022. The Bureau of Economic Analysis will retain nominations received after this date for consideration should additional vacancies occur.

ADDRESSES: Please submit nominations by email to *Gianna.Marrone@bea.gov* (subject line ''BEAAC Nominations'').

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Committee Management Official, Department of Commerce, Bureau of Economic Analysis, telephone: 301–278–9282, email: *Gianna.Marrone@bea.gov.*

SUPPLEMENTARY INFORMATION:

Background

The BEAAC was established September 2, 1999, and advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, with a focus on new and rapidly growing areas of the U.S. economy. The BEAAC functions solely as an advisory committee to the Director of BEA, in accordance with the Federal Advisory Committee Act (FACA), and advises BEA on topics selected by BEA in consultation with the Committee chairperson. The BEAAC provides recommendations from the perspectives of the economics profession, business, and government as well as recommendations for current and proposed BEA projects. This is the most effective means of obtaining valuable feedback on new data products and improvements to BEA's existing statistics.

Description of BEAAC Membership and Duties

The BEACC will consist of approximately 15 members who are appointed by and serve at the discretion of the Director of BEA. The Committee chairperson will be selected by the Director of BEA. Members will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. Committee members will be from business, academia, research, government, and international organizations, and they must be acknowledged experts in relevant fields, such as economics, statistics, and economic accounting. Committee members will be considered ''special government employees'' (SGEs) and, therefore, will be subject to the ethical standards applicable to SGEs.

Committee members will serve for a term up to three years. All members will be reevaluated at the conclusion of the term with the prospect of renewal for an additional term. Active attendance and participation in meetings and activities (*e.g.,* conference calls and assignments) will be factors considered when determining term renewal or membership continuance. Members may be appointed for no more than three consecutive terms. Appointments may be for one, two, or three years to provide staggered terms.

The BEACC meets once or twice a year, budget permitting. Additional meetings may be held as deemed necessary by the Director or the Designated Federal Official. All meetings are open to the public in accordance with FACA the Freedom of Information Act, 5 U.S.C. 552.

Members shall not reference or otherwise utilize their membership on this committee in connection with public statements made in their personal capacities without a disclaimer that the views expressed are their own and do not represent the views of the BEACC, BEA, or the Department of Commerce. Committee members shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.* Because Committee members will not have access to classified information, no security clearances are required.

Solicitation of Nominations

The Committee is currently filling one or more positions on the BEAAC. The Director will consider nominations of all qualified individuals to ensure that the Committee includes the areas of experience noted above. Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership on the Committee. Nominations shall state that the nominee is willing to serve as a member and carry out the duties of the Committee. A nomination package should include the following information for each nominee:

1. A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes recommend him/her for service in this capacity), and the nominee's field(s) of experience;

2. A biographical sketch of the nominee and a copy of his/her curriculum vitae; and

3. The name, return address, email address, and daytime telephone number at which the nominator can be contacted.

The Committee aims to have a balanced representation among its members, considering such factors as geography, age, sex, race, ethnicity, technical expertise, community involvement, and knowledge of programs and/or activities related to BEAAC. Individuals will be selected based on their expertise in or representation of specific areas as needed by BEAAC.

Authority: Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., app.

Dated: August 26, 2022.

Ryan Noonan,

Designated Federal Official, Bureau of Economic Analysis Advisory Committee, Bureau of Economic Analysis.

[FR Doc. 2022–18789 Filed 8–30–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–38–2022]

Foreign-Trade Zone (FTZ) 45—Portland, Oregon, Notification of Proposed Production Activity, Epson Portland, Inc. (Inkjet Ink Printer Bottles (Empty and Filled) for Retail Sale), Hillsboro, Oregon

Epson Portland, Inc. (Epson) submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Hillsboro, Oregon within Subzone 45F. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on August 23, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed finished product(s) and material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished products include empty plastic bottles, plastic caps for bottles, and filled color and

black inkjet ink bottles for retail sale (duty rate ranges from 1.8% to 5.3%).

The proposed foreign-status materials and components include plastic shrink film, plastic caps for bottles, plastic pouches, and silicone slit valves (duty rate ranges from 3% to 5.3%). The request indicates that certain materials/components are subject to duties under Section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is October 11, 2022.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Diane Finver at *Diane.Finver@trade.gov.*

Dated: August 25, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–18780 Filed 8–30–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Notice of Court Decision Not in Harmony With the Results of Antidumping Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 24, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in Hyundai Steel Company v. United States, Consol. Court No. 18–00154, sustaining the U.S. Department of Commerce (Commerce)'s fourth remand results pertaining to the administrative review of the antidumping duty (AD) order on circular welded non-alloy steel pipe from the Republic of Korea (Korea) covering the period November 1, 2015, through October 31, 2016. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margins assigned to Hyundai Steel Company and SeAH Steel Corporation.

DATES: Applicable September 3, 2022.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 2018, Commerce published its *Final Results* in the 2015–2016 AD administrative review of circular welded non-alloy steel pipe from Korea. Commerce found that a particular market situation (PMS) existed in Korea and calculated weighted-average dumping margins of 30.85 percent for Hyundai Steel Company and 19.28 percent for SeAH Steel Corporation.[1] Commerce also calculated a combined assessment rate for Hyundai's affiliated importers.

Hyundai Steel Company and SeAH Steel Corporation appealed Commerce's *Final Results.* On November 25, 2019, the CIT remanded the *Final Results* to Commerce, finding that: (1) Commerce's determination of the existence of a PMS in the *Final Results* is unsupported by substantial evidence and remanded the issue to Commerce for further proceedings; and (2) Commerce's departure from its normal practice of calculating importer-specific assessment rates with respect to Hyundai Steel Company was unsupported by substantial evidence and remanded the issue to Commerce for further proceedings.[2] In its first remand redetermination, issued on February 26, 2020, Commerce further considered its PMS determination and recalculated Hyundai Steel Company's assessment rates on an importer-specific basis.[3]

The CIT remanded for a second time, ordering Commerce to explain the statutory authority to conduct a cost-based PMS analysis when normal value is based on home market sales and to adjust the cost of production (COP) for purposes of the sales-below-cost test.[4] In its second remand redetermination, issued on February 2, 2021, Commerce provided its interpretation of the statutory authority in accordance with the Court's order.[5]

The CIT remanded for a third time, ordering Commerce to reconsider its PMS determination and adjustment in light of its opinion that Commerce may not adjust the COP when using normal value based on home market sales, and that Commerce is not authorized to adjust the COP for purposes of the sales-below-cost test.[6] In its third remand redetermination, issued on September 8, 2021, Commerce recalculated the weighted-average dumping margin of Hyundai Steel Company with no adjustment to account for the PMS that Commerce had found to have existed during the period of review; Commerce also recalculated the rate for the second mandatory respondent, Husteel Co., Ltd., for the sole purpose of calculating the rate for SeAH Steel Corporation, the non-examined company which is a party to this litigation but, in recalculating Husteel Co., Ltd.'s rate, Commerce continued to apply a PMS adjustment for normal value in situations where normal value was determined based on constructed value.[7]

The CIT remanded for a fourth time, holding that Commerce calculated SeAH Steel Corporation's dumping margin improperly using an average of dumping rates based, in part, on a PMS determination that was unsupported by substantial evidence, and ordering Commerce to recalculate SeAH Steel Corporation's dumping margin in accordance with its opinion.[8] In its final remand redetermination, issued in August 2022, Commerce, under respectful protest, recalculated the weighted-average dumping margin for SeAH Steel Corporation without making a cost-based PMS adjustment.[9] The CIT

[1] *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 83 FR 27541 (June 13, 2018) (*Final Results*).

[2] *See Hyundai Steel Company* v. *United States,* 415 F. Supp. 3d 1293 (CIT 2019).

[3] *See Final Results of Redetermination Pursuant to Court Remand Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* Consolidated Court No. 18–00154, Slip Op. 19–148 (CIT November 25, 2019), dated February 26, 2020 (*First Remand*), available at *https://access.trade.gov/resources/remands/19-148.pdf.*

[4] *See Hyundai Steel Company* v. *United States,* 483 F. Supp. 3d 1273 (CIT 2020).

[5] *See Final Results of Redetermination Pursuant to Court Remand Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* Consolidated Court No. 18–00154, Slip Op. 20–168 (CIT November 23, 2020), dated February 2, 2021 (*Second Remand*)), *available at https://access.trade.gov/Resources/remands/20-168.pdf.*

[6] *See Hyundai Steel Company* v. *United States,* 531 F. Supp. 3d 1344 (CIT 2021).

[7] *See Final Results of Redetermination Pursuant to Court Remand,* Consolidated Court No. 18–00154, Slip Op. 21–88 (CIT July 19, 2021), dated September 8, 2021 (*Third Remand*), available at *https://access.trade.gov/resources/remands/21-88.pdf.*

[8] *See Hyundai Steel Company* v. *United States,* Court No. 18–00154, Slip Op. 22–67 (CIT June 15, 2022).

[9] *See Final Results of Redetermination Pursuant to Court Remand Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* Consolidated Court No. 18–00154, Slip Op. 22–67 (CIT June 15,

Continued

sustained Commerce's final redetermination.[10]

Timken Notice

In its decision in *Timken,*[11] as clarified by *Diamond Sawblades,*[12] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's August 24, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results of Review

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Hyundai Steel Company and SeAH Steel Corporation as follows:

Company	Margin (percent)
Hyundai Steel Company	12.92
SeAH Steel Corporation	9.77

Cash Deposit Requirements

Because Hyundai Steel Company and SeAH Steel Corporation have a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: (1) were produced by Hyundai Steel Company (also known as Hyundai Steel Corporation and Hyundai Steel and the successor-in-interest to Hyundai HYSCO) and exported by Hyundai Steel Company or Hyundai Corporation, and imported by Hyundai Steel USA, Inc. or Hyundai Corporation USA; or (2) were produced and/or exported by SeAH Steel Corporation; and were entered, or withdrawn from warehouse, for consumption during the period November 1, 2015, through October 31, 2016. These entries will remain enjoined pursuant to the terms of the injunctions during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise that: (1) were produced by Hyundai Steel Company (also known as Hyundai Steel Corporation and Hyundai Steel and the successor-in-interest to Hyundai HYSCO) and exported by Hyundai Steel Company or Hyundai Corporation, and imported by Hyundai Steel USA, Inc. or Hyundai Corporation USA; or (2) were produced and/or exported by SeAH Steel Corporation in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an import-specific *ad valorem* assessment rate is zero or *de minimis,*[13] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e), and 777(i)(1) of the Act.

Dated: August 25, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–18803 Filed 8–30–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NIST Invention Disclosure and Inventor Information Collection

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before October 31, 2022.

ADDRESSES: Interested persons are invited to submit written comments by mail to Maureen O'Reilly, Management Analyst, NIST, by email to *PRAcomments@doc.gov*. Please reference OMB Control Number 0693–0085 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Jeffrey DiVietro, Deputy Director, Technology Partnerships Office, NIST, 100 Bureau Drive, MS 2200, Gaithersburg, MD 20899–2200 or *Jeffrey.DiVietro@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NIST DN–45 Invention Disclosure Form is used to collect information pertaining to inventions created by Federal employees or by non-Federally employed individuals who have created an invention using NIST laboratory facilities as NIST Associates. The collection of this information is required to protect the United States rights to inventions created using Federal resources. The information collected on the form allows the Government to determine: (1) if an invention has been created; (2) the status of any statutory bar that pertains to the potential invention or that may pertain to the invention in the future. The information collected may allow the Government to begin a patent application process.

The Inventor Information Sheet is used to collect from individuals who have been named as potential inventors on a NIST Invention Disclosure Form. The collection of this information is used for multiple purposes:

(1) Some of the information may be required to file a patent application, if NIST seeks to protect a federally owned invention, pursuant to 35 U.S.C. 207.

2022), dated August 2, 2022, available at *https://access.trade.gov/Resources/remands/22-67.pdf.* In the *Third Redetermination,* Commerce recalculated the weighted-average dumping margin of Hyundai Steel with no adjustment to account for the PMS. *See Third Redetermination* at 10.

[10] *See Hyundai Steel Company* v. *United States,* Court No. 18–00154, Slip Op. 22–98 (CIT August 24, 2022).

[11] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[12] *See Diamond Sawblades Manufacturers Coalition* v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[13] *See* 19 CFR 351.106(c)(2).

(2) The form, in part, is a statement made by the respondent declaring whether the respondent considers herself/himself to be an inventor.

(3) Some of the information is needed for NIST to determine potential assignees with which NIST would potentially negotiate consolidation of rights and other patent related matters.

(4) Some of the information helps NIST determine under which statutory authority NIST may consolidate rights in an invention with other potential assignees.

(5) Country citizenship information is required to determine whether a Scientific and Technology agreement or treaty with the respondent's country may impact the U.S. Government's rights to the invention.

The information is collected by the Technology Partnerships Office and shared with the Office of Chief Counsel at NIST. The information may also be shared with non-Governmental entities that may have ownership rights to the potential invention. The Government collects this information to execute the policy and objective of the Congress expressed at 35 U.S.C. 200. 35 U.S.C. 207 authorizes Federal agencies to apply for, obtain, and maintain patents or other forms of protection on inventions in which the Federal Government owns a right, title, or interest. 35 U.S.C. 207 also authorizes each Federal agency to undertake all other suitable and necessary steps to protect and administer rights to federally owned inventions on behalf of the Federal government. The information collected through the NIST DN–45 is necessary for NIST to execute the authority granted at 35 U.S.C. 207.

II. Method of Collection

Information is collected by completing the NIST DN–45 form. The form can be completed either by entering information into a Microsoft Word template, or by entering information via an online portal.

III. Data

OMB Control Number: 0693–0085.

Form Number(s): NIST DN–45.

Type of Review: Regular submission, Extension of a current information collection.

Affected Public: Individuals.

Estimated Number of Respondents: Invention Disclosure Form—10 per year.

Inventor Information Form—100 per year.

Estimated Time per Response: Invention Disclosure Form: 3 hours.

Inventor Information Form: 30 minutes.

Estimated Total Annual Burden Hours: Invention Disclosure Form: 30 hours. Inventor Information Form: 50 hours.

Estimated Total Annual Cost to Public: $500.

Respondent's Obligation: Voluntary.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–18841 Filed 8–30–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Establishment of the Ocean Research Advisory Panel and Solicitation of Nominations for Membership

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice; correction. The closing date for receiving nominations for the notice published on June 29, 2022 at 87–FR 38711 has been extended to September 30, 2022.

SUMMARY: Pursuant to the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 Act and the Federal Advisory Committee Act (FACA), the NOAA Administrator and the Co-Chairs of the Ocean Policy Committee (OPC) announce the establishment of the Ocean Research Advisory Panel (ORAP). The ORAP shall advise the OPC on certain ocean science and research policies, procedures, priorities, and other appropriate matters. The ORAP charter shall terminate two years from the date of its filing with the appropriate U.S. Senate and House of Representatives Committees unless earlier terminated or renewed by proper authority. Notwithstanding section 14 of the Federal Advisory Committee Act, the Advisory Panel shall terminate on January 1, 2040. This notice also requests nominations for membership on the ORAP.

DATES: Nominations should be sent to the email address specified below and must be received by September 30, 2022.

ADDRESSES: Nominations and applications should be submitted electronically to Dr. Cynthia Decker, the Designated Federal Officer (DFO), ORAP, NOAA, at *cynthia.decker@noaa.gov,* and email: *Andrew.peck@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, DFO, ORAP, NOAA (Phone Number: (202) 936–5847), Email: *cynthia.decker@noaa.gov*) and Andrew Peck, Program Support, ORAP, NOAA (Phone Number: 202–964–1254), Email: *andrew.peck@noaa.gov)* in the Office of Science Support, Oceanic and Atmospheric Research.

SUPPLEMENTARY INFORMATION:

Document Citation: 87 FR 38711.

Document Number: 2022–13919.

I. Background and Authority

Establishment of the ORAP implements a statutory requirement of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (H.R.6395), 10 U.S.C. 8933 *et seq.* The ORAP is governed by the FACA, as amended, 5 U.S.C. app., which sets forth standards for the formation and use of advisory committees. Responsibilities include the following: (1) to advise the OPC on policies and procedures to implement the National Oceanographic Partnership Program; (2) to advise the OPC on matters relating to national oceanographic science, engineering, facilities, or resource requirements; (3) to advise the OPC on improving diversity, equity, and inclusion in the

ocean sciences and related fields; (4) to advise the OPC on national ocean research priorities; and (5) any additional responsibilities that the OPC considers appropriate.

II. Structure

The ORAP shall consist of not fewer than 10 and not more than 18 members appointed by the co-chairs of the OPC, including each of the following: (A) three members who represent the National Academies of Sciences, Engineering, and Medicine; (B) members selected from among individuals who represent the views of ocean industries, State, tribal, territorial or local governments, academia, and such other views as the co-chairs consider appropriate; and (C) members selected from among individuals eminent in the fields of marine science, marine technology, and marine policy, or related fields.

Members shall serve in a representative capacity; they are, therefore, not Special Government Employees. As such, members are not subject to the ethics rules applicable to Government employees, except that they must not misuse Government resources or their affiliation with the ORAP for personal purposes. All members of the ORAP will be appointed by the OPC Co-Chairs for a three-year term, with one member appointed by the OPC Co-Chairs as the ORAP Chair. Members may not serve on the ORAP for more than two consecutive terms. A member of the ORAP may not serve as the ORAP Chair for more than two terms. The ORAP shall meet not less than two times each year. Additional meetings may be called as deemed desirable by the OPC. Members are reimbursed for actual and reasonable travel and other per diem expenses incurred in performing such duties but will not be compensated for their time. As a Federal Advisory Committee, the ORAP's membership is required to be balanced in terms of viewpoints represented and the functions to be performed. The OPC Co-Chairs shall ensure that an appropriate balance of academic, scientific, industry, and geographical interests are represented by the members of the ORAP. The OPC Co-Chairs shall also make appointments without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, or cultural, religious, or socioeconomic status.

III. Nominations

Interested persons may nominate themselves or third parties. An application is required to be considered for ORAP membership, regardless of whether a person is nominated by a third party or self-nominated. The application package must include: (1) the nominee's full name, title, institutional affiliation, and contact information; (2) identification of the nominee's area(s) of industry perspective—academia, commercial service provider, or end-user; (3) a short description of his/her qualifications relative to the kinds of advice being solicited in this Notice; and (4) a current resume (maximum length four [4] pages). All nomination information must be provided in a single, complete package, and must be sent to the ORAP DFO at the electronic address provided above.

David J. Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–18836 Filed 8–30–22; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; International Dolphin Conservation Program

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before October 31, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0387 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Chris Fanning, Fishery Policy Analyst, NOAA/National Marine Fisheries Service, 501 West Ocean Blvd., #4200, Long Beach, CA 90802, (562) 980–4198, *Chris.Fanning@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension, without change, of a current information collection. The purpose of this collection of information is to comply with the requirements of the *International Dolphin Conservation Program Act* (IDCPA), 16 U.S.C. 1414. The IDCPA amended the *Dolphin Protection Consumer Information Act* (DPCIA), 16 U.S.C. 1385. The IDCPA and the DPCIA authorize the Secretary of Commerce to promulgate regulations that implement the dolphin-safe labeling standard in the United States (U.S.) by the collection of documents on the dolphin-safe status of tuna import shipments and domestic tuna product processing; by allowing documentary requests to allow for an effective tracking and verification program; and by verifying that tuna was not harvested by a nation under embargo or otherwise prohibited from exporting tuna to the United States.

This collection of information also complies with the requirements of the Tuna Conventions Act (TCA), 16 U.S.C. 951 *et seq.,* which was amended by the ''Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015'' (Pub. L. 114–81). The TCA gives the Secretary of Commerce the authority to enact regulations to fulfill the requirement that all member States maintain and provide to the Inter-American Tropical Tuna Commission (IATTC) a list of vessels flagged by the member State and (1) authorized by the member State to be used for fishing for tuna and tuna-like species in the IATTC Convention Area, or (2) authorized by other States to be used for fishing for tuna and tuna-like species in their areas of jurisdiction in the IATTC Area, and to maintain and provide for each vessel on that list certain information on its characteristics and its owner and operator. The TCA also gives the Secretary of Commerce authority to implement fishery management resolutions of the IATTC.

The International Dolphin Conservation Program Act (Act) allows entry of yellowfin tuna into the United States (U.S.), under specific conditions,

from nations in the International Dolphin Conservation Program that would otherwise be under embargo. The Act also allows U.S. fishing vessels to participate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean (ETP) on terms equivalent with the vessels of other nations. NOAA collects information to allow tracking and verification of ''dolphin-safe'' and ''non-dolphin safe'' tuna products from catch through the U.S. market.

The information is used by NMFS, the United States Coast Guard (USGC), and the IATTC to monitor the size and composition of the vessel fleets in the IATTC Convention Area for compliance and scientific-related purposes. Knowing such information as the number of vessels, the details of the vessels and their ownership, and the types of gear employed enables effective monitoring of vessel activity for enforcement and assessment purposes. NMFS also uses this information for the purposes of management the U.S. purse seine fleet capacity in the IATTC Convention Area.

This collection includes permit applications, notifications, tuna tracking forms, reports, and certifications that provide information on vessel characteristics and operations in the ETP, the origin of tuna and tuna products, chain of custody recordkeeping requirements and certain other information necessary to implement the Act.

II. Method of Collection

Information will be collected via online application, email notifications and reporting, and an option for paper format permit applications.

III. Data

OMB Control Number: 0648–0387.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 518.

Estimated Time per Response: 35 minutes for a vessel permit application; 10 minutes for an operator permit application, a notification of vessel arrival or departure, a change in permit operator, a notification of a net modification or a monthly tuna storage removal report; 30 minutes for a request for a waiver to transit the ETP without a permit (and subsequent radio reporting) or for a special report documenting the origin of tuna (if requested by the NOAA Administrator); 10 hours for an experimental fishing operation waiver; 15 minutes for a request for a Dolphin Mortality Limit; 35 minutes for written notification to request active status for a small tuna purse seine vessel; 5 minutes for written notification to request inactive status for a small tuna purse seine vessel or for written notification of the intent to transfer a tuna purse seine vessel to foreign registry and flag; 60 minutes for a tuna tracking form or for a monthly tuna receiving report; 30 minutes for IMO application or exemption request; 30 minutes for chain of custody recordkeeping reporting requirement.

Estimated Total Annual Burden Hours: 277.

Estimated Total Annual Cost to Public: $518.

Respondent's Obligation: Mandatory.

Legal Authority: International Dolphin Conservation Program Act (IDCPA), 16 U.S.C. 1414; The IDCPA amended the *Dolphin Protection Consumer Information Act* (DPCIA), 16 U.S.C. 1385; and the Tuna Conventions Act (TCA), 16 U.S.C. 951 *et seq.*

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–18837 Filed 8–30–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2022–0015; OMB Control Number 0704–0216]

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; Bonds and Insurance

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 30, 2022.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 228, Bonds and Insurance, and related clauses at 252.228; OMB Control Number 0704–0216.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 311.

Annual Responses: 311.

Annual Burden Hours: 561.

Reporting Frequency: On Occasion.

Needs and Uses: DoD uses the information obtained through this collection to determine (1) the allowability of a contractor's costs of providing war-hazard benefits to its employees; (2) the need for an investigation regarding an accident that occurs in connection with a contract; and (3) whether a non-Spanish contractor performing a service or construction contract in Spain has adequate insurance coverage. DFARS 252.228–7000, Reimbursement for War-Hazard Losses, requires the contractor to provide notice and supporting

documentation to the contracting officer regarding potential claims, open claims, and settlements providing war-hazard benefits to contractor employees. DFARS 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, requires the contractor to report promptly to the administrative contracting officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with the contract. DFARS 252.228–7006, Compliance with Spanish Laws and Insurance, requires the contractor to provide the contracting officer with a written representation that the contractor has obtained the required types of insurance in the minimum amounts specified in the clause, when performing a service or construction contract in Spain.

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2022–18735 Filed 8–30–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2022–0016; OMB Control Number 0704–0478]

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement (DFARS); Cyber Incident Reporting and Cloud Computing

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 30, 2022.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Safeguarding Covered Defense Information, Cyber Incident Reporting, and Cloud Computing; OMB Control Number 0704–0478.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 2,097.

Responses per Respondent: 7.99, approximately.

Annual Responses: 16,760.

Average Burden per Response: 0.46 hours.

Annual Burden Hours: 7,695.

Reporting Frequency: On occasion.

Needs and Uses: Offerors and contractors must report cyber incidents on unclassified networks or information systems, within cloud computing services, and when they affect contractors designated as providing operationally critical support, as required by statute.

a. The clause at DFARS 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting, covers cyber incident reporting requirements for incidents that affect a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract.

b. DFARS provision 252.204–7008, Compliance with Safeguarding Covered Defense Information Controls, requires an offeror that proposes to vary from any of the security controls of National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 in effect at the time the solicitation is issued to submit to the contracting officer a written explanation of how the specified security control is not applicable or an alternative control or protective measure is used to achieve equivalent protection.

c. DFARS provision 252.239–7009, Representation of Use of Cloud Computing, requires contractors to report that they ''anticipate'' or ''do not anticipate'' utilizing cloud computing service in performance of the resultant contract. The representation will notify contracting officers of the applicability of the cloud computing requirements at DFARS clause 252.239–7010 of the contract.

d. DFARS clause 252.239–7010, Cloud Computing Services, requires reporting of cyber incidents that occur when DoD is purchasing cloud computing services.

These DFARS provisions and clauses facilitate mandatory cyber incident reporting requirements in accordance with statutory regulations. When reports are submitted, DoD will analyze the reported information for cyber threats and vulnerabilities in order to develop response measures as well as improve U.S. Government understanding of advanced cyber threat activity. In addition, the security requirements in NIST SP 800–171 are specifically tailored for use in protecting sensitive information residing in contractor information systems and generally reduce the burden placed on contractors by eliminating Federal-centric processes and requirements. The information provided will inform DoD in assessing the overall risk to DoD covered defense information on unclassified contractor systems and networks.

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2022–18769 Filed 8–30–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Board on Coastal Engineering Research (BCER). This meeting is open to the public.

DATES: The BCER will meet from 8:30 a.m. to 5 p.m. on September 14, 2022, Alaskan standard time Zone (AST). The Executive Session of the Board will convene from 8:30 a.m. to 11 a.m. on September 15, 2022. All sessions are open to the public and are held in AST.

ADDRESSES: The address of all sessions is Fireweed Business Center 725 E Fireweed Ln, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Dr. Julie Dean Rosati, the Board's Designated Federal Officer (DFO), (202) 761–1850 (Voice), *Julie.D.Rosati@usace.army.mil* (email). Mailing address is Board on Coastal Engineering Research, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, Coastal and Hydraulics Laboratory, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199. Website: *https://www.erdc.usace.army.mil/Locations/CHL/CERB/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: The meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (title 5 United States Code (U.S.C.), appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and title 41 Code of Federal Regulations (CFR), sections 102–3.140 and 102–3.150.

Purpose of the Meeting: The Board's mission is to provide broad policy guidance and reviews plans for the conduct of research and the development of research projects in consonance with the needs of the coastal engineering field and the objectives of the U.S. Army Chief of Engineers. The objective of this meeting is to identify coastal research needs associated with coastal communities in cold regions including issues of climate change, social equity, and environmental justice.

Agenda: Starting Wednesday morning September 14, 2022, at 8:30 a.m. the Board will be called to order with an opening presentation on the CERB history and purpose. Afterwards a panel presentation entitled ''Alaska's Coastal Setting and Challenges'' will begin, presentations include Alaska District's Coastal shoreline erosion projects and challenges; Impacts of Changing Sea Ice on wave climate and shoreline erosion; and Community Coastal Resilience & Social Challenges. After lunch the last panel session entitled Ongoing Research, Needs and Gaps will have presentation on: Coastal Permafrost Degradation and uncertainty in Coastal Erosion—Case Study at Cape Blossom; Storm selection for design event scenarios, correlating to wind speed, direction, and duration—Case Study at Utquigvik; Coastal Hazards System for Pacific Basin; and National Coastal Mapping Program Research, Development, and Collaborations in Alaska.

The Board will meet in Executive Session to discuss ongoing initiatives and future actions on Thursday morning, September 15, 2022, from 8:30 a.m. to 11 a.m.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to space availability, the meeting is open to the public both in-person and virtually. Because seating capacity is limited, advance registration is required. For registration requirements please see below. Persons desiring to participate in the meeting online or by phone are required to submit their name, organization, email and telephone contact information to Ms. Tanita Warren at *Tanita.S.Warren@usace.army.mil* no later than Thursday, September 12, 2022. Specific instructions for virtual meeting participation, will be provided by reply email.

Oral participation by the public is scheduled for 3:30 p.m. on Wednesday, September 14, 2022. For additional information about public access procedures, please contact Dr. Julie Dean Rosati, the Board's DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Registration: It is encouraged for individuals who wish to attend the meeting of the Board to register with the DFO by email, the preferred method of contact, no later than September 9, 2022, using the electronic mail contact information found in the **FOR FURTHER INFORMATION CONTACT** section. The communication should include the registrant's full name, title, affiliation or employer, email address, and daytime phone number. If applicable, include written comments or statements with the registration email.

Written Comments and Statements: In accordance with section 10(a)(3) of the FACA and title 41 CFR 102–3.015(j) and 102–3.140, the public or interested organizations may submit written comments or statements to the Board, in response to the stated agenda of the open meeting or in regard to the Board's mission in general. Written comments or statements should be submitted to Dr. Julie Dean Rosati, DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT**; section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO will review all submitted written comments or statements and provide them to members of the Board for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the DFO at least five business days prior to the meeting to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chairperson and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting.

Verbal Comments: Pursuant to 41 CFR 102–3.140d, the Board is not obligated to allow a member of the public to speak or otherwise address the Board during the meeting. Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least five business days in advance to the Board's DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The DFO will log each request, in the order received, and in consultation with the Board Chair, determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment, and whose comments have been deemed relevant under the process described above, will be allotted

no more than five minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

David B. Olson,

Federal Register Liaison Officer, Corps of Engineers.

[FR Doc. 2022–18806 Filed 8–30–22; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Advanced Scientific Computing Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open virtual meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, September 30, 2022; 10:00 a.m. to 3:00 p.m. EDT.

ADDRESSES: Teleconference: Remote attendance of the ASCAC meeting will be possible via Zoom. Instructions will be posted on the ASCAC website at *https://science.energy.gov/ascr/ascac/* prior to the meeting and can also be obtained by contacting Christine Chalk by email at *christine.chalk@science.doe.gov* or by telephone at (301) 903–7486. Advanced registration is required.

FOR FURTHER INFORMATION CONTACT: Christine Chalk, Office of Advanced Scientific Computing Research; SC–31/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue SW; Washington, DC 20585–1290; Telephone (301) 903–7486; email: *christine.chalk@science.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the committee is to provide advice and guidance on a continuing basis to the Office of Science and the Department of Energy on scientific priorities within the field of advanced scientific computing research.

Purpose of the Meeting: This meeting is the semi-annual meeting of the Committee.

Tentative Agenda

- View from Germantown
- ASCR Priority Research Directions
- Update on Exascale project activities
- Update on planning for an integrated research infrastructure
- Report from Working Group on collaboration with the National Cancer Institute
- Technical presentations
- Public Comment (10-minute rule)

The meeting agenda includes an update on the budget, accomplishments, and planned activities of the Advanced Scientific Computing Research program and the exascale computing project; technical presentations from funded researchers and industry collaborations; updates from subcommittees, and there will be an opportunity for comments from the public. The meeting will conclude at 3:00 p.m. (eastern time) on September 30, 2022. Agenda updates and presentations will be posted on the ASCAC website prior to the meeting: *https://science.osti.gov/ascr/ascac*.

Public Participation: The meeting is open to the public. Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. The time allotted per speaker will depend on the number who wish to speak but will not exceed 10 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should submit their request at least five days before the meeting. Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Christine Chalk, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, email to *Christine.Chalk@science.doe.gov*.

Minutes: The minutes of this meeting will be available within 90 days on the Advanced Scientific Computing website at *https://science.osti.gov/ascr/ascac*.

Signed in Washington, DC, on August 26, 2022.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–18818 Filed 8–30–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Office of the Secretary, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act, and in accordance with Title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Secretary of Energy Advisory Board (SEAB) will be renewed for a two-year period beginning on August 26, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence, Designated Federal Officer, (202) 586–5260, email: *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Board will provide advice and recommendations to the Secretary of Energy on a range of energy-related issues.

Additionally, the renewal of the SEAB has been determined to be essential to conduct business of the Department of Energy and to be the in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Board will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, adhering to the rules and regulations in implementation of that Act.

Signing Authority: This document of the Department of Energy was signed on August 26, 2022, by Miles Fernandez, Acting Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 26, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–18815 Filed 8–30–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB),

Nevada. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 28, 2022; 4 p.m.–8:45 p.m.

The opportunity for public comment is at 4:10 p.m. PT.

This time is subject to change; please contact the Nevada Site Specific Advisory Board (NSSAB) Administrator (below) for confirmation of time prior to the meeting.

ADDRESSES: This meeting will be open to the public in-person at the Molasky Corporate Center (address below) or virtually via Microsoft Teams. To attend virtually, please contact Barbara Ulmer, NSSAB Administrator, by email *nssab@emcbc.doe.gov* or phone (702) 523–0894, no later than 4 p.m. PT on Monday, September 26, 2022.

Molasky Corporate Center, 15th Floor Conference Room, 100 North City Parkway, Las Vegas, NV 89106

Attendees should check the website listed below for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, NSSAB Administrator, by phone: (702) 523–0894 or email: *nssab@emcbc.doe.gov* or visit the Board's internet homepage at *www.nnss.gov/NSSAB/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Briefings on Fiscal Year (FY) 2022 Wrap Up and FY 2023 Planned Activities
2. FY 2023 Work Plan Development
3. Election of Officers for FY 2023

Public Participation: The in-person/online virtual hybrid meeting is open to the public either in-person at the Molasky Corporate Center or via Microsoft Teams. To sign-up for public comment, please contact the NSSAB Administrator (above) no later than 4 p.m. PT on Monday, September 26, 2022. In addition to participation in the live public comment session identified above, written statements may be filed with the Board either before or within seven days after the meeting by sending them to the NSSAB Administrator at the aforementioned email address. Written public comment received prior to the meeting will be read into the record. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments can do so in 2-minute segments for the 15 minutes allotted for public comments.

Minutes: Minutes will be available by writing or calling Barbara Ulmer, NSSAB Administrator, U.S. Department of Energy, EM Nevada Program, 100 North City Parkway, Suite 1750, Las Vegas, NV 89106; Phone: (702) 523–0894. Minutes will also be available at the following website: *http://www.nnss.gov/nssab/pages/MM_FY22.html.*

Signed in Washington, DC, on August 26, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–18811 Filed 8–30–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, October 3, 2022; 1:00 p.m. to 4:00 p.m. Tuesday, October 4, 2022; 9:00 a.m. to 12:00 p.m.

ADDRESSES: This hybrid meeting will be open to the public virtually via WebEx only. To attend virtually, please contact the Northern New Mexico Citizens Advisory Board (NNMCAB) Executive Director (below) no later than 5:00 p.m. MDT on Wednesday, September 28, 2022.

Board members, Department of Energy (DOE) representatives, agency liaisons, and Board support staff will participate in-person, strictly following COVID–19 precautionary measures, at: Hotel Don Fernando de Taos, 1005 Paseo Del Pueblo Sur, Taos, New Mexico 87571.

Attendees should check with the NNMCAB Executive Director (below) for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Menice B. Santistevan, NNMCAB Executive Director, by Phone: (505) 699–0631 or Email: *menice.santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

EM Los Alamos Field Office Strategic Vision Planning

Public Participation: The in-person/online virtual hybrid meeting is open to the public virtually via WebEx only. Written statements may be filed with the Board no later than 5:00 p.m. MDT, on Wednesday, September 28, 2022, or within seven days after the meeting by sending them to the NNMCAB Executive Director at the aforementioned email address. Written public comments received prior to the meeting will be read into the record. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to submit public comments should follow as directed above.

Minutes: Minutes will be available by emailing or calling Menice Santistevan, NNMCAB Executive Director, at *menice.santistevan@em.doe.gov* or at (505) 699–0631.

Signed in Washington, DC, August 26, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–18812 Filed 8–30–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2706–000]

Eight Point Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Eight Point Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice

and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 14, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 25, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18797 Filed 8–30–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–498–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on August 15, 2022, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, filed a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's (Commission) regulations, for authorization to abandon in place a section of Line SM–116 and related facilities due to highwall and area surface mining to be performed by Appalachian Resource Company LLC on their Millseat Surface Mine, located in Mingo County, West Virginia. Columbia proposes to abandon these facilities under authorities granted by its blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, at (832) 320–5477 or *david_alonzo@tcenergy.com*.

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on October 24, 2022. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is October 24, 2022. A protest may also serve as a motion to intervene so long as the

[1] 18 CFR (Code of Federal Regulations) § 157.9.

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is October 24, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before October 24, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22–498–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. 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; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP22–498–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, at 700 Louisiana Street, Suite 1300, Houston, Texas, 77002–2700 or *david_alonzo@tcenergy.com.*

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Dated: August 25, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18796 Filed 8–30–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR22–58–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: § 284.123 Rate Filing: COH SOC Rates effective July 29 2022 to be effective 7/29/2022.
Filed Date: 8/25/22.
Accession Number: 20220825–5013.
Comments/Protest Due: 5 p.m. ET 9/15/22.

Docket Numbers: RP22–1143–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (APS Sept 2022) to be effective 9/1/2022.
Filed Date: 8/24/22.
Accession Number: 20220824–5056.
Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: RP22–1144–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing: TETLP August 2022 Penalty Disbursement Report to be effective N/A.
Filed Date: 8/24/22.
Accession Number: 20220824–5099.
Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: RP22–1145–000.

Applicants: Saltville Gas Storage Company L.L.C.

Description: § 4(d) Rate Filing: August 2022 Negotiated Rate Clean-up Filing to be effective 9/25/2022.

Filed Date: 8/25/22.

Accession Number: 20220825–5002.

Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: RP22–1146–000.

Applicants: Elba Express Company, L.L.C.

Description: § 4(d) Rate Filing: Prepayment to be effective 9/26/2022.

Filed Date: 8/25/22.

Accession Number: 20220825–5019.

Comment Date: 5 p.m. ET 9/6/22.

Docket Numbers: RP22–1147–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: 2022 ACA Tracker Filing—GSS, LSS, SS–2, S–2 to be effective 10/1/2022.

Filed Date: 8/25/22.

Accession Number: 20220825–5055.

Comment Date: 5 p.m. ET 9/6/22.

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: August 25, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18791 Filed 8–30–22; 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 rate filings:

Docket Numbers: ER22–2264–001.

Applicants: Midcontinent Independent System Operator, Inc., Great River Energy, Northern States Power Company, a Minnesota corporation.

Description: Tariff Amendment: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): 2022–08–25_SA 3813 NSP–GRE–Willmar Sub Orig TIA to be effective 8/31/2022.

Filed Date: 8/25/22.

Accession Number: 20220825–5104.

Comment Date: 5 p.m. ET 9/15/22.

Docket Numbers: ER22–2500–000.

Applicants: DLS—Jean Duluth Project Co, LLC.

Description: Supplement to July 27, 2022 of DLS—Jean Duluth Project Co, LLC submits tariff filing per 35.12: MBR Application to be effective 9/26/2022.

Filed Date: 8/23/22.

Accession Number: 20220823–5108.

Comment Date: 5 p.m. ET 9/2/22.

Docket Numbers: ER22–2501–000.

Applicants: DLS—Laskin Project Co, LLC.

Description: Supplement to July 27, 2022 DLS—Laskin Project Co, LLC submits tariff filing per 35.12: MBR Application to be effective 9/26/2022.

Filed Date: 8/23/22.

Accession Number: 20220823–5109.

Comment Date: 5 p.m. ET 9/2/22.

Docket Numbers: ER22–2502–000.

Applicants: DLS—Sylvan Project Co, LLC.

Description: Supplement to July 27, 2022 DLS—Sylvan Project Co, LLC submits tariff filing per 35.12: MBR Application to be effective 9/26/2022.

Filed Date: 8/23/22.

Accession Number: 20220823–5110.

Comment Date: 5 p.m. ET 9/2/22.

Docket Numbers: ER22–2715–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 346 to be effective 10/25/2022.

Filed Date: 8/24/22.

Accession Number: 20220824–5108.

Comment Date: 5 p.m. ET 9/14/22.

Docket Numbers: ER22–2716–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to SA No. 5822; Queue No. AE1–143 to be effective 10/7/2020.

Filed Date: 8/25/22.

Accession Number: 20220825–5001.

Comment Date: 5 p.m. ET 9/15/22.

Docket Numbers: ER22–2717–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii: ATSI submits Revised Interconnection Agreement (IA) SA No. 3994 to be effective 10/25/2022.

Filed Date: 8/25/22.

Accession Number: 20220825–5004.

Comment Date: 5 p.m. ET 9/15/22.

Docket Numbers: ER22–2718–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6585; Queue Nos. AE2–230/AF1–291A/AF2–075 to be effective 7/26/2022.

Filed Date: 8/25/22.

Accession Number: 20220825–5032.

Comment Date: 5 p.m. ET 9/15/22.

Docket Numbers: ER22–2719–000.

Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: PPL Electric Utilities Corporation submits tariff filing per 35.13(a)(2)(iii: PPL EU Revisions to the Formula Rate, OATT Attachment H–8G and H–8H to be effective 10/25/2022.

Filed Date: 8/25/22.

Accession Number: 20220825–5083.

Comment Date: 5 p.m. ET 9/15/22.

Docket Numbers: ER22–2720–000.

Applicants: Union Electric Company, Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Union Electric Company submits tariff filing per 35.13(a)(2)(iii: 2022–08–25_SA 3884 UEC-Hannibal (Finn) Joint Use Agreement to be effective 10/25/2022.

Filed Date: 8/25/22.

Accession Number: 20220825–5089.

Comment Date: 5 p.m. ET 9/15/22.

Docket Numbers: ER22–2721–000.

Applicants: Union Electric Company.

Description: § 205(d) Rate Filing: Rate Schedule 24, Rush Island SSR Payment to be effective 9/1/2022.

Filed Date: 8/25/22.

Accession Number: 20220825–5096.

Comment Date: 5 p.m. ET 9/15/22.

Docket Numbers: ER22–2722–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6588; Queue No. AE2–118 to be effective 7/26/2022.

Filed Date: 8/25/22.

Accession Number: 20220825–5098.

Comment Date: 5 p.m. ET 9/15/22.

Docket Numbers: ER22–2723–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 6 to be effective 10/24/2022.

Filed Date: 8/25/22.

Accession Number: 20220825–5110.

Comment Date: 5 p.m. ET 9/15/22.

Docket Numbers: ER22–2724–000.

Applicants: Florida Power & Light Company.

Description: Tariff Amendment: FPL Notice of Cancellation of Second Revised Rate Schedule No. 104 to be effective 10/23/2022.

Filed Date: 8/25/22.

Accession Number: 20220825–5119.

Comment Date: 5 p.m. ET 9/15/22.

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: August 25, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18795 Filed 8–30–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–15–000]

Commission Information Collection Activities (FERC–592); 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 collection, FERC–592 (Standards of Conduct for Transmission Provider and Marketing Affiliates of Interstate Pipelines), which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due September 30, 2022.

ADDRESSES: Send written comments on FERC–592 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0157) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC22–15–000) to the Commission as noted below. 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: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain;* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

FERC 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* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: Standards of Conduct for Transmission Providers and Marketing Affiliates of Interstate Pipelines.

OMB Control No.: 1902–0157.

Type of Request: Three-year extension of the FERC–592 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission uses the information maintained and posted by the respondents to monitor the pipeline's transportation, sales, and storage activities for its marketing affiliates to deter undue discrimination by pipeline companies in favor of their marketing affiliates. Non-affiliated shippers and other entities (*e.g.,* state commissions) also use the information to determine whether they have been harmed by affiliate preference and to prepare evidence for proceedings following the filing of a complaint.

18 CFR Part 358 (Standards of Conduct)

Respondents maintain and provide the information required by 18 CFR part 358 on their internet websites. When the Commission requires a pipeline to post information on its website following a disclosure of non-public information to its marketing affiliate, non-affiliated shippers obtain comparable access to the non-public transportation information, which allows them to compete with marketing affiliates on a more equal basis.

18 CFR 250.16, and the FERC–592 Log/Format

This form (log/format) provides the electronic formats for maintaining information on discounted transportation transactions and capacity allocation to support monitoring of activities of interstate pipeline marketing affiliates. Commission staff considers discounts given to shippers in litigated rate cases.

Without this information collection:

- the Commission would be unable to effectively monitor whether pipelines are giving discriminatory preference to their marketing affiliates; and
- non-affiliated shippers and state commissions and others would be unable to determine if they have been harmed by affiliate preference or prepare evidence for proceedings following the filing of a complaint.

Type of Respondents: Natural gas pipelines.

Estimate of Annual Burden: [1] The Commission estimates the annual reporting burden and cost for the information collection as shown in the following table:

FERC–592—ESTIMATED ANNUAL BURDEN

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response [2]	Total annual burden hours & total annual cost	Cost per respondent ($)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
85	1	85	117 hrs.; $10,179	9,945 hrs.; $865,215	$10,179

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: August 25, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18792 Filed 8–30–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–467–000]

Texas Gas Transmission, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Henderson County Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final Environmental Impact Statement (EIS) for the Henderson County Expansion Project (Project), proposed by Texas Gas Transmission, LLC (Texas Gas) in the above-referenced docket. Texas Gas requests a Certificate of Public Convenience and Necessity and Abandonment Authorization to construct, operate, and maintain, and abandon certain natural gas transmission pipeline facilities in Henderson and Webster Counties, Kentucky and Posey and Johnson Counties, Indiana. The Project purpose is to provide up to 220,000 dekatherms per day of new firm transportation service to CenterPoint Energy Indiana South's (CenterPoint) AB Brown Generating Station in Posey County, Indiana.

The final EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would result in some adverse environmental impacts; however, with the exception of potential impacts on climate change, we conclude that impacts would be reduced to less than significant levels. Regarding climate change impacts, this EIS is not characterizing the Project's greenhouse gas emissions as significant or insignificant because the Commission is conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going forward.[1]

The U.S. Environmental Protection Agency participated as a cooperating agency in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although the U.S. Environmental Protection Agency provides input to the conclusions and recommendations presented in the final EIS, the agency may present its own conclusions and recommendations in any applicable Records of Decision or other documentation for the Project.

The final EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- Henderson Lateral—Construction of an approximately 23.5-mile-long, 20-inch-diameter natural gas transmission pipeline extending from a new tie-in facility in Henderson County, Kentucky to the new AB Brown Meter and Regulating (M&R) Station in Posey County, Indiana.
- AB Brown M&R Station and Point of Demarcation Site (Posey County, Indiana)—Construction of a delivery M&R station, receiver facility, and a 0.1-mile-long, 16-inch-diameter interconnecting pipeline terminating at the new Point of Demarcation Site, which would serve as CenterPoint's tie-in for Project facilities for its AB Brown Generating Station.
- Slaughters Compressor Station (Webster County, Kentucky)—Installation of a new 4,863-horsepower Solar Centaur 50 turbine compressor unit with piping modifications and other appurtenant facilities, abandonment in place of an existing compressor unit (Unit 5), and placement on standby of two existing compressor units (Unit 6 and Unit 7).
- New ancillary facilities including a mainline valve and tie-in facility in Henderson County, Kentucky and upgrades to an existing M&R station in Johnson County, Indiana.

The Commission mailed a copy of the *Notice of Availability of the Final Environmental Impact Statement for the Proposed Henderson County Expansion Project* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; potentially affected landowners and

[1] ''Burden'' is defined 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, reference 5 CFR 1320.3.

[2] Commission staff estimate that the industry's hourly cost for wages plus benefits is similar to the Commission's $87.00 FY 2021 average hourly cost for wages and benefits.

[1] *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews,* 178 FERC ¶ 61,108 (2022); 178 FERC ¶ 61,197 (2022).

other interested individuals and groups; and newspapers and libraries in the Project area. The final EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the final EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP21–467). 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.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: August 25, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–18790 Filed 8–30–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0223; FRL–10138–01–OCSPP]

Cancellation Order for Certain Chlorpyrifos Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces an Environmental Protection Agency (EPA) order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the chlorpyrifos products listed in Table 1 of Unit I., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows an April 28, 2022, **Federal Register** Notice of Receipt of requests from the registrants listed in Table 2 of Unit I. to voluntarily cancel these chlorpyrifos product registrations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations and amendments are effective August 31, 2022.

FOR FURTHER INFORMATION CONTACT: Patricia Biggio, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–566–0700; email address: *OPPChlorpyrifosInquiries@epa.gov.*

ADDRESSES: The docket for this action, identified under docket identification (ID) number EPA–HQ–OPP–2022–0223, is available online at *https://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.* For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What action is the Agency taking?

This document announces the cancellations, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

EPA registration No.	Company No.	Product name	Active ingredients
279–3538	279	Nufos 4E	Chlorpyrifos.
279–3581	279	Bolton Insecticide	Chlorpyrifos & gamma-Cyhalothrin.
279–9545	279	F9047–2 EC Insecticide	Chlorpyrifos & Zeta-Cypermethrin.
279–9572	279	Gat Chlorpyrifos Cs	Chlorpyrifos.
279–9574	279	Chlorpyrifos 42 CS	Chlorpyrifos.
499–367	499	Whitmire PT 275 Dur-O-Cap Microencapsulated Chlorpyrifos.	Chlorpyrifos.
499–405	499	Whitmire PT 1920 Total Release Insecticide	Chlorpyrifos.
499–419	499	Duration PT 275 MC Microencapsulated Dursban Liquid Concentrate.	Chlorpyrifos.
53883–264	53883	CSI Chlorpyrifos CS	Chlorpyrifos.
53883–331	53883	CSI Chlorpyrifos 42 CS Insecticide	Chlorpyrifos.
53883–355	53883	CSI Chlorpyrifos 20 CS	Chlorpyrifos.
86363–11	86363	Bifenchlor	Bifenthrin & Chlorpyrifos.
89168–20	89168	Liberty Chlorpyrifos Bifenthrin	Bifenthrin & Chlorpyrifos.
89168–24	89168	Liberty Chlorpyrifos 4E	Chlorpyrifos.
89168–47	89168	Liberty Granular Insecticide	Bifenthrin & Chlorpyrifos.
89459–69	89459	Equil Pyrifos	Chlorpyrifos.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

Company No.	Company name and address
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
499	BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
53883	Control Solutions, Inc., 5903 Genoa Red Bluff Road, Pasadena, TX 77507.
86363	Kaizen Agent Name: Lighthouse Product, Services Technologies, LLC, 2411 S. Bear Claw Way, Meridian, ID 83642.
89168	Liberty Crop Protection, LLC, 1880 Fall River Dr., #100, Loveland, CO 80538.
89459	Central Garden & Pet Company, 1501 East Woodfield Road, Suite 200W, Schaumburg, IL 60173.

C. What is the Agency's authority for taking this action?

FIFRA section 6(f)(1), 7 U.S.C. 136d(f)(1), provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations or registered uses be cancelled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

FIFRA section 6(f)(1)(B), 7 U.S.C. 136d(f)(1)(B), requires that before acting on a request for voluntary cancellation, EPA must provide a 30-public comment period on the request for voluntary cancellation or use termination. Following the public comment period, the EPA Administrator may approve such a request.

II. Background

A. Brief History

In August 2021, EPA issued a rule revoking chlorpyrifos tolerances on the grounds that the chlorpyrifos tolerances were not safe (86 FR 48315, August 30, 2021) (FRL–5993–04–OCSPP) publication in the **Federal Register**. Pursuant to the procedures set forth in FFDCA section 408(g)(2), objections to, requests for evidentiary hearings on those objections, and/or requests for stays of the final rule were filed on or before the close of the objections period on October 29, 2021. On February 28, 2022, EPA issued an Order denying all objections to, requests for hearing on those objections, as well as requests for stay of the August 2021 final rule published in the **Federal Register** on February 28, 2022 (87 FR 11222) (FRL–5993–05–OCSPP).

Those tolerances expired on February 28, 2022. Once the tolerances expired, pesticide products containing chlorpyrifos could no longer be used on food crops. After EPA alerted registrants of chlorpyrifos products of the lack of tolerances and the options for their products, several registrants submitted requests to voluntarily cancel their chlorpyrifos pesticide products.

In April 2022, the notice of receipt of the request for voluntary cancellation or use termination related to this action published for comment in the **Federal Register** on April 28, 2022 (87 FR 25256) (FRL–9723–01–OCSPP). The 30-day public comment period closed on May 31, 2022.

B. Summary of Comments Received

During the public comment period, EPA received seven substantive comments in response to the April 2022 notice of receipt. The comments can be found in the docket for this action and are briefly summarized here.

Comments submitted by the Arizona Farm Bureau Federation, the American Farm Bureau Federation, the Agricultural Retailers Association, the Cherry Marketing Institute, and a joint comment from the American Sugar Beet Growers Association, the U.S. Beet Sugar Association, and the Beet Sugar Development Foundation opposed the cancellation of the products containing chlorpyrifos due to the importance of chlorpyrifos for growers. In particular, these commenters specified concerns that growers will have difficulty protecting their crops against certain pests without chlorpyrifos and that growers may use more significant quantities of less-effective products, contributing to resistance issues. In addition, these commenters make note of litigation challenging EPA's rule revoking the chlorpyrifos tolerances that is currently pending in the United States Court of Appeals for the 8th Circuit, *Red River Valley Sugarbeet Growers Ass'n et al.,* v. *Regan, et al.*, No. 22–1422 (8th Cir.), and request that EPA postpone cancellation of chlorpyrifos products until the litigation is resolved.

C. EPA Response to Comments

EPA is declining to postpone the cancellations requested by the registrants subject to this cancellation order. Postponing the cancellations would essentially impose a responsibility on the registrants subject to this order to retain and maintain their registrations indefinitely. The resolution and timing of the litigation is unknown, and retention of the registrations could subject registrants to additional maintenance fees and responsibilities for those registrations. See, *e.g.,* 40 CFR part 152, subpart G (registrant responsibilities); 7 U.S.C. 136a–1(i)(1) (maintenance fee obligations); 7 U.S.C. 136e (production reporting requirements); 7 U.S.C. 136f (recordkeeping requirements).

EPA also notes that some of the registrations being cancelled in this Order do not contain labeling bearing food uses, so any outcome of the litigation is irrelevant. In any event and more importantly, FIFRA section 6(f) allows a registrant to request voluntary cancellation of a pesticide product registration at any time for many reasons, including lack of interest in maintaining the registration or the pesticide no longer being marketed. EPA cannot compel registrants to maintain a registration indefinitely if they request to voluntarily cancel it. Moreover, retention of these registrations will not make chlorpyrifos products available for use as the commenters desire. The revocation of the tolerances means that application of chlorpyrifos to food crops will result in adulterated food. While cancellation of these 16 products does not terminate the last of the chlorpyrifos products registered in the United States, these products (and other remaining chlorpyrifos products) cannot be applied to food crops that will be shipped in interstate commerce.

Finally, these commenters also questioned the Agency's rationale for revoking all chlorpyrifos tolerances due to the Agency's proposed mitigations in the *Chlorpyrifos Proposed Interim Decision* (December 3, 2020). Those comments are challenges to EPA's rule revoking tolerances, which is being separately litigated and is outside the scope of this action.

Several commenters highlighted concerns regarding the existing stocks provisions from the April 2022 notice of receipt that indicated the Agency did not identify potential risk concerns and anticipated allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Earthjustice commented that the existing stocks language in the April 2022 notice of receipt that would be applicable to chlorpyrifos products in

the notice indicates that EPA anticipated allowing registrants to sell and distribute existing stocks of chlorpyrifos for one year after the publication of the cancellation order and to allow others to sell, distribute, and use existing stocks until exhausted. Earthjustice asserts that EPA cannot allow for existing stocks of chlorpyrifos to be sold, distributed, or used in this way as a result of the revocation of all chlorpyrifos tolerances. See the August 30, 2021 (86 FR 48315) (FRL–5993–04–OCSPP) publication in the **Federal Register**.

The applicability of the existing stocks language in the April 2022 notice of receipt to chlorpyrifos products was an oversight and is being corrected in this cancellation order. The existing stocks section of the April 2022 notice of receipt contained specific language pertaining to one specific product (not the chlorpyrifos products) and other language ''for all other voluntary cancellations listed in the notice.'' 87 FR 25259. That language provided broad existing stocks provisions due to the Agency's conclusion that there were ''no significant potential risk concerns associated with those pesticide products.'' *Id.* In using somewhat standard language for a voluntary cancellation notice, EPA failed to specify a different existing stocks provision for the chlorpyrifos products in the notice, for which tolerances were revoked due to EPA's conclusion that chlorpyrifos tolerances were not safe. See 87 FR 11222. FIFRA section 6(a)(1) gives EPA the discretion to permit the continued sale and use of existing stocks, where doing so is determined to be consistent with the purposes of FIFRA. 7 U.S.C. 136d(a)(1). In the case of the chlorpyrifos registrations subject to this order, without tolerances in place to cover residues from use of these products, these products may not be used on food, nor may they be sold or distributed. Allowing for continued use or sale would not be consistent with FIFRA; therefore, EPA is not allowing for continued sale, distribution, or use of chlorpyrifos products listed above.

III. The Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit I. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit I. are cancelled.

The cancellations and amendments addressed in this Order are effective August 31, 2022. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit I. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

IV. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The language regarding the intended disposition of existing stocks that published in the **Federal Register** on April 28, 2022 (87 FR 25256) (FRL–9723–01–OCSPP) on page 25259 is not appropriate for application to the pesticide products subject to this Order.

None of the registrants listed in this order have requested any continued sale or distribution of existing stocks of the registrations subject to this cancellation order nor have they requested special provisions to relabel the products listed in this order. Because of that and because chlorpyrifos tolerances have been revoked and use of chlorpyrifos renders food adulterated, all sale, distribution, and use of the chlorpyrifos products identified in Table 1 of Unit I. is prohibited, except for export consistent with FIFRA section 17, 7 U.S.C. 136o or for proper disposal.

Dated: August 26, 2022.

Mary Elissa Reaves,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2022–18838 Filed 8–30–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 30, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Sword Financial Corporation, Horicon, Wisconsin;* to acquire Community Bancshares Wisconsin and thereby indirectly acquire Cornerstone Community Bank, both of Grafton, Wisconsin.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *First National Buffalo Bankshares, Inc., Buffalo, Wyoming;* to acquire First State Bank of Newcastle, Newcastle, Wyoming.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–18808 Filed 8–30–22; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Senior Executive Service Performance Review Board

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Board for the Federal Retirement Thrift Investment Board. The purpose of the Performance Review Board is to make written recommendations on each executive's annual summary ratings, performance-based pay adjustment, and performance awards to the appointing authority.

DATES: This notice is applicable on August 31, 2022.

FOR FURTHER INFORMATION CONTACT: Kelly Powell, HR Specialist, at 202–942–1681.

SUPPLEMENTARY INFORMATION: Title 5, U.S. Code, 4314(c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before Board service commences. The following persons will serve on the Federal Retirement Thrift Investment Board's Performance Review Board which will review initial summary ratings to ensure the ratings are consistent with established performance requirements, reflect meaningful distinctions among senior executives based on their relative performance and organizational results and provide recommendations for ratings, awards, and pay adjustments in a fair and equitable manner: Thomas Brandt, Jim Courtney, Sean McCaffrey, and Kim Weaver.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2022–18784 Filed 8–30–22; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–E–2259; FDA–2020–E–2260; and FDA–2020–E–2261]

Determination of Regulatory Review Period for Purposes of Patent Extension; THEROX DOWNSTREAM SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for THEROX DOWNSTREAM SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by October 31, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by February 27, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 31, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

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 Nos. FDA–2020–E–2259; FDA–2020–E–2260; and FDA–2020–E–2261 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; THEROX DOWNSTREAM SYSTEM.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' 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 § 10.20 (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 numbers, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device THEROX DOWNSTREAM SYSTEM. It is indicated for the preparation and delivery of SuperSaturated Oxygen Therapy to targeted ischemic regions perfused by the patient's left anterior descending coronary artery immediately following revascularization by means of percutaneous coronary intervention with stenting that has been completed within 6 hours after the onset of anterior acute myocardial infarction symptoms caused by a left anterior descending artery infarct lesion. Subsequent to this approval, the USPTO received patent term restoration applications for THEROX DOWNSTREAM SYSTEM (U.S. Patent Nos. 6,582,387; 7,820,102; and 8,264,564) from TherOx Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated May 24, 2021, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of THEROX DOWNSTREAM SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for THEROX DOWNSTREAM SYSTEM is 7,386 days. Of this time, 6,824 days occurred during the testing phase of the regulatory review period, while 562 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption for this device, under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)), became effective:* January 13, 1999. The applicant claims that the investigational device exemptions (IDEs) required under section 520(g) of the FD&C Act for human tests to begin became effective on November 4, 1998, or January 28, 2012. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on January 13, 1999, which represents the IDE effective date of the earliest IDE received.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* September 18, 2017. The applicant claims September 21, 2017, as the date the premarket approval application (PMA) for THEROX DOWNSTREAM SYSTEM (PMA P170027) was initially submitted. However, FDA records indicate that PMA P170027 was initially submitted on September 18, 2017.

3. *The date the application was approved:* April 2, 2019. FDA has verified the applicant's claim that PMA P170027 was approved on April 2, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 991 days, 1,591 days, or 1,826 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see DATES). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket Nos. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: August 25, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–18754 Filed 8–30–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2021–E–0382 and FDA–2021–E–0383]

Determination of Regulatory Review Period for Purposes of Patent Extension; UBRELVY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for UBRELVY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by October 31, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence

during the regulatory review period by February 27, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 31, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

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 Nos. FDA–2021–E–0382 and FDA–2021–E–0383 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; UBRELVY.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' 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 § 10.20 (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 numbers, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, UBRELVY (ubrogepant). UBRELVY is indicated for the acute treatment of migraine with or without aura in adults. Subsequent to this approval, the USPTO received patent term restoration applications for UBRELVY (U.S. Patent Nos. 8,912,210 and 9,833,448) from Allergan Sales LLC, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated June 8, 2021, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of UBRELVY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for

UBRELVY is 2,883 days. Of this time, 2,520 days occurred during the testing phase of the regulatory review period, while 363 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* February 2, 2012. The applicant claims February 3, 2012, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was February 2, 2012, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 26, 2018. FDA has verified the applicant's claims that the new drug application (NDA) for UBRELVY (NDA 211765) was initially submitted on December 26, 2018.

3. *The date the application was approved:* December 23, 2019. FDA has verified the applicant's claim that NDA 211765 was approved on December 23, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 555 days or 774 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: August 25, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–18753 Filed 8–30–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Advisory Council, September 19, 2022, 10:00 a.m. to 04:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Rooms 260 C, D, E and F, Bethesda, MD 20892, which was published in the **Federal Register** on August 24, 2022, FR Doc 2022–18262, 87 FR 52000.

This notice is being amended to remove the visitor testing requirement for entering NIH facilities due to CDC updates published August 11, 2022, regarding screening testing. The meeting is open to the public.

Information is also available on the Institute's/Center's home page: *https://public.csr.nih.gov/AboutCSR/Organization/CSRAdvisoryCouncil*, where an agenda and any additional information for the meeting will be posted when available.

The meeting will be videocast and can be accessed from the NIH Videocasting website (*https://videocast.nih.gov/watch=45767*).

Dated: August 25, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–18785 Filed 8–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Request for Information: SAMHSA's Role in Possible Agency Actions Regarding Mental Health and Substance Use Wellbeing in the Context of Climate Change and Health Equity

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).

ACTION: Notice of request for information.

SUMMARY: SAMHSA seeks input from members of the public about how it can best address the behavioral health impacts of climate change and health equity considerations. Behavioral health includes mental health conditions and substance use disorders. SAMHSA specifically seeks input on suggested priorities, resources, partners and collaborating agencies and organizations.

DATES: Comments on this notice must be received by October 31, 2022.

ADDRESSES: Please submit all responses via email to *ClimateChange@SAMHSA.HHS.gov* as a Word document, Portable Document Format (PDF) or in the body of an email. Please include ''Request for Information: SAMHSA's Role in Climate Change'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Mitchell Berger, Public Health Advisor, Telephone: 240–276–1757, Email: *Mitchell.Berger@SAMHSA.HHS.gov,* or Maggie Jarry, Emergency Management Specialist, Email: *Maggie.Jarry@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: In January 2021, President Biden signed Executive Order 14008, Tackling the Climate Crisis at Home and Abroad. Recognizing that ''we face a climate crisis that threatens our people and communities, public health and economy, and, starkly, our ability to live on planet Earth,'' the Order called for a ''government-wide approach'' to climate change and development of agency action plans to ''bolster adaptation and increase resilience to the impacts of climate change.'' [1]

President Biden also in January 2021 signed Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, which called upon Agencies to take steps to enhance

programs for underserved communities.[2]

In August 2021, HHS established the Office of Climate Change and Health Equity (OCCHE) as part of the Office of the Assistant Secretary for Health. OCCHE priorities include supporting efforts to reduce greenhouse gas emissions, partnering with other government agencies and the nonprofit and private sectors and supporting efforts to address health disparities.

Consistent with Administration priorities, HHS in 2021 developed a Climate Action Plan emphasizing the Department's proactive response to climate change.[3]

SAMHSA leads public health efforts to advance the behavioral health of the nation. SAMHSA's mission is to reduce the impact of substance abuse and mental illness on America's communities. SAMHSA accomplishes this mission by working closely with other federal partners, state, local, tribal, and territorial governments, health care providers, academic institutions, persons with lived experience and family members and caregivers to promote mental health, prevent substance misuse, and provide treatments and supports to foster recovery. SAMHSA works closely with such partners as the Administration for Strategic for Preparedness and Response, Health Resources and Services Administration, Centers for Medicare & Medicaid Services, Centers for Disease Control and Prevention and other agencies to expand access to behavioral health services, ensure compliance with the Mental Health Parity and Addiction Equity Act, and provide services to vulnerable populations.

SAMHSA also supports such programs as the Substance Abuse and Mental Health Block Grants, Disaster Technical Assistance Center, Projects for Assistance in Transition from Homelessness emphasizing services for vulnerable populations. Through these and other grants and activities supported by SAMHSA's Office of Behavioral Health Equity and Office of Tribal Affairs and Policy, SAMHSA, consistent with the Administration's January 2021 Executive Orders, works to ensure disadvantaged and underserved communities and individuals experiencing behavioral health conditions are supported.

Increasingly, climate change is impacting, directly and indirectly, clients, providers, caregivers, and communities, and in particular, persons with behavioral health conditions. For instance, climate change may increase the likelihood of extreme weather events, such as heatwaves, that adversely impact persons with psychiatric conditions.[4] Hurricanes may disrupt access to and participation in behavioral health treatment and recovery supports for people with substance use and/or mental disorders. For instance, hurricanes may disrupt access to medications or increase anxiety, depression, and substance use.[5] [6] Hurricanes may also disrupt access to the SAMHSA identified four major dimensions of recovery—health, home, purpose, and community. In addition, growing numbers of youth and others are experiencing heightened anxiety related to current and potential impacts of climate change. Climate emergencies, such as droughts, also may lead to loss of community cohesion, depopulation, loss of natural resources, and loss of economic opportunities.[7] Under-resourced populations are among those most impacted by climate change because of their inadequate access to healthy foods, lack of stable housing and healthcare barriers.[8]

SAMHSA programs, along with those of other HHS and federal agencies, are working to address these impacts. For instance, SAMHSA participates in the National Integrated Heat Health Information System, which works to mitigate the health impacts of extreme heat and supports the recently launched website, Heat.gov. In collaboration with the Federal Emergency Management Agency, SAMHSA also supports the Crisis Counseling Assistance and Training Program, which provides outreach and psychosocial support following disasters.

Consistent with its mission and the Administration's focus on climate change and health equity, SAMHSA seeks input on how its programs, technical assistance and training, and other resources can support clients, providers, family members and communities in confronting the impacts of climate change. Specifically, SAMHSA seeks input on the following questions:

A. What should SAMHSA's top priorities be with respect to climate change and behavioral health? What are current strengths or gaps in SAMHSA's work in this area?

B. What should SAMHSA's top priorities be to ensure behavioral health equity with respect to climate change?

C. Which population(s) are most vulnerable to the behavioral health impact(s) of climate change? How can SAMHSA communicate with such population(s) and others to support their preparedness for the behavioral health impact(s) of climate change?

D. In thinking about behavioral health, what are the top lessons learned from past climate-related emergencies and natural disasters, such as recent or past hurricanes, heat waves, wildfires, or other events?

E. What peer-reviewed articles, papers, toolkits, listservs or other resources related to climate change should SAMHSA highlight in its work with states, local, tribal and territorial health authorities, behavioral health providers, grant recipients, national and local stakeholder organizations, and the general public?

F. Should SAMHSA programs highlight the importance of climate change to its grant recipients? If so, how?

G. What barriers exist in SAMHSA's programs or regulations that make it difficult to prepare for, mitigate, respond to or recover from the impacts of climate change on mental health or substance use disorders?

H. What steps should SAMHSA take to help states, local, tribal and territorial health authorities, grant recipients and stakeholders, behavioral health providers, national and local stakeholder organizations, and the general public address the impacts of climate change and the needs of underserved populations?

I. Can SAMHSA promote behavioral health equity by addressing intergenerational trauma resulting from climate change? If so, how?

J. How can SAMHSA support access to behavioral health and climate change resources and supports for future generations?

K. How can SAMHSA effectively collaborate with governmental and non-governmental partners to facilitate adaption to current and future climate change impacts?

L. What research should be prioritized to build the evidence base on how climate change affects mental health and substance use disorder outcomes?

Endnotes

[1] 86 FR 7619 (2021).

[2] 86 FR 7009 (2021).

[3] HHS Climate Action Plan, Sept. 2021, *https://www.hhs.gov/sites/default/files/hhs-climate-action-plan-9-28-2021.pdf.*

[4] See *e.g.,* Disaster Behavioral Health in an Era of Climate Change, Dialogue, 2022; 17(3), *https://www.samhsa.gov/sites/default/files/dtac-dialogue-vol-17-issue-3.pdf;* Mental Health and Our Changing Climate, 2021 Edition, *https://ecoamerica.org/mental-health-and-our-changing-climate-2021-edition/;* N. Obradovich and K. Minor, Identifying and Preparing for the Mental Health Burden of Climate Change, JAMA Psychiatry 2022 Apr 1;79(4):285–286. doi: 10.1001/jamapsychiatry.2021.4280; R.

Thompson *et. al.,* Associations between high ambient temperatures and heat waves with mental health outcomes: a systematic review. Public Health. 2018 Aug;161:171–191. doi: 10.1016/j.puhe.2018.06.008. Epub 2018 Jul 12. PMID: 30007545; D. Dodgen *et. al.,* 2016: Ch. 8: Mental Health and Well-Being. The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment. U.S. Global Change Research Program, Washington, DC, 217–246. *http://dx.doi.org/10.7930/J0TX3C9H.*

[5] K. Bevilacqua *et. al.* Understanding Associations Between Hurricane Harvey Exposure and Mental Health Symptoms Among Greater Houston-Area Residents. Disaster Med Public Health Prep. 2020 Feb;14(1):103–110. doi: 10.1017/dmp.2019.141. PMID: 32019618; JM Shultz and S. Galea, Mitigating the Mental and Physical Health Consequences of Hurricane Harvey. JAMA. 2017;318(15):1437–1438. doi:10.1001/jama.2017.14618; E.A. Storch et. al., Psychiatric Diagnoses and Medications for Hurricane Harvey Sheltered Evacuees, Community Mental Health Journal, 2019; 55 (7): 1099–1102. doi: 10.1007/s10597–019–00378–9.

[6] See *e.g.,* L. Elliott *et al.,* Disaster preparedness among opioid treatment programs: Policy recommendations from state opioid treatment authorities. International Journal of Disaster Risk Reduction, 2017; 23: 152–159. *doi.org/10.1016/j.ijdrr.2017.05.001;* A.R. Griffin, *et. al.,* A Crisis Within a Crisis: The Extended Closure of an Opioid Treatment Program After Hurricane Sandy. Journal of Drug Issues, 2018; 48(4), 536–545. *doi.org/10.1177/0022042618779541;* H. Matusow *et al.,* Challenges to Opioid Treatment Programs After Hurricane Sandy: Patient and Provider Perspectives on Preparation, Impact, and Recovery. Substance Use & Misuse, 2018; 53(2), 206–219. *https://doi.org/10.1080/10826084.2016.1267225;* PJ Joudrey *et. al.,* Assessment of Community-Level Vulnerability and Access to Medications for Opioid Use Disorder, JAMA Network Open. 2022;5(4):e227028. doi:10.1001/jamanetworkopen.2022.7028.

[7] H. Vins et. al. The mental health outcomes of drought: a systematic review and causal process diagram. Int J Environ Res Public Health. 2015;12(10):13251–13275. doi: 10.3390/ijerph121013251. LA Palinkas and M. Wong, M. Global climate change and mental health. Current Opinion in Psychology, 2020; 32, 12–16. *https://doi.org/10.1016/j.copsyc.2019.06.023.*

[8] See *e.g.,* Behavioral Health Equity. *https://www.samhsa.gov/behavioral-health-equity.*

How To Submit a Response

Responses will be accepted through October 31, 2022. Responses must be emailed to *ClimateChange@SAMHSA.HHS.gov.* Please include ''Request for Information: SAMHSA's Role in Climate Change'' in the subject line.

Responders are free to address any or all the questions listed above. Please identify the question or question(s) to which you are responding. Responses also may address concerns or issues not identified above.

The submitted information will be reviewed by SAMHSA and HHS staff. However, individual comments may not be acknowledged by SAMHSA due to the volume of comments received.

Responses to this RFI are entirely 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.

SAMHSA will use the information submitted in response to this RFI at its discretion. SAMHSA 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), contract(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.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–18834 Filed 8–30–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2022 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award supplemental funding.

SUMMARY: This is a notice of intent to award supplemental funding to the National Training and Technical Assistance Center for Certified Community Behavioral Health Clinics—Expansion Grant (TTA–CCBHC) recipient funded in FY 2021 under Funding Opportunity Announcement SM–21–015. This is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting an administrative supplement, which is consistent with the initial award, of up to $150,000 for one-year to the TTA–CCBHC recipient, The National Council for Mental Wellbeing. This supplement will provide support to new Certified Community Behavioral Health (CCBHC) recipients that have opted to participate in the SAMHSA/NIH Evidence-Based Practices Implementation Science Pilot as noted in the Notice of Funding Opportunities (NOFOs) in FY 2022, CCBHC-Planning, Development, and Implementation (SM–22–002) and CCBHC-Improvement and Advancement (SM–22–012). The technical assistance will provide the following: (1) support to SAMHSA and CCBHC grant recipients to develop capacity and the ability to implement and sustain effective treatment and practices; (2) support delivery of evidence-based practices with fidelity; and (3) identification and/or development of resources that can be used by CCBHC recipients to augment the implementation of effective practices in alignment with the CCBHC certification criteria. This is not a formal request for application. Assistance will only be provided to the TTA–CCBHC recipient, The National Council for Mental Wellbeing, based on the receipt of a satisfactory application and associated budget. This recipient was funded in FY 2021 under Funding Opportunity Announcement SM–21–015 with a project end date of September 29, 2026.

FOR FURTHER INFORMATION CONTACT: Mary Blake, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone (240) 276–1747; email: *mary.blake@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: FY 2021 National Training and Technical Assistance Center for Certified Community Behavioral Health Clinics—Expansion Grant (SM–21–015).

Assistance Listing Number: 93.243.

Justification: Eligibility for this supplemental funding is limited to The National Council for Mental Wellbeing which was funded in FY 2021 under the National Training and Technical Assistance Center for Certified Community Behavioral Health Clinics—Expansion Grant. The National Council for Mental Wellbeing has special expertise in completing activities that support SAMHSA-funded CCBHC grant recipients and their ability to effectively implement evidence-based and effective practices in alignment with the CCBHC Certification Criteria.

Authority: Section 520A of the Public Health Service Act, as amended.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–18802 Filed 8–30–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2022 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award supplemental funding.

SUMMARY: This is a notice of intent to award supplemental funding to the 13 Mental Health Technology Transfer Center (MHTTC) Cooperative Agreement recipients funded in FY 2018 under Funding Opportunity Announcement SM–18–015. This is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting one-year administrative supplements up to $304,081 per recipient.

This supplement will provide continued direct technical assistance (TA) and training on the implementation and delivery of mental health services in schools and school systems, including training and TA provided to Project AWARE grantees. This will involve not only TA to the general field but provision of direct and tailored TA to grantees on school-based mental health services implementation. This is not a formal request for application. Assistance will only be provided to the Mental Health Technology Transfer Center Cooperative Agreement grant recipients based on receipt of a satisfactory application and associated budget. These recipients were funded in FY 2018 under the Mental Health Technology Transfer Center Cooperative Agreement Funding Opportunity Announcement SM–18–015 with a project end date of August 29, 2023.

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: FY 2018 Mental Health Technology Transfer Center Cooperative Agreements, SM–18–015.

Assistance Listing Number: 93.243.

Authority: Section 520A of the Public Health Service Act, as amended.

Justification: Eligibility for this supplemental funding is limited to the 13 Mental Health Technology Transfer Center Cooperative Agreement recipients that were funded in FY 2018 under the Mental Health Technology Transfer Center Cooperative Agreement (SM–18–015). The recipients have unique and special expertise in accelerating the adoption and implementation of mental health-related evidence-based practices; heightening the awareness, knowledge, and skills of the workforce that addresses the needs of individuals with serious mental illness or serious emotional disturbance; fostering regional and national alliances among culturally diverse practitioners, researchers, policy makers, family members, and consumers of mental health services; and ensuring the availability of training and technical assistance to SAMHSA/Center for Mental Health Services grant recipients. The MHTTCs are uniquely positioned to coordinate and manage SAMHSA's national efforts to ensure that high quality, effective mental health treatment and recovery support services, and evidence-based practices are available for all individuals with mental disorders, especially those with serious mental illness or serious emotional disturbance.

Contact: Kimberly Reynolds, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone (240) 276–2825; email: *Kimberly.reynolds@samhsa.hhs.gov*.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–18800 Filed 8–30–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: ''**Notification of Intent To Use Schedule III, IV, or V Controlled Medications for the Treatment of Opioid Use Disorder**'' **Under 21 U.S.C. 823(g)(2) (OMB No. 0930–0234 and OMB No. 0930–0369)—Revision**

The Drug Addiction Treatment Act of 2000 (''DATA,'' Pub. L. 106–310) amended the Controlled Substances Act (21 U.S.C. 823(g)(2)) to permit qualifying practitioners to seek and obtain waivers to prescribe certain approved controlled medications for the treatment of opioid use disorder. The legislation set eligibility and certification requirements as well as an interagency notification review process for practitioners who seek waivers. To implement these provisions, SAMHSA developed Notification of Intent Forms that facilitate the submission and review of notifications.

On October 24, 2018, the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act (Pub. L. 115–71) was signed into law. Sections 3201–3202 of the SUPPORT Act made several amendments to the Controlled Substances Act regarding office-based opioid use disorder treatment that affords practitioners greater flexibility in the provision of Medications for Opioid Use Disorder (MOUD).

The SUPPORT Act expands the definition of ''qualifying other practitioner'' enabling Clinical Nurse Specialists, Certified Registered Nurse Anesthetists, and Certified Nurse Midwives (CNSs, CRNAs, and CNMs) to apply for a Drug Addiction Treatment Act of 2000 (DATA) waiver. It also allows qualified practitioners (*i.e.,* MDs, DOs, NPs, PAs, CNSs, CRNAs, and CNMs) who are board certified in addiction medicine or addiction psychiatry, -or- practitioners who provide MOUD in a qualified practice setting, to start treating up to 100 patients in the first year of MOUD

practice (as defined in 42 CFR 8.2) with a waiver.

Further, the SUPPORT Act extends the ability to treat up to 275 patients to ''qualifying other practitioners'' (*i.e.,* NPs, PAs, CNSs, CRNAs, and CNMs) if they have a waiver to treat up 100 patients for at least one year and provide MOUD with covered medications (as such terms are defined under 42 CFR 8.2) in a qualified practice setting as described under 42 CFR 8.615.

Finally, the SUPPORT Act also expands how physicians could qualify for a waiver. Under the statute now, physicians can qualify for a waiver if they have received at least 8 hours of training on treating and managing patients with opioid use disorder, as listed in the statute if the physician graduated in good standing from an accredited school of allopathic medicine or osteopathic medicine in the United States during the 5-year period immediately preceding the date on which the physician submits a Notice of Intent to SAMHSA. In order to expedite the new provisions of the SUPPORT Act, SAMHSA sought and received a Public Health Emergency Paperwork Reduction Act Waiver.

On April 28, 2021 the Department of Health and Human Services (HHS) issued the new Practice Guidelines for the Administration of Buprenorphine for Treating Opioid Use Disorder (86 FR 22439) in an expedited manner. The new Practice Guidelines allow practitioners who wish to obtain a 30-patient waiver to forego the 8-hour training requirement for physicians and 24-hour training for other qualifying practitioners. Practitioners utilizing this training exemption are limited to treating no more than 30-patients at a time and time spent practicing under this exemption will not qualify the practitioner to qualify for a higher patient level. In addition, the new Practice Guidelines removed the requirement to provide counseling and other ancillary services (*i.e.,* psychosocial services).

The collection of information within the application is essential to the implementation of SAMHSA's mission to reduce the impact of substance use disorders on America's communities. Practitioners may use these forms for various types of notifications: (a) New Notification to treat up to 30 patients with training or without training; (b) New Notification, with the intent to immediately facilitate treatment of an individual (one) patient; (c) Second notification of need and intent to treat up to 100 patients; (d) New notification to treat up to 100 patients, and (e) New notification to treat up to 275 patients. The forms provide the information necessary to determine whether practitioners meet the qualifications for waivers set forth under the law at the 30E-, 30-, 100-, 275E-, and 275-patient limits. This includes the annual reporting requirements for practitioners with waivers for a 275-patient limit.

Under ''new'' notifications, practitioners may make their initial waiver requests to SAMHSA. ''Immediate'' notifications inform SAMHSA and the Attorney General of a practitioner's intent to prescribe immediately to facilitate the treatment of an individual (one) patient under 21 U.S.C. 823(g)(2)(E)(ii). The form collects data on the following items: Practitioner name; state medical license number; medical specialty; and DEA registration number; address of primary practice location, telephone and fax numbers; email address; purpose of notification: new, immediate, or renewal; certification of qualifying criteria for treatment and management of patients with opioid use disorder; certification of capacity to provide directly or refer patients for appropriate counseling and other appropriate ancillary services, as applicable; certification of maximum patient load, certification to use only those medication formulations that meet the criteria in the law. The form also notifies practitioners of Privacy Act considerations and permits practitioners to expressly consent to disclose limited information to the SAMHSA Buprenorphine Physician and Behavioral Health Treatment Services locators. The following table summarizes the estimated annual burden for the use of this form.

42 CFR citation	Purpose of submission	Estimated number of respondents	Responses/ respondent	Burden/ response (hr.)	Total burden (hrs.)
	Notification of Intent	1,800	1	0.083	149
	Notification to Prescribe Immediately	60	1	0.083	5
	Notice to Treat up to 100 patients	600	1	0.04	24
	Notice to Treat up to 275 patients	960	1	0.081	78
Subtotal		3,420			256
Burden Associated With the Final Rule That Increased the Patient Limit					
8.620 (a)–(c)	Request for Patient Limit Increase *	620	1	0.5	310
	Request for Patient Limit Increase *	620	1	0.5	310
	Request for Patient Limit Increase *	620	1	0.5	310
8.64	Renewal Request for a Patient Limit Increase *	312	1	0.5	156
	Renewal Request for a Patient Limit Increase *	312	1	0.5	156
	Renewal Request for a Patient Limit Increase *	312	1	0.5	156
8.655	Request for a Temporary Patient Increase for an Emergency *.	12	1	3	36
	Request for a Temporary Patient Increase for an Emergency *.	12	1	3	36
	Request for a Temporary Patient Increase for an Emergency *.	12	1	3	36
Subtotal		2,497			1,279
Burden Associated With the Final Rule That Outlined the Reporting Requirements					
8.635	Practitioner Reporting Form *	1,620	1	3	4,860
	''Qualifying Other Practitioner'' under 21 USC § 823(g)(2)—Nurse Practitioners.	979	1	0.066	65

42 CFR citation	Purpose of submission	Estimated number of respondents	Responses/ respondent	Burden/ response (hr.)	Total burden (hrs.)
	"Qualifying Other Practitioner" under 21 USC § 823(g)(2)—Physician Assistants.	708	1	0.066	47
	"Qualifying Other Practitioner" under 21 USC § 823(g)(2)—Certified Nurse Specialists.	708	1	0.066	47
	"Qualifying Other Practitioner" under 21 USC § 823(g)(2)—Certified Nurse Mid-Wives.	708	1	0.066	47
	"Qualifying Other Practitioner" under 21 USC § 823(g)(2)—Certified Registered Nurse Anesthetists.	708	1	0.066	47
Sub Total	.....	5,431	.....	.....	5,112
Total Burden ...	.....	6,561	.....	.....	6,647

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–A, Rockville, Maryland 20857, *OR* email a copy to *Carlos.Graham@samhsa.hhs.gov.* Written comments should be received by October 31, 2022.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–18801 Filed 8–30–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2022–0045]

Homeland Security Advisory Council

AGENCY: Office of Partnership and Engagement (OPE), Department of Homeland Security (DHS).

ACTION: Notice of closed Federal advisory committee meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet virtually on Wednesday, September 14, 2022. The meeting will be closed to the public.

DATES: The meeting will take place from 2:30 p.m. ET to 3:30 p.m. ET on Wednesday, September 14, 2022.

Public Participation: The meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Rebecca Sternhell, Executive Director, HSAC at 202–891–2876 or *HSAC@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. appendix), which requires a portion of each FACA committee meeting to be open to the public unless the President, or the head of the agency to which the advisory committee reports, determines that a portion of the meeting may be closed to the public in accordance with 5 U.S.C. 552b(c).

The HSAC provides organizationally independent, strategic, timely, specific, actionable advice, and recommendations to the Secretary of Homeland Security on matters related to homeland security. The Council consists of senior executives from government, the private sector, academia, law enforcement, and non-governmental organizations.

The HSAC will meet in a closed session from 2:30 p.m. to 3:30 p.m. ET to participate in sensitive discussions with DHS senior leadership regarding current state of threats to the nation's cybersecurity and critical infrastructure.

Basis for Closure: In accordance with section 10(d) of FACA, the Secretary of Homeland Security has determined this meeting must be closed during this session as the disclosure of the information relayed would be detrimental to the public interest for the following reasons:

The Council meeting will include an operational discussion on the nation's cybersecurity that contains For Official Use Only and Law Enforcement Sensitive information. Specifically, the Council will be briefed on DHS operations related to threats on the nation's cybersecurity and efforts the Department is taking to mitigate these threats. Senior Leadership will provide detailed information on the current state of threats to the nation's cybersecurity. The session is closed pursuant to 5 U.S.C. 552b(c)(7) and(9)(B).

Dated: August 26, 2022.

Michael J. Miron,

Deputy Executive Director, Homeland Security Advisory Council, Department of Homeland Security.

[FR Doc. 2022–18819 Filed 8–30–22; 8:45 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7061–N–12]

60-Day Notice of Proposed Information Collection: Public Housing Reform Act: Changes to Admission and Occupancy Requirements; OMB No.: 2577–0230

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, 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:* October 31, 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, REE, 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: Leea J. Thornton, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room

3178, Washington, DC 20410; telephone 202–402–6488, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Leea Thornton.

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: Public Housing Reform Act: Changes to Admission and Occupancy Requirements.

OMB Approval Number: 2577–0230.

Type of Request: Revision of currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use:

This collection of information implements changes to the admission and occupancy requirements for the public housing program made by the Quality Housing and Work Responsibility (QHWRA) Act of 1998 (Title V of the FY 1999 HUD appropriations Act, Public Law 105–276, 112 Stat. 2518, approved October 21, 1998), and the Housing Opportunity Through Modernization Act of 2016 (HOTMA), section 103, which amends the United States Housing Act of 1937. Both QHWRA and HOTMA made comprehensive changes to HUD's public housing program. These changes include defining an 'over-income family' as one having an annual income 120 percent above the median income for the area for two consecutive years and includes new mandatory annual reporting requirements on the number of over-income families residing in public housing and the total number of families on the public housing waiting lists at the end of each reporting year.

The purpose of the admission and occupancy policy requirement is to ensure that public housing agencies have written documentation of their respective admission and occupancy policies for both the public and the Department of Housing and Urban Development (HUD). Public housing authorities must have on hand and available for inspection, policies related to admission and occupancy, to respond to inquiries from tenants, legal-aid services, HUD, and other interested parties informally or through the Freedom of Information Act of policies relating to eligibility for admission and continued occupancy, local preferences, income limitations, and rent determination. HOTMA now requires PHAs to make an update to their Admission and Occupancy policy to apply local over-income limits, and annually report on the number of over-income families living in their public housing units as well as the number of families on the public housing waiting list.

Additional revisions have been made to this collection to reflect adjustments in calculations based on the total number of current, active public housing agencies (PHAs) to date. The number of active public housing agencies has changed from 2,897 to 2,774 [1] since the last approved information collection. In general, the number of PHAs can fluctuate due to many factors, including but not limited to the merging of two or more PHAs or the termination of the public housing programs due to the Rental Assistance Demonstration.

Lastly, to provide an opportunity to respondents to review, this notice includes a burden statement that will able be made available on HUD's website:

The public reporting burden for this collection of information for the Admission and Occupancy Requirements of Public Housing is estimated to average 24 hours, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, to the Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600. When providing comments, please refer to OMB Approval No. 2577–0230. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

This collection of information is required to ensure that public housing agencies have written documentation of their respective admission and occupancy policies for both the public and HUD pursuant to regulations found at 24 CFR 903.7 and 960. The information will be used to provide HUD with sufficient information to enable a determination that HUD statutory and regulatory requirements have been met. No assurances of confidentiality are provided for this information collection.

[1] The Public Housing (PH) Data Dashboard as of 5/16/22, *https://www.hud.gov/program_offices/public_indian_housing/programs/ph/PH_Dashboard.*

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 2,774.

Estimated Number of Responses: 2,774.

Frequency of Response: 1.

Average Hours per Response: 24.

Total Estimated Burdens: 66,576.

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 L. Miller-Pittman,

Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2022–18828 Filed 8–30–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7056–N–27]

60-Day Notice of Proposed Information Collection: Comment Request; New Construction Subterranean Termite Protection for New Homes; OMB Control No.: 2502–0525

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for

review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 31, 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, REE, 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.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

A. Overview of Information Collection

Title of Information Collection: New Construction Subterranean Termite Protection for New Homes.

OMB Approval Number: 2502–0525.

Form Number: Form HUD–NPMA–99–A and Form HUD–NPMA–99–B.

Type of Request: Extension of a currently approved collection.

Description of the Need for the Information and Proposed Use: HUD regulations at 24 CFR 200.926d(b)(3) require that the sites for HUD insured structures must be free of termite hazards. The HUD–NPMA–99–A requires the builder to certify that all required treatment for termites was performed by an authorized pest control company with the builder's guarantee of the treated area against infestation for one year. The form HUD–NPMA–99–B requires a licensed pest control company to provide to the builder a record of specific treatment information for the prevention of termites. When applicable, the Form HUD–NPMA–99–B must accompany the Form HUD–NPMA–99–A. If the requested data are not collected, new home purchasers and HUD are subject to the risk of insuring a mortgage loan for a home that is infested by termites.

Agency Form Numbers: Form HUD–NPMA–99–A and Form HUD–NPMA–99–B.

Respondents: Business.

Estimated Number of Respondents: 93,630.

Estimated Number of Responses: 187,260.

Frequency of Response: On Occasion.

Average Hours per Response: 0.083.

Total Estimated Burdens (Hours): 31,178.8.

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 comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Nathan Shultz,

Acting Chief of Staff, Office of Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2022–18830 Filed 8–30–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7061–N–11]

60-Day Notice of Proposed Information Collection: Housing Opportunity Through Modernization Act of 2016 (HOTMA): Public Housing Waiting List Data Collection Tool

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:* October 31, 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: Leea J. Thornton, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202–402–6455, (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. Leea Thornton.

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: Housing Opportunity Through

Modernization Act of 2016 (HOTMA): Public Housing Waiting List Data Collection Tool.

OMB Approval Number: 2577–XXXX.

Type of Request: New Collection.

Form Number: Form HUD–XXXXX.

Description of the need for the information and proposed use: This collection of information implements a statutory requirement made by Section 103 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA). HOTMA was signed into law on July 29, 2016 (Pub. L. 114–201, 130 Stat. 782). Section 103 of HOTMA amends section 16(a) of the United States Housing Act of 1937 (42 U.S.C. 1437n(a)) (1937 Act).

Section 103 of HOTMA states that after a public housing family has been over-income for two consecutive years, a public housing agency (PHA) must either: (1) charge the over-income family a monthly rent that is the higher of fair market rent under section 8(c) for the dwelling unit or the monthly amount of public housing subsidy provided for the dwelling unit; or (2) terminate the tenancy of the over-income family no later than 6 months after the end of the two-year period. Additionally, pursuant to section 103 of HOTMA, PHAs must submit an annual report on two specific data points: (1) The number of over-income families residing in public housing and (2) the number of families on the public housing waiting lists.

The number of over-income families currently residing in public housing is already being collected via the form HUD–50058. Therefore, PHAs will be allowed to use income data already provided by form HUD–50058, under OMB approval number 2577–0083, which is submitted electronically in the PIH Information Center (PIC) system to satisfy the first data requirement to report the annual number of over-income families residing in public housing. The requirement for PHAs to report on the number of over-income families will be satisfied with currently-existing 50058 reporting requirements and HUD will compile this with the data provided on the number of families on the public housing waiting list for the public report.

The requirement for PHAs to report on the number of families on the public housing waiting list is new and so has resulted in the need to for this collection of information request. Each PHA will now be required to submit the total number of families on the public housing waiting lists annually utilizing the newly created electronic Public Housing Waiting List Data Collection Tool. The data on the total number of unduplicated families on the public housing waiting list will be provided by the PHA in the aggregate and no personally identifiable information will be collected. Section 103 of HOTMA permits HUD to determine the format of these annual reports and HUD has elected to utilize PIC data when possible as this will result in no additional burden to the PHA. Per the requirements of Section 103 of HOTMA, HUD will compile the data provided in PIC and the new data that will be collected via the electronic Public Housing Waiting List Data Collection Tool to publish this information annually in a publicly available report.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 2,774 (This number excludes HCV-only PHA's).

Estimated Number of Responses: 2,774 (This number excludes HCV-only PHA's).

Frequency of Response: Annually.

Average Hours per Response: 0.5 of an hour (30 min).

Total Estimated Burdens: 1,387 Hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Public Housing Waiting List Data Collection Tool	**2,774	1	1	0.5 of an hr. (30 min)	1,387	*$21.82	$30,264
Total	2,774	1	1	0.5 hr.	1,387	21.82	30,264

*Based on the U.S. national average of the hourly pay for an Executive Assistant (*payscale.com,* 3/7/2022).
**Based on data from the Public Housing (PH) Dashboard updated as of 8/1/22.

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 L. Miller-Pittman,

Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2022–18829 Filed 8–30–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GR22ZS00MD82100; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Assessing Community Needs for Terrestrial Analog Studies

AGENCY: Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing a request to approve an information collection in use without an approval.

DATES: Interested persons are invited to submit comments on or before September 30, 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. Send comments by mail to the U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov*. Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Lauren Edgar by email at *ledgar@usgs.gov,* or by telephone at 928–556–7213. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 16, 2022. No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The survey is designed to gather feedback from community members that have a self-described interest in the use of terrestrial analogs. The survey is intended to assess the obstacles that exist related to training, research, sample collections, and data archiving within analog projects, the need for coordination across the community, and what products and services might be needed to further terrestrial analog use and to support exploration. Results from the survey will not be targeted at a particular audience but will instead be used to encourage responses and actions by various parts of the community.

Title of Collection: Assessing Community Needs for Terrestrial Analog Studies.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: NEW.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 300.

Total Estimated Number of Annual Responses: 300.

Estimated Completion Time per Response: 30 minutes on average.

Total Estimated Number of Annual Burden Hours: 150.

Respondent's Obligation: Voluntary.

Frequency of Collection: As needed.

Total Estimated Annual Nonhour Burden Cost: 0.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Justin Hagerty,

USGS Astrogeology Science Center Director, Southwest Region.

[FR Doc. 2022–18809 Filed 8–30–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 223]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service and the BLM, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on September 30, 2022.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7210.

FOR FURTHER INFORMATION CONTACT: Janet Wilkins, Chief Cadastral Surveyor for Colorado, telephone: (303) 239–3818; email: *j1wilkin@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The plat incorporating the field notes of the remonumentation in Township 18 South, Range 71 West, Sixth Principal Meridian, Colorado, was accepted on June 1, 2022.

The plat and field notes of the dependent resurvey and subdivision of sections in Township 8 South, Range 96 West, Sixth Principal Meridian,

Colorado, were accepted on June 1, 2022.

The plat, in three sheets, incorporating the field notes of the dependent resurvey in Township 9 South, Range 78 West, Sixth Principal Meridian, Colorado, was accepted on June 16, 2022.

The plat and field notes of the dependent resurvey and survey in Township 10 South, Range 80 West, Sixth Principal Meridian, Colorado, were accepted on July 18, 2022.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. Chap. 3)

Janet Wilkins,

Chief Cadastral Surveyor.

[FR Doc. 2022–18762 Filed 8–30–22; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034426; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent to Repatriate Cultural Items: U.S. Army Corps of Engineers, Mobile District, Mobile, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, Mobile District, intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Troup County, GA.

DATES: Repatriation of the cultural items in this notice may occur on or after September 30, 2022.

ADDRESSES: Ms. Alexandria Smith, U.S. Army Corps of Engineers, Mobile District, 109 St. Joseph Street, P.O. Box 2288, Mobile, AL 36628–0001, telephone (251) 690–2728, email *Alexandria.N.Smith@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the U.S. Army Corps of Engineers, Mobile District. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the U.S. Army Corps of Engineers, Mobile District.

Description

Between 1966 and 1968, the University of Georgia conducted excavations at the Burnt Village Site (9TP9), in Troup County, GA, in advance of the construction and subsequent inundation of the West Point Lake reservoir. Human remains were identified in a minimum of 20 individual grave locations, but due to preservation issues, an unknown number of individuals were uncovered but not exhumed.

Feature 153 was documented as a burial location. The collection from the Burnt Village site, which has been housed at the University of Georgia since the excavation, contains objects from Feature 153, but no human remains. Based on this circumstantial evidence, the human remains associated with these objects were never removed from the Burnt Village Site.

The 95 objects under the control of Mobile District known to originate from Feature 153 include nine glass fragments, two lots of beads, nine individual beads (tube and seed), two lots of wood/charcoal, five charred pieces of wood, one lot of charred seeds, three brass fragments, one iron fragment, one lead fragment, one unidentified metal fragment, 45 ceramic sherds, one lot of daub, six individual pieces of daub, two pieces of quartz, one lot of faunal remains, three individual faunal skeletal elements, and three unmodified rocks.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace this relationship: geographical, archeological, linguistic, folkloric, oral traditional, historical, and expert opinion. Geographically, the Burnt Village site is the location of the historically known Creek Town of Okfuskeneena. The site is located within established Creek Indian territory on the western bank of the central Chattahoochee River in Troup County, GA. This area is both within treaty-designated Creek lands, and land known through historic and ethnographic accounts as being home to the Creek Indians. Archeological investigations of the site confirmed historical accounts of the village location, which was recorded as being attacked on September 27, 1793, by white settlers. Evidence includes diagnostic artifacts that correspond to those expected and described in historical accounts. Linguistic and folkloric evidence for settlements in the area reflect a Creek occupation of the central Chattahoochee River Valley, including the area of the Burnt Village site.

Historic accounts indicate that the survivors of Creek Town of Okfuskeneena fled and were welcomed into neighboring Creek polities, which eventually became part of the Creek Confederations. Oral traditional information provided by tribal members further demonstrates that the descendants of the Town of Okfuskeneena currently reside within, and are part of, The Muscogee (Creek) Nation.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the U.S. Army Corps of Engineers, Mobile District, has determined that:

- The 95 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have

been removed from a specific burial site of a Native American individual.

- There is a relationship of shared group identity that can be reasonably traced between the cultural items and The Muscogee (Creek) Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to Ms. Alexandria Smith, U.S. Army Corps of Engineers, Mobile District, 109 St. Joseph Street, P.O. Box 2288, Mobile, AL 36628–0001, telephone (251) 690–2728, email *Alexandria.N.Smith@usace.army.mil.* Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after September 30, 2022. If competing requests for repatriation are received, the U.S. Army Corps of Engineers, Mobile District, must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The U.S. Army Corps of Engineers, Mobile District, is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: August 24, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–18738 Filed 8–30–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–555 and 731–TA–1310 (Review)]

Certain Amorphous Silica Fabric From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countervailing and antidumping duty orders on certain amorphous silica fabric from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: May 9, 2022.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 9, 2022, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 5511, February 1, 2022) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on August 19, 2022. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before August 26, 2022 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by August 26, 2022. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the responses to its notice of institution filed on behalf of Auburn Manufacturing, Inc. and SGL Composites Inc., domestic producers of amorphous silica fabric, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 19, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–18804 Filed 8–30–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–554 and 731–TA–1309 (Review)]

Biaxial Integral Geogrid Products From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countervailing and antidumping duty orders on biaxial integral geogrid products from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: May 9, 2022.

FOR FURTHER INFORMATION CONTACT: Caitlyn Hendricks-Costello (202–205–2058), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On May 9, 2022, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 5508, February 1, 2022) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on August 25, 2022. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before September 1, 2022 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by September 1, 2022. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 26, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–18799 Filed 8–30–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–929 (Rescission)]

Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same; Notice of Commission Determination To Institute a Rescission Proceeding; Rescission of a Limited Exclusion Order and Three Cease and Desist Orders; Termination of the Rescission Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a rescission proceeding and to rescind a limited exclusion order (''LEO'') three cease and desist orders (''CDOs'') issued in the underlying investigation. The rescission proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the response to its notice of institution filed on behalf of Tensar Corporation, a domestic producer of biaxial and triaxial integrated geogrid products, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

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 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: On September 9, 2014, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'') based a complaint filed by complainants Adrian Rivera and Adrian Rivera Maynez Enterprises, Inc. (together, ''ARM'') alleging a violation of section 337 by reason of infringement of claims 5–8 and 18–20 of U.S. Patent No. 8,720,320 (''the '320 patent''). 79 FR 53445–46 (Sept. 9, 2014). The notice of institution of the investigation named the following entities as respondents: Solofill, Inc. (''Solofill''); DongGuan Hai Rui Precision Mould Co., Inc. (''DongGuan''); Eko Brands, Inc. (''Eko Brands''); Evermuch Technology Co., Ltd. (''Evermuch Technology''); Ever Much Company Ltd. (''Evermuch Company''); Melitta USA, Inc. (''Melitta''); Spark Innovators Corp. (''Spark''); LBP Manufacturing Inc. and LBP Packaging (Shenzhen) Co. Ltd. (together, ''LBP''); B. Marlboros International Ltd. (HK) (''B. Marlboros''); and Amazon.com, Inc. (''Amazon''). 79 FR 53445. The Office of Unfair Import Investigations was also named as a party to the investigation. *Id.*

The Commission terminated the investigation with respect to Melitta, Spark, LBP, and B. Marlboros based on the entry of consent orders and terminated the investigation with respect to Amazon based on a settlement agreement. Order No. 10 (Nov. 19, 2014), *unreviewed by* Notice (Dec. 18, 2014); Order No. 12 (Dec. 16, 2014), *unreviewed by* Notice (Jan. 13, 2015); Order No. 14 (Feb. 26, 2015), *unreviewed by* Notice (Mar. 27, 2015); Order No. 16 (Mar. 18, 2015), *unreviewed by* Notice (Apr. 13, 2015). The Commission also found Eko Brands, Evermuch Technology, and Evermuch Company in default for failing to respond to the complaint and notice of investigation. Order No. 19 (Apr. 22, 2015), *unreviewed by* Notice (May 18, 2015). ARM later withdrew its allegations with respect to claims 8 and 19 of the '320 patent. *See* Order No. 18 (Mar. 24, 2015), *unreviewed by* Notice (Apr. 21, 2015). Accordingly, the only allegations remaining against active respondents were that Solofill and DongGuan violated section 337 with respect to claims 5–7, 18, and 20 of the '320 patent.

On March 17, 2016, the Commission issued a final determination of no violation by Solofill and DongGuan based on its finding that claims 5–7, 18, and 20 of the '320 patent are invalid. 81 FR 15742–43 (Mar. 24, 2016). The Commission, however, found that ARM satisfied the requirements of section 337(g)(1) (19 U.S.C. 1337(g)(1)) with respect to Eko Brands, Evermuch Technology, and Evermuch Company regarding claims 8 and 19 of the '320 patent, and issued an LEO and three CDOs against those entities based on those patent claims. *Id.* Espresso Supply, Inc. purchased Eko Brands in November of 2015 and became subject to the orders against Eko Brands.

On June 14, 2018, in litigation between Eko Brands and ARM, the U.S. District Court for the Western District of Washington entered an order finding that claims 5, 8, and 18–19 of the '320 patent are invalid as obvious. *Eko Brands, LLC* v. *Adrian Rivera Maynez Enterprises, Inc.,* Case No. 2:15–cv–00522–JPD, 2018 WL 2984691 (W.D. Was. Jun. 14, 2018). On July 30, 2018, the Commission temporarily rescinded the LEO and CDOs regarding claims 8 and 19 pending the resolution of any appeal of the district court decision. 83 FR 38178–79 (Aug. 3, 2018). The U.S. Court of Appeals for the Federal Circuit affirmed the district court findings of invalidity of claims 5, 8, and 18–19 of the '320 patent on January 13, 2020, and issued its mandate on February 19, 2020. *Eko Brands, LLC* v. *Adrian Rivera Maynez Enterprises, Inc.,* 946 F.3d 1367 (Fed. Cir. 2020).

On July 26, 2022, Eko Brands and Espresso Supply, Inc. filed an unopposed petition pursuant to Commission Rule 210.76(a) (19 CFR 210.76(a)) to permanently rescind the LEO and CDO issued against them. They state that, as claims 8 and 19 of the '320 patent have been found invalid by the Federal Circuit and the time for further appeal has passed, the Commission should permanently rescind the LEO and CDO. No party responded to the petition.

Having reviewed the petition seeking to rescind the LEO and CDO based on a subsequent finding that claims 8 and 19 of the '320 patent are invalid, the Commission finds that the conditions which led to the issuance of the LEO and CDO no longer exist, and therefore, granting the petition to rescind is warranted under section 337(k) (19 U.S.C. 1337(k)) and the requirements of Commission Rule 210.76(a) are satisfied. The Commission issued the orders under the presumption that those claims were valid (35 U.S.C. 282), which is a condition that no longer exists in light of the district court and Federal Circuit rulings. That changed condition also applies with respect to Evermuch Technology and Evermuch Company. Accordingly, the Commission has determined to institute a rescission proceeding, and to rescind the LEO and three CDOs issued against Eko Brands, Evermuch Technology, and Evermuch Company. The rescission proceeding is terminated.

The Commission vote for this determination took place on August 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: August 25, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–18752 Filed 8–30–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0011]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Application To Make and Register a Firearm—ATF Form 1 (5320.1)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit 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. The proposed information collection (IC) OMB 1140–0011 (Application to Make and Register a Firearm—ATF Form 1 (5320.1)) is being revised to

include changes due to the formatting changes, additional definitions, updates to the instructions, and other minor adjustments due to the Bipartisan Safer Communities Act. The proposed IC is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 30, 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.

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 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;
- 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:* Revision of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Application to Make and Register a Firearm.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 1 (5320.1).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households, Business or other for-profit, Federal Government, State, Local, or Tribal Government.

Other: Not for-profit and Farms.

Abstract: The Application to Make and Register a Firearm—ATF Form 1 (5320.1) must be completed by any person, other than a qualified manufacturer, who wishes to make and register a National Firearms Act (NFA) firearm. For any person other than a government agency, the making incurs a tax of $200.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 25,716 respondents will respond to this collection once annually, and it will take each respondent approximately 3.99783 hours to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 102,808 hours, which is equal to 25,716 (total respondents) * 1 (# of response per respondent) * 3.99783 hours (239.9 minutes or the time taken to prepare each response).

If additional information is required contact: Robert Houser, Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E–206, Washington, DC 20530.

Dated: August 25, 2022.

Robert Houser,

Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–18756 Filed 8–30–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0014]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Application for Tax Paid Transfer and Registration of Firearm—ATF Form 4 (5320.4)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit 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. The proposed information collection (IC) OMB 1140–0014 (Application for Tax Paid Transfer and Registration of Firearm—ATF Form 4 (5320.4) is being updated to include minor changes due to the Bipartisan Safer Communities Act. These include updates to the instructions and questions regarding prohibited persons, adjustments to the definitions of misdemeanor crime of domestic violence and adjudicated mentally defective, and the resolution of other grammatical errors and formatting changes. The proposed IC is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 30, 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.

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 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;
- 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:* Extension with Change of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Application for Tax Paid Transfer and Registration of Firearm.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 4 (5320.4).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households, Business or other for-profit, Federal Government, and State, Local, or Tribal Government.

Other: Not-for-profit institutions, or Farms.

Abstract: The Application for Tax Paid Transfer and Registration of Firearm—ATF Form 4 (5320.4) must be completed to obtain permission to transfer and register a National Firearms Act (NFA) firearm. There is a tax of $5 or $200 on the transfer of an NFA firearm.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 123,339 respondents will respond to this collection once annually, and it will take each respondent an average 3.7843261 hours to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 466,755 hours, which is equal to 123,339 (total respondents) * 1 (# of response per respondent) * 3.7843261 (the total time taken to prepare each response).

If additional information is required contact: Robert Houser, Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E–206, Washington, DC 20530.

Dated: August 25, 2022.

Robert Houser,

Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–18757 Filed 8–30–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0015]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Application for Tax Exempt Transfer and Registration of Firearm—ATF Form 5 (5320.5); Extension With Change of a Currently Approved Collection

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit 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. The proposed information collection (IC) OMB 1140–0015 (Application for Tax Exempt Transfer and Registration of Firearm—ATF Form 5 (5320.5) is being updated to include minor changes due to the Bipartisan Safer Communities Act. These include updates to the instructions and questions regarding prohibited persons, adjustments to the definitions of misdemeanor crime of domestic violence and adjudicated mentally defective, and the resolution of other grammatical errors and formatting changes. The proposed IC is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 30, 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.

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 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;
- 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:* Extension with Change of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Application for Tax Exempt Transfer and Registration of Firearm.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 5 (5320.5).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal Government and State, Local or Tribal Government.

Other: Individuals or households, Business or other for-profit, Not-for-profit institutions, and Farms.

Abstract: The Application for Tax Exempt Transfer and Registration of Firearm—ATF Form 5 (5320.5) is used request permission to transfer and register a National Firearms Act (NFA) firearm, and to claim exemption from the transfer tax.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,591 respondents will respond to this collection once annually, and it will take each respondent approximately 30.309 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 5,350 hours, which is equal to 10,591 (total respondents) * 1 (# of response per respondent) * .5052 hours (30.309 minutes or the time taken to prepare each response).

If additional information is required contact: Robert Houser, Assistant

Director, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E–206, Washington, DC 20530.

Dated: August 25, 2022.

Robert Houser,

Assistant Director, Policy and Planning Staff, Office of the Chief Officer, U.S. Department of Justice.

[FR Doc. 2022–18758 Filed 8–30–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0006]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Application and Permit for Importation of Firearms, Ammunition and Defense Articles—ATF Form 6—Part II (5330.3B)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit 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. The proposed collection OMB 1140–0006 (Application and Permit for Importation of Firearms, Ammunition and Defense Articles—ATF Form 6—Part II (5330.3B)) is being revised to include a Continuation Sheet, so that additional firearms can be listed on the same permit application. The proposed information collection is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 30, 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.

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 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;
- 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:* Revision of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Application and Permit for Importation of Firearms, Ammunition and Defense Articles.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 6—Part II (5330.3B).

Sponsor: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individuals or households.

Abstract: The information collected on the Application and Permit for Importation of Firearms, Ammunition and Defense Articles—ATF Form 6—Part II (5330.3B) is used to determine if the article(s) described in the application qualifies for importation by the importer, and also serves as authorization for the importer.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 400 respondents will respond to this collection once annually, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 200 hours, which is equal to 400 (total respondents) * 1 (# of response per respondent) * .5 (30 minutes or the time taken to prepare each response).

If additional information is required contact: Robert Houser, Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E–206, Washington, DC 20530.

Dated: August 25, 2022.

Robert Houser,

Assistant Director, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–18755 Filed 8–30–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on May 16, 2022, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the ''Act''), Pistoia Alliance, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Medable, Palo Alto, CA; Prism Analytic Technologies Inc, Cambridge, MA; Intelligencia, New York, NY; uncountable Inc, San Francisco, CA; Terra Quantum AG, Rorschach, SWITZERLAND; Chiesi Farmaceutici SpA, Parma, ITALY; Dynaccurate SARL, LUXEMBOURG; Whitespace SARL, Vernier, SWITZERLAND; GNS Healthcare Inc, Somerville, MA; and Gliff Ltd., Aykley Heads, UNITED KINGDOM have been added as parties to this venture.

Also, BioSymmetrics, Huntingdon, NY; Nanome, San Diego, CA; and Nutanix BV, Hoofdorp, NETHERLANDS have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional

written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on February 28, 2022. A corrected notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 20, 2022 (87 FR 43298).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–18817 Filed 8–30–22; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1072]

Importer of Controlled Substances Application: Experic LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Experic 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 September 30, 2022. Such persons may also file a written request for a hearing on the application on or before September 30, 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 July 7, 2022, Experic LLC, 2 Clarke Drive, Cranbury, New Jersey 08512–3619, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols.	7370	I
Psilocybin	7437	I
5-Methoxy-N–N-Dimethyltryptamine.	7431	I
Psilocyn	7438	I
Nabilone	7379	II

The company plans to import drug code 7437 (Psilocybin) and Psilocyn (7438) as bulk powder and Marihuana Extract (7350), Marihuana (7360) Tetrahydrocannabinols (7370) and Nabilone (7379) as finished dosage units for research and clinical trial 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. 2022–18744 Filed 8–30–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–372]

Exempt Chemical Preparations Under the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Order with opportunity for comment.

SUMMARY: The applications for exempt chemical preparations received by the Drug Enforcement Administration (DEA) between August 30, 2021, and March 31, 2022, as listed below, were accepted for filing and have been approved or denied as indicated.

DATES: Interested persons may file written comments on this order in accordance with 21 CFR 1308.23(e). Electronic comments must be submitted, and written comments must be postmarked, on or before October 31, 2022. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. eastern time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–372'' on all correspondence, including any attachments.

Electronic comments: DEA encourages that all comments be submitted through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *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.

Paper comments: Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Terrence L. Boos, Ph.D., Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–8201.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://*

www.regulations.gov and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at *http://www.regulations.gov* for easy reference.

Legal Authority

Section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) authorizes the Attorney General, by regulation, to exempt from certain provisions of the CSA certain compounds, mixtures, or preparations containing a controlled substance, if he finds that such compounds, mixtures, or preparations meet the requirements detailed in 21 U.S.C. 811(g)(3)(B).[1] The Drug Enforcement Administration (DEA) regulations at 21 CFR 1308.23 and 1308.24 further detail the criteria by which the DEA Assistant Administrator may exempt a chemical preparation or mixture from certain provisions of the CSA. The Assistant Administrator may, pursuant to 21 CFR 1308.23(f), modify or revoke the criteria by which exemptions are granted and modify the scope of exemptions at any time.

Exempt Chemical Preparation Applications Submitted Between August 30, 2021, and March 31, 2022

DEA received applications between August 30, 2021, and March 31, 2022, requesting exempt chemical preparation status detailed in 21 CFR 1308.23. Pursuant to the criteria stated in 21 U.S.C. 811(g)(3)(B) and in 21 CFR 1308.23, the Assistant Administrator has found that each of the compounds, mixtures, and preparations described in Chart I below is intended for laboratory, industrial, educational, or special research purposes and not for general administration to a human being or animal and either: (1) contains no narcotic controlled substance and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse; or (2) contains either a narcotic or non-narcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration that the preparation or mixture does not present any potential for abuse and, if the preparation or mixture contains a narcotic controlled substance, is formulated in such a manner that it incorporates methods of denaturing or other means so that the preparation or mixture is not liable to be abused or have ill effects, if abused, and so that the narcotic substance cannot in practice be removed.

Accordingly, pursuant to 21 U.S.C. 811(g)(3)(B), 21 CFR 1308.23, and 21 CFR 1308.24, the Assistant Administrator has determined that each of the chemical preparations or mixtures generally described in Chart I below and specifically described in the application materials received by DEA is exempt, to the extent described in 21 CFR 1308.24, from application of sections 302, 303, 305, 306, 307, 308, 309, 1002, 1003, and 1004 (21 U.S.C. 822–823, 825–829, and 952–954) of the CSA, and 21 CFR 1301.74, as of the date that was provided in the approval letters to the individual requesters.

Scope of Approval

The exemptions are applicable only to the precise preparation or mixture described in the application submitted to DEA in the form(s) listed in this order and only for those above mentioned sections of the CSA and the CFR. In accordance with 21 CFR 1308.24(h), any change in the quantitative or qualitative composition of the preparation or mixture, or change in the trade name or other designation of the preparation or mixture after the date of application requires a new application. The requirements set forth in 21 CFR 1308.24(b)–(e) apply to the exempted materials. In accordance with 21 CFR 1308.24(g), DEA may prescribe requirements other than those set forth in 21 CFR 1308.24(b)–(e) on a case-by-case basis for materials exempted in bulk quantities. Accordingly, in order to limit opportunity for diversion from the larger bulk quantities, DEA has determined that each of the exempted bulk products listed in this order may only be used in-house by the manufacturer, and may not be distributed for any purpose, or transported to other facilities.

Additional exempt chemical preparation requests received between August 30, 2021, and March 31, 2022, and not otherwise referenced in this order, may remain under consideration until DEA receives additional information required, pursuant to 21 CFR 1308.23(d), as detailed in separate correspondence to individual requesters. DEA's order on such requests will be communicated to the public in a future **Federal Register** publication.

DEA also notes that these exemptions are limited to exemption from only those sections of the CSA and the CFR that are specifically identified in 21 CFR 1308.24(a). All other requirements of the CSA and the CFR apply, including registration as an importer as required by 21 U.S.C. 957.

[1] This authority has been delegated from the Attorney General to the DEA Administrator by 28 CFR 0.100, and subsequently redelegated to the Deputy Assistant Administrator pursuant to 28 CFR 0.104 and section 7 of the appendix to subpart R of part 0.

CHART I

Supplier	Product name	Form	Application date
Aalto Scientific, Ltd	Unassayed Chemistry Base Level 1	Glass or plastic bottle or flask: 1mL–100 mL; 100mL–500mL; 500mL–1L.	3/28/2022
Aalto Scientific, Ltd	Unassayed Chemistry Base Level 2	Glass or plastic bottle or flask: 1mL–100 mL; 100mL–500mL; 500mL–1L.	3/28/2022
Aalto Scientific, Ltd	Unassayed Chemistry Base Level 3	Glass or plastic bottle or flask: 1mL–100 mL; 100mL–500mL; 500mL–1L.	3/28/2022
Absolute Standards, Inc	(-)-Δ8-THC-D3, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	(-)-Δ9-THC-D3, 100 ug/mL, in Ethanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	(-)-Δ9-THC-D3, 1000 ug/mL, in Ethanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	(+/-)-11-Hydroxy-Δ9-THC-D3, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	(+/-)-11-Hydroxy-Δ9-THC-D3, 1000 ug/mL, in Methanol.	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	(+/-)-Amphetamine-D8, 10 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	(+/-)-Amphetamine-D8, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	(+/-)-Amphetamine-D8, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	(+/-)-Methamphetamine-D8, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	(+/-)-Methamphetamine-D8, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	(+/-)-Methamphetamine-D9, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	AB-CHMINACA, 100 ug/mL, in Acetonitrile	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	AB-FUBINACA, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	AB-PINACA, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	AH-7921, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	AKB48 (APINACA), 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	alpha-Pyrrolidinobutiophenone (alpha-PBP), 100 ug/mL, in Methanol.	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	AM2201, 100 ug/mL, in Acetonitrile	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	AM2201, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Benzoylecgonine, 10 ug/ml, in Methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Benzoylecgonine, 100 ug/ml, in Methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Benzoylecgonine, 1000 ug/ml, in Methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Benzoylecgonine-D8, 100 ug/ml, in Methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Benzoylecgonine-D8, 1000 ug/ml, in Methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Cocaine-D3, 10 ug/ml, in Methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Cocaine-D3, 100 ug/ml, in Methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Cocaine-D3, 1000 ug/ml, in Methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Codeine-6-β-glucuronide, 10 ug/ml, in acetonitrile:water [1:1].	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Codeine-6-β-glucuronide, 100 ug/ml, in acetonitrile:water [1:1].	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Codeine-6-β-glucuronide, 1000 ug/ml, in acetonitrile:water [1:1].	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	d,l-MDEA, 10 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	d,l-MDEA, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	d,l-MDEA, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	d,l-Methadone, 10 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	d,l-Methadone, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	d,l-Methadone, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	d,l-Methadone-D3, 10 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	d,l-Methadone-D3, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	d,l-Methadone-D3, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	DBP Mix, 100 ug/ml, in MTBE	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	DBP Mix, 100 ug/ml, in MTBE	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Dimethyltryptamine, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Dimethyltryptamine, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	d-Propoxyphene, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	d-Propoxyphene, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Ecognine methyl ester, 10 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Ecognine methyl ester, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Ecognine methyl ester, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	EPA Method 551 "Mix B", 1000 ug/ml, in MTBE	Glass ampoule: 1 ml x 5	1/10/2022
Absolute Standards, Inc	EPA Method 551—Disinfection By-Products Mix #2, 100 ug/ml, in MTBE.	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	EPA Method 551.1—Analytes Mix #2, 100 ug/ml, in MTBE.	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Fenproporex, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022

CHART I—Continued

Supplier	Product name	Form	Application date
Absolute Standards, Inc	Fenproporex-D5, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	FUB-144, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	FUB-AKB48 (FUB-APINACA), 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Heroin-D9, 10 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Heroin-D9, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Heroin-D9, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Hydrocodone (+)-bitartrate salt, 100 ug/ml, in methanol.	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Hydrocodone (+)-bitartrate salt, 1000 ug/ml, in methanol.	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Hydrocodone, 10 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Hydrocodone, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Hydrocodone, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Hydromorphone, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Hydromorphone, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	JWH-019, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	JWH-073, 100 ug/mL, in Acetonitrile	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	JWH-073, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	JWH-081, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	JWH-122, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	JWH-200, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	JWH-200-d5, 100 ug/mL, in Acetonitrile	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	JWH-250, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Ketamine, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Ketamine, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Ketamine-D4, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Lysergic acid diethylamide (LSD), 100 ug/mL, in Acetonitrile.	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Lysergic acid diethylamide (LSD), 100 ug/mL, in Acetonitrile.	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Lysergic acid diethylamide (LSD), 1000 ug/mL, in Acetonitrile.	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Lysergic acid diethylamide (LSD), 1000 ug/mL, in Acetonitrile.	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Meperidine, 10 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Meperidine, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Meperidine, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Mephedrone, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Mephedrone, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Mix A, 1000 ug/ml, in MTBE	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	MMB-FUBINACA, 100 ug/mL, in Acetonitrile	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	MMB-FUBINACA, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Nitrazepam, 100 ug/mL, in Acetonitrile	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Nitrazepam, 1000 ug/mL, in Acetonitrile	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	NM2201, 100 ug/mL, in Acetonitrile	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Oxazepam, 10 ug/ml, in acetonitrile	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Oxazepam, 10 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Oxazepam, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Oxazepam, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Oxycodone, 10 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Oxycodone, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Oxycodone, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Oxycodone-D3, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Oxycodone-D3, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Oxycodone-D6, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Oxycodone-D6, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Oxymorphone, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Oxymorphone, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Oxymorphone-D3, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Oxymorphone-D3, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	PB-22, 100 ug/mL, in Acetonitrile	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Phencyclidine-D5, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Phencyclidine-D5, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Phenylacetone, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Pregabalin, 10 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Pregabalin, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Pregabalin, 1000 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Psilocin, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Psilocin, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Psilocybin PT, varied ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	RCS-4, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022

CHART I—Continued

Supplier	Product name	Form	Application date
Absolute Standards, Inc	THC-O-acetate, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	THC-O-acetate, 1000 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	THC-O-acetate, varied ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Tramadol, 10 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	Tramadol, 100 ug/ml, in methanol	Glass ampoule: 1 ml	1/10/2022
Absolute Standards, Inc	UR-144, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	XLR-11, 100 ug/mL, in Methanol	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Zopiclone, 100 ug/mL, in Acetonitrile	Glass ampoule: 1 mL	2/14/2022
Absolute Standards, Inc	Zopiclone, 1000 ug/mL, in Acetonitrile	Glass ampoule: 1 mL	2/14/2022
Audit MicroControls, Inc	Control FLQ Unassayed Chemistry, Level 1	Kit: 10 bottles, 4 mL each	3/30/2022
Audit MicroControls, Inc	Control FLQ Unassayed Chemistry, Level 1	Kit: 5 bottles, 4 mL each	3/30/2022
Audit MicroControls, Inc	Control FLQ Unassayed Chemistry, Level 1	Plastic bottle: 4mL	3/30/2022
Cerilliant Corporation	(6aR,9R)-delta10-THC	Glass ampule: 1.0 mL	8/30/2021
Cerilliant Corporation	5 Part Potency in Beverage	Glass ampule: 1.0 mL	2/22/2022
Cerilliant Corporation	6 Part Potency in Solution (Acids)	Glass ampule: 1.0 mL	1/11/2022
Cerilliant Corporation	8 Part Potency in Solution (Neutrals)	Glass ampule: 1.0 mL	1/11/2022
Chemtos, LLC	(S)-N,N-dimethylamphetamine HCl (1 mg/mL in methanol).	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	(S)-N,N-dimethylamphetamine-d3 HCl (0.1 mg/mL in methanol).	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	(S)-N,N-dimethylamphetamine-d3 HCl (1 mg/mL in methanol).	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	2,4-DMMC HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	3,4-DMMC HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	3-MMC HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	4-Cl-PVP HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	4-Methylbuphedrone (4-Me-MABP) HCl (1 mg/mL in methanol).	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	5F-MDMB–PICA (1 mg/mL in acetonitrile)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	AB-CHMINACA (1 mg/mL in acetonitrile)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	AB-PINACA (1 mg/mL in acetonitrile)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	alpha-PHP HBr (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Alphaprodine HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Alphaprodine-d5 HCl (0.1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Alphaprodine-d5 HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	AM-694 (1 mg/mL in acetonitrile)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Anileridine HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	APINACA, AKB48 (1 mg/mL in acetonitrile)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	bk-MDDMA HCl (Dimethylone) (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Diethyltryptamine (DET) (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Dimethyltryptamine (DMT) (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Dimethyltryptamine-d3 (DMT-d3) (0.1 mg/mL in methanol).	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Dimethyltryptamine-d3 (DMT-d3) (1 mg/mL in methanol).	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Dipentylone HCl (bk-DMBDP) (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Estazolam (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Estazolam-d5 (0.1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Estazolam-d5 (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Flunitrazepam (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Flunitrazepam-d3 (0.1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Flunitrazepam-d3 (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Ketamine HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Ketamine-d4 HCl (0.1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Ketamine-d4 HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	MAB-CHMINACA (1 mg/mL in acetonitrile)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	MDMB-CHMICA, MMB-CHMINACA (1 mg/mL in acetonitrile).	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	MMB-CHMICA, AMB-CHMICA (1 mg/mL in acetonitrile).	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	MPHP HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Naphyrone HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	N-Ethyl-amphetamine HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	N-Ethyl-amphetamine-d5 HCl (0.1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	N-ethylhexedrone (NEH) HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	N-ethylhexedrone-d5 (NEH-d5) HCl (0.1 mg/mL in methanol).	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	NM2201, CBL-2201 (1 mg/mL in acetonitrile)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	PCC (1 mg/mL in acetonitrile)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Phendimetrazine-d8 (0.1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Phendimetrazine-d8 (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022

CHART I—Continued

Supplier	Product name	Form	Application date
Chemtos, LLC	Phenylacetone (1 mg/mL in acetonitrile)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Propylone HCl (bk-3,4-MDPA) (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	PV8 (PHPP) HCl (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	Tenocyclidine (TCP) (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
Chemtos, LLC	THJ-2201 (AM2201) (1 mg/mL in methanol)	Amber ampule: 1 mL	3/14/2022
CPI International	Custom Hormone Mix, 9-072, 1000 mg/L, 1 mL (ISO 17025).	Amber ampule: 1 mL	2/2/2022
LabSystems Diagnostics	NeoMass CAH Extraction Solution with Internal Standard.	Glass vial: 33 mL	1/10/2022
LabSystems Diagnostics	NeoMass CAH Mutlilevel Calibrator Dried Blood Spot Calibrator Level 0–7.	Aluminum pouch: 7 Dried blood spots, 85 µL each.	1/10/2022
LabSystems Diagnostics	NeoMass CAH Mutlilevel Controls Dried Blood Spot Controls Level 1–3.	Aluminum pouch: 6 Dried blood spots, 85 µL each.	1/10/2022
LabSystems Diagnostics	NeoMass CAH System suitability Mixture CAH (lyophilized).	Glass vial: 2 mL	1/10/2022
LabSystems Diagnostics	NeoMass CAH Tuning Mixture CAH (lyophilized)	Glass vial: 2 mL	1/10/2022
LGC	Narcotics Mixture 1 0.02–0.075 µg/mL in Synthetic oral fluid.	1 kit; 10 × 1 mL amber cryule.	3/8/2022
LGC	Narcotics Mixture 2 0.01–0.05 µg/mL in Synthetic oral fluid.	1 kit; 10 × 1 mL amber cryule.	3/8/2022
LGC	Narcotics Mixture 3 0.001–0.01 µg/mL in Synthetic oral fluid.	1 kit; 10 × 1 mL amber cryule.	3/8/2022
LGC—Dr. Ehrenstorfer	(6aR,9R)-Δ10-Tetrahydrocannabinol 100 µg/mL in Methanol.	Amber Ampule: 1 mL	12/21/2021
LGC—Dr. Ehrenstorfer	(6aR-trans)-Δ8-Tetrahydrocannabinol acetate 100 µg/mL in Methanol.	Amber Ampule: 1 mL	12/21/2021
LGC—Dr. Ehrenstorfer	Custom Cannabinoid Mixture 10141 1000 ug/mL in Acetonitrile.	Amber ampule: 1 mL	3/4/2022
LGC—Dr. Ehrenstorfer	Custom Cannabinoid Mixture 10142 1000 ug/mL in Acetonitrile.	1 kit; 5 × 1 mL amber ampule.	3/4/2022
LGC—Dr. Ehrenstorfer	Custom Pharmaceutical Mixture 10147 1000 ug/mL in Acetonitrile.	Amber ampule: 1 mL	3/4/2022
LGC—Dr. Ehrenstorfer	Custom Pharmaceutical Mixture 10148 1000 ug/mL in Acetonitrile.	1 kit; 5 × 1 mL amber ampule.	3/4/2022
LGC—Dr. Ehrenstorfer	Custom Tramadol hydrochloride 100 µg/mL in Methanol.	Glass Ampule: 1 mL	1/27/2022
LGC—Dr. Ehrenstorfer	Trenbolone cyclohexylmethylcarbonate 100 µg/mL in Acetonitrile.	Amber Ampule: 1 mL	12/21/2021
LGC—Dr. Ehrenstorfer	Zolpidem tartrate 100 µg/mL in Methanol	Glass Ampule: 1 mL	1/27/2022
LGC Clinical Diagnostics, Inc	Fertility 1 ab Bulk—Level 1	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	Fertility 1 ab Bulk—Level 2	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	Fertility 1 ab Bulk—Level 3	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	Fertility 1 ab Bulk—Level 4	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	Fertility 1 ab Bulk—Level 5	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	Fertility 1 ab WrkBlk—Level 1	Volumetric flask: 200–8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	Fertility 1 ab WrkBlk—Level 5	Volumetric flask: 200–8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	Fertility 1 re Bulk—Level 1	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	Fertility 1 re Bulk—Level 2	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	Fertility 1 re Bulk—Level 3	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	Fertility 1 re Bulk—Level 4	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	Fertility 1 re Bulk—Level 5	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	Fertility 1 re WrkBlk—Level 1	Volumetric flask: 200–8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	Fertility 1 re WrkBlk—Level 5	Volumetric flask: 200–8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ab Bulk—Level 1	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ab Bulk—Level 2	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ab Bulk—Level 3	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ab Bulk—Level 4	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ab Bulk—Level 5	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ab WrkBlk—Level 1	Volumetric flask: 200–8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 au Bulk—Level 1	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 au Bulk—Level 2	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 au Bulk—Level 3	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 au Bulk—Level 4	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 au Bulk—Level 5	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 au WrkBlk—Level 1	Volumetric flask: 200–8000 mL.	3/21/2022

CHART I—Continued

Supplier	Product name	Form	Application date
LGC Clinical Diagnostics, Inc	TDM1 bc Bulk—Level 1	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 bc Bulk—Level 2	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 bc Bulk—Level 3	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 bc Bulk—Level 4	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 bc Bulk—Level 5	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 bc WrkBlk—Level 1	Volumetric flask: 200–8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 db Bulk—Level 1	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 db Bulk—Level 2	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 db Bulk—Level 3	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 db Bulk—Level 4	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 db Bulk—Level 5	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 db WrkBlk—Level 1	Volumetric flask: 200–8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri GentC Set Bulk—Level 1	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri GentC Set Bulk—Level 2	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri GentC Set Bulk—Level 3	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri GentC Set Bulk—Level 4	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri GentC Set Bulk—Level 5	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri GentC Set WrkBlk—Level 1	Volumetric flask: 200–8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri TDM Set Bulk—Level 1	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri TDM Set Bulk—Level 2	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri TDM Set Bulk—Level 3	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri TDM Set Bulk—Level 4	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri TDM Set Bulk—Level 5	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri TDM Set WrkBlk—Level 1	Volumetric flask: 200–8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 vt Set Bulk—Level 1	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 vt Set Bulk—Level 2	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 vt Set Bulk—Level 3	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 vt Set Bulk—Level 4	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 vt Set Bulk—Level 5	Volumetric flask: 3200 mL	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 vt Set WrkBlk—Level 1	Volumetric flask: 200–8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	Testosterone (TSTO) Stock A 100,000 ng/ml	Plastic vial: 25 mL	3/21/2022
LGC Clinical Diagnostics, Inc	Testosterone (TSTO) Stock B 2,000 ng/ml	Plastic vial: 25 mL	3/21/2022
LGC Clinical Diagnostics, Inc	VALIDATE Fertility 1 Test Set 502ab	5 Bottles: 4 mL each	3/21/2022
LGC Clinical Diagnostics, Inc	VALIDATE Fertility 1 Test Set 502re	5 Bottles: 4 mL each	3/21/2022
LGC Clinical Diagnostics, Inc	VALIDATE TDM1 Test Set 301ab	Kit: 5 Bottles, 3 ml each	3/21/2022
LGC Clinical Diagnostics, Inc	VALIDATE TDM1 Test Set 301au	Kit: 5 Bottles, 3 ml each	3/21/2022
LGC Clinical Diagnostics, Inc	VALIDATE TDM1 Test Set 301bc	Kit: 5 Bottles, 3 ml each	3/21/2022
LGC Clinical Diagnostics, Inc	VALIDATE TDM1 Test Set 301db	Kit: 5 Bottles, 3 ml each	3/21/2022
LGC Clinical Diagnostics, Inc	VALIDATE TDM1 Test Set 301ri	Kit: 5 Bottles, 3 ml each; 5 bottles, 2 mL each.	3/21/2022
LGC Clinical Diagnostics, Inc	VALIDATE TDM1 Test Set 301vt	Kit: 5 Bottles, 3 ml each	3/21/2022
o2si smart solutions	Custom Pharmaceutical Mixture, 12–0370, 100 ug/mL, 5 × 1 mL (ISO 17034).	1 Package; 5 × 1 mL amber ampules.	1/14/2022
o2si smart solutions	Hydrocodone hydrogen (+)-bitartrate as hydrocodone in acetonitrile Solution, 5,000 mg/L PARENT STOCK SOLUTION—NOT FOR SALE.	Amber ampule: 1 mL	2/11/2022
Restek Corporation	Custom Heroin Standard	Glass ampule: 1.3 mL	3/8/2022
RTI International	12198–62–06	Glass tube: 7 mL	3/1/2022
RTI International	2023 DMPM–01	HDPE Bottle: 40 mL	3/30/2022
RTI International	2023 DMPM–02	HDPE Bottle: 40 mL	3/30/2022
RTI International	2023 DMPM–03	HDPE Bottle: 40 mL	3/30/2022
RTI International	2023 DMPM–05	HDPE Bottle: 40 mL	3/30/2022
RTI International	2023 DMPM–06	HDPE Bottle: 40 mL	3/30/2022
RTI International	2023 DMPM–07	HDPE Bottle: 40 mL	3/30/2022
RTI International	2023 FTC–02	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 FTC–03	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 FTC–05	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 FTC–06	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 FTC–07	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 FTC–09	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 FTC–10	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 FTC–11	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 FTC–13	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 FTC–14	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 FTC–15	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 OFD–01	Vial: 2 mL	3/30/2022

CHART I—Continued

Supplier	Product name	Form	Application date
RTI International	2023 OFD–02	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–03	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–04	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–05	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–06	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–07	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–08	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–10	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–11	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–12	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–13	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–14	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–15	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–16	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–17	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–18	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–19	Vial: 2 mL	3/30/2022
RTI International	2023 OFD–20	Vial: 2 mL	3/30/2022
RTI International	2023 T–02	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 T–03	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 T–04	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 T–05	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 T–06	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 T–07	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 T–08	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 T–11	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 T–12	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 T–14	HDPE Bottle: 20 mL	3/30/2022
RTI International	2023 THCB–01	Vial: 10 mL	3/30/2022
RTI International	2023 THCB–02	Vial: 10 mL	3/30/2022
RTI International	2023 THCB–03	Vial: 10 mL	3/30/2022
RTI International	2023 THCB–04	Vial: 10 mL	3/30/2022
RTI International	2023 THCB–05	Vial: 10 mL	3/30/2022
RTI International	2023 THCB–06	Vial: 10 mL	3/30/2022
RTI International	2023 UDS–01	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–02	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–03	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–04	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–05	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–06	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–07	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–08	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–09	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–10	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–11	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–12	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–13	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–14	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UDS–15	HDPE Bottle: 10 mL	3/30/2022
RTI International	2023 UT–01	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UT–02	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UT–03	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UT–05	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UT–06	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UT–07	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UT–08	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UT–09	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UT–10	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UT–11	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UT–12	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UT–13	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UT–14	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UT–15	HDPE Bottle: 50 mL	3/30/2022
RTI International	2023 UTCO–01	HDPE Bottle: 40 mL	3/30/2022
RTI International	2023 ZE–01	Vial: 5 mL	3/30/2022
RTI International	2023 ZE–02	Vial: 5 mL	3/30/2022
RTI International	2023 ZE–03	Vial: 5 mL	3/30/2022
RTI International	2023 ZE–04	Vial: 5 mL	3/30/2022
RTI International	2023 ZE–05	Vial: 5 mL	3/30/2022
RTI International	2023 ZE–06	Vial: 5 mL	3/30/2022
RTI International	2023–OFD–09	Vial: 2 mL	3/30/2022

CHART I—Continued

Supplier	Product name	Form	Application date
RTI International	Sample 1 Matrix: Urine	HDPE tubes: 5 mL	3/7/2022
RTI International	Sample 2 Matrix: Urine	HDPE tubes: 5 mL	3/7/2022
RTI International	Sample 3 Matrix: Plasma	HDPE tubes: 5 mL	3/7/2022
RTI International	Sample 4 Matrix: Urine	HDPE tubes: 5 mL	3/7/2022
RTI International	Sample 6 Matrix: Whole Blood	HDPE tubes: 5 mL	3/7/2022
Thermo Fisher Scientific	Cascadion SM Antiepileptics Internal Standard	Box: 6 vials, 29 mL each	3/24/2022

The Assistant Administrator has found that each of the compounds, mixtures, and preparations described in Chart II below is not consistent with the criteria stated in 21 U.S.C. 811(g)(3)(B) and in 21 CFR 1308.23. Accordingly, the Assistant Administrator has determined that the chemical preparations or mixtures generally described in Chart II below and specifically described in the application materials received by DEA, are not exempt from application of any part of the CSA or from application of any part of the CFR, with regard to the requested exemption pursuant to 21 CFR 1308.23, as of the date that was provided in the determination letters to the individual requesters.

CHART II

Supplier	Product name	Form	Application date
Chemtos, LLC	ANPP (1 mg/mL in acetonitrile)	Amber ampule: 1mL	3/14/2022
CPI International	Custom Hormone Mix, 9–072, 1000 mg/L, 6 x 1 ml	1 Package; 6 x 1 mL amber ampules.	1/14/2022
LGC Clinical Diagnostics, Inc	TDM1 ab WrkBlk—Level 5	Volumetric flask: 200—8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 au WrkBlk—Level 5	Volumetric flask: 200—8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 bc WrkBlk—Level 5	Volumetric flask: 200—8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 db WrkBlk—Level 5	Volumetric flask: 200—8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri GentC Set WrkBlk—Level 5	Volumetric flask: 200—8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 ri TDM Set WrkBlk—Level 5	Volumetric flask: 200—8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	TDM1 vt Set WrkBlk—Level 5	Volumetric flask: 200—8000 mL.	3/21/2022
LGC Clinical Diagnostics, Inc	Validate TDM Phenobarbital Stock	Plastic vial: 150 mL	3/21/2022

Opportunity for Comment

Pursuant to 21 CFR 1308.23(e), any interested person may submit written comments on or objections to any chemical preparation in this order that has been approved or denied as exempt. If any comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which this order is based, the Assistant Administrator will immediately suspend the effectiveness of any applicable part of this order until she may reconsider the application in light of the comments and objections filed. Thereafter, the Assistant Administrator shall reinstate, revoke, or amend his original order as she determines appropriate.

Approved Exempt Chemical Preparations are Posted on the DEA's Website

A list of all current exemptions, including those listed in this order, is available on the DEA's website at *http://www.DEAdiversion.usdoj.gov/schedules/exempt/exempt_chemlist.pdf.* The dates of applications of all current exemptions are posted for easy reference.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–18794 Filed 8–30–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On August 25, 2022, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Utah in the lawsuit entitled *United States* v. *United Park City Mines Company,* Civil Action No. 2:19–cv–00200–BSJ.

The United States filed this lawsuit against United Park City Mines Company (''UPCM'') under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''). The complaint seeks recovery of costs that the United States incurred pursuant to a 2014 Administrative Settlement Agreement and Order on Consent (''2014 AOC''), along with declaratory judgments regarding UPCM's liability for future costs to be incurred in responding to releases of hazardous substances at the Richardson Flat Tailings Site near Park City, Utah.

Under the Consent Decree, UPCM agrees to pay or cause to be paid $6,475,000 for response costs at the Richardson Flat Tailings Site, $350,000 for natural resource damages at the Richardson Flat Tailings Site, and $250,000 for response costs at the nearby Uintah Mining District Site. In return, the United States agrees not to sue UPCM and certain other entities

under sections 106 and 107 of CERCLA; under section 7003 of the Resource Conservation and Recovery Act (''RCRA''); in relation to certain previous agreements among the United States, UPCM, and others, including the 2014 AOC; and under the Federal Priority Statute, the Federal Debt Collection Procedures Act, or any alter-ego, fraudulent-conveyance, or other debt-collection cause of action for response costs related to the Richardson Flat Tailings Site and Uintah Mining District Site.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *United Park City Mines Company,* D.J. Ref. No. 90–11–3–08764/4. 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.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Consent Decree 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 Consent Decree 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 $5.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–18839 Filed 8–30–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

On August 26, 2022, the Department of Justice lodged a proposed Settlement Agreement entered into with J.J.W. Metal, Corp. (''J.J.W. Metal'') in the United States Bankruptcy Court for the District of Puerto Rico in *In re J.J.W. Metal Corp.,* Case No. 20–04536–EAG11. J.J.W. Metal is a potentially responsible party under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), at the JJW Metal Recycling Superfund Site located at 756 Los Colobos Street, Carolina, Puerto Rico (the ''Site''). Under the Settlement Agreement, the United States, on behalf of the United States Environmental Protection Agency (''EPA''), will have an allowed claim in the amount of $300,000. This allowed claim will be paid as a Class 6 allowed general unsecured claim under the terms of the Third Amended Plan of Reorganization (''Plan'') in 60 monthly payments over a period of five years at 4.5% interest (unless there is a deferral of the payments under Article V of the Plan, for a period of up to a year, due to the need for J.J.W. Metal to relocate its operations.)

EPA has provided a covenant not to file a civil action or take administrative action against J.J.W. Metal pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607, with respect to the Site. The covenant does not apply to any right against J.J.W. Metal with respect to the Site for liability under federal or state law for acts by the J.J.W. Metal that occur after the date of lodging of the Settlement Agreement.

The publication of this notice opens a period for public comment on the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re J.J.W. Metal, Corp.,* Case No. 20–04536–EAG11 (Bankr. D.P.R.), D.J. Ref. No. 90–11–3–12537. All comments must be submitted no later than 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 Settlement Agreement 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 Settlement Agreement 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 $3.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–18820 Filed 8–30–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Unemployment Insurance Benefit Accuracy Measurement Program

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-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 September 30, 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: Since 1987, all State Workforce Agencies except the U.S. Virgin Islands have been required by regulation at 20 CFR part 602 to operate Benefit Accuracy Measurement (BAM) programs to assess the accuracy of their unemployment insurance (UI) benefit payments in three programs: State UI, Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-servicemembers (UCX). BAM is one of the tools DOL uses to measure and reduce improper payments in the UI program. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 23, 2022 (87 FR 10244).

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–ETA.

Title of Collection: Unemployment Insurance Benefit Accuracy Measurement Program.

OMB Control Number: 1205–0245.

Affected Public: Individuals or Households; State, Local, and Tribal Governments; Private Sector—Businesses or other for-profits, not-for-profit institutions, and farms.

Total Estimated Number of Respondents: 181,633.

Total Estimated Number of Responses: 228,745.

Total Estimated Annual Time Burden: 618,084 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: August 24, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–18777 Filed 8–30–22; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–00151]

Proposed Extension of Information Collection; Cleanup Program for Accumulations of Coal and Float Coal Dusts, Loose Coal, and Other Combustibles

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Cleanup Program for Accumulations of Coal and Float Coal Dusts, Loose Coal, and Other Combustibles.

DATES: All comments must be received on or before October 31, 2022.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2022–0042.
- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

A program for regular cleanup and removal of accumulations of coal and float coal dusts, loose coal, and other combustibles is essential to protect miners from explosions. Effective and frequent rock dust application is necessary to protect miners from the potential of a float coal dust explosion or, if one occurs, to reduce its propagation. 30 CFR 75.400–2 requires that mine operators establish and maintain a ''program for regular cleanup and removal of accumulations of coal and float coal dusts, loose coal, and other combustibles.'' In addition, the cleanup program must be available to the Secretary or authorized representative.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Cleanup Program for Accumulations of Coal and Float Coal Dusts, Loose Coal, and Other Combustibles. MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
• Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Cleanup Program for Accumulations of Coal and Float Coal Dusts, Loose Coal, and Other Combustibles. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0151.

Affected Public: Business or other for-profit.

Number of Respondents: 195.

Frequency: On occasion.

Number of Responses: 176.

Annual Burden Hours: 243 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Song-ae Aromie Noe,

Certifying Officer.

[FR Doc. 2022–18776 Filed 8–30–22; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (22–063)]

Notice of Intent To Grant an Exclusive, Co-Exclusive or Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant exclusive, co-exclusive or partially exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant an exclusive, co-exclusive or partially exclusive patent license to practice the inventions described and claimed in the patents and/or patent applications listed in **SUPPLEMENTARY INFORMATION** below.

DATES: The prospective exclusive, co-exclusive or partially exclusive license may be granted unless NASA receives written objections including evidence and argument, no later than September 15, 2022 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than September 15, 2022 will also be treated as objections to the grant of the contemplated exclusive, co-exclusive or partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

Objections and Further Information: Written objections relating to the prospective license or requests for further information may be submitted to Agency Counsel for Intellectual Property, NASA Headquarters at Email: *hq-patentoffice@mail.nasa.gov.* Questions may be directed to Phone: (202) 358–3437.

SUPPLEMENTARY INFORMATION: NASA intends to grant an exclusive, co-exclusive, or partially exclusive patent license in the United States to practice the inventions described and claimed in: U.S. Patent 10,566,089 entitled, ''Nanosensor Array For Medical Diagnoses,'' to Agscent USA Inc., having its principal place of business in Denver, CO. The fields of use may be limited. NASA has not yet made a final determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

This notice of intent to grant an exclusive, co-exclusive or partially exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Helen M. Galus,

Agency Counsel for Intellectual Property.

[FR Doc. 2022–18793 Filed 8–30–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Request for Comment Regarding Common Disclosure Forms for the Biographical Sketch and Current and Pending (Other) Support

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995, the National Science Foundation (NSF), on behalf of the National Science and Technology Council's (NSTC) Research Security Subcommittee, is soliciting public comment on common disclosure forms for the Biographical Sketch and Current and Pending (Other) Support sections of a research application. An excel spreadsheet that summarizes all of the data elements that will be collected in both the Biographical Sketch and Current and Pending (Other) Support, as well as their associated attributes, also is included for public comment. The National Science Foundation has agreed to serve as steward for collection and resolution of public comments, as well

as for posting and maintaining the latest versions of the above-mentioned documents of the common forms and other associated documents. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years. NSF will be submitting this information collection request as Common Forms to permit Federal research funding agencies beyond NSF to streamline the information collection process in coordination with OMB.

DATES: Written comments on this notice must be received by October 31, 2022 to be assured consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Please address comments to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E7400, Alexandria, Virginia 22314; telephone (703) 292–7556; or send an 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).

FOR FURTHER INFORMATION CONTACT: For information on the proposed Common Disclosure Forms, contact Jean Feldman, Head, Policy Office, Division of Institution & Support, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA, 22314, email: *jfeldman@nsf.gov;* telephone (703) 292–8243; FAX: (703) 292–9171.

For further information on the NSTC Research Security Subcommittee, contact Christina Ciocca Eller, Assistant Director for Evidence and Policy, Executive Office of the President, Office of Science and Technology Policy, 725 17th Street NW, Washington, DC 20503; email: *ResearchSecurity@ostp.eop.gov,* telephone 202–456–6059; FAX 202–456–6027.

Comments: Comments are requested on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, 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, electronic, mechanical, or other technological collection techniques or other forms of information technology.

We encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Please include ''Common Disclosure Forms for the Biographical Sketch and Current and Pending (Other) Support'' in the subject line of the email message; please also include the full body of your comments in the text of the message and as an attachment. Include your name, title, organization, postal address, telephone number, and email address in your message.

SUPPLEMENTARY INFORMATION:

Title of Collection: Request for Comment regarding Common Disclosure Forms for the Biographical Sketch and Current and Pending (Other) Support.

OMB Approval Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish a common disclosure forms information collection for three years.

I. Background

Section 4(b) of NSPM–33 directs that ''research funding agencies shall require the disclosure of information related to potential conflicts of interest and commitment from participants in the Federally funded R&D enterprise . . . The appropriate disclosure requirement varies depending on the individual's role in the United States R&D enterprise.'' Section 4(b)(vi) directs that ''agencies should standardize forms for initial disclosures as well as annual updates, . . . and should provide clear instructions to accompany these forms and to minimize any associated administrative burden.''

Over the past several months, the NSTC Research Security Subcommittee has worked to develop consistent disclosure requirements from senior personnel, as well as to develop proposed common disclosure forms for the Biographical Sketch and Current and Pending (Other) Support sections of an application for Federal research and development (R&D) grants or cooperative agreements. The purpose of the Biographical Sketch is to assess how well qualified the individual, team, or organization is to conduct the proposed activities. The purpose of Current and Pending (Other) Support is to assess the capacity of the individual to carry out the research as proposed and to help identify any potential scientific and budgetary overlap/duplication, as well as overcommitment with the project being proposed.

These common forms are intended to clarify what is expected of senior personnel applying for R&D funding from Federal research funding agencies. Variations among research agencies will be limited to cases: (a) where required by statute or regulation; (b) where more stringent protections are necessary for protection of R&D that is classified, export-controlled, or otherwise legally protected; or (c) for other compelling reasons consistent with individual agency authorities and as coordinated through the NSTC.

As stated in the NSPM–33 Implementation Guidance, ''the goal of these common forms and accompanying instructions is to ensure that applying for awards from any Federal research funding agency will require disclosing the same information in the same manner, to increase clarity and reduce administrative burden on the research community. In some cases, research agencies may adapt the forms and instructions, where required by their legal authorities. Such common forms also will allow the research community to identify and point out where greater clarity may be needed.''

Agencies may develop agency- or program-specific data elements and instructions, if necessary, to meet programmatic requirements, although agencies will be instructed to minimize the degree to which they supplement the common forms. Modification and/or supplementation of these common forms will require clearance by OMB/OIRA under the PRA process.

These common forms are intended to replace forms/formats currently used by agencies for these sections of applications, thereby increasing the consistency of disclosure forms and reducing administrative burden.

II. Invitation to Comment

The following documents are available for review and comment on the NSF website (see *https://www.nsf.gov/bfa/dias/policy/nstc_disclosure.jsp*):

a. A common Biographical Sketch form, including data elements and associated instructions;

b. A common Current and Pending (Other) Support form, including data elements and associated instructions; and

c. An excel spreadsheet that summarizes all the data elements, as well as their data attributes.

The National Science Foundation has agreed to serve as steward for collection and resolution of public comments, as

well as for posting and maintaining the latest versions of the above- mentioned documents of the common forms and other associated documents.

Input is welcome on any aspect of the proposed common disclosure forms, including the accompanying instructions, and excel spreadsheet.

BURDEN ON THE PUBLIC

Form name	Number of proposals (estimated)	Number of respondents (estimated)	Burden time (hours)	Total
Biographical Sketch	47,900	4	1	191,600
Current and Pending (Other) Support	47,900	4	1	191,600
Total burden hours				383,200

Dated: August 25, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–18746 Filed 8–30–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 30, 2022. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–4479; or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (ACA 2021–004) to Grant Ballard on September 23, 2020. The issued permit allows the applicant to engage in take, harmful interference, enter Antarctic Specially Protected Areas (ASPAs), and import samples into the USA in association with research on the role of environmental factors on foraging, diet, growth, and survival of Adelie penguins (*Pygoscelis adeliae*). Research activities include installing weighbridges, resighting banded birds, and following birds through incubation and chick-rearing until late January. The applicant and agents attach logging and tracking devices on breeding adults and collect fecal samples from adults and chicks during the brooding and guarding stage, then attach long-term GPS-Argos tags and geolocating dive recorders on adult penguins. To survey the large colonies at Cape Royds and Cape Crozier in a timely manner, the applicant and agents employ multiple, self- and collectively-aware remotely piloted aircraft (RPAS) simultaneously. Now the applicant proposes a modification to the permit to collect blood samples (1–2 drops each) from penguins already undergoing other handling, sampling, or instrumentation. The applicant proposes to take up to 220 blood samples from fledglings, 120 blood samples from chicks, and 130 blood samples from adult Adelie penguins per year. The applicant proposes to take up to an additional 30 feather samples from fledglings, and 20 feather samples from adults per year over feather samples already permitted. The applicant proposes to take up to an additional 240 opportunistic or cloacal swab fecal samples per year. Additionally, the applicant proposes to tag up to 60 chicks per year with small T-bar anchor tags which will be removed at the end of the rearing season. The applicant also proposes to disturb up to 1000 penguins by surrounding a penguin subcolony with a plastic fence for the continuation of a long term weighbridge study to evaluate foraging trip duration, adult condition, and food delivery.

Location: ASPA 121, Cape Royds, Ross Island; ASPA 124, Cape Crozier, Ross Island; ASPA 105, Beaufort Island; Cape Bird (outside ASPA boundary).

Dates: November 1, 2022 to February 15, 2025.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–18770 Filed 8–30–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143; NRC–2022–0097]

Nuclear Fuel Services, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to request a hearing and to petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has received an application from Nuclear Fuel Services, Inc. (NFS or the licensee) to amend special nuclear materials (SNM) license number SNM–124. The amended license would authorize the licensee to perform uranium purification and conversion services at the NFS site pursuant to a contract with the U.S. Department of Energy's National Nuclear Security Administration (NNSA). Because the amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation by persons who file a

hearing request or petition for leave to intervene.

DATES: Requests for a hearing or petition for leave to intervene must be filed by October 31, 2022. Any potential party as defined in Section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by September 12, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0097 when contacting the NRC about the availability of information regarding this action. You may obtain publicly available information related to this action using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0097. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James Downs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7744, email: *James.Downs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC has received, by letter dated November 18, 2021, an application from Nuclear Fuel Services, Inc. (NFS or licensee) to amend SNM license number SNM–124. The NRC also received two letters, each dated February 24, 2022, that supplement this application. The amended license would authorize the licensee to perform uranium purification and conversion services at the NFS site pursuant to a contract with the NNSA. According to NFS this contract would bridge the gap between shutting down NNSA legacy uranium processing equipment and starting up a new NNSA process utilizing electrorefining technology. Under 10 CFR 70.72, ''Facility changes and change process,'' this work requires a license amendment because NFS determined that the uranium purification and conversion services: (1) have the potential to introduce new accident scenarios to the existing NRC-licensed activities that, unless mitigated or prevented, would exceed the performance requirements of 10 CFR 70.61, ''Performance requirements,'' and have not previously been described in the integrated safety analysis summary; and (2) use new processes, technologies, or control systems for which the licensee has no prior experience.

As documented in an administrative completeness review, dated March 25, 2022, NRC found the application, as supplemented, acceptable for a technical review. During the technical review, the NRC will review the application, as supplemented, in areas that include, but are not limited to, radiation safety, chemical safety, fire safety, security, environmental protection, and material control/accountability. Prior to reaching a decision on the request to amend SNM license number SNM–124, the NRC will need to conduct a review and make a determination in accordance with the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report.

II. Additional Information

On April 27, 2022, the NRC issued a notice in the **Federal Register** (87 FR 25054) regarding the referenced license amendment request with a 60-day period to request a hearing ending June 27, 2022. After receiving a request from a petitioner to extend the deadline, citing hardships related to the ongoing COVID–19 pandemic, the NRC granted a 30-day extension to the original deadline. After receiving another request to grant an additional extension, the NRC decided to re-issue this notice and to include procedures to access SUNSI for any potential party who believes that access to SUNSI is necessary to respond to this notice.

III. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS.

Document description	ADAMS Accession No.
Cover letter from NFS for license amendment request with summary of changes, affidavit on trade secrets or commercial information, and Attachment 1—Proposed License Application, dated November 18, 2021.	ML21327A099.
Attachment 2—Proposed Integrated Safety Analysis Summary	ML21327A097 (non-public, withheld pursuant to 10 CFR 2.390).
Attachment 3—Proposed Emergency Plan	ML21327A098 (non-public, withheld pursuant to 10 CFR 2.390).
Attachment 4—Proposed Supplemental Environmental Report	ML21327A101 (non-public, withheld pursuant to 10 CFR 2.390).
Attachment 5—Proposed Decommissioning Cost Estimate	ML21327A100 (non-public, withheld pursuant to 10 CFR 2.390).
Request for supplemental information from NRC, dated January 21, 2022	ML22014A421.
Cover letter from NFS for response to supplemental information with affidavit on trade secrets or commercial information, dated February 24, 2022.	ML22066B004.
Attachment—Response to request for supplementation information	ML22066B003 (non-public, withheld pursuant to 10 CFR 2.390).
Enclosure—Proposed Supplemental Environmental Report, dated November 30, 2021	ML22066B005.
Cover letter from NFS on additional supplemental background information with affidavit on trade secrets or commercial information, dated February 24, 2022.	ML22069A315.

Document description	ADAMS Accession No.
Enclosure A—Seismic Evaluation of the Nuclear Fuel Services Fuel Fabrication Facility.	ML22069A316 (non-public, withheld pursuant to 10 CFR 2.390).
Enclosure B—Seismic Evaluation of Equipment for Nuclear Fuel Services Fuel Fabrication Facility.	ML22069A317 (non-public, withheld pursuant to 10 CFR 2.390).
Enclosure C—Integrated Safety Analysis Summary, Revision 1, for Building 301 Highly Enriched Uranium Metal Production Facility.	ML22069A318 (non-public, withheld pursuant to 10 CFR 2.390).
Acceptance of application from NRC for detailed technical review of the NFS U-metal license amendment request, dated March 25, 2022.	ML22080A238.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's

electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3), the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: August 25, 2022.
For the Nuclear Regulatory Commission.

Brooke P. Clark,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing or opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement or Affidavit for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2022–18775 Filed 8–30–22; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0137]

Information Collection: Access Authorization

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Access Authorization.''

DATES: Submit comments by October 31, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0137. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0137 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–2022–0137. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2022–0137 on this website.
- *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession ML22235A728. The draft supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML22200A112 and ML22200A113.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0137 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Access Authorization.
2. *OMB approval number:* 3150–0046.
3. *Type of submission:* Revision.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* NRC-regulated facilities and other organizations requiring access to NRC-classified information, and NRC contractors with access to classified information or who hold a sensitive position.
7. *The estimated number of annual responses:* 534 (456 reporting responses plus 78 recordkeepers).
8. *The estimated number of annual respondents:* 300.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 226 hours (160 hours reporting + 66 hours recordkeeping).
10. *Abstract:* NRC collects information on individuals in order to determine their eligibility for an NRC access authorization for access to classified information. NRC-regulated facilities and other organizations are required to provide information to the NRC when requested on the cleared individual and maintain records to ensure that only individuals with the adequate level of protection are provided access to NRC classified information and material.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your response.
2. Is the estimate of the burden of the information collection accurate? Please explain your response.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: August 26, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–18846 Filed 8–30–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service®.

ACTION: Notice of new system of records.

SUMMARY: The United States Postal Service ® (USPS® or Postal Service) is proposing to create a new Customer Privacy Act System of Records (SOR) to support an initiative to centralize Commercial Mail Receiving Agency (CMRA) records into an electronic database, improve the security of the In-Person enrollment process, and consolidate all CMRA paper and electronic records under one new and dedicated SOR. Previous **Federal Register** Notices for CMRA records that covered the current manual paper record system were published as USPS SOR 840.000, Customer Mailing and Delivery Instructions.

DATES: These revisions will become effective without further notice on September 30, 2022, unless responses to comments received on or before that date, result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (*privacy@usps.gov*). To facilitate public inspection, arrangements to view copies

of any written comments received will be made upon request. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The Postal Service has determined that the creation of a new SOR is needed to support the implementation of an online application for CMRA owners and managers to enter the data collected on Postal Service (PS) Form 1583—Application for Delivery of Mail through an Agent, and to consolidate all functions related to the CMRA application, enrollment, and administration processes.

I. Background

A CMRA is a private business, registered with the Postal Service, that acts as an authorized agent on behalf of U.S. Postal Service customers to accept delivery of U.S. mail at an alternate address managed by the authorized agent. Currently, U.S. Postal Service customers apply for delivery of mail to a CMRA by voluntarily providing selected personally identifying information (PII) to the CMRA and the Postal Service via a paper form, Postal Service (PS) Form 1583—Application for Delivery of Mail through an Agent. The CMRA maintains a copy of this application form and provides a paper copy of each customer's completed form to the Postal Service each quarter. These paper records are maintained in hard-copy form at the respective delivery units based on ZIP Code™.

The Postal Service is proposing to convert all decentralized paper enrollment records into a centralized electronic database and enhance the in-person enrollment process for CMRA agents and customers. CMRA owners and managers will maintain an online account with the USPS Business Customer Gateway (BCG) portal. The BCG portal will be used to access a separate online CMRA registration database. As part of the enrollment process, PS Form 1583—Application for Delivery of Mail through an Agent, asks customers to produce two valid forms of identification, residential and/or business addresses, as well as the address to where mail may be forwarded by the CMRA. The CMRA owner or manager will enter the information collected on this form into the CMRA registration database and upload a legible scanned copy of each identification document.

These proposed changes are designed to standardize the application and enrollment process for CMRA customers through a centralized online system that will provide increased assurance that mail is delivered as addressed and mitigate the risk of fraudulent activity.

II. Rationale for Creation of a New USPS Privacy Act Systems of Records

As indicated above, CMRA records were previously covered by USPS SOR 840.000, Customer Mailing and Delivery Instructions. USPS SOR 845.000, Commercial Mail Receiving Agency (CMRA) Records is being created to support the implementation of a centralized online database of customer data collected on PS Form 1583, and consolidate all administrative, review and compliance functions related to the CMRA process. This new centralized approach and online database is expected to improve efficiency, reduce costs, and improve the effectiveness for oversight and compliance efforts.

III. Description of the New System of Records

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, arguments, or comments on this proposal. A report of the proposed new SOR has been sent to Congress and to the Office of Management and Budget (OMB) for their evaluations. The Postal Service does not expect this new system of records to have any adverse effect on individual privacy rights. The new USPS Customer System of Records (SOR), SOR 845.000, Commercial Mail Receiving Agency (CMRA) Records is provided below in its entirety.

SYSTEM NAME AND NUMBER:

USPS 845.000, Commercial Mail Receiving Agency (CMRA) Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

USPS Headquarters, Eagan, MN Accounting Service Center.

SYSTEM MANAGER(S):

Vice President, Retail and Post Office Operations, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 101, 401, 403, 404.

PURPOSE(S) OF THE SYSTEM:

1. To administer CMRA application, enrollment and fulfillment processes.
2. To verify a customer's identity when applying for service via a Commercial Mail Receiving Agency (CMRA).
3. To permit authorized delivery of mail to the addressee's agent via a CMRA.
4. To provide for efficient and secure mail delivery services.
5. To ensure proper delivery of mail as addressed
6. To protect customers from mail fraud and identity theft through identity proofing during the CMRA enrollment process.
7. To enhance In-Person identity proofing, improve Identity Document fraud detection and enable a customer to successfully complete identity proofing activities required for access to CMRA services.
8. To provide customers with the option to voluntarily submit scanned images of government issued IDs and other documents for proof of identity or current address, that will be used for identity verification and to secure mail delivery to the correct recipient.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Customers requesting delivery of mail through an agent via a CMRA.
2. Commercial Mail Receiving Agency (CMRA) owners and managers that act as an authorized agent on behalf of U.S. Postal Service customers

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Residential Customer information:* Name, address, address verification via photocopy of document from prescribed list of documents, phone number, email address, date(s) of birth, customer ID(s) number and photocopy, expiration dates, signature, Private Mailbox application number, customer's authorized representative and list of minors receiving mail by a guardian, address that mail is forward to, copies of protective court orders submitted by the customer.
2. *Business Customer information:* Name, address, address verification via photo copy of document from prescribed list of documents, phone number, email address, date(s) of birth, customer ID(s) number and photo copy, expiration dates, signature, Private Mail Box application number, business names, and registration information,

type of business, business registration location, members of the business organization who will be receiving mail, customer's authorized representative, address that mail is forward to, copies of protective court orders submitted by the customer.

3. *Customer Mail Receiving Agent (CMRA) Agency information:* Agent name, address, signature. Email address, and phone number. Customer information collected on PS Form 1583 Application for Delivery of Mail Through Agent will be collected and maintained by the CMRA.

4. *Verification information:* Photocopies or scanned images of IDs and address documents, customer name, address, signature, date of birth ID or document expiration date, business name, registration number.

RECORD SOURCE CATEGORIES:

Customers, designated individuals authorized to collect mail on behalf of a customer, and Commercial Mail Receiving Agency (CMRA) owners and managers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 7., 10., and 11. apply. In addition:

a. Information may be disclosed for the purpose of identifying an address as an address of an agent to whom mail is delivered on behalf of other persons. This routine use does not authorize the disclosure of the identities of persons on behalf of whom agents receive mail.

All routine uses are subject to the following exception: Information concerning an individual who has filed an appropriate protective court order with their CMRA application will not be disclosed under any routine use except pursuant to the order of a court of competent jurisdiction and subject to the approval of the USPS General Counsel.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated databases, computer storage media, and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By Commercial Mail Receiving Agency (CMRA) location, customer name, address, private mailbox number, or by customer ID(s).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Records related to CMRA customer applications are retained for 2 years after the private mailbox is closed.

2. Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See *Notification Procedures* below and *Record Access Procedures* above.

NOTIFICATION PROCEDURES:

Customers wanting to know if information about them is maintained in this system pertaining to mail delivery by agents, noncompliant mailboxes, must address inquiries to their local postmasters. Customers should include name, address, and other identifying information.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–18822 Filed 8–30–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 95601; File No. SR–CboeBZX–2022–045]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Opening Auction Process Provided Under Rule 11.23(b)(2)(B)

August 25, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 15, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposal to amend the Opening Auction process provided under Rule 11.23(b)(2)(B) (the ''Opening Auction Process'') to better align with current market conditions, and, where certain market conditions are not optimal, to delay the Opening Auction from occurring until those market conditions have improved. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.23(b)(2)(B) to make the Opening Auction Process more dynamic by, under certain circumstances delaying the Opening Auction in order to incorporate additional information into the determination of the Opening Auction price. Specifically, as proposed the Rule would provide that when there is no Valid NBBO [3] in a BZX-listed security and there is an Indicative Price [4] that is not within the Collar Price Range,[5] the Opening Auction will be delayed until market conditions improve or the delay period has lapsed, as further described below.

The Exchange notes that the official opening price disseminated by the primary listing market provides market participants valuable information which in most cases is used to calculate the initial limit up-limit down (''LULD'') bands and also may serve as the basis for trading strategies for that trading day. However, the official opening price is not as important or time sensitive as the official closing price disseminated by the primary listing market, which is used for the pricing and valuation of certain indices, funds and derivative products. The Exchange believes the benefit of allowing crossed auction interest to execute at the best possible price outweighs the minimal and finite delay in the dissemination of the BZX Opening Price and LULD bands. Specifically, as discussed further below, the Exchange believes that the possible downside of delaying the dissemination of the LULD bands is mitigated by the infrequency with which LULD halts occur within the first four minutes and 30 seconds of the trading day and is also offset by the benefits to the opportunity for increased executions in the Opening Auction. As further noted below, this delayed dissemination of LULD bands is also a tradeoff that already exists as it relates to the opening process on the New York Stock Exchange LLC (''NYSE''), which may delay its opening process indefinitely. Finally, the Exchange notes that because the proposed functionality would only apply where there is crossed interest that is outside the Collar Price Range and there is not a Valid NBBO, the Exchange would only delay the Opening Auction (and thus delay the dissemination of the LULD bands) in certain situations. In those situations, it is more likely that the LULD bands disseminated without a delay in the Opening Auction are based on a price that is not reflective of current market conditions.

As such, the Exchange believes that the proposal strikes an appropriate balance by providing additional time for the Opening Auction Process to occur so that under such circumstances BZX-listed securities have an opportunity for more meaningful price formation that is more representative of current market conditions, but limiting any such delay so that the BZX Official Opening Price is reported to the Securities Information Processor (''SIP'') by 9:35 a.m. and will therefore be used to set the LULD bands.[6]

Background

As noted above, the Exchange is proposing that under limited circumstances its current Opening Auction Process would be amended to delay the process such that additional information could be incorporated into the determination of the Opening Auction price. Currently, Rule 11.23(b)(2)(B) sets forth the process by which the BZX Official Opening Price [7] is determined for BZX-listed securities during the Opening Auction Process. Specifically, as provided in Rule 11.23(b)(2)(B), the Opening Auction price will be the price level within the Collar Price Range that maximizes the number of shares executed between the Continuous Book [8] and Auction Book [9] in the Opening Auction. In the event of a volume based tie at multiple price levels, the Opening Auction price will be the price which results in the minimum total imbalance. In the event of a volume based tie and a tie in minimum total imbalance at multiple price levels, the Opening Auction price will be the price closest to the Volume Based Tie Breaker.[10]

The Volume Based Tie Breaker for an Opening Auction will be the midpoint of the NBBO where there is a Valid NBBO. Where there is no Valid NBBO, the Final Last Sale Eligible Trade (''FLSET'') [11] will be used as the Volume Based Tie Breaker.[12] Because the FLSET is typically based on the most recent execution in a security during Regular Trading Hours, its value may be significantly away from the Indicative Price at the time of the Opening Auction Process, especially in more thinly traded securities. As a result, the Exchange has observed instances where auction eligible orders priced in-line with the Indicative Price were not executed in the Opening Auction because they were outside the Collar Price Range established using the FLSET. Based on analysis by the Exchange and feedback from market participants, certain of these instances resulted in orders not receiving executions in the Opening Auction that would have otherwise occurred at prices that would have been acceptable to both parties to the execution. To illustrate this point, the Exchange presents the following example.

Example 1

Consider a security with a prevailing NBBO at 9:30:00 a.m. of $27.10 × $29.54 and two Limit-On-Open orders on the Auction Book—a buy for 1,000 shares at $27.90 and a sell for 1,500 shares at $27.90.[13] The Indicative Price, which is the price at which the most shares from the Auction Book and the Continuous Book would match, would be $27.90 because the only crossed interest comes from the two orders on the Auction Book. Therefore, there is crossed interest willing to execute at a price

[3] As provided in Rule 11.23(a)(23), an NBBO is a Valid NBBO where: (i) there is both a NBB and NBO for the security; (ii) the NBBO is not crossed; and (iii) the midpoint of the NBBO is less than the Maximum Percentage away from both the NBB and the NBO. *See* Exchange Rule 11.23(a)(23). The Maximum Percentage will vary depending on the price of the NBBO midpoint. Currently, the Maximum Percentages are as follows: for a NBBO midpoint price less than or equal to $25, the Maximum Percentage is 5%; for a NBBO midpoint price greater than $25 but less than or equal to $50, the Maximum Percentage is 2.5%; for a NBBO midpoint price greater than $50, the Maximum Percentage is 1.5%. *See* Section 1.5 (Definitions) of the US Equities Auction Process at *https://cdn.cboe.com/resources/membership/Cboe_US_Equities_Auction_Process.pdf*.

[4] The term ''Indicative Price'' shall mean the price at which the most shares from the Auction Book and the Continuous Book would match. In the event of a volume based tie at multiple price levels, the Indicative Price will be the price which results in the minimum total imbalance. In the event of a volume based tie and a tie in minimum total imbalance at multiple price levels, the Indicative Price will be the price closest to the Volume Based Tie Breaker. *See* Exchange Rule 11.23(a)(10).

[5] *See* Exchange Rule 11.23(a)(6).

[6] The SIP links the U.S. markets by processing and consolidating all protected bid/ask quotes and trades from every trading venue into a single data feed.

[7] *See* Exchange Rule 11.23(a)(5).

[8] *See* Exchange Rule 11.23(a)(7).

[9] *See* Exchange Rule 11.23(a)(1).

[10] The Volume Based Tie Breaker is the midpoint of the NBBO for a particular security where the NBBO is a Valid NBBO. Where the NBBO is not a Valid NBBO, the price of the FLSET is used as the Volume Based Tie Breaker. *See* Exchange Rule 11.23(a)(23).

[11] *See* Exchange Rule 11.23(a)(9).

[12] The Exchange estimates that there is no Valid NBBO for approximately 5.81% of the Exchange's Opening Auctions.

[13] For purposes of this example, there are no orders on the Continuous Book.

within the NBBO. However, because the midpoint of the NBBO (*i.e.,* $28.32) is more than the Maximum Percentage [14] away from both the NBB and NBO, the NBBO is not a Valid NBBO and thus the NBBO midpoint would not be used as the Volume Based Tie Breaker. Instead, the Volume Based Tie Breaker would be the FLSET, which would, by definition, be the BZX Official Closing Price from the previous business day, which was $26.52. Using the FLSET as the Collar Midpoint,[15] the Collar Price Range would be $25.19 × $27.85.[16] Because the Indicative Price is outside of the Collar Price Range and there is no crossed interest within the Collar Price Range, there would be no execution as part of the Opening Auction. Therefore, crossed interest from the Auction Book that was priced equal to or more aggressive than the Indicative Price and was within the NBBO would be canceled without execution.[17]

Proposal

Based on the scenario described above, the Exchange is proposing to change its Opening Auction functionality only in circumstances where (i) there is an Indicative Price, (ii) there is not a Valid NBBO, and/or (iii) the Indicative Price is not within the FLSET-established Collar Price Range. As proposed and described in further detail below, the Opening Auction would occur pursuant to the Standard Opening Auction Process if the NBBO becomes a Valid NBBO (*i.e.,* the spread narrows as markets open such that the midpoint of the NBBO is less than the Maximum Percentage away from both the NBB and the NBO) before 9:30:05, or if the Indicative Price moves within the Collar Price Range set by the FLSET (*i.e.,* orders on the Auction Book and/or non-displayed orders on the Continuous Book change the price level at which the most shares from the Auction Book and the Continuous Book would match to be within the Collar Price Range) prior to 9:34:30.

Proposed Rule 11.23(b)(2)(B)(i) would set forth the ''Standard Opening Process'', which mirrors the current process described in Rule 11.23(b)(2)(B). Proposed Rule 11.23(b)(2)(B)(ii) would provide that if there is no Valid NBBO and the Indicative Price is within the Collar Price Range, the Opening Auction price will be established pursuant to the Standard Opening Process. Proposed Rule 11.23(b)(2)(B)(iii) would delay and set forth an alternative Opening Auction Process in the event there is no Valid NBBO and the Indicative Price is not within the Collar Price Range. The proposal is designed to prevent the cancellation of auction eligible orders priced equally or more aggressive than the Indicative Price which the Exchange believes will facilitate the presence of sufficient liquidity and information to make the Opening Auction a meaningful price formation event in BZX-listed securities.

Proposed Rule 11.23(b)(2)(B)(iii) would provide that the Opening Auction price will be delayed as set forth in subparagraphs (a) and (b) as follows:

(a) If after the one-second delay there is a Valid NBBO or the Indicative Price is within the Collar Price Range, the Opening Auction price will be established pursuant to the Standard Opening Auction Process. If there is no Valid NBBO and the Indicative Price is not within the Collar Price Range after the one-second delay, the Opening Auction will be delayed by one additional second, at which point if there is a Valid NBBO or the Indicative Price is within the Collar Price Range, the Opening Auction price will be established pursuant to the Standard Opening Process. If after the additional one-second delay there is a Valid NBBO or the Indicative Price is not within the Collar Price Range, the process described in this paragraph (a) will continue to be applied in one-second increments until either the Opening Auction occurs or until five seconds has lapsed (*i.e.,* 9:30:05 a.m.).

(b) If the Opening Auction has not occurred by 9:30:05, the System will widen the Collar Price Range in the direction of the Indicative Price by 5% of the Volume Based Tie Breaker, which will be Final Last Sale Eligible Trade as of 9:30:05 a.m. (the ''Widening Amount'').[18] If the Indicative Price is within the widened Collar Price Range, the Opening Auction price will be established pursuant to the Standard Opening Auction Process. If the Indicative Price is not within the widened Collar Price Range, the Opening Auction will be further delayed, as discussed below.

In sum, the process described in proposed paragraph Rule 11.23(b)(2)(B)(iii)(a) would simply allow for the Opening Auction to occur using the Standard Opening Process described in paragraph 11.23(b)(2)(B)(i), the only difference between the current process being that such Opening Auction could instead occur within the first five seconds of Regular Trading Hours [19] based on whether there is a Valid NBBO or the Indicative Price is within the Collar Price Range. If, after each one-second delay, there is no longer an Indicative Price (*i.e.,* there is no longer crossed interest), the Opening Auction would occur immediately pursuant to proposed Rule 11.23(2)(B)(v). After the first five seconds of Regular Trading Hours, the System will only check for whether the Indicative Price is within the Collar Price Range and will not check for a Valid NBBO because the process described in Proposed Rules 11.23(b)(2)(B)(iii)(b)(1) through (4) is intended to closely follow the reopening process that is described in the Twelfth Amendment of the Plan to Address Extraordinary Market Volatility [20] (the ''Plan'') and corresponding Exchange Rules, as described in further detail below.

Proposed Rules 11.23(b)(2)(B)(iii)(b)(1) through (4) would set forth the delay of the Opening Auction if no auction has occurred between 9:30:05 and 9:34:30. Specifically, the proposed Rules would provide:

(1) The System will check to see whether the Indicative Price is inside the widened Collar Price Range every second between 9:30:05 and 9:30:30 a.m. If an Indicative Price is inside the widened Collar Price Range during a check, the Opening Auction price will be established pursuant to the Standard Opening Auction Process.

(2) If by 9:30:30 a.m. the Indicative Price is not within the widened Collar Price Range, the Collar Price Range will again widen by the Widening Amount. The System will check to see whether the Indicative Price is inside the widened Collar Price Range every second between 9:30:30 and 9:31:30 a.m. If an Indicative Price is inside the widened Collar Price Range during a check, the Opening Auction price will be established pursuant to the Standard Opening Auction Process.

(3) If by 9:31:30 a.m. the Indicative Price is not within the widened Collar Price Range, the System will check to see whether the Indicative Price is inside the widened Collar Price Range every second between 9:31:30 and 9:34:30 a.m. If an Indicative Price is inside the widened Collar Price Range during a check, the Opening Auction price will be established pursuant to the Standard Opening Auction Process. Unless the Opening Auction has occurred, the Collar Price Range will widen in the direction of the Indicative Price by the Widening Amount each minute from 9:31:30 to 9:34:30.

(4) If no Opening Auction has occurred by 9:34:30 a.m., the Opening Auction will occur pursuant to the Standard Opening Auction Process using the expanded Collar Price Range as of 9:34:30.

The Exchange first notes that if, during after each one-second delay,

[14] As noted above, the Maximum Percentage for a NBBO midpoint price greater than $25 but less than or equal to $50 is 2.5%.

[15] As provided in Rule 11.23(a)(6), the Collar Midpoint is the Volume Based Tie Breaker for Opening Auctions.

[16] The Collar Price Range is always double the Maximum Percentage. Therefore, the Collar Price Range in Example 1 is 5%.

[17] *See* Exchange Rule 11.23(b)(3)(C).

[18] The Exchange notes that Widening Amount will be locked-in as of 9:30:05, and will not change between 9:30:05 and 9:34:30 even in the event that a round lot trade reported to the consolidated tape was received by the Exchange during that time (*i.e.,* a FLSET).

[19] *See* Exchange Rule 1.5(w).

[20] *See* Securities and Exchange Act no. 79410 (November 28, 2016) 81 FR 87114 (December 2, 2016) (Notice of Filing of the Twelfth Amendment to the National Market System Plan To Address Extraordinary Market Volatility (''Amendment 12'')).

there is no longer an Indicative Price (*i.e.,* there is no longer crossed interest), the Opening Auction would occur immediately pursuant to proposed Rule 11.23(2)(B)(v).[21] The Exchange is also proposing to stop extending the Opening Auction Process at 9:34:30 a.m. in part to ensure that the Exchange is able to disseminate the BZX Official Opening Price with sufficient time to be used in the determination of the opening price[22] pursuant to the Plan, from which the reference price[23] is used to calculate the LULD bands. Specifically, the reference price for trading is typically the opening price on the primary listing exchange in an NMS Stock if such opening price occurs less than five minutes after the start of Regular Trading Hours. Therefore, because under the proposal the Opening Auction Process would occur no later than 9:34:30, the LULD bands would be determined based on the BZX Official Opening Price. While the LULD bands for BZX-listed securities could be determined pursuant to the Plan without a BZX Official Opening Price, the Exchange believes that the inclusion of such price provides for LULD bands that more accurately reflect current market conditions.

The Exchange also proposes to move the last two sentences of existing Rule 11.23(b)(2)(B) to proposed Rules 11.23(b)(2)(B)(iv) and (v), respectively, with certain modifications to Rule 11.23(b)(2)(B)(v). Specifically, proposed Rule 11.23(b)(2)(B)(iv) would provide that the Opening Auction Price will be the BZX Official Opening Price. Proposed Rule 11.23(b)(2)(B)(v) would provide that in the event that there is no Opening Auction for an issue, the BZX Official Opening Price will be the price of the FLSET. The Exchange proposes to eliminate the provision that states that the FLSET will be the previous BZX Official Closing Price as it is possible that an FLSET may occur between 9:30:00 and 9:34:30.

Based on the above proposed amendments, the Exchange proposes to amend Rules 11.23(b)(1)(A) and (B) to reflect that the Opening Auction may occur at a time other than 9:30 a.m. Specifically, the Exchange proposes to amend paragraph (A) to provide the following: Users may submit orders to the Exchange as set forth in Rule 11.1. Any Eligible Auction Orders[24] designated for the Opening Auction will be queued for participation in the Opening Auction. Users may submit limit-on-open (''LOO'') and market-on-open (''MOO'') orders until 9:28 a.m., at which point any additional LOO and MOO orders submitted to the Exchange will be rejected. Regular Hours Only[25] (''RHO'') market orders will also be rejected from 9:28 a.m. until the Opening Auction has concluded. Users may submit late-limit-on-open[26] (''LLOO'') orders from 9:28 a.m. until the Opening Auction has concluded. Any LLOO orders submitted before 9:28 a.m. or after the Opening Auction has concluded will be rejected. RHO limit orders submitted from 9:28 a.m. until the Opening Auction has concluded will be treated as LLOO orders.

The Exchange proposes to amend Rule 11.23(b)(1)(B) to provide that Eligible Auction Orders designated for the Opening Auction may not be cancelled or modified from 9:28 a.m. until the Opening Auction has concluded except that RHO limit orders designated for the Opening Auction may be modified, but not cancelled, from 9:28 a.m. until the time the Opening Auction has concluded. Any such RHO limit orders modified from 9:28 a.m. until the Opening Auction has concluded will be treated as LLOO orders.

To illustrate the proposed functionality, consider the following examples.

Example 2

Applying the same facts from Example 1 related to current functionality above, assume a security has a prevailing NBBO at 9:30:00 a.m. of $27.10 × $29.54 and two Limit-On-Open orders on the Auction Book—a buy for 1,000 shares at $27.90 and a sell for 1,500 shares at $27.90.[27] The Indicative Price, which is the price at which the most shares from the Auction Book and the Continuous Book would match, would be $27.90 because the only crossed interest comes from the two orders on the Auction Book.

Because there was no Valid NBBO and the Indicative Price was outside of the Collar Price Range, the System would check at each second starting at 9:30:00 and ending at 9:30:05 for a Valid NBBO and for the Indicative Price that is within the Collar Price Range. Assuming that these checks did not find a Valid NBBO or an Indicative Price within the Collar Price Range, after the check at 9:30:05 the Collar Price Range is widened in the direction of the Indicative Price by 5% of the FLSET (*i.e.,* $26.52) as of 9:30:05, or $1.33, resulting in a Collar Price Range of $25.19 × $29.18. Upon the first one second check thereafter, the Indicative Price of $27.90 is within the widened Collar Price Range and the auction occurs immediately pursuant to the Standard Opening Auction Process.

Example 3

Applying the facts from Example 2 above, but also considering that another two orders exist on the Auction Book including a buy order for 2,000 shares at $30.50 and a sell order for 500 shares at $30.50.[28] The additional orders entered to the Auction Book would move the Indicative Price to $30.50 because $30.50 would be the price at which the most shares would match (*i.e.,* 2,000 shares). Given that the Indicative Price ($30.50) is not within the widened Collar Price Range calculated above ($25.19 × $29.18), the Opening Auction would not occur after the first collar widening. As such, the System would check at each second starting at 9:30:05 and ending at 9:30:30 for an Indicative Price that is within the Collar Price Range. Assuming that the Indicative Price did not change and thus the checks would not find an Indicative Price within the Collar Price Range, after the check at 9:30:30 the Collar Price Range would once again be widened in the direction of the Indicative Price by the same 5% amount used for the initial collar widening at 9:30:05 ($1.33). The Collar Price Range from 9:30:30 to 9:31:30 would then be $25.19 × $30.51. Upon the first one second check thereafter, the Indicative Price of $30.50 is within the widened

[21] The Exchange notes that the BZX Official Opening Price will be the price of the FLSET, which will be the previous BZX Official Closing Price unless an FLSET occurred after 9:30:00.

[22] For purposes of the Plan, ''opening price'' shall mean the price of a transaction that opens trading on the primary listing exchange. If the primary listing exchange opens with quotations, the ''opening price'' shall mean the closing price of the NMS Stock on the primary listing exchange on the previous trading day, or if no such closing price exists, the last sale on the primary listing exchange. *See* section I(I) of the Plan.

[23] For purposes of the plan, ''reference price'' shall have the meaning provided in Section V of the Plan. *See* section I(R) of the Plan. Section V of the Plan provides that the LULD price bands are based on a reference price for each NMS Stock that, for purposes of the first reference price for a trading day shall be the opening price on the primary listing exchange in an NMS Stock if such opening price occurs less than five minutes after the start of Regular Trading Hours. If the opening price on the primary listing exchange in an NMS Stock does not occur within five minutes after the start of Regular Trading Hours, the first reference price for a trading day shall be the arithmetic mean price of eligible reported transactions for the NMS Stock over the preceding five minute time period. If there is no opening price on the primary listing exchange in an NMS Stock and no trades have occurred by 9:35:00, the previous reference price shall remain in effect.

[24] *See* Exchange Rule 11.23(a)(8).

[25] *See* Exchange Rule 11.9(b)(7).

[26] *See* Exchange Rule 11.23(a)(12).

[27] For purposes of this example, there are no orders on the Continuous Book.

[28] For purposes of this example, assume there are no orders on the BZX Continuous Book.

Collar Price Range and the auction would occur immediately pursuant to the Standard Opening Auction Process.

Example 4

Applying the facts from Example 3 above, but replacing the two additional orders to the Auction Book a buy order for 2,000 shares at $34.75 and a sell order for 500 shares at $34.75. The orders entered to the Auction Book would move the Indicative Price to $34.75 because $34.75 would be the price at which the most shares would match (*i.e.,* 2,000 shares). Given that the Indicative Price ($34.75) is not within the widened Collar Price Range calculated above at 9:30:30 ($25.19 × $30.51), the Opening Auction would not occur after the second collar widening. As such, the System would check at each second starting at 9:30:30 and ending at 9:31:30 for the Indicative Price being within the Collar Price Range. Assuming that the Indicative Price did not change and thus the checks would not find an Indicative Price within the Collar Price Range, after the check at 9:31:30 the Collar Price Range would again widen in the direction of the Indicative Price by the same 5% amount used for the initial collar widening at 9:30:05 (*i.e.,* $1.33). Therefore, the Collar Price Range would be $25.19 × $31.84 for the period between 9:31:30 and 9:32:30. Again, assuming there is no change to the Indicative Price, at 9:32:30 the Collar Price Range would widen by $1.33 in the direction of the Indicative Price, which would be $25.19 × $33.17 for the period between 9:32:30 and 9:33:30. Again, assuming there is no change to the Indicative Price, at 9:33:30 the Collar Price Range would widen by $1.33 in the direction of the Indicative Price, which would be $25.19 × $34.50 for the period between 9:33:30 and 9:34:30. At this point, the Indicative Price (*i.e.,* $34.75) remains higher than the top end of the Collar Price Range (*i.e.,* $34.50). As such, the Opening Auction would occur at 9:34:30, but would occur within the final Collar Price Range at $27.91, which is the price level tied for the most volume (*i.e.,* 1,500 shares), lowest imbalance (*i.e.,* 500 shares), and closest to the Volume Based Tie Breaker (*i.e.,* the FLSET of $26.52), instead of at the Indicative Price.

As described above, the current functionality described in Example 1 would result in no opening auction because all crossed interest was outside the Collar Price Range set using the FLSET. Examples 2 and 3 demonstrate scenarios in which the proposed functionality of delaying the Opening Auction Process and widening the Collar Price Range would allow participants to execute in an opening auction that would occur at a price more reflective of current market conditions, and that would permit the greatest volume of crossed interest to execute. Alternatively, Example 4 demonstrates that even with the proposed delay and widened Collar Price Range, the Opening Auction may not occur at a price for which any or all crossed interest may execute. The Exchange includes Example 4 in order to illustrate that not all crossed interest in an auction should necessarily be executed and that at some point the benefit of continuing to delay the Opening Auction would be outweighed by the need to establish the BZX Official Opening Price, in particular to ensure that it is reported to the SIP in advance of 9:35 a.m. so that it can be used as the reference price from which the LULD bands are calculated.

Under the proposal, the Opening Auction would be delayed until either (1) the NBBO becomes a Valid NBBO, (2) the Indicative Price is within the Collar Price Range (*i.e.,* if the Opening Auction occurred between 9:30:01 and 9:30:05) or within the widened Collar Price Range (*i.e.,* if the Opening Auction occurred between 9:30:06 and 9:34:30), or (3) the delay period of four minutes and 30 seconds lapsed. While the proposal does not guarantee that certain orders priced equally or more aggressive to the Indicative Price will execute in the Opening Auction, it provides for additional time for the market to develop at the beginning of the trading day before conducting the Opening Auction.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act.[29] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[30] because it would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Exchange.[31] Generally, the Exchange believes that the proposed changes will improve the price discovery process in the Opening Auction for securities listed on the Exchange along with additional benefits set forth below.

First, the Exchange believes proposed Rules 11.23(b)(2)(B)(i) and (ii) are consistent with the Act as the proposed paragraphs are substantially similar to existing Rule 11.23(b)(2)(B) and involve no change in the Opening Auction functionality. Second, the Exchange believes proposed Rule 11.23(b)(2)(B)(iii) would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. The proposal is designed to increase the likelihood that auction eligible orders that are priced equally or more aggressive than the Indicative Price of the security are able to participate in the Opening Auction instead of being canceled because they are priced outside the Collar Price Range established using the FLSET. As stated above, current Rule 11.23(b)(2)(B) provides that in the event there is no Valid NBBO, the FLSET will be used as the Volume Based Tie Breaker and basis for calculating the Collar Price Range. Because the current Opening Auction Process occurs at 9:30:00 a.m., such a Collar Price Range is based on an FLSET that may not have occurred recently or may not otherwise be reflective of current market conditions. As a result, the Exchange has observed instances where auction eligible orders priced equally or more aggressive than the Indicative Price were canceled without execution because they were outside the Collar Price Range established using the FLSET. While these observed instances have been infrequent, the Exchange believes it is important to ensure that the BZX Opening Process is designed to maximize the greatest volume of executions so that the BZX Official Opening Price accurately reflects current market conditions and to allow for executions between willing buying and sellers. Further to this point, Market-On-Open orders (also known as MOO orders) [32] are market orders only eligible for execution in the Opening Auction that are designed for participants that want to get an execution without regard to price. Because such orders are not price

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78f(b)(1).

[32] As defined in Rule 11.23(a)(16), the term ''Market-On-Open'' or ''MOO'' shall mean a BZX market order that is designated for execution only in the Opening Auction.

sensitive, they are more likely to cross contra-side orders outside of the Collar Price Range and the Exchange believes that the greater opportunity for execution afforded by the proposed changes will create a better opening process for such MOO orders. From January 1, 2022 through July 12, 2022 there have been 324 instances in which MOO orders did not receive an execution in the Opening Auction and were thus cancelled. In 168 of those instances the Opening Auction would have been extended under the proposed changes to the BZX Opening Process and 10,936 shares could have potentially received an execution.[33] As noted above, the proposed new functionality would result in extending the Opening Auction relatively infrequently, but could be particularly meaningful for orders that are willing to execute in the Opening Auction, especially where such orders are Market-On-Open orders that are looking for an execution without price sensitivity. Further, the Exchange believes that the possible downside of delaying the dissemination of the LULD bands is mitigated by the infrequency with which LULD halts occur within the first four minutes and 30 seconds of the trading day and is also offset by the benefits to the opportunity for increased executions in the Opening Auction. As further noted below, this delayed dissemination of LULD bands is also a tradeoff that already exists as it relates to the opening process on the NYSE.

The Exchange is not aware of any issues that the proposal would create and does not expect the proposal to impact other markets that trade BZX-listed securities pursuant to unlisted trading privileges (''UTP'') in a manner that is not necessary or appropriate in furtherance of the purposes of the Act. For example, the proposal will have no impact on the UTP opening process for the Exchange's affiliated markets, Cboe BYX Exchange, Inc. (''BYX''), Cboe EDGA Exchange, Inc. (''EDGA''), and Cboe EDGX Exchange, Inc. (''EDGX'' and collectively with BYX and EDGA referred to as the ''Cboe Exchanges''). Each of the Cboe Exchanges provide for an opening process for securities listed pursuant to UTP (the ''UTP Opening Process''),[34] which state that the opening process ''will be priced at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the listing exchange after 9:30:00 a.m. Eastern Time.'' [35] Such process occurs regardless of NBBO width. Because the Exchange will continue to disseminate an NBBO regardless of the timing of the Opening Auction and the UTP Opening Process takes place where there is a ''two-sided quotation published by the listing exchange,'' the proposed new functionality will have no impact on the UTP Opening Process rules of the Cboe Exchanges. Further to this point, the Exchange notes that MIAX Pearl Exchange, an exchange that only offers UTP trading, has identical language related to its opening process and, therefore, the Exchange would not expect this change to have an impact on its opening process.[36]

Furthermore, the Exchange notes that it is the responsibility of each exchange that offers UTP trading to establish and maintain their opening process for UTP securities such that it works with the opening process of the applicable primary listing venue. The Exchange believes that it is generally in the public interest for a primary listing venue to improve the price discovery process for its listed securities and that the rule filing process provides the opportunity for anyone to provide public comment on any issues that might offset such benefits, including operational issues for exchanges offering UTP trading. The Cboe Exchanges' UTP Opening Process was designed with the opening process of the primary listing venue for the UTP security in mind and provides different processes depending on the listing exchange of the applicable UTP security.[37] Because certain exchanges allow for a security to be opened manually, which often results in an opening that occurs after 9:30:00 a.m. ET, the UTP Opening Process rules differentiate the opening process based on the listing exchange of the applicable UTP security. As such, other exchanges have presumably also designed and maintain their respective UTP opening processes with an eye toward the opening process of the primary listing exchange. To the extent that the proposed change hypothetically created issues for the UTP opening process of other market centers or that such other market centers otherwise disagree with the Exchange's proposed new functionality, no such issues have been raised through the public comment process. Accordingly, the Exchange believes that its proposal benefits investors generally by enhancing the Exchange's price discovery process for Opening Auctions without any anticipated impact to other UTP exchanges and, as such, that the proposal is consistent with the Act.

The Exchange also believes the proposal strikes a balance between providing a better price discovery mechanism by offering additional execution opportunities for auction eligible orders priced equally or more aggressive than the Indicative Price of the security and limiting any such delay so that the BZX Official Opening Price is reported to the SIP by 9:35 a.m. and will therefore be used to set the LULD bands. The Exchange notes that, while there will be no LULD bands until the Exchange disseminates a reference price and thus there will be no LULD bands during the period before the Opening Auction Process occurs, this is a tradeoff that already exists as it relates to the opening process on the NYSE, which may delay the opening process for an indefinite period of time. The Exchange also notes that LULD bands disseminated during the circumstances in which the proposed delay would be applied are more likely to be based on a price that may not be reflective of current market conditions. For example, in situations where the proposed delay would be applied, the LULD bands would be based off an FLSET that occurred on the prior trading day, and thus the LULD bands could be based on a stale price. The Exchange is only proposing to delay the Opening Auction in circumstances where there is crossed interest and no Valid NBBO meaning that there are parties willing to execute at a particular price and the NBBO is not narrow enough to provide any meaningful guidance about the actual market value of the security. Therefore, the Exchange believes any potential drawback in a delay of the LULD bands is mitigated by the limited circumstances in which the delay would occur and that any LULD bands disseminated during such a delay may not be reflective of current market conditions. Delaying the opening

[33] This calculation is across 73,927 total Opening Auctions in BZX-listed securities during the applicable period. The Exchange notes that this calculation only includes MOO orders that were not executed and would thus not include the following scenarios: (i) Limit-On-Open orders that were crossed with MOO orders (although the MOO order portion is captured), other Limit-On-Open orders, or limit orders on the Continuous Book; and (ii) limit orders in the Continuous Book that were crossed with MOO orders (although the MOO order portion is captured). The Exchange believes that the MOO orders likely represent the majority of the instances in which crossed-interest was unexecuted because it was outside of the Collar Price Range because MOO orders are submitted for participation in the Opening Auction more frequently than very aggressively priced Limit-On-Open orders.

[34] *See* BYX Rule 11.23, EDGA Rule 11.7, and EDGX Rule 11.7 (collectively, the ''UTP Opening Process Rules'').

[35] *See* paragraph (c)(2) of UTP Opening Process Rules.

[36] *See* MIAX Pearl Exchange Rule 2615, particularly Rule 2615(c)(2).

[37] *See* paragraphs (c)(1) and (c)(2) of the UTP Opening Process rules.

auction process under certain circumstances provides an opportunity for more meaningful price formation that is more representative of current market conditions, especially in thinly traded or less liquid securities which are by definition less likely to have executions during the period before the Opening Auction Process occurs. Further to this point, the Exchange expects that: (i) the Opening Auction Process will not be delayed frequently; and (ii) even where the Opening Auction Process is delayed, it is unlikely that the price of the underlying security will hit a price at which it would have been subject to an LULD halt if the Exchange had not delayed the Opening Auction Process.[38]

Separately, the Exchange believes that creating functionality that could delay the Opening Auction Process by four minutes and 30 seconds is consistent with the Act because it also ensures that the Exchange's opening process is used to determine the LULD band reference price. If the opening price on a primary listing exchange is not reported to the SIPs within five minutes after the start of Regular Trading Hours, the first reference price for a trading day is the arithmetic mean price of eligible reported transactions for the NMS stock over the preceding five minute period.[39] However, if no eligible reported transactions have occurred in the NMS stock over the preceding five minute period, there will be no reference price and thus no LULD bands in the security until an eligible reported transaction occurs. The Exchange believes that LULD bands are an important mechanism for investor protection, especially in thinly traded or illiquid securities and, as such, is proposing to calculate a BZX Official Opening Price no later than 9:34:30 a.m. which will allow it to continue to report the BZX Official Opening price to the SIP prior to 9:35 a.m. so that it serves as the reference price on which the LULD bands are based.

To the extent that the Exchange's proposed opening process results in a more accurate BZX Official Opening Price, it follows that such a price would also provide a better foundation for the LULD bands without negatively impacting the LULD process because the Exchange would continue to provide the BZX Official Opening Price to the SIP prior to 9:35. As a result, the Exchange believes that the proposal would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

The Exchange notes that the concept of delaying an auction and widening the Collar Price Range as provided in proposed paragraphs 11.23(b)(2)(B)(iii)(b)(1) through (4) is similar to the Twelfth Amendment of the Plan and corresponding amendments by the primary listing exchanges. Specifically, Amendment 12 was created to improve re-openings following a trading pause,[40] with an eye towards carefully balancing halt auction price quality and the speed with which continuous trading can be resumed. Amendment 12 provided that auction halt periods would be extended if either the auction price at which the most shares would be traded is outside the range of the pre-defined price threshold collars (the ''price threshold collars'') or there is a market order share imbalance. Further, Amendment 12 provided that the price threshold collars would be widened in the event that the auction's halt period is extended. In its approval of Amendment 12, the Commission stated that it is appropriate in the public interest, for the protection of investors and the maintenance of a fair and orderly market to provide that a trading pause continue until the primary listing exchange has reopened trading using its established reopening procedures, even if such reopening is more than 10 minutes after the beginning of a trading pause, and to require that trading centers may not resume trading in an NMS Stock following a trading pause without price bands in such NMS Stock. The Commission stated that these two provisions together support a more standardized process for reopening trading after a trading pause has been declared.

As a primary listing exchange, the Exchange amended Rule 11.23(d) to incorporate the provisions of Amendment 12.[41] Specifically, under Rule 11.23(d)(1)(A) the Quote-Only Period[42] with respect to a halt auction commences five (5) minutes prior to such halt auction. Adopted Rule 11.23(d)(2)(C) provides for the Quote-Only Period to be extended an additional five (5) minutes should a halt auction be unable to be performed due to Market Order[43] imbalance under 11.23(d)(2)(B)(i)[44] or if the indicative price, before being adjusted for halt auction collars, is outside the halt auction collars set forth in adopted subparagraphs (i)[45] and (ii)[46] to Exchange Rule 11.23(d)(2)(C) (either, an ''Impermissible Price'') (''Initial Extension Period''). Similar to the proposal, Rule 11.23(d)(2)(C)(ii) provides that at the beginning of the Initial Extension Period the upper (lower) halt auction collar shall be increased (decreased) by five (5) percent in the direction of the Impermissible Price, rounded to the nearest minimum price variation. For securities with a halt auction reference price of $3.00 or less, the halt auction collar shall be increased (decreased) in $0.15 increments in the direction of the Impermissible Price. At the beginning of each additional extension period, the halt auction collar shall be widened in accordance with this paragraph by the same amount as the Initial Extension Period. In its approval order,[47] the Commission stated that ''extending the Trading Pause and widening the halt auction collar on the side of the Impermissible Price would be a measured approach to provide additional time to attract offsetting interest, to help to address an imbalance that may not be resolved within the prior halt auction collars, and to reduce the potential for triggering another Trading Pause.''

The Exchange notes that the purpose of Amendment 12 and corresponding

[38] The Exchange notes that during the period of June 1, 2021 through May 31, 2022, a LULD halt occurred in BZX listed symbols during the first four minutes and 30 seconds of the trading day roughly 0.01% of the time (15/134,615).

[39] *See* Section V(B)(2) of the Plan.

[40] A ''trading pause'' refers to a function of the LULD mechanism provided under the Plan. Specifically, the Plan sets for procedures that provide for market-wide LULD requirements that prevent trades in individual NMS stocks from occurring outside of the specified price bands and provides for trading pauses to accommodate more fundamental price moves.

[41] *See* Securities Exchange Act No. 75879 (October 26, 2016) 81 FR 75875 (November 1, 2016) (SR–BatsBZX–2016–61) (Notice of Filing of a Proposed Rule Change To Amend Exchange Rule 11.23, Auctions, To Enhance the Reopening Auction Process Following a Trading Halt Declared Pursuant to the Plan To Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS). *See also* Securities Exchange Act No. 79885 (January 26, 2017) 82 FR 8968 (February 1, 2017) (SR–BatsBZX–2016–61) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Exchange Rule 11.23, Auctions, To Enhance the Reopening Auction Process Following a Trading Halt Declared Pursuant to the Plan To Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS)

[42] ''Quote-Only Period'' is defined as ''a designated period of time prior to a halt auction, a Volatility Closing Auction, or an IPO Auction during which Users may submit orders to the Exchange for participation in the auction.'' See Exchange Rule 11.23(a)(17).

[43] *See* Rule 11.9(a)(2).

[44] Under 11.23(d)(2)(B)(i), the Quote-Only Period may be extended where there are unmatched Market Orders on the Auction Book associated with the auction.

[45] Rule 11.23(d)(2)(C)(i) provides for the initial halt auction collar calculations.

[46] Rule 11.23(d)(2)(C)(ii) provides for the widening of the halt auction collars.

[47] *Supra* note 26.

Exchange amendment was intended to delay a halt auction to attract offsetting interest, while the purpose of this proposal is intended to delay the Opening Auction Process in order to provide the Opening Auction price additional time to reflect current market conditions. While Exchange Rule 11.23(d) and Amendment 12 apply only to re-opening auctions that are single venue liquidity events and this proposal applies to the opening auction which is not a single venue liquidity event,[48] applying a common functionality across the two remains logical because the Exchange believes that delaying the Opening Auction Process under certain conditions such that the delay will be coincident with the increasing liquidity that comes shortly after the beginning of Regular Trading Hours, which the Exchange believes is similar to extending halt auctions in order to allow for greater participation and simultaneous expansion of executable price range. Even though trading is ongoing while the Opening Auction Process is underway, orders on the Continuous Book are included in the Opening Auction Process and the increased liquidity around the open will generally increase liquidity in the Opening Auction Process even if market participants are entering orders in the Continuous Book rather than auction specific orders. To this point, both are designed to balance auction price quality and the speed with which an auction can occur and thus continuous trading can be resumed, in the case of a halt auction, or when the Opening Auction Process completes, in the case of an Opening Auction. Further, this consistency in approach offers a process that market participants are already familiar with. Having consistent auction processes benefits all investors because market participants are already familiar with the proposed functionality and will not have to learn a new set of nuanced rules designed to accomplish the same end goal, will understand how the functionality operates because of its common usage in the LULD context, and will generally help with quick understanding and adoption while reducing the need for market participants to build systems designed to accommodate an entirely new process. Therefore, the Exchange believes the proposal is appropriate, in the public interest, for the protection of investors and the maintenance of a fair and orderly market.

The Exchange also believes its proposal to the last two sentences of existing Rule 11.23(b)(2)(B) to paragraphs 11.23(b)(2)(B)(iv) and (v), respectively, will improve clarity and readability of the rule. Further, the proposal to remove the provision of paragraph 11.23(b)(2)(B)(v) that states the FLSET will be the previous BZX Official Closing Price is consistent with the new proposed functionality, which would allow for an FLSET to occur between 9:30 and 9:34:30.

Finally, the Exchange believes its proposed clarifications to Rules 11.23(b)(1)(A) and (B) to reflect that the Opening Auction may occur at a time other than 9:30 a.m. will allow the Exchange to more easily administer its rules, and Members can more clearly understand how the Opening Auction Process may occur. Specifically, the proposed amendments to Rules 11.23(b)(1)(A) and (B) will add clarity, transparency and internal consistency to Exchange rules making them easier to navigate, in light of the other proposed Rule changes described herein.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, allowing the Exchange to make the above proposed modifications will allow the Exchange to better compete with other exchanges as a listing venue by improving the Exchange's auction process by allowing more executions to occur at more reasonable prices that are based on the current value of the security. As mentioned above, the Exchange has received feedback from market participants regarding the issue under the current process, and the proposed amendments will both address this feedback and improve the Exchange's auction process, allowing it to better compete as both a listing and execution venue.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–045 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CboeBZX–2022–045. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from

[48] The Exchange's Opening Auction is not a single venue liquidity event because trading is occurring on the Exchange's Continuous book and at away market centers before and during the Opening Auction.

comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–045 and should be submitted on or before September 21, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–18764 Filed 8–30–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95605; File No. SR–FICC–2022–005]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Revise the Formula Used To Calculate the VaR Charge for Repo Interest Volatility

August 25, 2022.

I. Introduction

On June 29, 2022, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule change SR–FICC–2022–005. The proposed rule change was published for comment in the **Federal Register** on July 15, 2022.[3] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

FICC proposes to amend its Government Securities Division (''GSD'')[4] Quantitative Risk Management (''QRM'') Methodology Document—GSD Initial Market Risk Margin Model (''QRM Methodology Document'')[5] in order to (i) revise the formula FICC uses to calculate the Value at Risk charge (''VaR Charge'')[6] margin component for repurchase agreement (''repo'') interest volatility, and (ii) make certain technical and conforming changes.

A. Background

Repos involve a pair of transactions between two parties. The first transaction consists of the sale of securities, in which one party (the ''cash borrower'') delivers securities in exchange for the other party's (the ''cash lender'') delivery of cash. The second transaction occurs on a date after that of the first transaction and consists of a repurchase of the securities, in which the obligations to deliver cash and securities are reversed. FICC's members submit repos to FICC for matching, comparison, risk management, and ultimately, net settlement. FICC guarantees that the cash borrower receives its repo collateral back at the close of a repo transaction, while the cash lender receives the amount paid at the repo's start, plus interest. Interest on a repo transaction is the difference between the repurchase settlement amount and the start amount paid on the repo inception date.

A key tool that FICC uses to manage its credit exposures to its members is the daily collection of margin from each member. The aggregated amount of all members' margin constitutes the Clearing Fund,[7] which FICC would be able to access should a defaulted member's own margin be insufficient to satisfy losses to FICC caused by the liquidation of that member's portfolio. Each member's margin consists of a number of applicable components, including the VaR Charge which is designed to capture the potential market price risk associated with the securities in a member's portfolio.[8] The VaR Charge is typically the largest component of a member's margin requirement. FICC designed the VaR Charge to cover FICC's projected liquidation losses with respect to a defaulted member's portfolio at a 99 percent confidence level.

The VaR Charge includes, among other things, a component that addresses repo interest volatility (the ''repo interest volatility charge'').[9] The QRM Methodology Document describes FICC's formula for calculating the repo interest volatility charge. The market value of interest payments for the duration of a repo transaction are subject to the risk of movements of the market repo interest rates. Since FICC guarantees the repo interest payment to the cash lenders, FICC must mitigate the risk arising out of fluctuations in market repo interest rates for a specified period of time after a member default.[10]

Under the current formula, the repo interest positions for a given member portfolio are put into different risk buckets based on (i) whether the underlying repo trade is a generic repo trade or a special repo trade,[11] and (ii) the time to settlement of the underlying repo trade. FICC assesses the repo interest volatility charge by applying a haircut schedule to the different risk buckets, with a single haircut rate applied to each risk bucket after netting the short and long repo interest positions within the relevant bucket. The total net amount of each risk bucket equals the sum of the products of the repo start amount and the time to settlement of each repo interest position in that risk bucket. If the total net amount is positive (*i.e.,* long), FICC applies a long repo haircut rate to the total net amount for that risk bucket to calculate the repo interest volatility charge for that risk bucket. If the total net amount is negative (*i.e.,* short), FICC applies a short repo haircut rate to the absolute value of the total net amount for that risk bucket to calculate the repo interest volatility charge for that risk bucket. The total repo interest volatility charge for a member's portfolio is the sum of the repo interest volatility charges of all of the risk buckets in the portfolio. Accordingly, the current formula reflects a repo interest rate

[49] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 95256 (July 12, 2022), 87 FR 42524 (July 15, 2022) (SR–FICC–2022–005) (''Notice'').

[4] FICC operates two divisions, GSD and the Mortgage Backed Securities Division (''MBSD''). GSD provides trade comparison, netting, risk management, settlement, and central counterparty (''CCP'') services for the U.S. Government securities market, including repos. MBSD provides the same services for the U.S. mortgage-backed securities market. GSD and MBSD maintain separate sets of rules, margin models, and clearing funds. The proposed rule change relates solely to GSD.

[5] FICC filed an excerpt of the QRM Methodology Document showing the proposed changes as a confidential exhibit to this proposed rule change, pursuant to 17 CFR 240.24–b2. FICC originally filed the QRM Methodology Document confidentially as part of a previous proposed rule change and advance notice approved by the Commission regarding FICC's GSD sensitivity VaR. *See* Securities Exchange Act Release Nos. 83362 (June 1, 2018), 83 FR 26514 (June 7, 2018) (SR–FICC–2018–001) and 83223 (May 11, 2018), 83 FR 23020 (May 17, 2018) (SR–FICC–2018–801).

[6] Capitalized terms not defined herein are defined in FICC's GSD Rulebook, *available at https://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf* (''Rules'').

[7] *See* Rule 4 of the Rules, *supra* note 6.

[8] *See* Rule 1 of the Rules, *supra* note 6.

[9] Currently, the repo interest volatility constitutes approximately 3 percent of the total GSD margin (at the CCP level). *See* Notice, *supra* note 3, at 42524.

[10] This time period is currently set at three days, which represents the duration of time that FICC would be subject to market risk after a member default, starting from the time of the last successful margin collection to the time the market risk exposure is effectively mitigated. *See* Notice, *supra* note 3, at 42524.

[11] FICC designates repo trades as either generic or special depending on how the repo rate of the trade's particular collateral compares to the prevailing market rates of similar repo transactions.

index [12] driven approach where a single repo haircut rate is applied to the absolute value of the total net amount of each risk bucket of repo interest positions.[13] The QRM Methodology Document, which was filed confidentially, contains a detailed description of the repo haircut rate calculation for all risk buckets.

Based on FICC's 2020 and 2021 annual model validation reports,[14] the rolling 12-month backtesting coverage on members' repo interest positions were below the 99 percent coverage target from June 2019 to September 2020. Additionally, FICC conducted an impact study for the period of January 2018 to February 2022 (''Impact Study''),[15] which demonstrated a backtesting coverage ratio of 98.7 percent for the repo interest volatility charge during that time period. To address these deficiencies, FICC proposes to change the formula for calculating the repo interest volatility charge to improve backtesting coverage and provide FICC with greater flexibility than the current formula to calculate the repo interest volatility charge in a manner that is more responsive to rapidly changing market conditions.

B. Proposed Rule Change

1. New Formula for Calculating Repo Interest Volatility Charge

The proposed formula is similar to the current formula in certain respects. For example, the proposed formula would continue to rely upon repo interest rate indices and would use a similar mathematical calculation as the current formula. In addition, under the proposed formula, the repo interest positions for a given member portfolio would continue to be placed into risk buckets based on the same criteria used currently, that is, (i) whether the underlying repo trade is a generic repo trade or a special repo trade, and (ii) the time to settlement of the underlying repo trade. Finally, the total repo interest volatility charge for the portfolio would continue to be the sum of the repo interest volatility charges of all of the risk buckets in the portfolio.

However, unlike the current formula, the proposed formula provides FICC with the flexibility to apply more than one repo haircut rate to each risk bucket because FICC would no longer apply the repo haircut rate based on whether the total net amount for a specific risk bucket is long or short. Instead, FICC proposes to apply a specific repo haircut rate based on whether the individual repo interest position in a given risk bucket is either long or short. That is, FICC would apply a long repo haircut rate to all long positions and a short repo haircut rate to all short positions, in each risk bucket. The long positions and the short positions could offset each other within the same risk bucket, but could not offset each other across different risk buckets. The repo interest volatility charge for a specific risk bucket would be the absolute value [16] of the sum of the products of repo start amount, time to settlement, and repo haircut rate of the individual repo interest positions in the risk bucket. Thus, by allowing FICC to use two haircuts for each risk bucket, one for long positions and the other for short positions,[17] the proposal would enable FICC to respond to rapidly changing market conditions more quickly and timely.[18]

2. Add Bid-Ask Spread To Repo Haircut Rates

FICC also proposes to add a repo bid/ask spread to each repo haircut rate (one for long positions and one for short positions) within the same risk bucket. FICC would calculate the repo bid/ask spread based on the historical percentile movements of FICC's internally constructed repo interest rate indices. FICC states that this change would account for the difference observed in the repo market between the highest rate a repo participant is willing to pay to borrow money in a repo trade and the lowest rate a repo participant is willing to accept to lend money in a repo trade. FICC believes that adding the repo bid/ask spread to each of the repo haircut rates would improve backtesting coverage, particularly with respect to sub-portfolios of repo interest only positions.[19]

Based on the Impact Study, had the proposed new formula and repo bid-ask spread been in place during the period of January 2018 to February 2022, the CCP-level backtesting coverage ratio for the repo interest volatility charge would have increased from approximately 98.7 percent to 99.2 percent.[20]

3. Remove Description of Repo Haircut Rate Calculations

As stated above, the QRM Methodology Document currently contains a detailed description of the repo haircut rate calculation for all risk buckets. FICC proposes to eliminate this detailed description from the QRM Methodology Document and replace it with a more general description of the repo haircut rate calculation. FICC proposes to describe the detailed calculations of the repo haircut rates in an internal standalone document.

FICC believes a more general description of the repo haircut rate calculation would be sufficient for the QRM Methodology Document, and would provide FICC with greater flexibility to respond to rapidly changing market conditions more quickly and timely by enabling FICC to adjust the calculation.[21] Nonetheless, FICC acknowledges that any future changes to the repo haircut rate calculations would continue to follow DTCC's internal model governance procedure as described in the Clearing Agency Model Risk Management Framework.[22] Moreover, pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and

[12] FICC has developed its repo interest rate indices using its delivery-versus-payment repo transactions. *See* Notice, *supra* note 3, at 42525.

[13] For a detailed example of the current repo interest volatility charge calculation, please refer to the Notice, *supra* note 3, at 42525.

[14] Pursuant to 17 CFR 240.24-b2, FICC filed excerpts of (1) the GSD Initial Market Risk Margin Models: Model Validation Report, July 2021, and (2) the Depository Trust and Clearing Corporation (''DTCC'') Model Validation Report/GSD Initial Market Risk Margin Models, July 2020, in a confidential Exhibit 3 to this proposed rule change.

[15] Pursuant to 17 CFR 240.24-b2, FICC filed a summary of the Impact Study in a confidential Exhibit 3 to this proposed rule change. The Impact Study

[16] The repo interest volatility charge would always be a positive number because the calculation is based on the absolute value of the sum of the relevant amounts.

[17] As an initial matter, FICC would set the repo haircut rates for long positions and short positions to be the same rate, *i.e.,* the larger of the two rates, so that the long and short positions in a specific risk bucket would be subject to the same repo haircut rate.

[18] *See* Notice, *supra* note 3, at 42525.

[19] *Id.*

[20] *See* Notice, *supra* note 3, at 42526.

[21] *See* Notice, *supra* note 3, at 42526. Specifically, FICC states that the more general description would allow it to adjust the calculation without needing to submit a proposed rule change pursuant to Rule 19b–4, 17 CFR 240.19b–4. *Id.*

[22] *Id.* The Clearing Agency Model Risk Management Framework (''Framework'') sets forth the model risk management practices that FICC and its affiliates, The Depository Trust Company and National Securities Clearing Corporation, follows to identify, measure, monitor, and manage the risks associated with the design, development, implementation, use, and validation of quantitative models. *See* Securities Exchange Act Release Nos. 81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (File Nos. SR–DTC–2017–008; SR–FICC–2017–014; SR–NSCC–2017–008), 88911 (May 20, 2020), 85 FR 31828 (May 27, 2020) (File Nos. SR–DTC–2020–008; SR–FICC–2020–004; SR–NSCC–2020–008), 92380 (July 13, 2021), 86 FR 38140 (July 19, 2021) (File No. SR–FICC–2021–006), 92381 (July 13, 2021), 86 FR 38163 (July 19, 2021) (File No. SR–NSCC–2021–008) and 92379 (July 13, 2021), 86 FR 38143 (July 19, 2021) (File No. SR–DTC–2021–003). Consistent with this obligation, FICC proposes to specifically state in the QRM Methodology Document that any changes or adjustments to the repo haircut rate calculation would need to go through this model governance process.

Consumer Protection Act (''Dodd-Frank Act'') and Rule 19b–4(n)(1)(i) under the Act, FICC would be required to file an advance notice with the Commission for any proposed change to the repo haircut rate calculation that would materially affect the nature or level of risks presented by FICC.[23] Additionally, FICC tracks the repo haircut rates in a monthly model parameter report, which is provided to the Commission in its supervisory capacity.[24]

FICC believes that enhancing its ability to quickly adjust the repo haircut rate calculation would better enable FICC to manage the risks of its members' repo interest positions.[25] Specifically, FICC believes the proposed change would enable FICC to make appropriate and timely adjustments to the repo haircut rates based on an evaluation of a number of factors, including, but not limited to, repo interest rate volatility outlook and backtesting coverage results.[26] Furthermore, FICC has identified certain known data availability limitations with respect to the current repo interest rate index.[27] Specifically, the current repo interest rate index is missing data for a volatile period, such that repo haircut rates calibrated based on the current repo interest rate index might not calculate sufficient margin amounts during periods of heightened repo market volatility.[28] FICC believes that the ability to quickly adjust the repo haircut rate calculation in response to rapidly changing market conditions would help mitigate the effects of such potential data availability limitations.[29]

4. Technical and Conforming Changes

FICC proposes to make certain technical and conforming changes to the QRM Methodology Document for clarity.[30]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[31] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[32] and Rules 17Ad–22(e)(4)[33] and (e)(6)[34] thereunder.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency, such as FICC, be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[35]

As described in Section II.B.1 above, FICC proposes to change its formula for calculating the repo interest volatility charge. Specifically, FICC would no longer apply the repo haircut rate based on whether the total net amount of a portfolio's positions in a specific risk bucket is long or short, as does the currently formula. Instead, FICC proposes to apply a specific repo haircut rate based on whether the individual repo interest positions in a given risk bucket are either long or short, specifically, enabling FICC to use two haircuts for each risk bucket, one for long positions and the other for short positions. The repo interest volatility charge for a specific risk bucket would be the absolute value of the sum of the products of repo start amount, time to settlement, and repo haircut rate of the individual repo interest positions in the risk bucket. The total repo interest volatility charge for the portfolio would be the sum of the repo interest volatility charges of all of the risk buckets in the portfolio. By allowing FICC to use two haircuts for each risk bucket, the proposed formula should better facilitate FICC's collection of sufficient margin by enabling FICC to respond to rapidly changing market conditions more quickly and effectively, particularly when the long and short repo interest positions exhibit very different risk profiles.

As described in Section II.B.2 above, FICC proposes to add a repo bid/ask spread to each repo haircut rate within the same risk bucket, based on the historical percentile movements of FICC's internally constructed repo interest rate indices. Adding the bid/ask spread would generate margin amounts not currently accounted for in the current repo interest volatility charge formula. Specifically, the proposed bid/ask spread component would account for the difference observed in the repo market between the highest rate a repo participant is willing to pay to borrow money in a repo trade and the lowest rate a repo participant is willing to accept to lend money in a repo trade.

Based on the Impact Study,[36] had FICC used the proposed formula (*i.e.,* two haircuts for each risk bucket) and the proposed bid/ask spread component, the CCP-level backtesting coverage ratio for the repo interest volatility charge would have increased from approximately 98.7 percent to 99.2 during the period of January 2018 to February 2022. The Commission believes that the results of the Impact Study demonstrate that these proposed changes would have enabled FICC to generate margin amounts that more effectively cover FICC's relevant credit exposures than the current formula.

Additionally, as described in Section II.B.3 above, FICC proposes to move the detailed description of the repo haircut rate calculation for all risk buckets from the QRM Methodology Document to an internal standalone document, which FICC would not consider to be a ''rule'' for purposes of Rule 19b–4[37] under the Act. As such, the proposed change would provide FICC with greater flexibility to respond to rapidly changing market conditions more quickly, which in turn, would better enable FICC to risk manage its members' repo interest positions and effectively cover FICC's applicable credit exposures.

Accordingly, the Commission believes that implementing the changes set forth in Sections II.B.1, II.B.2, and II.B.3

[23] 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i).

[24] *See* Notice, *supra* note 3, at 42526.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] FICC's proposed technical and conforming changes are designed to use more precise language, remove obsolete items, clarify and address substantive changes discussed in the proposal, and otherwise enhance the QRM Methodology Document's readability. For a detailed description of FICC's proposed technical and conforming changes, please refer to the Notice, *supra* note 3, at 42526–27.

[31] 15 U.S.C. 78s(b)(2)(C).

[32] 15 U.S.C. 78q–1(b)(3)(F).

[33] 17 CFR 240.17Ad–22(e)(4)(i).

[34] 17 CFR 240.17Ad–22(e)(6)(i) and (v).

[35] 15 U.S.C. 78q–1(b)(3)(F).

[36] *See supra* note 15.

[37] 17 CFR 240.19b–4. A stated policy, practice, or interpretation of a self-regulatory organization is not a ''rule'' that would be subject to the Rule 19b–4 filing requirements if, for example, it is reasonably and fairly implied by an existing rule of the self-regulatory organization. *See* 17 CFR 240.19b–4(c). However, any future changes to the repo haircut rate calculations would be subject to DTCC's internal model governance procedure as described in the Clearing Agency Model Risk Management Framework. *See supra* note 22. Moreover, any future changes to the repo haircut rate calculations that would materially affect the nature or level of risks presented by FICC would be subject to the advance notice filing requirements of the Dodd-Frank Act. *See supra* note 23.

should help ensure that, in the event of a member default, FICC's operation of its critical clearance and settlement services would not be disrupted because of insufficient financial resources. The Commission, therefore, finds that FICC's proposals to change the repo interest volatility charge formula, add the bid/ask spread component, and remove the details of the repo haircut rate calculations from the QRM Methodology Document should help FICC to continue providing prompt and accurate clearance and settlement of securities transactions in the event of a member default, consistent with Section 17A(b)(3)(F) of the Act.[38]

Moreover, as described in Section II.A above, FICC would access the mutualized Clearing Fund should a defaulted member's own margin be insufficient to satisfy losses to FICC caused by the liquidation of that member's portfolio. Because FICC's proposals to change the repo interest volatility charge formula, add the bid/ask spread component, and remove the details of the repo haircut rate calculations from the QRM Methodology Document, should help ensure that FICC has collected sufficient margin from members, the proposed changes would also help minimize the likelihood that FICC would have to access the Clearing Fund, thereby limiting non-defaulting members' exposure to mutualized losses. The Commission believes that by helping to limit the exposure of FICC's non-defaulting members to mutualized losses, the proposed changes should help FICC assure the safeguarding of securities and funds which are in its custody or control, consistent with Section 17A(b)(3)(F) of the Act.[39]

Finally, as described in Section II.B.4 above, FICC proposes several technical and conforming changes to the QRM Methodology Document to improve accuracy and clarity. The Commission believes that greater accuracy and clarity of the QRM Methodology Document should better enable FICC to effectively implement the document's provisions. Accordingly, the Commission believes that FICC's proposed technical and conforming changes should better enable FICC to assess and collect sufficient margin from its members with respect to the repo interest volatility charge, thereby promoting prompt and accurate clearance and settlement, and assuring the safeguarding of security and funds which are in FICC's custody or control, consistent with Section 17A(b)(3)(F) of the Act.[40]

B. Consistency With Rule 17Ad–22(e)(4) Under the Act

Rule 17Ad–22(e)(4)(i)[41] under the Act requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.

As described in Section III.A above, FICC's proposals to: (i) apply a specific repo haircut rate based on whether individual repo interest positions in a given risk bucket are either long or short; and (ii) add a bid/ask spread component to the repo interest volatility charge should improve FICC's ability to calculate and collect sufficient margin from its members. The results of FICC's Impact Study demonstrate that during the period of January 2018 to February 2022, the proposed changes would have enabled FICC to achieve its 99 percent coverage target more effectively than the current formula. Additionally, FICC's proposal to move the detailed description of the repo haircut rate calculation for all risk buckets from the QRM Methodology Document to an internal standalone document would enable FICC to quickly adjust the calculation in response to rapidly changing market conditions, which in turn, should better enable FICC to risk manage its members' repo interest positions and thereby collect sufficient margin to effectively cover FICC's credit exposures.

Because the foregoing proposed changes should better enable FICC to collect sufficient margin in connection with member portfolios subject to the repo interest volatility charge, the Commission believes that the proposed changes should enhance FICC's ability to maintain sufficient financial resources to cover its credit exposures to applicable member portfolios fully with a high degree of confidence, consistent with Rule 17Ad–22(e)(4)(i) under the Act.[42]

C. Consistency With Rule 17Ad–22(e)(6) Under the Act

Rule 17Ad–22(e)(6)(i)[43] under the Act requires a clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market. Rule 17Ad–22(e)(6)(v)[44] under the Act requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.

FICC's proposal to change its formula for calculating the repo interest volatility charge by applying a specific repo haircut rate based on whether individual repo interest positions in a given risk bucket are either long or short would provide FICC the flexibility to apply two separate repo haircut rates (for long and short positions, respectively) within the same risk bucket. As a result, the proposed change would enhance FICC's ability to respond quickly to rapidly changing market conditions, particularly when long and short repo interest positions exhibit very different risk profiles.[45] Additionally, FICC's proposal to add a bid/ask spread component to the repo interest volatility charge would account for the difference observed in the repo market between the highest rate a repo participant is willing to pay to borrow money and the lowest rate a repo participant is willing to accept to lend money. Finally, based on its review of the Proposed Rule Change, including confidential Exhibit 3 thereto,[46] the Commission understands that the proposed changes generate sufficient margin amounts more effectively than

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] 17 CFR 240.17Ad–22(e)(4)(i).

[42] *Id.*

[43] 17 CFR 240.17Ad–22(e)(6)(i).

[44] 17 CFR 240.17Ad–22(e)(6)(v).

[45] FICC's proposal to move the detailed description of the repo haircut rate calculation for all risk buckets from the QRM Methodology Document to an internal standalone document would enable FICC to quickly adjust the calculation in response to rapidly changing market conditions, which in turn, should enable FICC to better risk manage its members' repo interest positions.

[46] *See supra* notes 14 and 15, describing the information submitted confidentially.

the current repo interest volatility charge formula.

For these reasons, the Commission believes that the proposed changes should help ensure that FICC produces margin levels commensurate with the risks and particular attributes of its member portfolios containing repo interest positions by (i) enabling FICC to adjust the repo interest volatility charge formula in response to rapidly changing market conditions, and (ii) accounting for the bid/ask spread, which is not addressed in the current repo interest volatility charge formula. Accordingly, the Commission believes that the proposed changes would enhance FICC's risk-based margin system to better enable FICC to cover its credit exposures to its members' repo interest positions because the proposed changes consider the risks and particular attributes of the relevant products, portfolios, and markets, consistent with the requirements of Rule 17Ad–22(e)(6)(i).[47] Similarly, the Commission believes that the proposed changes are reasonably designed to cover FICC's credit exposures to its members' repo interest positions because the proposed changes would enhance FICC's risk-based margin system using appropriate methods for measuring credit exposures that account for relevant product risk factors and portfolio effects, consistent with the requirements of Rule 17Ad–22(e)(6)(v).[48]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of Section 17A of the Act[49] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[50] that proposed rule change SR–FICC–2022–005, be, and hereby is, APPROVED.[51]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–18768 Filed 8–30–22; 8:45 am]

BILLING CODE 8011–01–P

[47] 17 CFR 240.17Ad–22(e)(6)(i).

[48] 17 CFR 240.17Ad–22(e)(6)(v).

[49] 15 U.S.C. 78q–1.

[50] 15 U.S.C. 78s(b)(2).

[51] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[52] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 95602; File No. SR–MSRB–2022–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Amendments to MSRB Rule G–34 to Better Align the CUSIP Requirements for Underwriters and Municipal Advisors With Current Market Practices

August 25, 2022.

I. Introduction

On July 1, 2022, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to consisting of amendments to MSRB Rule G–34, on CUSIP numbers, New Issue, and Market Information Requirements (the ''proposed rule change''). The proposed rule change would make amendments to better align Rule G–34's requirements for obtaining CUSIP numbers with the process followed by market participants and facilitate compliance with MSRB Rule G–34 by streamlining the rule text.

The proposed rule change was published for comment in the **Federal Register** on July 13, 2022.[3] The public comment period closed on August 3, 2022, and three comment letters were received on the proposed rule change.[4] On August 22, 2022, the MSRB responded to those comments.[5] This order approves the proposed rule change.

II. Description of Proposed Rule Change

As described further herein and in the Notice of Filing, the proposed rule change specifies that CUSIP applications must be made to the Board's designee (and not the Board itself); removes the obligation for municipal advisors providing advice with respect to a competitive offering to apply for the CUSIP number by no later than one business day after dissemination of a notice of sale in favor of a more flexible standard that still obligates the application to be made within sufficient time to ensure timely CUSIP number assignment; removes language dictating the precise content of a CUSIP number application that the MSRB believes would more appropriately be left to the Board's designee for receiving and reviewing such applications; and provides that certain obligations set forth in the rule do not apply when CUSIP numbers have been preassigned.[6]

A. Designee of the Board

MSRB Rule G–34(a)(i)(A) currently requires an underwriter or municipal advisor to obtain CUSIP numbers through an application in writing to the Board or its designee. The proposed rule change amends this language by providing that underwriters and municipal advisors must apply to the Board's designee and removing the language in the rule text that makes reference to the Board as an option with which to submit CUSIP application.[7] The MSRB states that this revised language is designed to avoid the potential for confusion associated with the current rule text and to more clearly convey the MSRB's expectations with respect to the process of obtaining a CUSIP number.[8] The MSRB notes that it does not currently assign CUSIP numbers to municipal securities; underwriters and municipal advisors may only obtain a CUSIP by application to the only entity that provides these identifiers, CUSIP Global Services, which is currently the only entity serving as the Board's designee.[9] This designation would remain unchanged by the proposed rule change and would be reflected in new Supplementary Material .01.[10] The MSRB states that if CUSIP numbers become available from another source or another identifier for municipal securities becomes market practice at some point in the future, the MSRB would notify the market of a decision to modify the designee via

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 95208 (July 7, 2022) (the ''Notice of Filing''), 87 FR 41846 (July 13, 2022).

[4] *See* Letter to Secretary, Commission, from Michael Decker, Senior Vice President for Public Policy, Bond Dealers of America (''BDA''), dated August 3, 2022 (the ''BDA Letter''); Letter to Secretary, Commission, from Kim M. Whelan, Co-President, and Noreen P. White, Co-President, Acacia Financial Group Inc., dated August 3, 2022 (the ''Acacia Letter''); and Letter to Secretary, Commission, from Susan Gaffney, Executive Director, National Association of Municipal Advisors (''NAMA''), dated July 6, 2022 (the ''NAMA Letter'').

[5] *See* Letter to Secretary, Commission, from Gail Marshall, Chief Regulatory Officer, MSRB, dated August 22, 2022 (the ''MSRB Response Letter'').

[6] *See* Notice of Filing 87 FR 41846 at 41847.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

publication of an MSRB regulatory notice.[11]

In addition, as it is the Board's designee, and not the Board, that controls the CUSIP number application process, the MSRB proposes to remove the in-writing requirement for the application made for obtaining CUSIP numbers.[12] Because it does not receive or review CUSIP applications, the MSRB believes that the manner in which an applicant applies for CUSIP numbers is best left to the entity that reviews applications and assigns the CUSIP number.[13]

B. One Business Day Obligation

MSRB Rule G–34(a)(i)(A)(3) states that a municipal advisor advising the issuer with respect to a competitive sale of a new issue of municipal securities shall make an application by no later than one business day after dissemination of a notice of sale or other such request for bids. The proposed rule change removes the obligation to make such application by no later than one business day because, the MSRB believes that it is not always practical for municipal advisors to comply given the realities of the marketplace,[14] and therefore may place an undue burden on municipal advisors.[15] The MSRB notes that the rule already obligates the application to be made at a time sufficient to ensure final CUSIP number assignment occurs prior to the award of the issue.[16] The MSRB believes that this language is sufficient to ensure that any such application is timely without dictating a more burdensome approach of requiring a specific numeric time obligation.[17] Additionally, the MSRB has stated that it understands that, from an operational perspective, it may be impracticable for municipal advisors to apply for a CUSIP number within one business day after dissemination of a notice of sale, as currently required by Rule G–34(a)(i)(A)(3).[18] Accordingly, the MSRB believes that removal of this language would better align the rule text with the operational process followed by municipal advisors in connection with their CUSIP applications.[19]

C. Information To Be Provided When Applying for CUSIP Numbers

MSRB Rule G–34(a)(i)(A)(4) lists specific data points that must be provided when applying for CUSIP numbers.[20] The proposed rule change removes these data points from the rule and instead provides that underwriters and municipal advisors shall provide the information required by the Board's designee in connection with their CUSIP application.[21] The proposed rule change also makes a similar amendment to Rule G–34(a)(i)(D), removing from the rule text the three specified pieces of information that must be included in an application to obtain a CUSIP number in connection with certain new issuances that refund part of an outstanding issuance.[22] The MSRB states that it believes that Rule G–34 should not contain specific data points to be provided to its designee, as the MSRB does not control the specifics of the application process, nor does it make a determination on the sufficiency of an application to receive CUSIP numbers.[23] The MSRB believes that the entity awarding CUSIP numbers, the Board's designee, is the appropriate entity to dictate what individual data points must be provided with an application for CUSIP numbers in order to sufficiently evaluate an application.[24] The MSRB believes that this flexibility will help create a rule that is less likely to become stale and require further amendments over time.[25]

D. CUSIP Pre-Assignment

The proposed rule change specifies that the Rule G–34(a)(i)(A)(3) obligation to apply for a CUSIP number only applies where no CUSIP numbers have been pre-assigned.[26] The MSRB states that it believes that this change aligns with the common understanding among market participants that there is no obligation to seek a CUSIP number where one has already been pre-assigned.[27] A similar amendment to Rule G–34(a)(i)(C) provides that the provisions of Rule G–34(a)(i) regarding the assignment and affixture of CUSIP numbers do not apply with respect to any new issue of municipal securities on which CUSIP numbers have been preassigned.[28]

III. Summary of Comments Received and MSRB's Responses to Comments

As noted previously, the Commission received three comment letters on the proposed rule change, as well as the MSRB Response Letter. All three comment letters were supportive of the proposed rule change.[29] However, two commenters raised questions about the process by which the MSRB considered and ultimately submitted the proposed rule change for Commission approval.[30] One commenter raised three questions regarding the MSRB's rulemaking process: (1) What time-frame requirements, if any, are in place for the MSRB to send to the SEC for approval any rules that its Board has approved; (2) Outside of the formal rulemaking and amendment process which typically includes public notice and comment (except in necessary special and emergency circumstances), what processes and standards are in place for the Board to create, reconsider or make changes to a rule; and (3) What responsibilities does the MSRB have to provide public notice that the Board will discuss, consider/reconsider, and vote on its rulemaking?[31]

The MSRB issued a response to the comments on August 22, 2022.[32] The MSRB responded to comments that the MSRB's rulemaking process lacked transparency and predictability by reviewing the history of the Rule G–34 amendment process that began in March of 2017 to show that, in the MSRB's view, stakeholder feedback had been received and considered over a period of several years before the current proposal was submitted to the SEC for public comment.[33] Further, the MSRB provided data related to an economic analysis that was conducted in conjunction with the proposal to support the obligation for dealer and non-dealer municipal advisors to obtain CUSIP numbers in competitive offerings.[34] The MSRB Response Letter did not address the commenter's questions regarding the MSRB's rulemaking process.

In the MSRB Response Letter, the MSRB described a proposed rule change to MSRB Rule G–34 that the Commission approved the on December

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *See* Letter from Susan Gaffney, Executive Director, NAMA, dated May 28, 2019 available at: *https://www.msrb.org/rfc/2019-08/gaffney.pdf* (stating that there is an inherent timing inconsistency with respect to Rule G–34(a)(i)(A)(3) as it requires application for CUSIP numbers no later than one business day after the Notice of Sale, which will almost always be before the identity of the investors are known, and therefore the [municipal advisor] could not reasonably obtain the investors' written representations).

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id* at 41848.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *See* BDA Letter, Acacia Letter, NAMA Letter.

[30] *See* Acacia Letter, NAMA Letter.

[31] *See* NAMA Letter.

[32] *See* MSRB Response Letter.

[33] *Id.*

[34] *Id.*

14, 2017.[35] The MSRB stated that subsequently, municipal advisors expressed concern over the burden of developing and following compliance and supervisory policies related to the amendments,[36] which led the MSRB to issue an RFC on February 27, 2019 to obtain feedback on various aspects of the rule.[37] The MSRB states in the MSRB Response Letter that the Board then reconsidered the new amendments to Rule G–34 and authorized MSRB staff to file with the SEC a proposed rule change to eliminate the requirement for both dealer and non-dealer municipal advisors to apply for CUSIP numbers in a competitive transaction in which they advise.[38] On October 2, 2019, the Commission requested comment on a proposed exemptive order permitting registered municipal advisors to engage in certain solicitation activities, while acting in their roles as municipal advisors, in connection with the direct placement of municipal securities without registering as a broker.[39] Although the Commission's proposed exemptive order did not pertain to the type of competitive transactions at issue in Rule G–34, the MSRB states that it then decided to pause moving forward with Rule G–34 rule changes in response to the Commission's request for comment on the proposed exemptive order.[40] The MSRB further states that the COVID–19 pandemic then occurred which caused the MSRB change its focus as it worked to reduce regulatory burdens for municipal advisors during this period of uncertainty.[41] The MSRB states that the Board of Directors then determined at its April 2021 meeting that since the rule had been in place for several years and had proven to enhance market efficiency that the rule would remain in its current form.[42] The MSRB states that it continued to engage with stakeholders after the Board's decision and, as a result of these stakeholder discussions, the Board authorized the proposed rule change.[43] The MSRB notes that it delayed submitting the proposed changes to the Rule G–34 proposal in large part due to operational issues presented by the pandemic.[44]

The MSRB provided data on CUSIP generation in a competitive offering based on information received from CUSIP Global Services.[45] The MSRB states that it interpreted this data to mean the competitive sale market is more orderly and efficient as a result of the 2017 amendments to MSRB Rule G–34.[46] The MSRB noted that the 91.2% regular request rate in 2021 is consistent with the percentage of competitive offerings utilizing a municipal advisor, which the MSRB interprets as showing that approximately all competitive offerings with a municipal advisor apply for a CUSIP number through a regular request.[47]

The MSRB acknowledged that all three commenters expressed support for the proposed rule change, and stated that if the Commission approves the proposed rule change, the Board will continue to engage with stakeholders to support implementation of the amendments.[48]

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB Response Letter. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission believes that the proposed rule change is consistent with the provisions of Exchange Act Section 15B(b)(2)(C), which provides, in part, that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, and to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[49]

The Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, as further described below, because the amendments would: (i) promote just and equitable principles of trade; (ii) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products; (iii) remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products; and (iv) protect investors, municipal entities, obligated persons, and the public interest.

A. Promote Just and Equitable Principles of Trade

The Commission finds the proposed rule change would promote just and equitable principles of trade by amending the rule text to better represent the realities of the marketplace and not place undue hardships on underwriters and municipal advisors in obtaining a CUSIP number in a new municipal securities offering. The Commission believes the proposed rule change provides certainty to underwriters and municipal advisors regarding the entity with which CUSIP applications must be sent which reduces confusion with the application process. Additionally, the Commission believes that eliminating the one business day requirement for municipal advisors to apply for a CUSIP number and explicitly providing that a CUSIP application is not necessary where a CUSIP number is preassigned removes unnecessary obstacles and better aligns with current market practice. As the MSRB noted, in many instances, the requirement for municipal advisors to submit a CUSIP application within one business was impossible, and replacing the one business day requirement with a flexible time frame better aligns with business practice and allows municipal advisors to remain in compliance with the rule. The Commission further believes that explicitly providing within the rule that a CUSIP application is not necessary when a CUSIP has been preassigned ensures market participants are not taking redundant action that may impose unnecessary financial and time burdens. Finally, removing the content requirement of CUSIP applications

[35] *See* Securities Exchange Act Release No. 82321 (December 14, 2017), 82 FR 60433 (December 20, 2017). *https://www.sec.gov/rules/sro/msrb/2017/34/82321.pdf.*

[36] *See* MSRB Response Letter.

[37] *See* MSRB Notice 2019–08, Request for Comment on MSRB Rule G–34 Obligation of Municipal Advisors to Apply for CUSIP Numbers When Advising on Competitive Sales (February 27, 2019). *https://msrb.org/-/media/Files/Regulatory-Notices/RFCs/2019/08.ashx??n=1.*

[38] *See* MSRB Press Release (July 29, 2019). *https://www.msrb.org/About-MSRB/Governance/MSRB-Board-ofDirectors/~/link.aspx?_id=9E75A24433E942E8B910E102360317E3&_z=z.*

[39] *See* Securities Exchange Act Release No. 87204 (October 2, 2019), 84 FR 54062 (October 9, 2019). *https://www.sec.gov/rules/exorders/2019/34/87204.pdf.*

[40] *See* MSRB Response Letter.

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] 15 U.S.C. 78*o*–4(b)(2)(C).

provides certainty as to the entity underwriters and municipal advisors should follow regarding the requirements of the CUSIP application and prevents confusion in the event the Board's designee develops different content requirements than those outlined within the rule.

B. Foster Cooperation and Coordination With Persons Engaged in Regulating, Clearing, Settling, Processing Information With Respect to, and Facilitating Transactions in Municipal Securities and Municipal Financial Products

The Commission finds that the proposed rule change would foster cooperation and coordination between the SEC, the MSRB, and the Board's designee by directing underwriters and municipal advisors to submit CUSIP applications to the correct entity and stating their obligations in a manner that better aligns the requirements of the rule to the realities of the marketplace. The Commission believes these changes will provide regulatory clarity and facilitate compliance with the rule.

C. Remove Impediments to and Perfect the Mechanism of a Free and Open Market in Municipal Securities and Municipal Financial Products

The Commission finds that the proposed rule change would remove impediments to, and perfect the mechanism of, a free and open market in municipal securities by reduce confusion arising from the MSRB Rule G–34 and removing burdensome obligations that conflict with current business practices. The Commission believes that he proposed rule change provides certainty to underwriters and municipal advisors which helps to ensure a timely application process. Further, the Commission believes that replacing the one business day requirement for municipal advisors to submit a CUSIP application with a flexible timing requirement better aligns with the practicalities of a competitive municipal offering which better allows for municipal advisors to comply with the rule. Finally, the Commission finds that explicitly stating that municipal advisors do not have to submit a CUSIP application when a CUSIP number has been preassigned ensures that municipal advisors are not engaging in redundant actions that needlessly consume time and resources.

D. Protect Investors, Municipal Entities, Obligated Persons, and the Public Interest

The Commission finds that the proposed rule change will protect investors, municipal entities, obligated persons, and the public interest by preventing ambiguity in the process and ultimately ensuring that CUSIP numbers for new municipal offerings are obtained in a timely and efficient manner while facilitating compliance with the rule.

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation.[50] Exchange Act Section 15B(b)(2)(C)[51] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act because the proposed rule change would encourage fair competition by reducing confusion and fostering compliance with existing CUSIP number requirements. Furthermore, the proposed rule change would apply equally to all MSRB regulated entities.

The Commission has also reviewed the record for the proposed rule change and notes that the record does not contain any information to indicate that the proposed rule change would have a negative effect on capital formation.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[52] that the proposed rule change (SR–MSRB–2022–05) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.[53]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–18765 Filed 8–30–22; 8:45 am]

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[50] 15 U.S.C. 78c(f).

[51] 15 U.S.C. 78*o*–4(b)(2)(C).

[52] 15 U.S.C. 78s(b)(2).

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95603; File No. SR–ICC–2022–010]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the Clearing Rules and the End-of-Day Price Discovery Policies and Procedures

August 25, 2022.

I. Introduction

On July 7, 2022, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Clearing Rules (the ''Rules'') and End-of-Day Price Discovery Policies and Procedures (the ''EOD Policy'') to establish an additional class of Clearing Participant. The proposed rule change was published for comment in the **Federal Register** on July 20, 2022.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

The proposed rule change would amend the Rules and EOD Policy to establish an additional class of Clearing Participant at ICC, the Associate Clearing Participant (referred to herein as the ''ACP'').[4] In general, an ACP would have the same rights, obligations, and responsibilities as other Clearing Participants (referred to herein as ''Full Participants''), except with respect to certain price submissions. Specifically, ICC would permit an ACP to submit prices with respect to certain North American (''NA'') Credit Default Swap (''CDS'') products at the end of the London trading day, rather than at the end of the New York trading day. ICC represents this change is intended to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Clearing Rules and the End-of-Day Price Discovery Policies and Procedures; Exchange Act Release No. 95279 (July 14, 2022), 87 FR 43351 (July 20, 2022) (File No. SR–ICC–2022–010) (''Notice'').

[4] This description is substantially excerpted from the Notice, 87 FR at 43351. Capitalized terms not otherwise defined herein have the meanings assigned to them in the Rules or EOD Policy, as applicable.

facilitate the participation of United Kingdom and European entities that may be unable to provide price submissions for North American instruments outside of London trading hours.[5] There is no requirement, however, that an entity applying to become an ACP be based in the United Kingdom or Europe.

B. Rules

With respect to the Rules, the proposed rule change would amend Rule 102 and adopt a new Rule 212.

In Rule 102, the proposed rule change would add new defined terms: ''Associate Clearing Participant,'' ''Full Participant,'' ''NA Instruments,'' and ''NA Instrument EU EOD Submission.'' The term ''Associate Clearing Participant'' would have the meaning assigned to it in new Rule 212 (as discussed below), while the term ''Full Participant'' would mean a Clearing Participant other than an ACP. Similarly, the terms ''NA Instruments'' and ''NA Instrument EU EOD Submission'' would have the meanings assigned to them in new Rule 212.

New Rule 212 would permit ICC to establish the ACP category of Clearing Participants. Rule 212 would define ''ACP'' as a Clearing Participant meeting the terms and conditions set out in the new rule. Under Rule 212(a), each ACP would be a Clearing Participant for all purposes under the Rules and ICC Procedures, with and subject to all rights, obligations, limitations, conditions, restrictions, representations, warranties, and acknowledgements of a Clearing Participant, and subject to the initial and ongoing qualifications and requirements for being a Clearing Participant, except as otherwise provided in Rule 212 or the ICC Procedures.

Rule 212(b) would permit ICC to establish a new London end-of-day price submission window for which ACPs would be required to make price submissions with respect to NA Instruments. Rule 212(b) would define ''NA Instruments'' as Contracts relating to North American reference entities or indices (as identified by ICC) and such other Contracts as ICC may determine. Moreover, Rule 212(b) would define such price submissions submitted by ACPs as ''NA Instrument EU EOD Submissions.'' Rule 212(b) further would permit ICC to establish firm trade requirements[6] with respect to NA Instrument EU EOD Submissions. Finally, Full Participants could make NA Instrument EU EOD Submissions, but would not be required to do so and would not be subject to firm trade requirements in connection with such submissions.

Certain provisions of Rule 212 would permit ICC to establish different standards and obligations for ACPs as compared to Full Participants. Rule 212(c) would permit ICC to establish different daily deadlines for submission of Trades by ACPs. Rule 212(d) would permit ICC to establish different or supplemental margin requirements or related parameters for ACPs. Rule 212(f) would permit ICC to establish alternative or additional standards of business integrity, financial capacity, creditworthiness, operational capability, experience, and competence for ACPs. Finally, Rule 212(g) would permit ICC to require a separate form of Participant Agreement for ACPs.[7]

Rule 212(e) would prohibit ACPs from submitting any Trades on behalf of Clients. ACPs would only be permitted to submit Trades for their own accounts or for Affiliates as House positions. Moreover, under Rule 212(h), no Affiliate of an existing Clearing Participant could be an ACP. As stated in the notice, ICC believes that Clearing Participants that engage in clearing on behalf of Clients should be Full Participants, with the operational and other resources to submit pricing at all relevant times for the full spectrum of products that they or their Clients may submit.[8]

C. EOD Policy

The proposed rule change would make related changes to the EOD Policy to establish the price submission requirements for ACPs and to differentiate these requirements from the requirements for Full Participants.

First, the proposed rule change would create a new submission window for NA Instruments. ICC uses different submission windows to determine the prices of the different products it clears. For example, ICC has an existing submission window, known as the EU Submission Window, which occurs at the end of the London trading day for contracts that are primarily traded in London hours. The proposed rule change would create a new submission window for NA Instruments, which would occur at the end of the London trading day (referred to as the ''NA Instrument EU Submission Window''). Because the NA Instrument EU Submission Window would occur at the end of the London trading day, like the current EU Submission Window, the timings for all elements of the price discovery process related to the NA Instrument EU Submission Window would be the same as those for the EU Submission Window.

The proposed rule change also would amend the EOD Policy to provide that if a Clearing Participant—both ACP and Full Participant—fails to make a required end-of-day submission during the applicable window, ICC may use the last intraday quote received prior to the close of that window (if one has been received on that day) to serve as that Clearing Participant's end-of-day submission.

Moreover, the proposed rule change would add a requirement to the EOD Policy that ACPs provide price submissions for the NA Instrument EU Submission Window. The proposed rule change would further add language stating that Full Participants may, but are not required to, provide price submissions for the NA Instrument EU Submission Window.

Similarly, the proposed change would revise the provisions of the EOD Policy relating to firm trades. For the NA Instrument EU Submission Window, ICC would only designate firm trades between ACPs (and, for the avoidance of doubt, voluntary submissions by Full Participants in that window will not be subject to firm trades). Further, firm trades between ACPs originating from the NA Instrument EU Submission Window would not be eligible for reversing transactions.[9]

The proposed rule change also would revise the EOD Policy to provide that prices established in the NA Instrument EU Submission Window would not be published externally by ICC. ICC would use prices only for risk management purposes.[10]

Finally, in the appendix to the EOD Policy, the proposed rule change would update the timetables for the end-of-day submission process to include the NA Instrument EU Submission Window (with timing and deadlines consistent with the EU submission window, as noted above).

[5] Notice, 87 FR at 43351.

[6] The term ''firm trade requirements'' refers to ICC's ability to require that Clearing Participants enter into trades at the prices they submit to ICC. ICC uses firm trade requirements to help ensure accurate price submissions.

[7] ICC anticipates requiring ACPs to submit trades by the close of the London trading day but at this time does not anticipate establishing any other additional or alternative standards. Notice, 87 FR at 43352.

[8] Notice, 87 FR at 43352.

[9] Under the EOD Policy, a reversing transaction is a second firm trade with identical attributes to the initial firm trade, but with the buyer and seller counterparties reversed, and at that day's EOD price rather than the original firm trade price.

[10] Notice, 87 FR at 43352.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[11] For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[12] and Rules 17Ad–22(e)(6)(iv) and 17Ad–22(e)(18) thereunder.[13]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions.[14] Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed rule change is consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions at ICC because it would expand the group of entities able to become members of ICC.

As discussed above, the proposed rule change would establish the requirements applicable to ACPs. These requirements would largely mirror those currently applicable to Full Participants, except that ACPs would submit prices for NA Instruments during the NA Instrument EU Submission Window. The Commission believes this would allow participation by entities that may be unable to provide prices for NA Instruments at the close of the New York trading day (as is required for Full Participants). In doing so, the Commission believes the proposed rule change would facilitate expanded participation at ICC and therefore the additional clearance and settlement of transactions at ICC by these additional participants. The Commission believes this change therefore would promote the prompt and accurate clearance and settlement of transactions at ICC, consistent with Section 17A(b)(3)(F) of the Act.[15]

B. Consistency With Rule 17Ad–22(e)(6)(iv)

Rule 17Ad–22(e)(6)(iv) requires that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, among other things, uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.[16] As discussed above, proposed Rule 212 and the revised EOD Policy would require ACPs to submit prices for NA Instruments during the NA Instrument EU Submission Window. The Commission believes this requirement would facilitate the submission of prices for NA Instruments by ACPs, who may not have the operational capability to provide prices for NA Instruments at the close of the New York trading day (as is required for Full Participants). The Commission therefore believes that ACPs could serve as a reliable source of timely price data for NA Instruments, in addition to the price data that Full Participants submit. The Commission therefore finds the proposed rule change is consistent with Rule 17Ad–22(e)(6)(iv).[17]

C. Consistency with Rule 17Ad–22(e)(18)

Rule 17Ad–22(e)(18) requires that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to, among other things, establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities.[18] As discussed above, proposed Rule 212 and the revised EOD Policy would require ACPs to submit prices for NA Instruments during the NA Instrument EU Submission Window. The Commission believes this represents an objective requirement that would allow participation by persons that may be unable to provide prices for NA Instruments at the close of the New York trading day (as is required for Full Participants). Moreover, as discussed above, any person who meets this requirement, and the other requirements for ACPs (which are largely the same as those applicable to Full Participants) could become an ACP. The Commission therefore believes the requirements applicable ACPs represent objective criteria which any person could potentially satisfy, thereby permitting fair and open access to ACP membership at ICC. The Commission therefore find the proposed rule change is consistent with Rule 17Ad–22(e)(18).[19]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[20] and Rules 17Ad–22(e)(6)(iv) and 17Ad–22(e)(18) thereunder.[21]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[22] that the proposed rule change (SR–ICC–2022–010), be, and hereby is, approved.[23]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–18766 Filed 8–30–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(2)(C).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(6)(iv) and (e)(18).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(6)(iv).

[17] 17 CFR 240.17Ad–22(e)(2)(v).

[18] 17 CFR 240.17Ad–22(e)(18).

[19] 17 CFR 240.17Ad–22(e)(18).

[20] 15 U.S.C. 78q–1(b)(3)(F).

[21] 17 CFR 240.17Ad–22(e)(6)(iv) and (e)(18).

[22] 15 U.S.C. 78s(b)(2).

[23] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95604; File No. SR–NASDAQ–2022–049]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Port-Related Fees, at Equity 7, Section 115, and Options 7, Section 3

August 25, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's port-related fees, at Equity 7, Section 115, and Options 7, Section 3, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on September 1, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Equity 7, Section 115, and Options 7, Section 3, to prorate port fees for the first month of service. The Exchange also proposes to add language to Equity 7, Section 115, and Options 7, Section 3, to clarify that port fees for cancelled services will continue to be charged for the remainder of month.

Currently, the Exchange does not prorate port connectivity fees under either its equity or options rules. Thus, equity members and options participants are assessed a full month's fee if they direct the Exchange to make the subscribed connectivity live on any day of the month, including the last day thereof. Equity members and options participants are also assessed a full month's port fee if they cancel service during the month.

The Exchange proposes to provide prorated port fees for the first month of service for new requests. By prorating the first month's fees, the Exchange would charge equity members and options participants port fees only for the days in which the equity members and options participants are connected to the Exchange during the first month of service. The Exchange proposes to continue the current practice of charging port fees for the remainder of the month upon cancellation, with the exception of the specialized service fees in Equity 7, Section 115(e).[3] If an equity member or options participant starts and cancels service in the same month, the member or participant would not be billed for those days prior to the service start date but would be billed for the remainder of the month, including after the service is cancelled.[4]

The Exchange believes it is important for equity members and options participants to have the option to establish new connections to the Exchange at any time during the month without being hampered by a full month charge irrespective of when during the month service begins. Moreover, other exchanges also charge new ports on a prorated basis for the first month of service.[5]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its port fee schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options and equity securities transaction services that constrain its pricing determinations in that market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

The Exchange believes that it is reasonable to prorate port fees for the first month of connectivity. As discussed above, the Exchange believes it is important for equity members and options participants to have the flexibility to establish new connections to the Exchange at any time during the month without being hampered by a full month charge. For example, the Exchange believes it is reasonable to charge a user who begins a subscription on the last day of the month to be charged only for use of a port for that day. As noted above, other exchanges already charge their customers for new ports on a prorated basis for the first month of service.[9] The proposed language describing the Exchange's practice to bill for the remainder of the month upon cancellation is intended only to clarify the existing practice and limit any confusion.

The Exchange believes that the proposal is also equitable and not unfairly discriminatory because the proposed change to prorate port fees for the first month of service and continue to charge for the remainder of the month upon cancellation will apply uniformly to all similarly situated equity members and options participants. Removing the requirement to pay a full month's port fee if a user joins any day other than the first of the month is user-friendly and provides users incentive to subscribe at their convenience. The Exchange believes that prorating the fees for the first month of a user's subscription will ensure that the fees are more equitable to a user's utilization of the products. All users will benefit from the proration of the first month of their subscription.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[3] The Exchange prorates the cost of the first and last month of a user's subscription to the WebLink, Workstation, and WorkX products. *See* Securities Exchange Act Release No. 94226 (February 11, 2022), 87 FR 9096 (February 17, 2022) (NASDAQ–2021–012) [sic].

[4] For example, if a member orders a port on September 4, 2022 and cancels the port on September 16, 2022, the member would be charged the prorated port fee for September 5, 2022 through September 30, 2022.

[5] *See, e.g.,* Cboe BZX U.S. Equities Exchange Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/;* New York Stock Exchange Price List 2022, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[9] *Supra* note 4.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participants at a competitive disadvantage. The proposed change to prorate port fees for the first month of service will apply uniformly to all similarly situated equity members and options participants. All users will receive the benefit of a proration for the first month of port connectivity, which will enable users to save money that they otherwise would incur under the Exchange's current rules that do not provide for proration. The proposed language describing the Exchange's practice to bill for the remainder of the month upon cancellation merely codifies and clarifies an existing practice of the Exchange.

Intermarket Competition

The Exchange believes that the proposed change to its port fee schedule to provide proration for the first month of port connectivity will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other live exchanges and from off-exchange venues, which include alternative trading systems that trade national market system stock. Moreover, as noted above, other exchanges currently charge new ports on a prorated basis for the first month of service.[10] The proposed changes will help ensure that the Exchange's billing practices are commensurate with competitors.

The proposed change to the Exchange's port fee schedule is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17–18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members, participants, or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[10] *Supra* note 4.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and paragraph (f) of Rule 19b–4 [12] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–049 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2022–049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–049 and should be submitted on or before September 21, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–18767 Filed 8–30–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34688; 812–15226]

Capital Southwest Corporation

August 25, 2022.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(3) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order to permit a business development company (''BDC'') to organize, acquire, and wholly-own a portfolio company that intends to operate as an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act'').

APPLICANT: Capital Southwest Corporation (the ''Company'' or ''Applicant'').

FILING DATES: The application was filed on April 30, 2021, and amended on September 1, 2021, February 28, 2022, and May 31, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving Applicant

with a copy of the request, by email. Hearing requests should be received by the Commission by 5:30 p.m. on September 19, 2022 and should be accompanied by proof of service on the applicant, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicant: Michael S. Sarner, Chief Financial Officer, Secretary and Treasurer, Capital Southwest Corporation at *MSarner@capitalsouthwest.com.*

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated March 17, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

Company and Adviser Sub

1. The Company is a Texas corporation that operates as an internally managed, non-diversified, closed-end management investment company. The Company has elected to be regulated as a BDC under the Act. The Company's investment objective is to produce attractive risk-adjusted returns by generating current income from its debt investments and capital appreciation from its equity and equity related investments. The Company's investment strategy is to partner with business owners, management teams and financial sponsors to provide flexible financing solutions to fund growth, changes of control, or other corporate events.

2. Capital Southwest Asset Management LLC (''Adviser Sub'') was formed as a limited liability company under the laws of the State of Delaware and will be a direct or an indirect wholly owned portfolio company of the Company.[1] As discussed below, the Adviser Sub intends to operate as an investment adviser registered with the Commission under the Advisers Act.[2] The Company expects the Adviser Sub to receive fees in connection with its management of one or more privately-offered pooled investment vehicles, registered management investment companies, BDCs, and/or investment accounts (collectively, ''Managed Accounts'') similar to those received by comparable investment advisers.

3. The Company is, and the Adviser Sub will be, directly or indirectly overseen by the Company's seven-member Board of Directors (the ''Board''), of whom six are not considered ''interested persons'' of the Company within the meaning of section 2(a)(19) of the Act. In its capacity as the Board of the Advisers Sub's parent company, the Board will indirectly oversee the Adviser Sub.

4. The Company has elected to be treated for U.S. federal income tax purposes, and intends to qualify annually, as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended (the ''Code''). Applicant states that as a RIC, the Company generally will not pay corporate-level federal income taxes on any net ordinary income or capital gains that it distributes to its stockholders as dividends in accordance with the timing requirements of the Code. To maintain its RIC status, the Company must, among other things, meet specified source-of-income requirements. Applicant states that the Company will satisfy the source-of-income test for purposes of qualifying as a RIC if it derives in each taxable year at least 90% of its gross income from dividends, interest, payments with respect to certain securities loans, gains from the sale of stock or other securities or currencies, net income from certain ''qualified publicly traded partnerships'' (as defined in the Code) or other income derived with respect to its business of investing in such stock, securities or currencies (income from such sources, ''Good RIC Income'').

5. Applicant states that fee income received in connection with the provision of services to the Managed Accounts generally would not constitute Good RIC Income to the Company if it earned such income directly. Therefore, in order for the Company to maintain its RIC status while receiving the income from the provision of advisory services to the Managed Accounts, the Company believes that it is in the best interests of the Company and its shareholders for the Adviser Sub to provide advisory services to and to receive fees from the Managed Accounts instead of the Company providing such services and receiving such fees directly.

6. Under the Advisers Act, an investment adviser is generally required to be registered if it has $100 million or more of regulatory assets under management.[3] An investment adviser may also register under the Advisers Act in compliance with rule 203A–2(c)(1) of the Advisers Act if it expects to be eligible to register an as adviser within 120 days of registering. Applicant states that the Adviser Sub will register as an investment adviser under the Advisers Act in compliance with rule 203A–2(c)(1) of the Advisers Act after the relief requested in the application is granted to the Company because the Adviser Sub expects to have $100 million or more of regulatory assets under management within 120 days of such registration.

Applicable Law

1. Section 12(d)(3) makes it unlawful for any registered investment company, and any company controlled by a registered investment company, to acquire any interest in the business of a person who is either an investment adviser of an investment company or an investment adviser registered under the Advisers Act, unless (a) such person is a corporation all the outstanding securities of which are owned by one or more registered investment companies; and (b) such person is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities issued by other persons, selling securities to customers, or any one or more of such or related activities, and the gross income of such person normally is derived principally from such business or related activities. Section 60 of the Act states that section 12 shall apply to a BDC to the same extent as if it were

[1] Adviser Sub will be a wholly owned portfolio company of the Company and will also fall within the definition of ''wholly owned subsidiary'' for purposes of section 2(a)(43) of the Act.

[2] Adviser Sub has been formed, but it does not intend to commence operations unless and until the relief requested in the application has been granted.

[3] In addition, an investment adviser to an investment company registered under the Act or to a company that has elected to be a BDC with $25 million or more of regulatory assets under management would also be required to register under the Advisers Act. Applicants state that the Adviser Sub also may act as an investment adviser to an an investment company registered under the Act or to a company that has elected to be a BDC with $25 million or more of regulatory assets under management after the relief requested is granted.

a registered closed-end investment company.

2. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Legal Analysis

1. Applicant represents that the Company will own 100% of the equity interests in the Adviser Sub. However, Applicant states that it is not expected that the Adviser Sub would also be a broker-dealer that is primarily engaged in the business of underwriting and distributing securities issued by other persons. The ownership of the Adviser Sub, at such point as it becomes registered as an investment adviser, could thus cause the Company to be in violation of the provisions of section 12(d)(3) unless the requested Order is issued.[4] In addition, the Company expects that after the relief requested in the application is granted the Adviser Sub will act as an investment adviser to investment companies. To the extent it does so, relief from section 12(d)(3) is also required because the Adviser Sub acting as an investment adviser of an investment company would result in the Company acquiring a security of an investment adviser of an investment company. Therefore, Applicant requests the Order pursuant to section 6(c) of the Act granting an exemption from the provisions of section 12(d)(3) of the Act, to the extent necessary in order to permit the Company to organize, acquire, and wholly own the securities of the Adviser Sub.

2. Applicant states that section 12(d)(3) was intended to: (a) limit the risk of a registered investment company's exposure to the entrepreneurial risks, or general liabilities, that are peculiar to securities-related businesses; and (b) prevent potential conflicts of interest and reciprocal practices between investment companies and securities-related businesses. Applicant submits that the Company's ownership and control of the Adviser Sub does not present the concerns against which section 12(d)(3) was intended to safeguard.

3. Applicant states that much of the concern regarding entrepreneurial risks stemmed from the fact that when section 12(d)(3) was adopted, most securities-related businesses were organized as privately held general partnerships. As a result, an investment in such a company would expose an investment company to the unlimited liabilities of a general partner. Applicant notes that today's financial services industry is subject to a much more robust body of regulation, which contributes to a more conservative risk profile for those companies that comprise the industry. Moreover, Applicant states that the risks presented by the form of organization of a securities-related business are no longer as germane as they were at the time of the adoption of section 12(d)(3) because many formerly closely-held securities-related businesses have reorganized into corporate forms that are characterized by limited liability. Applicant asserts in particular that the Company's shareholders are not exposed to the risk of unlimited liability associated with an interest in the Adviser Sub because they are insulated by a layer of liability protection between the Adviser Sub and the Company, as the Adviser Sub is a separate entity and is structured as a limited liability company, not a partnership.

4. Applicant also submits that the Company will own 100% of the equity interests in the Adviser Sub and, as a result, will exercise total control over the strategic direction of the Adviser Sub, including the power to control the policies that affect the Company and to protect the Company from potential conflicts of interest and reciprocal practices. Moreover, as a wholly owned portfolio company and the sole shareholder of the Adviser Sub, the Adviser Sub and the Company will generally have aligned interests.

5. Applicant states that the Company will adopt policies and procedures with respect to the Adviser Sub designed to ensure that the Company and the Adviser Sub are both being operated and managed in the best interests of the Company's shareholders and that the ownership by the Company of the Adviser Sub is consistent with the purposes fairly intended by the policy and provisions of the Act.[5] Applicant states that the Company and the Adviser Sub will adopt policies and procedures to address potential conflicts of interest, including but not limited to policies and procedures that govern the allocation of expenses, personal securities trading, and insider trading and confidentiality of proprietary information.

6. Applicant notes that the Company and the Managed Accounts may invest in the same securities or different securities of the same issuer to the extent consistent with applicable law, regulatory guidance, or any exemptive order obtained by the Company. The Company and the Adviser Sub will implement policies and procedures that will govern the allocation of investment opportunities when investment advisory personnel of the Company and/or Adviser Sub become aware of investment opportunities that may be appropriate for the Company and one or more Managed Accounts.

7. Applicant states that the Company's proposal to enter into the advisory business through a wholly owned and controlled portfolio company will benefit the Company's shareholders by: (a) allowing them to share in the profits from the new advisory business; (b) allowing that advisory business to be more marketable than if the services were provided by the Company itself; and (c) limiting any potential liabilities arising from Adviser Sub's provision of advisory services. In addition, the growth in the Company's advisory business through the Adviser Sub will enable the Company to add advisory personnel that it could not on its own, such as additional portfolio managers and investment analysts, who will be available to provide advisory services both to the Company and to the Managed Accounts of the Adviser Sub and further enhance the experience and relationships of the Company's investment team. Without the growth of the Company's advisory business through the Adviser Sub, the Company would not have the ability to support such additional advisory personnel. Applicant also states that the Adviser Sub's organization as a wholly owned portfolio company of the Company and registration as an investment adviser would permit the Adviser Sub to operate the business of managing the Managed Accounts as a direct or an indirect wholly owned taxable portfolio company of the Company, thereby protecting the Company's RIC status.

[4] Rule 12d3–1(a) and (b) under the Act each provides limited relief from the restrictions of section 12(d)(3) if the acquired company derives 15 percent or less of its gross revenues from securities related activities (as defined in the rule) or the acquiring company owns not more than five percent of the outstanding securities of that class of the acquired company's equity securities. The Company does not believe that it may rely on this relief with respect to its investment in Adviser Sub, since the Company expects that a significant portion of the Adviser Sub's gross revenues will be derived from securities related activities and the Company will own all of the outstanding securities of the Adviser Sub.

[5] Applicant represents that the Adviser Sub's borrowings, if any, would be used only for its own legitimate business purposes, and would not be used directly or indirectly by the Company for its business purposes unrelated to the Adviser Sub, and that the Company will adopt procedures to ensure Board oversight of compliance with this representation.

8. Applicant represents that the Company's Board, including a majority of the disinterested directors, found that the Company organizing, acquiring, and wholly owning 100% of the equity interest in the Adviser Sub subsequent to its registration as an investment adviser is in the best interests of the Company and its shareholders. Applicant agrees that the Board will review at least annually the investment advisory business of the Adviser Sub to determine whether such business should be continued and whether the benefits derived by the Company from the Adviser Sub's business warrant the continued ownership of the Adviser Sub. Applicant states that shareholders of the Company will be provided with notice, in advance of, or concurrent with, the Adviser Sub's start of investment advisory activities.

9. Accordingly, Applicant represents that the requested relief is both necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

Applicant agrees that the Order of the Commission granting the requested relief shall be subject to the following conditions:

1. The determination to enter into the advisory business through the Adviser Sub has been made by a vote of at least a majority of the Board who are not ''interested persons'' of the Company as defined in section 2(a)(19).

2. The Company will wholly own and control the Adviser Sub. The Company will not have an investment adviser within the meaning of section 2(a)(20). Only persons acting in their capacities as directors, officers or employees of the Company will provide advisory services to the Company.

3. In each of its annual reports to shareholders and in future registration statements, the Company will discuss the existence of the Adviser Sub and the provision by the Adviser Sub of outside advisory services as well as include an assessment of whatever risks, if any, are associated with the existence of the Adviser Sub and its provision of such services.

4. The Adviser Sub will not make any proprietary investment that the Company would be prohibited from making directly under the Company's investment objectives, policies and restrictions or under any applicable law.

5. In assessing compliance with the asset coverage requirements under section 18 of the Act, the Company will deem the assets, liabilities, and indebtedness of the Adviser Sub as its own.

6. The Board will review at least annually the investment advisory business of the Adviser Sub to determine whether such business should be continued and whether the benefits derived by the Company from the Adviser Sub's business warrant the continued ownership of the Adviser Sub and, if appropriate, approve (by a vote of at least a majority of its directors who are not ''interested persons'' as defined in the Act) at least annually such continuation. In determining whether the investment advisory business of the Adviser Sub should be continued and whether the benefits derived by the Company from the Adviser Sub's business warrant the continued ownership of the Adviser Sub, the Board will take into consideration, among other things, the following: (a) the compensation of the officers of the Company and of the Adviser Sub; (b) all investments by and investment opportunities considered for the Company that relate to any investments by or investment opportunities considered for a client of the Adviser Sub; and (c) the allocation of expenses associated with the provision of advisory services between the Company and the Adviser Sub.[6]

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–18760 Filed 8–30–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17579 and #17580; PENNSYLVANIA Disaster Number PA–00120]

Administrative Declaration of a Disaster for the Commonwealth of Pennsylvania

AGENCY: Small Business Administration.

ACTION: Correction.

SUMMARY: This is a correction to the Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 08/19/2022.

Incident: Heavy Rain and Flash Flooding.

Incident Period: 08/05/2022.

DATES: Issued on 08/25/2022.

Physical Loan Application Deadline Date: 10/18/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 05/19/2023.

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 Administrator's disaster declaration for the Commonwealth of Pennsylvania, dated 08/19/2022, is hereby corrected to include Butler County as a contiguous county. Applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Westmoreland

Contiguous Counties:

Pennsylvania: Allegheny, Armstrong, Butler, Cambria, Fayette, Indiana, Somerset, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.375
Homeowners without Credit Available Elsewhere	2.188
Businesses with Credit Available Elsewhere	6.080
Businesses without Credit Available Elsewhere	3.040
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.040
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17579 6 and for economic injury is 17580 0.

The State which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2022–18781 Filed 8–30–22; 8:45 am]

BILLING CODE 8026–09–P

[6] Such expenses may include: administration and operating expenses; investment research expenses; sales and marketing expenses; office space and general expenses; and direct expenses, including legal and audit fees, directors' fees and taxes.

DEPARTMENT OF STATE

[Public Notice: 11844]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Códice Maya de México: The Oldest Book of the Americas'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Códice Maya de México: The Oldest Book of the Americas'' at the J. Paul Getty Museum at the Getty Center, Los Angeles, California, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–18821 Filed 8–30–22; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of the Second United States-Mexico-Canada Agreement Environment Committee Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting and request for comments.

SUMMARY: The Parties to the United States-Mexico-Canada Agreement (USMCA) intend to hold the second meeting of the Environment Committee (Committee) on September 23, 2022. Following the government-to-government Committee meeting, the Committee will hold a virtual public session. The Office of the United States Trade Representative (USTR) will accept comments on suggestions for topics to be discussed during the Committee meeting, and questions for the public session.

DATES: September 9, 2022, at 11:59 p.m. ET: Deadline for written comments on suggestions for the Committee meeting topics and questions for the public session. September 23, 2022, 5:30–7:00 p.m. ET: The Parties will host a virtual public session of the Committee.

ADDRESSES: Submit written comments to Judith Webster, Director for Environment and Natural Resources, by email at *judith.a.webster@ustr.eop.gov* with the subject line 'USMCA Environment Committee Meeting'.

FOR FURTHER INFORMATION CONTACT: Judith Webster, Director for Environment and Natural Resources, at *judith.a.webster@ustr.eop.gov,* or 202–881–7318.

SUPPLEMENTARY INFORMATION:

I. Background

Article 24.26 of the USMCA establishes an Environment Committee composed of senior government representatives. The Committee oversees implementation of Chapter 24, the Environment Chapter, and provides a forum to discuss and review the implementation of the Chapter. The USMCA requires the Committee to meet within one year of the date of entry into force of the USMCA and every two years thereafter unless the Committee agrees otherwise. The Committee met on June 17, 2021, and agreed to hold a second meeting in 2022. All decisions and reports of the Committee will be made publicly available, unless the Committee decides otherwise. The Committee will provide for public input on matters relevant to the Committee's work, as appropriate, and hold a public session at each meeting.

II. Committee Meeting

On September 23, 2022, the Committee will meet in a government-to-government session to (1) review implementation of the Environment Chapter, and discuss how the Parties are meeting their Chapter obligations; and (2) receive a presentation from the Commission on Environmental Cooperation (CEC) Secretariat on cooperation and public Submissions for Enforcement Matters (SEMs). This session will not be open to the public.

III. Public Session on Environment Chapter Implementation

Following the government-to-government session, the Committee invites all interested persons to attend a virtual public session on USMCA Environment Chapter implementation. At the session, the Committee will welcome questions, input, and information concerning implementation of the Chapter obligations. The Committee will cover questions raised in comments submitted to USTR, and through a live chat function overseen by a moderator. Prior to the meeting, details on how to access the public session will be made available on USTR's website at *https://ustr.gov/issue-areas/environment.*

IV. Comments

USTR invites all interested persons to submit comments on topics and issues for the United States government to consider as it prepares for the Committee meeting, and specific questions for the public session. Participation in the public session is not limited to questions submitted through comments in advance of the session. As noted, during the public session, you will be able to ask questions through a chat function overseen by a moderator. When preparing comments, we encourage submitters to refer to USMCA Chapter 24, which is available at *https://ustr.gov/sites/default/files/IssueAreas/Environment/USMCA_Environment_Chapter_24.pdf*).

Amanda Mayhew,

Deputy Assistant U.S. Trade Representative for Environment and Natural Resources, Office of the United States Trade Representative.

[FR Doc. 2022–18824 Filed 8–30–22; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release From Federal Surplus Property and Grant Assurance Obligations at Francis S. Gabreski Airport (FOK), Southampton, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The FAA proposes to rule and invites public comment on the application for a release of approximately 0.12 acres of federally obligated airport property at Francis S. Gabreski Airport, Southampton, New York, from both the Federal Surplus Property obligations contained in the July 12, 1972 Quitclaim Deed, and the Grant Assurance obligations. This acreage is composed of one parcel of land that was transferred from the United States of America to the County of Suffolk under the provisions of the Federal Property and Administrative Services Act of 1949 and the Surplus Property Act of 1944. The release will allow the airport to enter into a long-term non-aeronautical lease with the Suffolk County Water Authority (SCWA) for a water booster pump station. The proposed use of land after the release will be compatible with the airport and will not interfere with the airport or its operation.

DATES: Comments must be received on or before September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Comments on this application may be submitted to Robert Costa, Federal Aviation Administration, New York Airports District Office via phone at (718) 995–5778 or at the email address *Robert.Costa@faa.gov.* Comments on this application may also be mailed or delivered to the FAA at the following address: Evelyn Martinez, Manager, Federal Aviation Administration, New York Airports District Office, **Federal Register** Comment, 1 Aviation Plaza, Jamaica, New York 11434.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements. The following is a brief overview of the request.

The County of Suffolk requested a release from surplus property and grant assurance obligations to allow a land-use change in use for other than aeronautical purposes of approximately 0.12 acres of airport property at Francis S. Gabreski Airport. Specifically, the release request seeks approval to allow for the permanent non-aeronautical use of the property, a long-term non-aeronautical lease with the Suffolk County Water Authority (SCWA) for a water booster pump station; and the release of the 0.12 acres of property, transferred via the aforementioned Quitclaim Deed, from the National Emergency Use Provision (NEUP). The NEUP allows the United States of America the right to make use of the land during any national emergency as declared by the President or Congress. FAA approval of this request, with respect to the aforementioned 0.12 acres, is contingent on the Department of Defense's concurrence that the 0.12 acres is no longer required for aeronautical purposes.

The airport will retain ownership of the 0.12 acres and will receive fair market value rent for the length of the agreement. The rental income will be devoted to airport operations and capital projects. The proposed use of the property will not interfere with the airport or its operation; and will thereby, serve the interests of civil aviation.

Issued in Jamaica, New York, on August 24, 2022.

Evelyn Martinez,

Manager, New York Airports District Office.

[FR Doc. 2022–18833 Filed 8–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–1187]

Agency Information Collection Activities: Request for Comments, Clearance of Renewed Approval of Information Collection: General Operating and Flight Rules FAR 91 and FAR 107

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FAA invites public comments about its intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 14, 2022. The collection involves the submission of materials to obtain a letter of deviation authority (LODA) to permit flight instruction for compensation or hire aboard aircraft holding experimental certificates. The information to be collected will be used to determine whether such flight instruction can be conducted safely.

DATES: Written comments should be submitted by September 30, 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.

FOR FURTHER INFORMATION CONTACT: Jabari Raphael by email, *Jabari.Raphael@faa.gov,* or by phone, (202) 267–1088.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the FAA's performance; (b) the accuracy of the estimated burden; (c) ways for the FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0005.

Title: General Operating and Flight Rules FAR 91 and FAR 107.

Form Numbers: N/A.

Type of Review: Renewal.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 14, 2022. 87 FR 8335 (Feb. 14, 2022). In 2004, the FAA published a final rule requiring operators of experimental aircraft to apply for a LODA to conduct operations for compensation or hire under 14 CFR 91.319. *See* 69 FR 44771 (July 27, 2004). When publishing the 2004 final rule, the FAA inadvertently omitted its submission to the OMB detailing the information collection burden under the Paperwork Reduction Act (PRA). *See* 69 FR at 44858 (explaining estimated PRA burden and OMB compliance requirements). As a result of this omission, the existing OMB collection does not account for the PRA burden of LODAs issued to operators under § 91.319.

In the 2004 final rule, the FAA also implied that, beginning January 31, 2010, all experimental light sport aircraft (ELSA) operators would similarly need to apply for a LODA to conduct operations for compensation or hire. 69 FR at 44853 (explaining LODA requirements for ELSA operators). This additional LODA implication—published in the 2004 final rule with an effective date in 2010—was also inadvertently not accounted for in the OMB's information collection. As a

result of these inadvertent omissions to OMB, the FAA submits this Notice to ensure compliance with the PRA. Importantly, the FAA has already requested and received public comment on the anticipated PRA burden for obtaining a LODA for experimental aircraft operators. *See* 69 FR at 44858 (adjudicating public comments regarding PRA burden). Thus, the FAA notes that it considered comments from interested members of the public when finalizing the LODA requirements under § 91.319. In other words, the FAA submits this Notice to ensure technical compliance with the OMB's PRA requirements, as a matter of diligence in meeting these requirements and ensuring accuracy in recordkeeping procedures.

Respondents: There are approximately 177 active LODA holders for operations under 14 CFR 91.319, and the FAA anticipates approximately 20 new submissions per year.

Frequency: As needed.

Estimated Average Burden per Response: 19 hours.

Estimated Total Annual Burden: 380 hours per year.

Issued in Washington, DC, on August 26, 2022.

Dwayne C. Morris,

Project Manager, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2022–18805 Filed 8–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2022–0023]

Notice of Proposed Waiver of Buy America Requirements for Electric Vehicle Chargers

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: The Federal Highway Administration (FHWA) is seeking comments on a proposal under its Buy America waiver authorities to: modify its existing general applicability waiver for manufactured products to remove electric vehicle (EV) chargers; and waive certain Buy America requirements under FHWA regulations and the Build America, Buy America Act for the steel, iron, manufactured products, and construction materials in EV chargers in a manner that, over a deliberate transitional period, reduces the scope of that waiver. The proposed new waiver would initially waive all Buy America requirements for EV chargers and all components of EV chargers that are installed in a project and then phase-out the waiver with two changes during calendar year 2023 and one change in January 2024.

DATES: Comments must be received by September 30, 2022.

ADDRESSES: Please submit your comments to the Federal eRulemaking Portal at *http://www.regulations.gov/,* Docket: FHWA–2022–0023, and follow the online instructions for submitting comments.

Instructions: You must include the agency name and docket number at the beginning of your comments. Except as described below under the heading ''Confidential Business Information,'' all submissions received, including any personal information provided, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review the U.S. Department of Transportation's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, 202–366–1562, or via email at *Brian.Hogge@dot.gov.* For legal questions, please contact Mr. Patrick C. Smith, FHWA Office of the Chief Counsel, 202–366–1345, or via email at *Patrick.C.Smith@dot.gov.* Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of this Notice, all comments received on this Notice, and all background material may be viewed online at *http://www.regulations.gov* using the docket number listed above. Electronic retrieval help and guidelines are also available at *http://www.regulations.gov.* An electronic copy of this document also may be downloaded from the Office of the Federal Register's website at: *www.FederalRegister.gov* and the Government Publishing Office's website at: *www.GovInfo.gov.*

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 notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. You may ask FHWA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send FHWA, 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, FHWA 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: Mr. Brian Hogge, FHWA, 1200 New Jersey Avenue SE, HICP–20, Washington, DC 20590. Any comment submissions that FHWA receives that are not specifically designated as CBI will be placed in the public docket for this matter.

Background

The President has laid out a bold vision for making transformative transportation investments to support job growth and reshape the United States (U.S.) transportation system, strengthen the U.S. economy and competitiveness, and support a sustainable energy and climate future. The President has set the ambitious goal of building a national network of 500,000 EV chargers by 2030.[1] On November 15, 2021, the President signed into law the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA), (Pub. L. 117–58). The BIL makes the most transformative investment in EV charging in U.S. history, including $5 billion over five years that will be made available under the new National Electric Vehicle Infrastructure (NEVI) Formula Program.[2] As outlined in statute, the purpose of the NEVI Formula Program is to ''provide funding to States to strategically deploy EV charging infrastructure and to establish an interconnected network to facilitate data collection, access, and reliability.'' *See* BIL, Division J, Title VIII, Highway

[1] White House Fact Sheet: Biden Administration Advances Electric Vehicle Charging Infrastructure (Apr. 22, 2021), available at *https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-biden-administration-advances-electric-vehicle-charging-infrastructure/.*

[2] See *https://highways.dot.gov/newsroom/president-biden-usdot-and-usdoe-announce-5-billion-over-five-years-national-ev-charging.*

Infrastructure Program heading, Paragraph (2). This purpose would be satisfied by creating a convenient, affordable, reliable, and equitable network of EV chargers throughout the country. BIL also includes many additional funding and financing programs with eligibilities for EV charging infrastructure, including formula, discretionary, other allocated, and innovative finance programs.[3] These historic investments across the Federal government in EV charging under BIL will put the U.S. on a path to meeting the President's goal for EV charging infrastructure and ensuring a convenient, reliable, affordable, and equitable charging experience for all users.

BIL includes new Build America, Buy America provisions to strengthen domestic manufacturing. As the Administration implements the historic investments in EV charging infrastructure under the BIL, we seek to maximize the use of American made products and materials while also ensuring successful and timely delivery of these critical EV infrastructure projects. The manufacturing, assembly, installation, and maintenance of EV chargers all have the potential to not only support the President's policies on sustainability and climate, but also increase domestic manufacturing, strengthen our supply chains, and create good-paying, union jobs in the U.S.

In order to ensure delivery and meaningful results on EV charging projects using Federal-aid highway funds throughout the U.S., FHWA is considering making judicious use of its waiver authority under Section 313(b)(1) of Title 23 of the U.S. Code and 23 CFR 635.410(c), with respect to steel, iron, and manufactured products, and Section 70914(b) of the BIL, with respect to construction materials. Following establishment of an initial temporary public interest waiver for EV chargers, FHWA proposes to decrease the scope of the waiver over time to ensure the maximum utilization of goods, products, and materials produced in the United States. *See* BIL § 70935(a). The initial, temporary public interest waiver for EV chargers will allow manufacturers a short ramp up period to make needed investments to build and expand domestic production to quickly proceed in support of a sustainable energy and climate future. In addition, EV charger installation and maintenance can immediately create good-paying, union jobs in America that cannot be outsourced. Moreover, domestic jobs may also be created to manufacture domestically available components of those systems.

At the same time, consistent with Executive Order (E.O.) 14005, FHWA is also seeking to encourage first-movers who bring more EV charger and component manufacturing and assembly to the U.S. By shifting manufacturing and assembly processes to the U.S. for EV chargers and charger equipment as soon as practicable and making necessary arrangements with vendors to obtain appropriate certifications showing Buy America compliance, domestic manufacturing firms have potential to obtain significant first-mover benefits from the bold investments provided by BIL in this area. By proposing to gradually reduce the scope of the waiver to increase domestic content, FHWA aims to further incentivize domestic manufacturing of EV chargers and charger-related equipment, including maximizing domestic content. FHWA also seeks to maximize opportunities for American workers to manufacture, assemble, install, and maintain EV chargers consistent with BIL § 70935(a). The proposed transitional period, reducing the scope of the waiver in scheduled intervals, is intended to both support domestic manufacturing of EV chargers and timely construction of an EV charging network using Federal-aid highway funds by giving industry a clear timetable to increase domestic manufacturing and assembly of EV chargers.

On November 24, 2021, DOT and the U.S. Department of Energy (DOE) published a Request for Information (RFI) in the **Federal Register** intended to gather information from the public on the availability of EV chargers manufactured and assembled in the United States, including whether they comply with applicable Buy America requirements for iron and steel. 86 FR 67115 (Nov. 24, 2021). The results of the RFI are summarized in the ''November 2021 Request for Information'' Section of this document.

Based on information obtained through the RFI and in recognition that the market continues to evolve, FHWA developed this proposal to support the President's objectives on creating a safe, reliable, and efficient network of EV charging infrastructure, protecting the climate, and investing in domestic manufacturing and the expansion of good paying, union jobs.

Executive Orders

In January 2021, President Biden issued E.O. 14005, titled Ensuring the Future is Made in All of America by All of America's Workers (86 FR 7475, Jan. 28, 2021). The E.O. states that the United States Government ''should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States.'' FHWA is committed to ensuring strong and effective Buy America implementation consistent with E.O. 14005, including for the transformative investment in EV charging infrastructure under the BIL.

In January 2021, President Biden also issued E.O. 14008, titled Tackling the Climate Crisis at Home and Abroad (86 FR 7619, Feb. 1, 2021). The E.O. states that the Nation faces ''a climate crisis that threatens our people and communities, public health and economy, and starkly, our ability to live on planet Earth.'' E.O. 14008, at Sec. 201. The Federal government has an opportunity to build modern and sustainable infrastructure, deliver an equitable, clean energy future, and put the United States on a path to achieve net-zero emissions, economy-wide, by no later than 2050. *Id.* The President directed the Federal government ''to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a government-wide approach that reduces climate pollution in every sector of the economy,'' including through the ''deployment of clean energy technologies and infrastructure.'' *Id.* To attain the 2050 target, the President has set a goal of building a national network of 500,000 EV chargers by 2030. BIL provides a multi-billion-dollar investment to make this goal a reality.

This proposal supports the policies of both orders, as well as the President's broader objectives.

Buy America Requirements

The Buy America requirements for steel and iron set forth at 23 U.S.C. 313 and 23 CFR 635.410 apply on FHWA-funded projects. These provisions require that all steel and iron that are permanently incorporated into a project must be produced in the United States unless a waiver is granted, including predominantly steel and iron components of a manufactured product. As applied to products other than iron and steel, the term ''produced'' in 23 U.S.C. 313 includes physical final assembly and manufacturing processes.

[3] Federal Funding is Available For Electric Vehicle Charging Infrastructure On the National Highway System, FHWA (April 22, 2022), available at *https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/resources/ev_funding_report_2022.pdf.*

This requirement applies to the obligation of Title 23, U.S.C. funds. For all predominantly steel or iron materials, products, or components to be used in projects that involve the obligation of Title 23, U.S.C. funds, all manufacturing processes, including application of a coating, must occur in the U.S. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. Such projects involve both the acquisition and installation of such equipment. Additionally, FHWA's Buy America requirement applies to all contracts regardless of the funding source if any contract within the scope of a determination under the National Environmental Policy Act (NEPA) involves an obligation of Federal funds. See 23 U.S.C. 313(h). Outside of the context of EV chargers, nothing in this waiver changes the longstanding requirement for iron and steel.

FHWA also has a longstanding Buy America nationwide general applicability waiver for manufactured products (Manufactured Products General Waiver). 48 FR 53099 (Nov. 25, 1983). As of the date of this notice, FHWA has not modified the Manufactured Products General Waiver, and the waiver continues to apply to manufactured products that are not predominantly steel and iron and are funded under Title 23. For this proposed waiver specific to EV chargers, FHWA proposes to remove EV chargers from the Manufactured Products General Waiver. Continuing to apply the Manufactured Products General Waiver to EV chargers would be inconsistent with the objectives of BIL's Buy America, Build America Act, discussed below, and is not supported by currently available information on domestic manufacturing capabilities. (FHWA will be conducting a separate review of the broader applicability of the Manufactured Products General Waiver, as required by BIL § 70914(d), including an opportunity for public comment.) The proposed waiver in this notice only reviews whether FHWA should continue or discontinue application of the Manufactured Products General Waiver to EV chargers. OMB Memorandum M–22–11, also discussed below, states at page 13 that, in reviewing general applicability waivers, ''agencies should consider narrowing the waiver in a manner that would support supply chain resilience and boost incentives to manufacture key products domestically.''

In addition to historic investment in American transportation and EV chargers, the BIL also includes the Build America, Buy America Act (the ''Act'' or ''BABA''), which expands the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. BIL, div. G §§ 70901–27. The Act applies those requirements to obligations made after May 14, 2022. BIL § 70914(a).

The Act provides that the preferences under Section 70914 apply only to the extent that a domestic content procurement preference as described in Section 70914 does not already apply to iron, steel, manufactured products, and construction materials. BIL § 70917(a)–(b). This provision allows Federal agencies to preserve existing Buy America policies and provisions that meet or exceed the standards required by the Act, such as FHWA's existing requirements for iron and steel. By statute at 23 U.S.C. 313, FHWA has existing Buy America domestic content preferences for steel, iron, and manufactured products.

FHWA's existing Buy America requirement at 23 U.S.C. 313 does not specifically cover construction materials, other than to the extent that such materials would already be considered iron, steel, or manufactured products. Accordingly, the new Buy America preferences included under Section 70914 of the Act for construction materials became effective on FHWA projects on May 14, 2022. However, in order to deliver projects and meaningful results while ensuring robust adoption of Buy America standards, DOT established a temporary public interest waiver for construction materials (''Temporary Construction Materials Waiver'') for a period of 180 days beginning on May 14, 2022 and expiring on November 10, 2022. *See* Waiver of Buy America Requirements for Construction Materials, 87 FR 31931 (May 25, 2022). The Temporary Construction Materials Waiver is applicable to awards that are obligated on or after May 14, 2022 and before November 10, 2022. Unless extended, the waiver expires on November 10, 2022.

FHWA will only consider a Buy America waiver when the conditions of 23 U.S.C. 313(b) and § 70914(b) of the Act have been met. This includes: (i) when the application of the requirements under 23 U.S.C. 313(b) and § 70914 of the Act would be inconsistent with the public interest; or (ii) when products are not produced in the United States in sufficient and reasonably available quantities of a satisfactory quality.[4] As explained below, this proposed waiver is in the public interest.

OMB Implementation Guidance

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 Implementation Guidance''). The OMB Implementation Guidance addresses the topic of public interest waivers. The guidance notes that a ''waiver in the public interest may be appropriate where an agency determines that other important policy goals cannot be achieved consistent with the Buy America requirements established by the Act.'' OMB Implementation Guidance at p. 10. The guidance also recognizes several instances in which Federal agencies may consider issuing a public interest waiver and encourages agencies to consider an adjustment period where time limited waivers would allow recipients and agencies to transition to new Buy America preferences, rules, and processes. *Id.* at p. 11.

Applicability of FHWA's Manufactured Products General Waiver to EV Chargers

As of the date of this notice, FHWA's Manufactured Products General Waiver remains in effect. Under existing policy and practice, FHWA generally applies its Buy America requirement to predominantly steel and iron components of manufactured products even if the product itself is not predominantly steel and iron.[5] The responses to the 2021 RFI, as discussed below, indicated that steel may be used in certain components for EV chargers including the housing, cabinet, or enclosure. Exclusive reliance on the Manufactured Products General Waiver based only on assessment of steel and iron content of the product overall may not be a reliable compliance strategy for EV chargers with components containing iron and steel.

November 2021 Request for Information

As also mentioned above, on November 24, 2021, DOT and DOE (collectively, ''the Agencies'') published

[4] Section 70914(b)(3) of the Act also provides a cost-based condition for a waiver, which FHWA's regulation addresses at 23 CFR 635.410(b)(3) through alternate bid procedures.

[5] *See* FHWA's Buy America Questions and Answers for the Federal-aid Program, available at *https://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm.* The answer to question 12 explains that FHWA's Buy America requirements apply to any predominantly steel or iron component of a manufactured product regardless of the overall composition of the manufactured product.

an RFI in the **Federal Register** to gather information from the public on the availability of EV chargers manufactured and assembled in the United States, including whether they comply with applicable Buy America requirements for iron and steel. 86 FR 67115 (Nov. 24, 2021).

The Agencies received 72 individual comments in response to the notice from a wide array of stakeholders, including state departments of transportation (State DOTs), local agencies, EV charger manufacturers and suppliers, auto manufacturers, industry associations, and transportation advocates.[6] The majority of comments indicated that the EV charger industry and State DOTs are not immediately prepared to certify compliance for EV chargers on FHWA-funded projects, with many commenters emphasizing strong support for establishing a waiver. As of the comment closing date for the RFI on January 10, 2022, approximately 11 manufacturers believed they could produce EV chargers in compliance with FHWA's Buy America requirement for steel and iron, although only three of these manufacturers were referring to direct current fast charging (DCFC) chargers. DCFC chargers will be the initial focus along the designated corridors for electric vehicles under the $5 billion NEVI program.[7] The responding manufacturers who believed their EV chargers comply with FHWA's Buy America requirement offered differing interpretations on how that Buy America requirement is, or should be, applied to EV chargers. At least 13 manufacturers believed they could meet a domestic final assembly condition for either DCFC or alternating-current Level 2 (ACL2) chargers—although other commenters believed the meaning of this condition was too vague and did not respond. Specific comments from EV charger manufacturers are discussed in more detail below. A common theme in many comments from State DOTs, manufacturers, industry associations, and others was the need for regulatory certainty and further guidance on how FHWA's Buy America requirement will be applied to EV chargers funded under BIL.

Several comments from manufacturers responding to the RFI included confidential business information (CBI), which is exempt from public disclosure. Such CBI is not discussed with specificity in this notice.

Comments on DCFC Chargers. In the RFI, the Agencies asked whether there are existing EV chargers that meet FHWA's Buy America requirement for steel and iron. The comments revealed limited evidence of immediate production capability and capacity for DCFC chargers and other charger equipment that can be certified to meet FHWA's requirement and the national demand. DCFC chargers enable rapid charging through delivering DC electricity to the EV. Under the NEVI Formula Program, FHWA has explained that all EV charger infrastructure installed along the designated corridors should be DCFC chargers.[8] At the time of the RFI, only three manufacturers—ChargePoint, FreeWire Technologies, Inc. (FreeWire), and Rhombus—believed that they had existing DCFC systems complying with FHWA's Buy America requirement. Other companies, such as Tritium, discussed plans to build DCFC chargers meeting FHWA's requirement in the future. While these comments show significant potential for the future of DCFC charger manufacturing in the U.S., uncertainty remains regarding their ability to immediately meet demand for Buy America-compliant DCFC chargers and other essential supporting equipment for EV chargers on FHWA-funded projects throughout the U.S.

ChargePoint believes it has a method to achieve compliance with FHWA's Buy America requirement for steel and iron for DCFC chargers. Portions of its comments were marked as containing CBI and will not be discussed with specificity in this notice.

The second company, FreeWire, believes it would comply based on its interpretation of FHWA's *de minimis* threshold for steel and iron under 23 CFR 635.410. FreeWire stated that it intends to manufacture and deliver approximately 140 DCFC chargers in 2022 and believes it would comply with Buy America for nearly all of those chargers. FHWA's Buy America regulation allows for a minimal use of foreign steel and iron materials, if the cost of such materials, as they are delivered to the project, does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. 23 CFR 635.410(b)(4). FreeWire did not disclose the specific cost or amount of foreign steel and iron content in its DCFC charger system. As the cost of foreign iron and steel in the FreeWire chargers remains unknown to FHWA, it is uncertain whether this would be an effective compliance approach for contracts including multiple chargers or other steel or iron products. It is also unknown whether FreeWire could also provide other necessary elements or components of EV chargers to comply with FHWA's Buy America standard for steel and iron, such as distribution system upgrades, payment systems, networking and telecommunications equipment, energy storage systems, and other necessary supporting equipment. FreeWire stated that it intends to scale up production of its DCFC chargers in the next five years.

The last company, Rhombus, estimated that it can produce approximately 3,000 DCFC chargers annually meeting FHWA's Buy America requirement for steel and iron. It stated that it would trace the origins of the steel and iron components used in its charger by requesting certification from the suppliers but did not provide extensive detail on what that process would entail.

While comments from manufacturers such as ChargePoint, FreeWire, Rhombus, Tritium, Siemens, and others reveal great potential for domestic DCFC manufacturing, FHWA remains uncertain regarding their immediate ability to meet demand on all FHWA projects for EV chargers that satisfy FHWA's Buy America requirement within the next 12 months. Reasons for this uncertainty include:

(1) *Economy-wide factors outside of manufacturer control:* Economy-wide factors outside of the control of EV charging manufacturers, such as price volatility, may impact their ability to reliably deploy a sufficient supply of Buy America compliant EV chargers on FHWA projects.

(2) *Essential elements of EV charger systems outside of manufacturer control:* Certain necessary elements or components of EV charger systems, such as distribution system upgrades (including, *e.g.,* transformers), payment systems, telecommunications and networking equipment, energy storage systems, and other supporting equipment may, in many cases, be outside of EV charger manufacturers' control. For example, distribution system upgrades, generally made by utilities, are typically required for deployment of EV chargers. Although manufacturers have different options for components used within the charger product itself, their control may be more limited over external elements of the system, which are integral to its reliable function and operation.

[6] The comments can be found at *regulations.gov* Docket No. FHWA–2021–0015.

[7] *See* NEVI Formula Program Guidance, at 12, 26, available at *https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/nominations/90d_nevi_formula_program_guidance.pdf.*

[8] *See* NEVI Formula Program Guidance, at 12, 26, available at *https://www.fhwa.dot.gov/environment/alternative_fuel_corridors/nominations/90d_nevi_formula_program_guidance.pdf.*

(3) *Readiness of upstream suppliers to provide certifications:* EV charger manufacturers may only be able to demonstrate compliance for certain components of EV chargers to the extent that upstream suppliers are willing and able to provide detailed accountings of manufacturing processes and costs. This may take some time to accomplish.

(4) *Extraordinary immediate demand:* The unprecedented and immediate demand created by the transformative investment under BIL for EV chargers throughout the U.S. may also impact manufacturers' ability to produce an adequate supply of chargers and other charger components that satisfy FHWA's Buy America requirement. Reliably meeting demand for EV chargers on FHWA projects is essential to staying on the path to meet policy goals in E.O. 14008 and the President's goal of a new network of 500,000 EV chargers by 2030. Some commenters responding to the RFI noted that demand for DCFC chargers in the U.S. already exceeded the available supply even before implementation of the BIL programs. For example, Veloce Energy noted that manufacturers were ramping up production in late 2021, but not yet meeting overall demand. In the near term, the supply of DCFC chargers manufactured to meet FHWA's Buy America requirement and able to successfully certify compliance of the same, if any, would likely be a small subset of the total supply.

(5) *Certification processes:* There is a need to establish compliance and certification processes focused specifically on EV chargers and other elements of EV chargers.[9] Recipients of DOT financial assistance, including States, local communities, Tribal nations, and industrial vendors need to develop and transition to new compliance and certification processes for EV chargers. Some commenters expressed concerns about these processes including potentially inconsistent procedures in different States. Under existing certification processes, manufacturers may also find it infeasible to verify compliance without disclosing sensitive CBI.

(6) *Reliability:* The reliability of EV chargers may vary greatly in the industry. A key statutory purpose of the NEVI Formula Program is to facilitate reliability in the EV charging infrastructure it funds. *See* BIL, Division J, Title VIII, Highway Infrastructure Program heading, Paragraph (2). Given that charger models or systems designed to comply with Buy America will generally be new or customized, manufacturers will need time to ensure they are also designed for reliability before producing them at scale. Designing new systems for reliability generally involves rigorous mechanical and environmental testing. Without adequate time for such testing, new or customized systems may not withstand the rigors of years in the field subjected to heat and freezing, UV radiation, many cycles of use, harsh handling, or other variables. Moreover, additional testing will be conducted on these newly manufactured products by the charging companies installing them and vehicle manufacturers whose vehicles will plug into them, which is another issue to consider when ensuring operability and reliability.

Given the factors discussed above, such as existing supply constraints, it appears unlikely that the limited set of DCFC chargers identified in response to the RFI as potentially able to meet FHWA's Buy America requirement could meet the full demand prompted by BIL and the NEVI program in the immediate future. Since market conditions may have changed since the time of the RFI in November 2021, FHWA seeks comment on appropriate waiver schedules below.[10]

Comments on ACL2 Chargers. A larger set of about nine manufacturers believed they are capable of producing Buy America-compliant ACL2 chargers. ACL2 chargers use an alternating-current electrical circuit to deliver electricity to the EV. Commenters believed that at least the following manufacturers can produce ACL2 chargers meeting FHWA standards: Oasis Charging Corp., d/b/a JuiceBar; Tritium; Wallbox USA, Inc.; Momentum Dynamics Corporation; BREEZEV, TADD LLC d/b/a Light Efficient Design; EVSE, LLC; Dunamis Clean Energy Partners, LLC; Siemens; and Blink Network, LLC. As with DCFC chargers, while these comments show significant potential for the future of ACL2 charger manufacturing in the U.S., uncertainty remains regarding their ability to immediately meet demand for Buy America-compliant ACL2 chargers and other essential supporting equipment on FHWA-funded projects throughout the U.S.

Some of these manufacturers acknowledged that their chargers contain small amounts of foreign iron or steel that cannot presently be traced but appear to rely on either FHWA's *de minimis* threshold or Manufactured Products General Waiver. For the reason discussed above on FHWA's *de minimis* threshold, it is uncertain whether this would be an effective compliance approach for contracts including multiple chargers or other steel or iron products. Also, exclusive reliance on FHWA's Manufactured Products General Waiver may not be an effective compliance strategy for EV Chargers containing steel and iron components. Moreover, through this notice, FHWA specifically proposes to remove EV chargers from coverage under the Manufactured Products General Waiver. Other ACL2 manufacturers, although believing their chargers are manufactured domestically, discussed potential obstacles to obtaining formal certification of compliance with FHWA's Buy America requirement. For example, some manufacturers may be unable to certify compliance of all component parts or their ability to certify those parts may be affected by factors outside of their control.

It is also unknown whether these ACL2 charger manufacturers could provide other necessary elements or components of ACL2 chargers to comply with FHWA's Buy America requirement, such as distribution system upgrades, payment systems, networking and telecommunications equipment, energy storage systems, and other necessary supporting equipment.

Comments on Interpretation of FHWA's Manufactured Products General Waiver. Other EV charger manufacturers also offered legal interpretations on why either a DCFC system or ACL2 charger system may comply with FHWA's Buy America requirement even if containing more than a *de minimis* amount foreign iron and steel. These interpretations generally relied on FHWA's Manufactured Products General Waiver and a 1997 FHWA policy memorandum related to that waiver.[11] Commenters stated that EV chargers may fall under the Manufactured Products General Waiver because they are not predominantly comprised of iron or steel. FHWA's RFI requested information on what percent of the total price of an EV charger is typically for steel and iron. Responses from

[9] These certification processes will be similar to existing certification processes employed by DOT.

[10] *See, e.g.,* White House Fact Sheet: Biden-Harris Administration Catalyzes more than $700 Million in Private Sector Commitments to Make EV Charging More Affordable and Accessible (Jun. 28, 2022), available at *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/28/fact-sheet-biden-harris-administration-catalyzes-more-than-700-million-in-private-sector-commitments-to-make-ev-charging-more-affordable-and-accessible/.*

[11] *See https://www.fhwa.dot.gov/programadmin/contracts/122297.cfm.*

manufacturers varied widely, from over 50 percent to only one or two percent.

Many of the responses addressing the Manufactured Products General Waiver focused on the overall steel and iron content of EV chargers but gave less information on the steel and iron content of charger components. As explained above, even if the product itself is not predominantly iron and steel, FHWA's Buy America requirement applies to predominantly steel and iron components of manufactured products under existing policy and practice. Steel is often used in components of EV chargers including the housing, cabinet, or enclosure.

Comments on Steel and Iron Components of EV Chargers. Commenters indicated that EV chargers with housing, cabinets, or enclosures made mostly of steel generally have a higher percentage of steel and iron content, usually ranging from five to 30 percent of the total costs of the charger, but also exceeding 50 percent in some cases. Commenters also indicated that EV chargers with housing, cabinets, or enclosures made mostly of other materials such as aluminum or plastic generally have a much lower percentage of steel and iron content, often below five percent. Many commenters indicated that most of the cost and value of an EV charger is in the parts found inside the housing, cabinet, or enclosure.

In addition to the housing, cabinet, or enclosure, commenters also identified at least the following components or subcomponents of EV chargers as potentially containing some amounts of iron or steel: (i) the framework or the internal structural frame; (ii) the pedestal; (iii) power modules; (iv) the power transformer; (v) heating and cooling fans; (vi) brackets and mounting brackets; (vii) cord and cable management components; and (viii) screws, bolts, and washers.

Comments on Domestic Final Assembly Condition. The Agencies also asked in the RFI whether there are existing EV chargers that are currently assembled in the United States that could meet a domestic final assembly condition. Manufacturers and other commenters provided a range of responses with some manufacturers believing they meet the condition and others believing that no manufacturers meet the condition at present. Manufacturers that believed they could meet a domestic final assembly condition for either DCFC or ACL2 chargers include at least: In-Charge Energy, Inc.; Oasis Charging Corp, d/b/a JuiceBar; Wallbox USA, Inc.; Momentum Dynamics Corporation; ChargePoint; Siemens; Electrify America, LLC; BTC Power; EVSE, LLC; Dunamis Clean Energy Partners, LLC; Atom Power; EvoCharge Philips and Temro; and Rhombus. Some commenters noted that they were not aware of a precise and consistent definition of ''domestic final assembly'' and this uncertainty prevented them from opining on the question.

Regarding a possible domestic final assembly condition, some commenters questioned whether manufacturers meeting such a condition could immediately meet all existing market demand for EV chargers in the U.S. in late 2021—even before considering the anticipated surge in market demand prompted by the investment in EV chargers under the BIL. Given practical constraints on immediately ramping up production capacity, significant uncertainty remains on whether demand could be met throughout the U.S. if such a condition were applied to the proposed EV charging waiver. It is also unknown whether other necessary elements or components of EV chargers could be supplied to meet the same domestic final assembly condition, such as distribution system upgrades, payment systems, networking and telecommunications equipment, energy storage systems, and other necessary supporting equipment. Veloce Energy commented that it believes it could meet such a condition for battery energy storage systems, but little additional information is available on the ability of supporting equipment for EV chargers to meet a domestic final assembly condition.

Comments on Potential Waiver of Buy America Requirements. Many commenters also offered opinions on the best application of Buy America during the initial implementation of programs with eligibilities for EV charging under BIL. These commenters requested a wide range of timelines to allow manufacturers to ramp up production of EV chargers that meet Buy America requirements and resolve supply chain issues and other compliance and certification concerns. Many commenters suggested establishing a waiver period for EV chargers ranging from a few months to several years. Others recommended an incremental approach to applying Buy America requirements to EV chargers to ensure that a sufficient volume of chargers is available immediately while allowing gradual progress on production capability and capacity.

For example, the American Association of State Highway and Transportation Officials (AASHTO) strongly recommended a ''staged'' or incremental approach to the application of Buy America requirements to EV charger equipment during the initial implementation of the BIL to facilitate efficient and effective deployment in the first few years. Electrify America suggested establishing a 36-month path to compliance during which DOT should exercise enforcement discretion on Buy America requirements to allow companies to expand their U.S. operations. Amp Up observed that the delivery time for EV chargers is significantly delayed at present and may lead to project timelines in excess of over a year under Buy America requirements. The Zero Emissions Transportation Association (ZETA) recommended establishing an interim national Buy America waiver for EV chargers to allow near-term implementation of BIL programs with eligibilities for EV chargers.

Comments Requesting Additional Buy America Guidance. Many commenters also requested additional guidance on the application of Buy America requirements to EV chargers to provide regulatory certainty and reduce the potential for inconsistent interpretations and applications of Buy America requirements on FHWA-funded EV charger projects. For example, AASHTO indicated that agencies and vendors need additional technical guidance. It suggested that nationwide consistency is needed in this area, as well as consistency between modal agencies within DOT. Another comment recommended consistent regional interpretation of FHWA's Buy America requirements and enabling manufacturers to demonstrate compliance through secure channels, such as independent third-party compliance verification. Another comment recommended clarification from FHWA to industry on Buy America requirements to address confusion in the market around the rules, definitions, interpretation, and audit measures in the areas of iron and steel calculation, percent of domestic content, applicability of waivers such as the Manufactured Products General Waiver, the meaning of ''predominantly,'' and necessary documentation for audits and compliance. ZETA recommended that FHWA provide certainty on whether EV Chargers qualify for its Manufactured Products General Waiver. FLO Services, USA also requested FHWA to clarify whether chargers are manufactured products exempt from FHWA Buy America requirements; this commenter believes that if EV chargers are classified as iron and steel products it would likely exclude the entire industry

from accessing funding in BIL for EV chargers.

Content of Proposed Waiver and Request for Comments

With respect to EV chargers as defined in this proposal, FHWA is requesting comment on its consideration of applying its authority under Section 313(b)(1) of Title 23 of the U.S. Code and 23 CFR 635.410(c), with respect to steel, iron, and manufactured products, and Section 70914(b) of the Act, with respect to construction materials, to provide a waiver of applicable Buy America requirements for EV chargers on FHWA-assisted infrastructure projects, on the basis that applying the domestic content preferences for these materials would be inconsistent with the public interest. Outside of the context of EV chargers as defined in this proposal, FHWA does not propose any additional changes to its existing policies and requirements for steel, iron, manufactured products, or construction materials through this notice, which may be addressed through separate processes. FHWA wants to ensure that its waiver allows recipients and subrecipients to use Federal-aid highway funds for EV chargers on their projects in support of policies and goals stated in E.O. 14008 as a partial phase-out is implemented during calendar year 2023.

FHWA seeks to establish a schedule that will ensure a sufficient and reliable supply of EV chargers is available for Title 23 U.S.C. and BIL-funded programs, including NEVI, to allow timely and strategic deployment of EV charging infrastructure across the United States. *See, e.g.,* BIL, Division J, Title VIII, Highway Infrastructure Program heading, Paragraph (2). Based on comments received in response to this notice, FHWA may also find that different alternative dates are warranted for the final waiver. FHWA requests comments on all phases of the proposed schedule set forth in this notice, including:

- Supporting information for alternative dates if applicable;
- Whether there should be four phases as proposed;
- Whether industry expects its production rates and capacity for chargers to be consistent with the proposed schedule; and
- How the proposed schedule or alternative dates impact installation schedules in the field.

For comments urging an extension of the timeline, FHWA requests an indication of how many chargers would be fully compliant with BABA requirements at each phase of the proposed waiver and by the end of the five-year NEVI program [12]—and also how many would not be compliant at each phase. For comments urging a shortening of the timeline, FHWA requests information supporting the reliable availability of compliant chargers earlier than proposed. FHWA also generally requests comment regarding the reliability of chargers, including new and custom chargers designed to comply with domestic content procurement preferences; cost competitiveness of chargers; production rates and capacity of chargers; and timing of delivery upon order or purchase of chargers. FHWA also includes additional requests for comment below in the context of specific elements of the proposed waiver.

Initial Phase and Removal of EV Chargers from Manufactured Products General Waiver. FHWA is proposing to initially apply a complete waiver to EV chargers and all components of EV chargers that are installed in a project during calendar year 2022, including waiving requirements for steel, iron, and manufactured products under Section 313(b)(1) of Title 23 of the U.S. Code and 23 CFR 635.410(c); and requirements for construction materials under Section 70914(b) of the Act. FHWA also proposes to remove EV chargers from its existing Manufactured Products General Waiver on the effective date of this proposed waiver. Removing EV chargers from the scope of the existing Manufactured Products General Waiver will avoid confusion and allow FHWA to clearly describe the domestic content procurement preferences applicable to EV chargers within the scope of a single waiver.

Partial Phase-Out of Waiver. Following the initial proposed phase in calendar year 2022, FHWA proposes to partially phase-out the waiver in two steps during calendar year 2023 and arrive at the final proposed phase on January 1, 2024. Specifically:

- Beginning on January 1, 2023, FHWA proposes to remove from the waiver EV chargers whose final assembly process does not occur in the United States. On and after that date, for EV chargers that are installed in a project FHWA proposes the waiver would be applicable only if final assembly occurs in the U.S.
- Beginning on July 1, 2023, FHWA proposes to also remove from the waiver EV chargers for which the cost of components manufactured in the United States does not exceed 25 percent of the cost of all components. On and after that date, for EV chargers that are installed in a project through December 31, 2023, FHWA proposes the waiver would be applicable only if: (i) final assembly occurs in the U.S.; and (ii) the cost of components manufactured in the United States exceeds 25 percent of the cost of all components.
- Beginning on January 1, 2024, and thereafter, FHWA proposes to also remove from the waiver EV chargers for which the cost of components manufactured in the United States does not exceed 55 percent of the cost of all components. On and after that date, FHWA proposes the waiver would be applicable only if: (i) final assembly occurs in the U.S.; and (ii) the cost of components manufactured in the United States exceeds 55 percent of the cost of all components.

The waiver would then remain in place until terminated by FHWA. However, in accordance with Section 70914(d)(1) of the Act, FHWA would commence a review of the waiver not less than 5 years after the date on which the waiver is issued.

Consideration of Different Schedules for DCFC and L1/L2 Chargers. FHWA also seeks comments on whether to establish different waiver phase-out schedules for: (i) DCFC chargers; and (ii) Level 1 and ACL2 chargers based on projected and anticipated availability and volume of different types of chargers. If different schedules are warranted, FHWA also seeks comment on what the phase-out schedules should be for those categories and why they should differ.

Proposed Meaning of Cost of Component Under Waiver. For the purpose of this waiver, FHWA proposes the cost of a component to be based on whether it is purchased or manufactured when it is incorporated into the EV charger. To determine the allowable costs included in purchased or manufactured components, FHWA proposes to use FAR 25.003.[13] To determine overhead costs that are generally allocable, FHWA proposes to use FAR 31.201–4.[14]

FHWA proposes the costs for purchased components to include the acquisition costs (including transportation costs to the place of incorporation into the end product) and any applicable duty (regardless of whether a duty-free certificate of entry is issued). FHWA proposes the costs for manufactured components to include all costs associated with the manufacture of

[12] See NEVI Program Fact Sheet, available at *https://www.fhwa.dot.gov/bipartisan-infrastructure-law/nevi_formula_program.cfm.*

[13] 48 CFR 25.003.

[14] 48 CFR 31.201–4.

the component (including transportation costs and quality testing), and allocable overhead costs, but to exclude profits and any labor costs associated with the manufacture of the end product. FHWA proposes allocable overhead costs to generally: (a) include costs incurred specifically for the contract; (b) benefit both the contract and other work and can be distributed to each in reasonable proportion to the benefits received; or (c) are necessary to the overall operation of the business, even if a direct relationship to any particular cost objective cannot be shown.

FHWA requests comments on the proposed meaning of cost of component described in this notice.

Proposed Meaning of EV Charger Under Waiver. For the purpose of this waiver, FHWA proposes the term ''EV charger'' to include EV chargers and associated payment systems, distribution systems, telecommunications and networking equipment, energy storage systems, and other supporting equipment and systems: (i) in the immediate vicinity of a charger or group of chargers; and (ii) essential to the function or operation of a charger or group of chargers. For the purpose of this waiver, FHWA proposes the term ''charger'' to exclude parking areas adjacent to the EV chargers and lanes for vehicle ingress and egress. For any areas, products, or materials excluded under the waiver, FHWA's existing Buy America requirements and policies will continue to apply, including the new requirement applicable to construction materials established under BABA following expiration of DOT's Temporary Construction Materials Waiver. FHWA requests comment on this definition, including whether the waiver should apply to manufactured products that are external to the EV charger itself but in its immediate vicinity and essential to its function or operation.

Proposed Meaning of Installation Under Waiver. For the purpose of this waiver, FHWA proposes ''installed in a project'' to mean the point at which an EV charger is permanently incorporated into or affixed to a Federal-aid funded infrastructure project.

Consideration of Use of Either Installation Date or Other Date for Waiver Effective Date and Phase-Out Dates. FHWA also seeks comments on whether to use the installation date of the EV charger (as proposed) or some other date (*e.g.,* the date of obligation of funds, the manufacturing date, the date of final assembly) as the effective date for the waiver and the dates for the phase-out schedule of the waiver. FHWA proposes to use the installation date in this notice but will consider using a different trigger as the compliance date based on comments received.

Consideration of Exclusion of Predominantly Steel and Iron Components from Coverage Under Waiver. FHWA seeks comments on whether and how to apply its existing Buy America requirement for iron and steel to any specific predominantly steel and iron EV charger components (*e.g.,* by excluding certain predominantly steel and iron components from the scope of the waiver). For example, steel and iron items identified in the RFI include the housing, cabinet, or enclosure; the framework or the internal structural frame; the pedestal; power modules; and others. Finally, FHWA also requests information supporting the reliable availability of such steel and iron components, which are capable of complying with FHWA's existing Buy America policy.

Request for Comments on Proposed NEVI Requirements for OSHA and Energy Star Certifications. Under the NEVI program notice of proposed rulemaking (NPRM), FHWA proposes to require all EV chargers to obtain certification from an Occupational Safety and Health Administration (OSHA) Nationally Recognized Testing Laboratory. 87 FR 37262 (Jun. 22, 2022). The NEVI NPRM also proposes to require ENERGY STAR certification for ACL2 chargers. FHWA requests comment on whether EV chargers discussed in response to other questions in this notice would meet the proposed NEVI requirements for OSHA and Energy Star certifications.

Justification for Proposed Waiver

With the goal of accelerating the deployment of crucial EV chargers projects in a timely manner, and ensuring that FHWA's transportation partners in States, Tribes, Territories, and MPOs can use BIL funding for EV chargers, FHWA is considering the waiver on the basis that: (i) immediately applying all applicable domestic content preferences for these products would be inconsistent with the public interest because it is likely to delay immediate implementation of BIL programs providing funding for EV chargers, which are a key strategy for reducing greenhouse gas emissions, during an interim phase period between the effective date of the waiver and December 31, 2022; (ii) during the intermediate phase during calendar year 2023, it is in the public interest to gradually reduce the scope of the waiver to provide industry with a clear timetable to increase domestic manufacturing and assembly of EV chargers while still ensuring that a supply of EV chargers is widely available for Federal-aid highway projects; and (iii) following the intermediate phase proposed to end on December 31, 2023, it is in the public interest to apply a single domestic content procurement preference to EV chargers, which is consistent with the domestic content procurement preference under section 70912(6)(B) of the Act generally applicable to manufactured products on infrastructure projects receiving Federal financial assistance.

This phased approach will encourage manufacturers to adjust their production processes to increase the amount of domestic content over time, consistent with Congressional direction in BIL § 70935(a), while providing an incentive and advantage to those able to do so more quickly. Applying uniform Buy America requirements, regardless of the source of Federal funding, would benefit potential suppliers of those products by providing a single market for federally assisted projects. Because this new waiver would be applicable to EV chargers and components, FHWA also proposes removing EV chargers from its Manufactured Products General Waiver.

FHWA's Buy America requirements provide that 100 percent of all steel and iron that is permanently incorporated into a project must be domestically manufactured. Additionally, under existing practice, FHWA's Manufactured Products General Waiver applies to all manufactured products except for predominantly steel and iron manufactured products, and predominantly steel and iron components of manufactured products. *See* ''Buy America Requirements'' Section above for additional discussion of existing FHWA policies. Although their overall iron and steel content may be small—in some cases less than five percent—EV chargers typically include components containing steel and iron, which may also be covered by FHWA's requirement. In today's global manufacturing industry, the components of EV chargers may be obtained from suppliers all over the world. Considering this, it appears impractical for manufacturers in the current market to immediately certify that an EV charger meets FHWA's regulatory requirement of 100 percent domestic iron and steel content. Moreover, it appears impractical to require States, contractors, and manufacturers to have to potentially comply with multiple different

standards applicable to the various components comprising the products. Although FHWA received some promising responses to its RFI on both DCFC and ACL2 chargers, for the reasons discussed above in the section summarizing those comments, it remains uncertain whether these manufacturers are able to meet the unprecedented and immediate demand for Buy America-compliant EV chargers on FHWA-funded projects throughout the U.S.

In ensuring strong and effective Buy America implementation consistent with E.O. 14005, FHWA must also ensure that important Federal programs for transportation infrastructure investment, including EV charger programs specifically, are able to complete infrastructure projects in a timely manner. In response to the RFI, stakeholders have voiced concerns regarding the implementation of Buy America requirements for EV chargers, such as comments indicating that certain components for EV chargers meeting FHWA's Buy America requirement are not currently available to meet anticipated demand. FHWA also received comments indicating that States and industry need additional time to develop processes to certify and demonstrate compliance for EV chargers. FHWA recognizes both the importance of ensuring Buy America compliant EV chargers and the need to implement the requirement in a way that is not overly burdensome to producers and funding recipients or prevents timely and effective delivery of EV charger projects. At present, based in part on information from the RFI, FHWA is proposing to issue the waiver discussed in this notice.

Based on the responses from the RFI, FHWA is proposing to issue a waiver that would step down in incremental stages. The proposed waiver will, if issued, provide an initial interim period during which FHWA's Buy America requirement is completely waived while industry ramps up domestic production of EV chargers. Following this initial period in calendar year 2022, FHWA proposes to partially phase-out the waiver with two changes occurring during calendar year 2023 and one additional change on January 1, 2024. Following that transition period, FHWA proposes to leave the waiver in place as a general applicability standing waiver for EV chargers, subject to the mandatory periodic review requirement in the BIL. This approach will provide recipients of FHWA financial assistance and their industrial vendors a reasonable transition period to increase the domestic content of their EV chargers.

This proposal is designed to ensure wide availability of EV chargers in the immediate future on FHWA-funded projects but also provide a strong incentive for manufacturers to rapidly shift toward domestic manufacturing processes to comply with the narrowing scope of the waiver for EV chargers during calendar year 2023 and arriving at the final proposed phase on January 1, 2024. FHWA believes this approach will be effective in fulfilling the purpose of E.O. 14005 to help American businesses and workers compete and thrive in the global marketplace.

Should the proposed waiver become effective, FHWA will publish its decision in the **Federal Register**. The proposed FHWA dates are subject to shortening, extension, or other modification—either prior to issuance of a final waiver or following the effective date of the final waiver and the applicable notice and comment period for modifying the waiver—based on relevant considerations including, but not limited to: (i) the ability of the domestic industry to supply EV chargers that comply with the proposed waiver phases, including producing sufficient volume to meet demand needed for NEVI program goals discussed above; (ii) the ability of States and industry to effectively certify such compliance with the proposed waiver phases. FHWA requests comment on other factors that would be relevant to considering such an adjustment. We also note that phases of this waiver are proposed for efficiency. Should a recipient be unable to meet the general phases of this waiver, a recipient still has the option to request that FHWA grant a project-specific waiver under 23 U.S.C. 313, for iron, steel, and manufactured products, and Section 70194(b) of the BIL, for construction materials.

The OMB Implementation Guidance also provides that, before granting a waiver in the public interest, to the extent permitted by law, agencies shall assess whether a significant portion of any cost advantage of a foreign-sourced product is ''the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products.'' OMB Implementation Guidance at p. 12. E.O. 14005 at Section 5 includes a similar requirement for ''steel, iron, or manufactured goods.'' However, because the public interest waiver that FHWA is proposing in this notice is not based on consideration of the cost advantage of any foreign-sourced steel, iron, or manufactured product content in EV chargers, there is not a specific cost advantage for FHWA to now consider.

Comment Period for Proposed Waiver

FHWA will consider comments received in the 30-day comment period during our evaluation of the waiver request. This comment period length exceeds the minimum comment period requirement in 23 U.S.C. 313(g), and is consistent with the minimum comment period for reviewing general applicability waivers specified in Section 70914(d) of the Act. Comments received after this period, but before notice of our finding is published in the **Federal Register**, may be considered to the extent practicable. Section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572) requires an additional 5-day, comment period after FHWA publishes a waiver finding notice. Comments received during that period will be reviewed, but the finding will continue to remain valid. Those comments may influence FHWA's decision to terminate or modify a finding.

Issued in Washington, DC, under authority delegated in 49 CFR 1.85 on August 26, 2022.

Stephanie Pollack,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2022–18831 Filed 8–30–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against a Proposed Public Transportation Project—Chicago Red Line Extension (RLE) Project

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) regarding the Chicago Red Line Extension (RLE) Project in Cook County, Chicago, Illinois. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: A claim seeking judicial review of FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before January 30, 2023.

FOR FURTHER INFORMATION CONTACT: Kathryn Loster, Assistant Chief Counsel, Office of Chief Counsel, (312) 705–1269, or Saadat Khan, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–9647. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions subject to 23 U.S.C. 139(l) by issuing certain approvals for the public transportation project listed below. The actions on the project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project files for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *https://www.transit.dot.gov.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA (42 U.S.C. 4321–4375), section 4(f) requirements (23 U.S.C. 138, 49 U.S.C. 303), section 106 of the National Historic Preservation Act (54 U.S.C. 306108), Endangered Species Act (16 U.S.C. 1531), Clean Water Act (33 U.S.C. 1251), and the Clean Air Act (42 U.S.C. 7401–7671q). This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The project and actions that are the subject of this notice follow:

Project name and location: Chicago Red Line Extension (RLE) Project, Chicago, Illinois.

Project sponsor: The Chicago Transit Authority (CTA), Chicago, Illinois.

Project description: The Chicago RLE Project is a 5.6-mile heavy rail transit line extension from the existing 95th/Dan Ryan terminal to 130th Street. The RLE Project involves construction of four (4) new stations near 103rd Street, 111th Street, Michigan Avenue, and 130th Street consisting of multimodal connections at each station including bus, bicycle, pedestrian, and park-and-ride facilities with approximately 1,340 parking spaces along the corridor. The project also includes construction of a modern, efficient railcar storage yard and shop facility at 120th Street.

Final agency actions: Section 4(f) *de minimis* impact determination, dated July 28, 2022; Section 106 No Adverse Effect determination, dated August 10, 2021; and Chicago Red Line Extension (RLE) Project Final Environmental Impact Statement (FEIS)/Record of Decision (ROD), dated July 28, 2022. Supporting documentation: Chicago Red Line Extension (RLE) Project Draft Environmental Impact Statement (DEIS), dated October 6, 2016, and Chicago Red Line Extension (RLE) Project Supplemental Environmental Assessment (SEA), dated January 4, 2022. The ROD/FEIS, DEIS, SEA and associated documents can be viewed and downloaded from: *https://www.transitchicago.com/rle/.*

Authority: 23 U.S.C. 139(l)(1).

Mark A. Ferroni,

Deputy Associate Administrator for Planning and Environment.

[FR Doc. 2022–18816 Filed 8–30–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0032]

Agency Information Collection Activities; Notice and Request for Comment; Strategies To Improve DRE Officers' Performance and Law Enforcement Agencies' DRE Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a new information collection.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a new information collection to study ways to help improve Officers' performance and Law Enforcement programs for Drug Recognition Experts (DRE). Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval on Strategies to Improve DRE Officers' Performance and Law Enforcement Agencies' DRE Programs.

DATES: Comments must be submitted on or before October 31, 2022.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2022–0032 through any of the following methods:

- *Electronic submissions:* Go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 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. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact: Jacqueline Milani, NPD220 (routing symbol), (202) 913–3925, National Highway Traffic Safety Administration, Enforcement and Justice Services Division, Room number: W44–206, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the

Federal Register providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Strategies to Improve DRE Officers' Performance and Law Enforcement Agencies' DRE Programs.

OMB Control Number: New.

Form Number(s): 1662, 1663, 1680.

Type of Request: New Request.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information

NHTSA seeks approval from the Office of Management and Budget (OMB) for a new information collection. Drug Recognition Experts (DRE) are law enforcement officers trained and certified through the International Drug Evaluation and Classification (DEC) program to recognize impairment in drivers under the influence of drugs other than, or in addition to, alcohol. Although there is a standardized process for the Drug Influence Evaluation (DIE) performed by DREs, there are differences in how each State DRE program, as well as local DREs, collect evidence, record data, and determine who will respond when a DRE is needed. These differences are due to a variety of reasons, including funding, the number of trained DREs, individual laws, and other factors. Some States have strengthened their programs with the utilization of tools and technologies, such as tablets and software that aid in the accurate and efficient collection of data. There has, however, been no research to document best practice strategies that other agencies could use with fidelity to replicate what some have done to improve their DRE officers' performance and law enforcement agencies' DRE programs. This project is a one-time demonstration project to study the strategies needed to improve the ability of DRE officers and effectiveness of DRE programs to address drug-impaired driving by consistently gathering and reporting evidence of drivers suspected of impaired driving. Participation in the program is voluntary; the process and information collected is described below.

- Application information (Form 1663) will be collected to enroll Law Enforcement Agencies with DRE programs. The application will include fields for the agency name, address, point of contact name, email address, and phone number. It will request information about existing DRE processes and procedures, tools and strategies used, and how the agency plans to implement new or enhance existing processes and procedures. A supporting Equipment, Technology and Supplies Order Form (Form 1680) will also need to be completed and submitted by participating agencies.
- Selected agencies will be required to submit via email, monthly reports (Form 1662) documenting activities conducted in the reporting month and planned for the next month. The monthly reports will also include information on equipment/technology received as of the date of the report.
- Quarterly reports will be required and will be collected through telephone conversations between the selected agencies and the support contractor. These calls will serve to discuss what has occurred within the past quarter in relation to the project, such as how the tools and technologies have been implemented, any challenges faced and how they were or will be addressed, any successes to date, and lessons learned.

Description of the Need for the Information and Proposed Use of the Information

NHTSA was established by the Highway Safety Act of 1970 (Pub. L. 91–605, section 202(a), 84 Stat. 1713, 1739–40). Its mission is to reduce the number of deaths, injuries, and economic losses resulting from motor vehicle crashes on our nation's highways. To further this mission, NHTSA conducts research on driver behavior and traffic safety to develop efficient and effective means of bringing about safety improvements. Impaired driving resulting from cannabis or other drug use poses challenges for our nation's law enforcement officers, prosecutors, toxicologists, highway safety offices, and others. As the number of States legalizing marijuana continues to increase, the need for effective strategies to address the growing concerns about impaired driving is imperative. Law enforcement agencies are eager for strategies to improve their efficiency, consistency, and completeness of their DRE programs. This program will play a critical role in a State's efforts to reduce impaired driving. This project will allow NHTSA to provide participating law enforcement agencies with information and resources to improve their DRE officers' performance and enforcement programs overall. This collection of information is necessary to allow interested enforcement agencies with DRE programs to submit an application that shares information about their current DRE program. This is a demonstration project. Agency applications will be collected and used as baseline data. This information will be compiled and used to better understand process outcomes that other law enforcement agencies could use to replicate and improve their programs.

Affected Public: Selected law enforcement agencies with DRE programs willing to participate.

Estimated Number of Respondents: 15.

Frequency: 1 application to share information about their Law Enforcement Agency, monthly reports and quarterly calls to share information on process measures on how the project is going.

Number of Responses: Approximately 15 agencies will apply. Each agency will submit 1 application, 36 monthly reports, and 12 quarterly calls.

Estimated Total Annual Burden Hours: 440 hours.

Data collection will require the following activities for participating agencies: completing an application, reviewing and signing a memorandum of understanding, participating in a kickoff call, preparing and submitting monthly reports and participating in quarterly phone calls. Agencies that are not selected for participation will spend time only on completing the application.

The total estimated burden hours for each participating agency is 88 hours. Assuming 15 agencies respond and are selected, the total estimated burden hours for all agencies is 1,320 hours. The estimated total burden hours for any agency that submits an application

but is not selected is 1 hour. This is a 36-month effort, assuming agencies are selected by March 2023 and provide monthly reports through March 2026. The average annual burden for all agencies is 440 hours or 29.33 hour per respondent. Table 1 provides more details about the total estimated burden hours.

TABLE 1—ESTIMATED TOTAL AND ANNUAL BURDEN HOURS FOR PARTICIPATING AGENCIES

Activity	Number of respondents	Number of times completed	Est. burden hours per activity	Total est. burden hours
Complete Application	15	1	1	15
Prepare Equipment Request	15	1	1	15
Review and Sign MOU	15	1	1	15
Participate in Kickoff Call	15	1	1	15
Complete and Submit Monthly Reports and Invoices	15	36	2	1,080
Participate in Quarterly Phone Calls	15	12	1	180
Total Burden Hours				1,320 hours.
Total Annual Burden Hours				440 hours/year.
Total Burden Hours Per Respondent				88 hours.
Average Annual Burden Hours Per Respondent				29.33 hours/year.

Estimated Annualized Labor Costs for Selected Agencies

The burden hour labor cost associated with this collection of information for selected agencies is derived by multiplying the appropriate mean wage published by the Bureau of Labor Statistics (weighted for total compensation) by the estimated burden hours for selected agencies. The mean wage is estimated to be $37.67 per hour for ''Police and Sheriff's Patrol Officers''.[1] This is estimated to be 62% of total compensation costs.[2] Therefore, NHTSA estimates the hourly labor costs to be $61.03. The estimated total labor cost for selected agencies to participate in the project is $1,790.21 per selected agency and $26,853.20 for all selected agencies.

The estimated annual labor cost associated with the burden hours per selected agency and all agencies is shown in Table 2.

TABLE 2—ESTIMATED ANNUAL LABOR COST FOR SELECTED AGENCIES

Annual respondents	Average hourly labor cost	Annual average burden hours per respondent	Annual labor cost per agency	Total annual average burden hours	Total annual labor cost
15	$61.03	29.33	$1,790.21	440	$26,853.20

Estimated Total Annual Burden Cost: There is no cost to participating Law Enforcement Agencies beyond the time associated with submitting reports and participating in quarterly calls.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Issued in Washington, DC.

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2022–18787 Filed 8–30–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council; Meeting

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Notice of meeting.

SUMMARY: The Internal Revenue Service Advisory Council will hold a public meeting.

DATES: The meeting will be held Wednesday, Sept.14, 2022.

ADDRESSES: The meeting will be held via conference call.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Burch, Office of National Public Liaison, at 202–317–4219 or send an email to *PublicLiaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988), that a public meeting of the Internal Revenue Service Advisory Council (IRSAC) will be held on Wednesday, Sept. 14, 2022, to discuss topics that may be recommended for inclusion in a future report of the Council. The meeting will take place 1:00–2:00 p.m. EDT.

The meeting will be held via conference call. To register and obtain attendee instructions, members of the public may contact Ms. Stephanie Burch at 202–317–4219 or send an email to

[1] National estimates for Police and Sheriff's Patrol Officers, available at *https://www.bls.gov/oes/current/oes333051.htm* (accessed May 5, 2022).

[2] Employer costs for employee compensation by ownership, state and local government workers, available at *https://www.bls.gov/news.release/ecec.t01.htm* (accessed May 5, 2022).

PublicLiaison@irs.gov. Attendees are encouraged to join at least 5–10 minutes before the meeting begins.

Time permitting, after the close of this discussion by IRSAC members, interested persons may make oral statements germane to the Council's work. Persons wishing to make oral statements should contact Ms. Stephanie Burch at *PublicLiaison@irs.gov* and include the written text or outline of comments they propose to make orally. Such comments will be limited to five minutes in length. In addition, any interested person may file a written statement for consideration by the IRSAC by sending it to *PublicLiaison@irs.gov.*

Dated: August 24, 2022.

John A. Lipold,

Designated Federal Officer, Internal Revenue Service Advisory Council.

[FR Doc. 2022–18788 Filed 8–30–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Deduction for Energy Efficient Commercial Buildings

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning deduction for energy efficient commercial buildings.

DATES: Written comments should be received on or before October 31, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include 1545–2004 or Deduction for Energy Efficient Commercial Buildings in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Deduction for Energy Efficient Commercial Buildings.

OMB Number: 1545–2004.

Regulation Project Number: Notice 2006–52; Notice 2008–40.

Form Number: IRS Form 7205.

Abstract: These notices set forth a process that allows the owner of energy efficient commercial building property to certify that the property satisfies the requirements of section 179D(c)(1) and (d). These notices also provide a procedure whereby the developer of computer software may certify to the Internal Revenue Service that the software is acceptable for use in calculating energy and power consumption for purposes of section 179D of the Code. IRS Form 7205 will be used to claim the deduction for energy efficient commercial buildings.

Current Actions: IRS is creating Form 7205 to standardize the procedures for claiming the deduction for energy efficient commercial building and renewing without changes to the Notices.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, Businesses, and other for-profit organizations.

Estimated Number of Respondents: 21,767.

Estimated Time per Respondent: 1.03 hours.

Estimated Total Annual Burden Hours: 22,421.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 26, 2022.

Andres Garcia Leon,

Supervisory Tax Analyst.

[FR Doc. 2022–18827 Filed 8–30–22; 8:45 am]

BILLING CODE 4830–01–P

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, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before September 30, 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 (IRS)

1. Title: Recapture of Investment Credit.

OMB Number: 1545–0166.

Form Number: 4255.

Abstract: Internal Revenue Code section 50(a) requires that a taxpayer's income tax be increased by the investment credit recapture tax if the taxpayer disposes of investment credit property before the close of the recapture period used in figuring the original investment credit. Form 4255 provides for the computation of the recapture tax.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 1,320.

Estimated Time per Respondent: 9 hours, 49 minutes.

Estimated Total Annual Burden Hours: 12,949 hours.

2. Title: Tax on Accumulation Distribution of Trusts.

OMB Number: 1545–0192.

Form Number: Form 4970.

Abstract: Internal Revenue Code 667 requires a tax to be paid by a beneficiary of domestic or foreign trust on accumulation distributions. Form 4970 is used to compute the tax adjustment attributable to an accumulation distribution and to verify whether the correct tax has been paid on the accumulation distribution.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 30,000.

Estimated Time per Respondent: 1 hr., 25 min.

Estimated Total Annual Burden Hours: 42,900.

3. Title: Low-Income Housing Credit.

OMB Number: 1545–0984.

Form Number: 8586.

Abstract: Internal Revenue Code section 42 permits owners of residential rental projects providing low-income housing to claim a tax credit for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by the IRS to verify that the correct credit has been claimed.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and businesses, or other for-profit organizations.

Estimated Number of Respondents: 779.

Estimated Time per Respondent: 8 hrs., 48 min.

Estimated Total Annual Burden Hours: 6,855.

4. Title: Change of Address or Change of Address or Responsible Party—Business.

OMB Number: 1545–1163.

Form Numbers: 8822 and 8822–B.

Abstract: Form 8822 is used by taxpayers to notify the Internal Revenue Service that they have changed their home or business address or business location. Form 8822–B is used to notify the Internal Revenue Service of a change in a business mailing address, business location, or the identity of a responsible party.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,000,000.

Estimated Time per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 222,942 hours.

5. Title: Commercial Revitalization Deduction.

OMB Number: 1545–1818.

Form Number: 2003–38.

Abstract: Pursuant to § 1400I of the Internal Revenue Code, Revenue Procedure 2003–38 provides the time and manner for states to make allocations of commercial revitalization expenditures to a new or substantially rehabilitated building that is placed in service in a renewal community.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local and tribal governments, and business or other for-profit organizations.

Estimated Number of Respondents: 80.

Estimated Time per Respondent: 2 hours, 30 minutes.

Estimated Total Annual Burden Hours: 200.

6. Title: Return by a Shareholder Making Certain Late Elections To End Treatment as a Passive Foreign Investment Company.

OMB Number: 1545–1950.

Form Number: 8621–A.

Abstract: Form 8621–A is necessary for certain taxpayers/shareholders who are investors in passive foreign investment companies (PFIC's) to request late deemed sale or late deemed dividend elections (late purging elections) under Reg. 1.1298–3(e). The form provides a taxpayer/shareholder the opportunity to fulfill the requirements of the regulation in making the election by asserting the following: (i) The election is being made before an IRS agent has raised on audit the PFIC status of the foreign corporation for any taxable year of the taxpayer/shareholder; (ii) the taxpayer/shareholder is agreeing (by submitting Form 8621–A) to eliminate any prejudice to the interests of the U.S. government on account of the taxpayer/shareholder's inability to make timely purging elections; and (iii) the taxpayer/shareholder shows as a balance due on Form 8621–A an amount reflecting tax plus interest as determined under Reg. 1.1298(e)(3).

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households, businesses and other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time per Respondent: 78 hours, 30 minutes.

Estimated Total Annual Burden Hours: 79 hours.

7. Title: Contributions of Motor Vehicles, Boats, and Airplanes.

OMB Number: 1545–1959.

Form Number: Form 1098–C.

Abstract: Section 884 of the American Jobs Creation Act of 2004 (Pub. L. 108–357) added paragraph 12 to section 170(f) for contributions of used motor vehicles, boats, and airplanes. Section 170(f)(12) requires that a donee organization provide an acknowledgement to the donor of this type of property and is required to file the same information to the Internal Revenue Service.

Form 1098–C is used to report charitable contributions of motor vehicles, boats, and airplanes after December 31, 2004.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits, Individuals or households, Farms, or Not-for-profit institutions.

Estimated Number of Respondents: 110,400.

Estimated Time per Respondent: 18 min.

Estimated Total Annual Burden Hours: 34,224.

8. Title: Profit or Loss From Farming.

OMB Number: 1545–1975.

Form Number: Schedule F (Form 1040).

Abstract: Schedule F, (Form 1040) is used by individuals, estate or trust to report their farm income or loss and expenses. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farming.

Estimated Number of Respondents: 26,546.

Estimated Time per Respondent: 19 hours.

Estimated Total Annual Burden Hours: 504,374.

9. Title: Form 14039, Identity Theft Affidavit, Form 14039 (SP), Declaracion Jurada sobre el Robo de Identidad, Form 14039–B, Business Identity Theft Affidavit and Form 14039–B (SP), Declaracion Jurada sobre el Robo de Identidad de un Negocio.

OMB Number: 1545–2139.

Form Numbers: 14039, 14039 (SP), 14039–B and 14039–B (SP).

Abstract: The primary purpose of these forms is to provide a method of reporting identity theft issues to the IRS so that the IRS may document situations where individuals or businesses are or may be victims of identity theft. Additional purposes include the use in the determination of proper tax liability and to relieve taxpayer burden. The information may be disclosed only as provided by 26 U.S.C. 6103.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations and not-for-profit institutions. Forms 14039 and 14039 (SP).

Estimated Number of Respondents: 382,433.

Estimated Time per Respondent: 1 hour 20 minutes.

Estimated Total Annual Burden Hours: 508,636. Forms 14039–B and 14039–B (SP).

Estimated Number of Respondents: 20,000.

Estimated Time per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 6,200.

Title: Notice of Medical Necessity Criteria under the Mental Health Parity and Addiction Equity Act of 2008.

10. OMB Number: 1545–2165.

Abstract: This document contains previously approved final rules implementing the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (MHPAEA) of 2008, which requires parity between mental health or substance use disorder benefits and medical/surgical benefits with respect to financial requirements and treatment limitations under group health plans and group and individual health insurance coverage.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not for profit institutions.

Estimated Number of Respondents: 1,413,420.

Estimated Time per Response: 2.1557.

Estimated Total Annual Burden Hours: 3,046,961.

11. Title: Request for Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits.

OMB Number: 1545–2187.

Form Number: 8955–SSA.

Abstract: Form 8955–SSA, the designated successor to Schedule SSA (Form 5500), is used to satisfy the reporting requirements of Internal Revenue Code section 6057(a). Plan administrators of employee benefit plans subject to the vesting standards of ERISA section 203 use the form to report information about separated participants with deferred vested benefits under the plan. The information is generally given to the Social Security Administration (SSA), which provides the reported information to separated participants when they file for social security benefits.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 200,000.

Estimated Time per Respondent: 50 minutes.

Estimated Total Annual Burden Hours: 166,000 hours.

12. Title: Guidance Regarding the Transition Tax Under Section 965 and Related Provisions.

OMB Number: 1545–2280.

Form Number: TD 9846.

Abstract: The Tax Cuts and Jobs Act, Section 14103 (Pub. L. 115–97), provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, amended section 965 of the Internal Revenue Code. Because of the amendment, certain taxpayers are required to include in income an amount based on the accumulated post-1986 deferred foreign income of certain corporations that they own either directly or indirectly through other entities. This collection covers the guidance regarding the transition tax under section 965. The regulations affect United States persons with direct or indirect ownership interests in certain foreign corporations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Individuals, or households.

Estimated Number of Respondents: 100,000.

Estimated Time per Respondent: 5 hrs.

Estimated Total Annual Burden Hours: 500,000.

(Authority: 44 U.S.C. 3501 *et seq.*)

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–18748 Filed 8–30–22; 8:45 am]

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FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 68
Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[EPA–HQ–OLEM–2022–0174; FRL–5766.6–01–OLEM]

RIN 2050–AH22

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend its Risk Management Program (RMP) regulations as a result of Agency review. The proposed revisions include several changes and amplifications to the accident prevention program requirements, enhancements to the emergency preparedness requirements, increased public availability of chemical hazard information, and several other changes to certain regulatory definitions or points of clarification. These proposed amendments seek to improve chemical process safety; assist in planning, preparedness, and responding to RMP-reportable accidents; and improve public awareness of chemical hazards at regulated sources.

DATES: Comments must be received on or before October 31, 2022.

Public Hearings: EPA will hold virtual public hearings on September 26, 2022; September 27, 2022; and September 28, 2022, at *https://www.epa.gov/rmp/forms/virtual-public-hearings-risk-management-program-safer-communities-chemical-accident.* Please refer to the **SUPPLEMENTARY INFORMATION** section of this preamble for additional information on the public hearings.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2022–0174, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, EPA–HQ–OLEM–2022–0174 Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand delivery or courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and more information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this preamble. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

The virtual hearings will be held at *https://www.epa.gov/rmp/forms/virtual-public-hearings-risk-management-program-safer-communities-chemical-accident.* The hearing on September 26, 2022, will convene at 9:00 a.m. (local time) and will conclude at 12:00 p.m. (local time). The hearing on September 27, 2022, will convene at 1:00 p.m. (local time) and will conclude at 4:00 p.m. (local time). The hearing on September 28, 2022, will convene at 5:00 p.m. (local time) and will conclude at 8:00 p.m. (local time). Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

FOR FURTHER INFORMATION CONTACT: Deanne Grant, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–1096; email: g*rant.deanne@epa.gov* or Veronica Southerland, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–2333; email: *southerland.veronica@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. EPA uses multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

List of Abbreviations and Acronyms

ACC American Chemistry Council
AN ammonium nitrate
ANPI Apache Nitrogen Products Inc.
ANSI American National Standards Institute
API American Petroleum Institute
AQMD Air Quality Management Districts
ASSP American Society of Safety Professionals
ASTM American Society for Testing and Materials
BSEE Bureau of Safety and Environmental Enforcement
CAA Clean Air Act
CAAA Clean Air Act Amendments
CDC Centers for Disease Control and Prevention
CDR Chemical Data Reporting
CCPS Center for Chemical Process Safety
CFATS Chemical Facility Anti-Terrorism Standards
CFR Code of Federal Regulations
CGA Compressed Gas Association
CSB Chemical Safety and Hazard Investigation Board
DHS Department of Homeland Security
DIR California Department of Industrial Relations
DOJ Department of Justice
DOT Department of Transportation
EHS Extremely Hazardous Substances
EJ Environmental Justice
E.O. Executive Order
EPA Environmental Protection Agency
EPCRA Emergency Planning and Community Right-To-Know Act
FEMA Federal Emergency Management Agency
FOIA Freedom of Information Act
FR Federal Register
FRS Facility Registry Service
GDC General Duty Clause
GMARD Guide for Making Acute Risk Decisions
HF hydrofluoric acid
HHC highly hazardous chemical
IEEE Institute of Electrical and Electronics Engineers
IIAR International Institute of Ammonia Refrigeration
IPAWS Integrated Public Alert & Warning System
ISD inherently safer design
IST inherently safer technology
LEPC local emergency planning committee
LPG liquefied petroleum gas
MACT Maximum Achievable Control Technology
NAICS North American Industry Classification System
NASTTPO National Association of SARA Title III Program Officials
NESHAP National Emission Standards for Hazardous Air Pollutants
NFPA National Fire Protection Association
NJAC New Jersey Administrative Code
NJDEP New Jersey Department of Environmental Protection
NREL National Renewable Energy Laboratory
NSPS New Source Performance Standards
NTTAA National Technology Transfer Advancement Act
OCA offsite consequences analysis
OSHA Occupational Safety and Health Administration
PHA process hazard analysis
PRA Paperwork Reduction Act
PSM process safety management
RAGAGEP recognized and generally accepted good engineering practices
RFA Regulatory Flexibility Act
RFI request for information
RIA Regulatory Impact Analysis
RMP Risk Management Program or risk management plan
SARA Superfund Amendments and Reauthorization Act
SCCAP Safer Communities by Chemical Accident Prevention

SDS Safety Data Sheet
SEMS Safety and Environmental Management Systems
SOCMA Society of Chemical Manufacturers and Affiliates
STAA safer technology and alternatives analysis
TCPA Toxic Catastrophe Prevention Act
TEPC Tribal emergency planning committee
TNT trinitrotoluene
TQ threshold quantity
UMRA Unfunded Mandates Reform Act

Organization of this document. The information in this preamble is organized as follows:

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2022–0174, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section, above. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be confidential business information or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside 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 confidential business information or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and its Federal partners so that it can respond rapidly as conditions change regarding COVID–19.

B. Comment Headings

Commentors should review the discussions in the preamble and may comment on any matter that is addressed by the proposed rule. For comments submitted through postal mail or *https://www.regulations.gov,* EPA is requesting commenters to identify their comments on specific issues by using the appropriate number and comment headings listed below to make it simpler for the Agency to

process your comment. If your comment covers multiple issues, please use all the heading numbers and names that relate to that comment. As an example of this optional method, where one individual comment relates to issue #1 and a second individual comment pertains to issues #2 and #3, a set of comments would be submitted as follows:

1. Natural Hazards—EPA requests comment on the following (See Section IV.A.1.b):

- The Agency's proposed approach.
- Whether EPA should develop additional guidance for assessing natural hazards.
- Natural hazard resources such as databases, checklists, or narrative discussions, as well as commenters' recommendations for regional versus national, or sector-specific guidance.
- Whether to specify geographic areas most at risk from climate or other natural events by adopting the list of areas exposed to heightened risk of wildfire, flooding, storm surge, or coastal flooding and if this approach would simplify implementation.
- If the Agency should require sources in areas exposed to heightened risk of wildfire, flooding, storm surge, coastal flooding, or earthquake, to conduct hazard evaluations associated with climate or earthquake as a minimum, while also requiring all sources to consider the potential for natural hazards unrelated to climate or earthquake in their specific locations.

2. Power Loss—EPA requests comment on the following (See Section IV.A.1.c):

- The Agency's proposed approach.
- The proposed provision to require air pollution control or monitoring equipment associated with prevention and detection of accidental releases from RMP-regulated processes to have standby or backup power and any potential safety issues associated with it.

3. Stationary Source Siting—EPA requests comment on the following (See Section IV.A.1.d):

- The Agency's proposed approach.

4. Hazard Evaluation Recommendation Information Availability—EPA requests comment on the following (See Section IV.A.1.e):

- The Agency's proposed approach.
- Whether EPA should require declined hazard evaluation recommendations to be included in narrative form, whether the Agency should provide specific categories of recommendations for facilities to choose from when reporting or allowing the owner or operator to post this information online and provide a link to their information within their RMP.
- Methods to provide justification for declining relevant hazard evaluation recommendations, the proposed approach or alternative categories.

5. Safer Technology and Alternatives Analysis (STAA)—EPA requests comment on the following (See Section IV.A.2.a):

- The Agency's proposed approach.
- Industry understanding of the practicability assessment, and how this might differ from the findings identified in the PHA.
- Additional benefits provided by the practicability assessment.
- EPA's definition of the practicability assessment.
- How to determine if a facility is within a 1-mile radius and if EPA should use locational data provided by facilities, or develop a standard definition (*e.g.,* 1 mile to the facility fenceline or 1 mile to the regulated process location).
- Information that should be collected in a STAA clearinghouse.
- The proposed STAA applicability criteria and alternatives.
- Whether EPA should reinstate the 2017 rule provisions requiring STAA for all NAICS 324 and 325 processes.
- Whether the proposal to limit the STAA provisions to NAICS 324 and 325 regulated processes within 1 mile of another NAICS 324 and 325 regulated facility is appropriate or if another distance (*e.g.,* 3 miles) would be appropriate, and the rationale for proposed distance alternatives.
- Other industries for which STAA should be required and how EPA might justify extending these provisions to other industries.
- What other information or consideration EPA can use to assess probability of an accident in other industries without accident history data as well as what specific chemicals or processes may merit the most focus, and how EPA may require STAA requirements for industries without a history of accidents.
- If the Agency should only require the STAA as part of the PHA, without the additional practicability assessment.
- For any cited costs of implementing the STAA as part of the PHA, documentation to support cost estimates.
- For any cited costs of implementing the practicability assessment of the STAA provisions, documentation to support cost estimates.

6. Root Cause Analysis—EPA requests comment on the following (See Section IV.A.2.b):

- The Agency's proposed approach.
- A potential definition of ''near miss'' that would address difficulties in identifying the variety of incidents that may occur at RMP facilities that could be near misses that should be investigated.
- A universal ''near miss'' definition, as well as comments on strengths and limitations of the definition provided by NJDEP and how the definition may clarify requirements for incident investigations.

7. Third Party Compliance Audits—EPA requests comment on the following (See Section IV.A.2.c):

- The Agency's proposed approach.
- Proposed independence criteria modified from the 2017 rule.
- Whether the selected auditor should be mutually approved by the owner or operator and employees and their representatives, and if direct participation from employees and their representative should be required when a third party conducts an audit.
- Whether EPA should require declined findings be included in narrative form, or whether the Agency should provide specific categories of findings for facilities to choose from when reporting.

8. Employee Participation—EPA requests comment on the following (See Section IV.A.2.d):

- The Agency's proposed approach.
- Whether there should be a representative number or percentage of employees and their representatives involved in these recommendations decision teams as well as the development of other process safety elements as outlined in 40 CFR 68.83(b).
- Relevant sources that have provided useful guidance in making risk decisions.
- Whether owners and operators should distribute an annual written or electronic notice to employees that employee participation plans and other RMP information is readily accessible upon request and provide training for those plans and how to access the information.

9. Proposed Modifications and Amplifications to Emergency Response Requirements—EPA requests comment on the following (See Section IV.B.2):

- The Agency's proposed approach.
- Additional information that is useful to share when notifying the public of RMP-accidental releases.
- Impediments to accessing community emergency response plans and potential solutions to having the plans more accessible within the scope of the RMP rule.

10. Emergency Response Exercises—EPA requests comment on the following (See Section IV.B.3):

- The Agency's proposed approach.

11. Information Availability—EPA requests comment on the following (See Section IV.C.3):

- The Agency's proposed approach.
- If the 6-mile radius for requesting information is appropriate. For alternative distances, information on the justification for these alternative distances.
- Specific information on the increased likelihood of security threats arising from dissemination of this information.
- Which data elements, or combinations of elements, may pose a security risk if released to the public (provided in Section 10 of the Technical Background Document).
- For each element or combination of elements identified as a potential security risk: (1) Specific comments on why the element or combination of elements presents a security risk and (2) documentation or basis for these security claims, such as expert studies, intelligence assessments, a prior incident, documented security threat, or near miss incident.

12. Other Areas of Technical Clarification—EPA requests comment on the following (See Section IV.D):

- The Agency's proposed approaches.
- For revisions to ''storage incident to transportation'' definition, the proposed 48-hour time frame, suggestions for other appropriate time frames, and any safety concerns that may arise from transportation containers being exempt from the RMP rule when disconnected for less than 48 hours.

13. Regulatory Impact Analysis—EPA requests comment on the following (See Section II.D):

- The assumptions and information used in the analysis, including burden estimates and the likelihood of adopting safer alternatives.
- The estimated costs of the proposed provisions and whether these costs should accrue to this proposal.
- Cost data or studies related to the cost of practicability studies for conversion of hydrofluoric acid alkylation units to safer technologies.
- The estimated benefits of the proposed provisions.

14. Regulatory Flexibility Act Analysis

- The number of small entities potentially affected by the proposed provisions of this rule.
- The estimated cost impacts on small entities by the proposed provisions of this rule.

15. OTHER—Any comments not falling under one of the preceding categories should be identified using 'OTHER' as the comment header.

C. Participation in Virtual Public Hearings

Please note that because of current CDC recommendations, as well as State and local orders for social distancing to limit the spread of COVID–19, EPA cannot hold in-person public meetings at this time.

EPA will begin pre-registering speakers for the hearing upon publication of this preamble in the **Federal Register** (FR). To register to speak at the virtual hearings, please see the online registration form available at *https://www.epa.gov/rmp/forms/virtual-public-hearings-risk-management-program-safer-communities-chemical-accident* or contact Deanne Grant at 202–564–1096 or *grant.deanne@epa.gov* to register to speak at the virtual hearings. The last day to pre-register to speak at the hearings will be September 22, 2022, EPA will post a general agenda for the hearings that will list pre-registered speakers in approximate order at *https://www.epa.gov/rmp/forms/virtual-public-hearings-risk-management-program-safer-communities-chemical-accident.*

EPA will make every effort to follow the schedule as closely as possible on the day of the hearings; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 3 minutes to provide oral testimony. EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via email) by emailing it to Deanne Grant at *grant.deanne@epa.gov.* EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearings.

Please note that any updates made to any aspect of the hearings are posted online at *https://www.epa.gov/rmp/forms/virtual-public-hearings-risk-management-program-safer-communities-chemical-accident.* While EPA expects the hearings to go forward as set forth above, please monitor the Agency's website or contact Deanne Grant, 202–564–1096, *grant.deanne@epa.gov,* to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearings with Deanne Grant and describe your needs by September 19, 2022. EPA may not be able to arrange accommodations without advanced notice.

II. General Information

A. Does this action apply to me?

This rule applies to those facilities (referred to as ''stationary sources'' under the Clean Air Act, or CAA) that are subject to the chemical accident prevention requirements at 40 CFR part 68. This includes stationary sources holding more than a threshold quantity (TQ) of a regulated substance in a process. Nothing in this rule would impact the scope and applicability of the General Duty Clause in CAA 112(r)(1), 42 U.S.C. 7412(r)(1). See 40 CFR 68.1. Table 1 provides industrial sectors and the associated North American Industry Classification System (NAICS) codes for entities potentially affected by this action. The Agency's goal is to provide a guide on entities that might be affected by this action. However, this action may affect other entities not listed in this table. If you have questions about the applicability of this action to a particular entity, consult the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

TABLE 1—ENTITIES POTENTIALLY AFFECTED BY THE PROPOSED RULE

Sector	NAICS codes	Number of facilities	Chemical uses
Administration of environmental quality programs (*i.e.,* governments, government-owned water).	92, 2213 (government-owned).	1,449	Use chlorine and other chemicals for water treatment.
Agricultural chemical distributors/wholesalers	11, 424 (except 4246, 4247).	3,315	Store ammonia for sale; some in NAICS 111 and 115 use ammonia as a refrigerant.
Chemical manufacturing	325	1,502	Manufacture, process, store.

TABLE 1—ENTITIES POTENTIALLY AFFECTED BY THE PROPOSED RULE—Continued

Sector	NAICS codes	Number of facilities	Chemical uses
Chemical wholesalers	4246	317	Store for sale.
Food and beverage manufacturing	311, 312	1,571	Use (mostly ammonia) as a refrigerant.
Oil and gas extraction	211	719	Intermediate processing (mostly regulated flammable substances and flammable mixtures).
Other	21 (except 211), 23, 44, 45, 48, 491, 54, 55, 56, 61, 62, 71, 72, 81, 99.	246	Use chemicals for wastewater treatment, refrigeration, store chemicals for sale.
Other manufacturing	313, 314, 315, 326, 327, 33.	375	Use various chemicals in manufacturing process, waste treatment.
Other wholesale	421, 422, 423	39	Use (mostly ammonia) as a refrigerant.
Paper manufacturing	321, 322	55	Use various chemicals in pulp and paper manufacturing.
Petroleum and coal products manufacturing	324	156	Manufacture, process, store (mostly regulated flammable substances and flammable mixtures).
Petroleum wholesalers	4247	367	Store for sale (mostly regulated flammable substances and flammable mixtures).
Utilities/water/wastewater	221 (non-government-owned water).	519	Use chlorine (mostly for water treatment) and other chemicals.
Warehousing and storage	493	1,110	Use (mostly ammonia) as a refrigerant.
Total		11,740	

B. What action is the Agency taking?

The purpose of this action is to propose changes to the RMP rule in order to improve safety at facilities that use and distribute hazardous chemicals. The RMP regulations have been effective in preventing and mitigating chemical accidents in the United States. However, EPA believes that revisions could further protect human health and the environment from chemical hazards through advancement of process safety based on lessons learned. These proposed revisions are a result of review of the existing RMP regulations and information gathered from the 2021 virtual public listening sessions (hereinafter referred to as the ''2021 listening sessions'').[1]

C. What is the Agency's authority for taking this action?

The statutory authority for this action is provided by section 112(r) of the CAA as amended (42 U.S.C. 7412(r)). Each modification of the RMP rule that EPA proposes in this document is based on EPA's rulemaking authority under CAA section 112(r)(7) (42 U.S.C. 7412(r)(7)). When promulgating rules under CAA section 112(r)(7)(A) and (B), EPA must follow the procedures for rulemaking set out in CAA section 307(d) (see CAA sections 112(r)(7)(E) and 307(d)(1)(C)). Among other things, CAA section 307(d) sets out requirements for the content of proposed and final rules, the docket for each rulemaking, opportunities for oral testimony on proposed rulemakings, the length of time for comments, and judicial review.

D. What are the costs and benefits of this action?

1. Summary of Estimated Costs

Approximately 11,740 facilities have filed current risk management plans with EPA and are potentially affected by the proposed rule. Table 1 presents the number of facilities according to the latest RMP reporting as of December 31, 2020, by industrial sector and chemical use. These facilities range from petroleum refineries and large chemical manufacturers to water and wastewater treatment systems; chemical and petroleum wholesalers and terminals; food manufacturers, packing plants, and other cold storage facilities with ammonia refrigeration systems; agricultural chemical distributors; midstream gas plants; and a limited number of other sources, including Federal installations, that use RMP-regulated substances. Among the stationary sources potentially affected, the Agency has determined that 2,911 are regulated private sector small entities and 630 are small government entities.

Table 2 presents a summary of the annualized costs estimated in the regulatory impact analysis (RIA).[2] In total, EPA estimates annualized costs of $75.8 million at a 3% discount rate and $76.7 million at a 7% discount rate.

TABLE 2—SUMMARY OF ESTIMATED ANNUALIZED COSTS OVER A 10-YEAR PERIOD

[Millions, 2020 dollars]

Cost elements	Total undiscounted	Total discounted (3%)	Total discounted (7%)	Annualized (3%)	Annualized (7%)
Third-party Audits	$102.7	$87.6	$72.1	$10.3	$10.3
Root Cause Analysis	7.3	6.2	5.1	0.7	0.7
Safer Technology and Alternatives Analysis	518.2	442.0	364.0	51.8	51.8
Backup Power for Perimeter Monitors	0.4	0.4	0.4	**0.0	**0.0
Employee Participation Plan	8.6	7.3	6.0	0.9	0.9

[1] Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Rule Retrospection Under Executive Order 13990; Virtual Public Listening Sessions; Request for Public Comment; EPA–HQ–OLEM–2021–0312–0001.

[2] Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention: Proposed Rule (April 19, 2022).

TABLE 2—SUMMARY OF ESTIMATED ANNUALIZED COSTS OVER A 10-YEAR PERIOD—Continued

[Millions, 2020 dollars]

Cost elements	Total undiscounted	Total discounted (3%)	Total discounted (7%)	Annualized (3%)	Annualized (7%)
Community Notification System	38.0	32.4	26.7	3.8	3.8
Information Availability	30.3	25.8	21.3	3.0	3.0
Rule Familiarization	46.5	45.2	43.5	5.3	6.2
Total Cost*	751.8	646.8	538.8	75.8	76.7

*Totals may not sum due to rounding.
**Totals are zero due to rounding, Unrounded totals are $44,600 at 3% and $52,200 at 7% discount rates.

The largest annualized cost of the proposed rule is the safer technologies and alternatives analysis (STAA) provision ($51.8 million at both 3% and 7% discount rates), followed by third-party audits ($10.3 million at both 3% and 7% discount rates), rule familiarization ($5.3 million at a 3% discount rate and $6.2 million at a 7% discount rate), and information availability ($3.0 million at both 3% and 7% discount rates). The remaining provisions impose annualized costs under $1 million, including employee participation ($0.9 million at both 3% and 7% discount rates), root cause analysis ($0.7 million at both 3% and 7% discount rates), and emergency backup power for perimeter monitors (less than $0.1 million at both 3% and 7% discount rates).

The Agency has determined that among the 2,911 potentially regulated private sector small entities so impacted, 2,822, or 96.9 percent, may experience an impact of less than one percent with an average small entity cost of $10,618; and 84, or 2.9 percent, may experience an impact of between one and three percent of revenues with an average small cost entity of $108,921. Among the 630 small government entities potentially affected, 488, or 77 percent would incur costs of less than $1,000; 109, or 17 percent costs ranging from $1,000 to $2,000; 18, or 3 percent costs ranging from $2,000 to $3,000; and only one would incur costs greater than $10,000, and EPA estimated that for the rule to have a larger than one percent impact on this entity, it would need to have revenue of less than $103 per resident. For detailed costs by provision and NAICS code see Chapter 8 of the RIA.

EPA seeks further information on the estimated costs of these provisions and whether these costs should accrue to this proposal. EPA particularly requests cost data or studies related to the cost of practicability studies for conversion of hydrofluoric acid alkylation units to safer technologies. For more information see Chapter 4 of the RIA.

2. Baseline Damages

Accidents and chemical releases from RMP facilities occur every year. They cause fires and explosions, damage to property, acute and chronic exposures of workers and nearby residents to hazardous materials and result in serious injuries and fatalities. EPA is able to present data on the total damages that currently occur at RMP facilities each year. EPA presents the data based on a 5-year baseline period, summarizes RMP accident impacts and, when possible, monetizes them. EPA expects that some portion of future damages would be prevented through implementation of a final rule. Table 3 presents a summary of the quantified damages identified in the analysis.

TABLE 3—SUMMARY OF QUANTIFIED DAMAGES

[Millions, 2020 dollars]

	Unit value	5-year total	Average/ year	Average/ accident
On site				
Fatalities	$9.3	$111.6	$22.32	$0.23
Injuries	0.05	27.50	5.50	0.06
Property Damage	.....	2,031	406.20	4.16
Onsite Total	.....	2,170.10	434.02	4.45
Off site				
Fatalities	9.30	0.00	0.00	0.00
Hospitalizations	0.045	1.40	0.28	0.003
Medical Treatment	0.001	0.13	0.03	0.0003
Evacuations*	0.00	14.16	2.83	0.029
Sheltering in Place*	0.00	9.39	1.88	0.019
Property Damage	.....	191.53	38.31	0.39
Offsite Total	.....	216.61	43.32	0.44
Total	.....	2,386.71	477.34	4.89

*The unit value for evacuations and for sheltering in place are less than $300 so when expressed in rounded millions the value represented in the table is zero.

In total, EPA estimated monetized damages from RMP facility accidents of $477.3 million per year. These damages are divided into onsite and offsite categories where possible. EPA estimated total, average annual onsite damages from chemical releases at RMP facilities of $434.0 million. The largest monetized category was property damage, valued at $406.2 million. The next largest impacts were onsite fatalities ($22.3 million) and injuries ($5.5 million).

EPA estimated total, average annual offsite damages of $43.3 million. Property damage again was the highest value category, estimated at approximately $38.3 million. In decreasing order, the next largest average annual offsite impact was from evacuations ($2.8 million), then sheltering in place ($1.9 million), hospitalizations ($0.3 million), and medical treatment ($0.03 million).

3. Summary of Benefits

EPA anticipates that promulgation and implementation of this proposed rule would result in a reduced frequency and magnitude of damages from releases, including damages that are quantified in Table 3 such as fatalities, injuries, property damage, hospitalizations, medical treatment, sheltering-in-place and so on. EPA also expects that the proposed rule provisions would reduce baseline damages that are not quantified in Table 3 such as lost productivity, responder costs, property value reductions, damages from catastrophes, and so on. Although EPA was unable to quantify the reductions in damages that may occur as a result of the proposed rule provisions, EPA expects that a portion of future damages would be prevented by the proposed rule. Table 4 summarizes four broad social benefit categories related to accident prevention and mitigation, including prevention of RMP accidents, mitigation of RMP accidents, prevention and mitigation of non-RMP accidents at RMP facilities, and prevention of major catastrophes. The table explains each and identifies ten associated specific benefit categories, ranging from avoided fatalities to avoided emergency response costs.

TABLE 4—SUMMARY OF SOCIAL BENEFITS OF PROPOSED RULE PROVISIONS

Broad benefit category	Explanation	Specific benefit categories
Accident Prevention	Prevention of future RMP facility accidents	• Reduced Fatalities. • Reduced Injuries. • Reduced Property Damage.
Accident Mitigation	Mitigation of future RMP facility accidents	• Fewer People Sheltered-in-Place. • Fewer Evacuations. • Avoided Lost Productivity.
Non-RMP Accident Prevention and Mitigation	Prevention and mitigation of future non-RMP accidents at RMP facilities.	• Avoided Emergency Response Costs. • Avoided Transaction Costs.
Avoided Catastrophes	Prevention of rare but extremely high consequence events.	• Avoided Property Value Impacts.* • Avoided Environmental Impacts.
Information Availability	Provision of information to the public and emergency responders.	• Improved Efficiency of Property Markets. • Improved Resource Allocation.

* These impacts partially overlap with several other categories.

EPA seeks further information on the estimated benefits of these provisions. For more information see Chapter 6 of the RIA.

III. Background

A. Overview of EPA's Risk Management Program

EPA originally issued the RMP regulation in two stages. The Agency published the list of regulated substances and TQs in 1994: ''List of Regulated Substances and Thresholds for Accidental Release Prevention; Requirements for Petitions Under Section 112(r) of the Clean Air Act as Amended'' (59 FR 4478, January 31, 1994), hereinafter referred to as the ''list rule.'' [3] The Agency published the RMP final regulation, containing risk management requirements for covered sources, in 1996: ''Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)'' (61 FR 31668, June 20, 1996), hereinafter referred to as the ''1996 RMP rule.'' [4] [5] Subsequent modifications to the list rule and the 1996 RMP rule were made as discussed in the 2017 amendments rule published in 2017 (''Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act''; 82 FR 4594, January 13, 2017, at 4600, hereinafter referred to as the ''2017 amendments rule''). Prior to development of EPA's 1996 RMP rule, the Occupational Safety and Health Administration (OSHA) published its Process Safety Management (PSM) standard in 1992 (57 FR 6356, February 24, 1992), as required by section 304 of the 1990 Clean Air Act Amendments (CAAA), using its authority under 29 U.S.C. 653. The OSHA PSM standard can be found in 29 Code of Federal Regulations (CFR) 1910.119. Both the OSHA PSM standard and EPA's RMP rule aim to prevent or minimize the consequences of accidental chemical releases through implementation of management program elements that integrate technologies, procedures, and management practices. In addition to requiring implementation of management program elements, the RMP rule requires any covered source to submit (to EPA) a document summarizing the source's risk management program—called a risk management plan (or RMP).

EPA's risk management program requirements include conducting a worst-case scenario analysis and a review of accident history, coordinating emergency response procedures with local response organizations, conducting a hazard assessment,

[3] Documents and information related to development of the list rule can be found in the EPA docket for the rulemaking, docket number A–91–74.

[4] Documents and information related to development of the 1996 RMP rule can be found in EPA docket number A–91–73.

[5] 40 CFR part 68 applies to owners and operators of stationary sources that have more than a TQ of a regulated substance within a process. The regulations do not apply to chemical hazards other than listed substances held above a TQ within a regulated process.

documenting a management system, implementing a prevention program and an emergency response program, and submitting a risk management plan that addresses all aspects of the risk management program for all covered processes and chemicals. A process at a source is covered under one of three different prevention programs (Program 1, Program 2, or Program 3) based directly or indirectly on the threat posed to the community and the environment. Program 1 has minimal requirements and is for processes that have not had an accidental release with offsite consequences in the last 5 years before submission of the source's risk management plan, and that have no public receptors within the worst-case release scenario vulnerable zone for the process. Program 3 applies to processes not eligible for Program 1, has the most requirements, and applies to processes covered by the OSHA PSM standard or classified in specified industrial sectors. Program 2 has fewer requirements than Program 3 and applies to any process not covered under Programs 1 or 3. Programs 2 and 3 both require a hazard assessment, a prevention program, and an emergency response program, although Program 2 requirements are less extensive and more streamlined. For example, the Program 2 prevention program was intended to cover in many cases simpler processes at smaller businesses and does not require the following process safety elements: management of change, pre-startup review, contractors, employee participation, and hot work permits. The Program 3 prevention program is fundamentally identical to the OSHA PSM standard and designed to cover those processes in the chemical industry.

B. Events Leading to This Action

On January 13, 2017, EPA published amendments to the RMP rule (82 FR 4594). The 2017 amendments rule was prompted by E.O. 13650, ''Improving Chemical Facility Safety and Security,'' [6] which directed EPA (and several other Federal agencies) to, among other things, modernize policies, regulations, and standards to enhance safety and security in chemical facilities. The 2017 amendments rule contained various new provisions applicable to RMP-regulated facilities addressing prevention program elements (safer technology and alternatives analysis (''STAA''); incident investigation root cause analysis; and third-party compliance audits), emergency response coordination with local responders (including emergency response exercises), and availability of information to the public. EPA received three petitions for reconsideration of the 2017 amendments rule under CAA section 307(d)(7)(B).[7] In December 2019, EPA finalized revisions to the RMP regulations to reconsider the rule changes made in January 2017 (''Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act,'' 84 FR 69834, December 19, 2019, hereinafter referred to as the ''2019 reconsideration rule''). The 2019 reconsideration rule rescinded certain information disclosure provisions of the 2017 amendments rule, removed most new accident prevention requirements added by the 2017 rule, and modified some other provisions of the 2017 amendments rule. The rule changes made by the 2019 reconsideration rule reflect the current RMP regulations to date. There are petitions for judicial review of both the 2017 amendments and the 2019 reconsideration rules. The 2019 reconsideration rule challenges are being held in abeyance until October 3, 2022, by which time the parties must submit motions to govern. The case against the 2017 amendments rule is in abeyance pending resolution of the 2019 reconsideration rule case.

On January 20, 2021, President Biden issued E.O. 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' [8] E.O. 13990 directed Federal agencies to review existing regulations and take action to address priorities established by the current Administration, which include bolstering resilience to the impacts of climate change and prioritizing environmental justice (EJ). As a result, EPA was tasked to review the current RMP regulations.

While the Agency reviewed the RMP rule under E.O. 13990, the E.O. did not specifically direct EPA to publish a solicitation for comment or information from the public. Nevertheless, EPA held virtual public listening sessions on June 16 and July 8, 2021, and had an open docket for public comment (86 FR 28828; May 28, 2021). In the request for public comment, the Agency asked for information on the adequacy of revisions to the RMP regulations completed since 2017, incorporating consideration of climate change risks and impacts into the regulations and expanding the application of EJ. EPA received a total of 27,828 public comments in response to the request for comments. This includes 27,720 received at *regulations.gov*,[9] 35 provided during the listening session on June 16, 2021,[10] and 73 provided during the listening session on July 8, 2021.[11] Most of the comments received in the docket were copies of form letters related to four different form letter campaigns. The remaining comments included 302 submissions containing unique content. Of the 302 unique submissions, a total of 163 were deemed to be substantive (*i.e.,* the commenters presented both a position and a reasoned argument in support of the position). Information collected through these comments has informed the review.

EPA seeks comment on the proposed amendments. Any suggestions for alternative options should include an appropriate rationale and supporting data for the Agency to be able to consider it for a final action. To the extent submitted comments will repeat or rely on material submitted in the docket used for the 2017 amendments rule or the 2019 reconsideration rule, include the relevant material in the submitted comment with a specific reference to the portion of the material cited as support.

C. EPA's Authority To Revise the RMP Rule

Congress granted EPA authority to establish accident prevention rules under two provisions in CAA section 112(r)(7). Under CAA section 112(r)(7)(A), EPA may set rules addressing the prevention, detection, and correction of accidental releases of substances listed by EPA by rule (''regulated substances'' listed in the Tables 1 through 4 to 40 CFR 68.130). Such rules may include requirements related to monitoring, data collection, training, design, equipment, work practice, and operations. In promulgating its regulations, EPA may draw distinctions between types, classes, and kinds of facilities by taking into consideration various factors including size and location. This section also indicates that EPA has discretion regarding the date rules will take effect. Regulations become effective ''as determined by the Administrator,

[6] Available at *https://obamawhitehouse.archives.gov/the-press-office/2013/08/01/executive-order-improving-chemical-facility-safety-and-security.*

[7] Available at *https://www.epa.gov/petitions/petitions-office-land-and-emergency-management.*

[8] Available at *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/.*

[9] EPA–HQ–OLEM–2021–0312.

[10] EPA–HQ–OLEM–2021–0312–0011.

[11] EPA–HQ–OLEM–2021–0312–0020.

assuring compliance as expeditiously as practicable.''

Under CAA section 112(r)(7)(B), Congress directed EPA to develop ''reasonable regulations and appropriate guidance'' that provide for the prevention and detection of accidental releases and the response to such releases ''to the greatest extent practicable.'' Congress required an initial rulemaking under this subparagraph by November 15, 1993. Section 112(r)(7)(B) sets out a series of mandatory subjects to address, interagency consultation requirements, and discretionary provisions that allowed EPA to tailor requirements to make them reasonable and practicable. The regulations needed to address ''storage, as well as operations'' and emergency response after accidental releases, and EPA was to use the expertise of the Secretaries of Labor and Transportation in promulgating the regulations. This provision gave EPA the discretion to recognize differences in factors such as ''size, operations, processes, class, and categories of sources'' and the voluntary actions taken by owners and operators of regulated sources to prevent and respond to accidental releases (CAA section 112(r)(7)(B)(i)). At a minimum, the regulations had to require any stationary source with more than a threshold quantity of regulated substances to prepare and implement a risk management plan (RMP). Such an RMP needed to provide for compliance with rule requirements under CAA section 112(r) and include a hazard assessment with release scenarios, an accident history, a release prevention program, and a response program (CAA section 112(r)(7)(B)(ii)). Plans were to be registered with EPA and submitted to various planning entities (CAA section 112(r)(7)(B)(iii)). These initial rules had to apply to sources 3 years after promulgation or 3 years after a substance was first listed for regulation under CAA section 112(r) (CAA section 112(r)(7)(B)(i)). EPA fulfilled its initial obligations under section 112(r)(7)(B) with the 1996 RMP rule, but the agency views section 112(r)(7)(B) to give EPA continuing authority to improve the RMP regulations to achieve the statutory directives.

In addition to the direction to use the expertise of the Secretaries of Labor and Transportation in CAA section 112(r)(7)(B), the statute more broadly requires EPA to consult with these secretaries when carrying out the authority of CAA section 112(r)(7) and to ''coordinate any requirements under [CAA section 112(r)(7)] with any requirements established for comparable purposes by'' OSHA (CAA section 112(r)(7)(D)). This consultation and coordination language derives from and expands upon provisions on hazard assessments in the bill that passed in the Senate as its version of what eventually became the 1990 CAAA, section 129(e)(4) of S.1630. The Senate committee report on this language notes that the purpose of the coordination requirement is to ensure that ''requirements imposed by both agencies to accomplish the same purpose are not unduly burdensome or duplicative.'' [12] The mandate for coordination in the area of safer chemical processes was incorporated into CAA section 112(r)(7)(D). In the same legislation, Congress directed OSHA to promulgate a process safety standard that became the PSM standard (see CAAA of 1990 section 304).

EPA used its authority under CAA section 112(r)(7) to issue the 1996 RMP rule (61 FR 31668; June 20, 1996), the 2017 amendments rule (82 FR 4594; January 13, 2017), and the 2019 reconsideration rule (84 FR 69834; December 19, 2019). The Agency is also implementing this authority in this proposed rulemaking. These proposed amendments address three requirements of the Risk Management Program: accident prevention program requirements, emergency preparedness requirements, and information availability requirements. The prevention program provisions in this rule address the prevention and detection of accidental releases and include the following topics: stationary source siting, safer technologies and alternatives analysis (STAA), root cause analysis incident investigation, third-party compliance auditing, and employee participation. The emergency response provisions in this rule modify existing provisions that provide for owner or operator responses to accidental releases. The information availability provisions discussed in this document generally assist in the development of emergency response procedures and measures to protect human health and the environment after an accidental release (CAA section 112(r)(7)(B)(i)).[13] When determining which amendments would result in the prevention and detection of accidental releases of regulated substances to the greatest extent practicable, EPA took into consideration multiple factors including—but not limited to—the size of the facility, the quantity of the substances handled, and the location of the facility in relation to other RMP facilities in accordance with both CAA sections 112(r)(7)(A) and (B)(i). The rule distinguishes among classes and categories of sources by industry and process type, as well as likelihood of an accidental release that may impact a community. This rulemaking action therefore proposes substantive amendments to 40 CFR part 68 and is authorized by CAA section 112(r)(7)(A) and (B), as explained herein.

In considering whether it is legally permissible for EPA to modify provisions of the RMP rule while continuing to meet its obligations under CAA section 112(r), the Agency notes that it has made discretionary amendments to the 1996 RMP rule several times without dispute over its authority to issue discretionary amendments. (See 64 FR 964, January 6, 1999; 64 FR 28696, May 26, 1999; 69 FR 18819, April 9, 2004.) According to the decision in *Air Alliance Houston* v. *EPA,* 906 F.3d 1049 (D.C. Cir. 2018), ''EPA retains the authority under Section 7412(r)(7) [CAA section 112(r)(7)] to substantively amend the programmatic requirements of the [2017 RMP amendments] . . . subject to arbitrary and capricious review'' (906 F.3d at 1066). Therefore, EPA is authorized to modify the provisions of the current RMP regulations if it finds that it is reasonable to do so.[14]

The Supreme Court has also recognized that agencies have broad discretion to reconsider a regulation at any time so long as the changes in policy are ''permissible under the statute, . . . there are good reasons for [them], and that the agency *believes* [them] to be better'' than prior policies. (See *Federal Communications Commission* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); emphasis

[12] Committee on Environment and Public Works, *Clean Air Act Amendments of 1989: Report of the Committee on Environment and Public Works, U.S. Senate, Together with Additional and Minority Views, to Accompany S.1630* (December 20, 1989), *https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-0645.* EPA–HQ–OEM–2015–0725–0645.

[13] Incident investigation, compliance auditing, and STAA are also authorized as release prevention requirements pertaining to stationary source design, equipment, work practice, recordkeeping, and reporting. Information disclosure is also authorized as reporting (CAA section 112(r)(7)(A)).

[14] *See Motor Vehicle Manufacturers. Association of the United States, Inc.* v. *State Farm Mutual Automobile Ins. Co.,* 463 U.S. 29 (1983). In addressing the standard of review to reconsider a regulation, the Supreme Court stated that the rescission or modification of safety standards ''is subject to the same test'' as the ''agency's action in promulgating such standards [and] may be set aside if found to be 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law' '' (463 U.S. at 41, quoting 5 U.S.C. 706). The same standard that applies to the promulgation of a rule applies to the modification or rescission of that rule.

in quote original).[15] As explained in detail above, the policy changes proposed in this action are permissible under the statute. Additionally, there are good reasons for the policies adopted in this rule. Accidental releases remain a significant concern to communities and cost society more than $477 million yearly.[16] The risk of being impacted by an accidental release is even more apparent in communities where multiple RMP facilities are in close proximity to residential areas. Lowering the probability and magnitude of accidents by putting more of a focus on prevention reduces the risks posed by these RMP facilities, which is one of the objectives of the present RMP proposed amendments.

In the 2019 reconsideration rule, the Agency justified rescinding the prevention program provisions of the 2017 amendments rule, STAA, incident investigation, root cause analysis, and third party compliance audits based on two main rationales: (1) That a case-by-case compliance-driven approach to oversight focusing on problematic sources (generally, sources that have had releases) could obtain many of the accident-reduction benefits of a rule without broadly burdening sources that were less likely to have a release under regulatory mandates, and (2) that the Agency was being consistent with the OSHA PSM prevention provisions. The Agency discusses each rationale in turn below.

The conclusion in the 2019 reconsideration rule that a case-by-case, compliance-driven approach relying on traditional tools such as compliance outreach and administrative and judicial enforcement could provide many of the same benefits as a rule without imposing broad burdens rested upon an observation that accidents are declining and concentrated among few sources, allowing for concentrated compliance oversight. See 84 FR 69843–44 (Dec. 19, 2019). While focusing on accident and impact rates, the rate analysis did not account for the likelihood that low-probability, high consequence events could impact trends. Thus, in the 2019 reconsideration rule, EPA acknowledged the decline in yearly total count of accidents and accident rates. For the 2017 amendments rule and 2019 reconsideration rule, EPA analyzed accidents for the periods 2004 to 2013, and 2014 to 2016, respectively.[17] Using a yearly average for the 2017 amendments rule (2004–2013) and the 2019 reconsideration rule (2014–2016), in 2019 EPA found declining yearly averages for every metric of onsite and offsite damage.[18] As part of this proposed rule, EPA analyzed accidents from 2016 to 2020.[19] The impacts of high consequence RMP-reportable accident events between 2017 and 2020 demonstrate the impact of low-probability, high consequence events on annual averages. For example, using the same methods used in the 2019 rule, current data show the average annual rate of those seeking medical treatment increased by 230% (10 per year in the 2019 reconsideration rule and 33 per year for this proposed rule); evacuations increased by 75% (1,868 per year versus 3,268 per year) and accidents resulting in sheltering in place increased by 18% (12,534 per year versus 14,845 per year). The more current data since the 2019 analyses shows that reliance on a declining trend in accidents and impacts to conduct selective, often post-incident oversight may prove insufficiently effective over time and make it difficult to stay ahead of reversals in trends.

Recent accidents also highlight EPA's improper reliance on only annual count of total accidents to address the low-probability, high-consequence nature of accidental releases. For example, while the annual count of accidents decreased overall between 2016 and 2020, in 2019, the TPC Group explosion and fire in Port Neches, Texas, reported the largest number of persons ever evacuated (n=50,000) as a result of an RMP-reportable incident, as well as $153 million in offsite property damage. Large events are rare, but to the extent that CAA 112(r) was intended as a prevention program for large catastrophic releases, selective oversight through a ''compliance-driven'' approach that relies heavily on determining if the facility was compliant with accident prevention regulations after an accident occurred would not meet the goal of preventing the initial accident. The RMP rule must be broader based, and rule-driven in order to have stationary sources handling dangerous chemicals work to prevent potentially catastrophic incidents.

Additionally, the 2019 reconsideration rule failed to acknowledge that mostly relying on relief like post-accident settlement, particularly at those industries that already have a history of frequent accidents, entails significant transaction costs, delays, and uncertainty of obtaining necessary prevention improvements. While such delays and transaction costs are inherent in compliance oversight and the enforcement process, the failure of the 2019 reconsideration rule to address this important limitation on the feasibility and utility of a ''compliance-driven'' approach is a flaw in the determination made in 2019 that such an approach is a reasonable substitute for a rule-driven approach to prevention. While enforcement of the RMP regulation has and will continue to occur, EPA expects under a rule-drive approach most facilities will proactively make the necessary prevention improvements to be in compliance with the rule to avoid enforcement. The 2019 reconsideration rule does not acknowledge that settlements often involve compromises, and that, in the course of settlement, EPA cannot always obtain all appropriate relief. The history of one of EPA's largest enforcement actions under the RMP rule involving Chevron's operations illustrates many of these points. EPA's enforcement engagement with Chevron began shortly after a fire at the Richmond, CA, refinery in August 2012. Subsequent accidents at Chevron refineries in El Segundo, CA, and Pascagoula, MS, led EPA to investigate all five Chevron refineries in the United States, including refineries in Salt Lake City, UT and Kapolei, HI (no longer owned by Chevron). EPA concluded a final civil judicial settlement with Chevron in October 2018, more than 6 years after the investigation began.[20]

Moreover, as discussed in more detail below, even when individual facilities have not yet experienced an accident, certain classes of facilities are more likely to have accidents near communities. Communities surrounding these classes of facilities would benefit from rule-based prevention prior to

[15] The full quote from Fox states: ''But [the Agency] need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates'' (*Federal Communications Commission* v. *Fox Television Stations, Inc.,* 556 U.S. at 515; emphasis original).

[16] A full description of costs and benefits for this proposed rule can be found in the Regulatory Impact Analysis: Safer Communities by Chemical Accident Prevention: Proposed Rule (April 19, 2022). This document is available in the docket for this rulemaking (EPA–HQ–OLEM–2022–0174).

[17] Exhibit 6–2, Page 77, EPA–HQ–OEM–2015–0725–2089.

[18] The exception being a higher annual average offsite property damage for the period of 2014–2016 as compared to 2004–2013.

[19] In the RIA for this proposed rule, EPA includes 2016 again to account for accidents not reported prior to the 2019 reconsideration rule analysis.

[20] U.S. Environmental Protection Agency, *Chevron Settlement Information Sheet, https://www.epa.gov/enforcement/chevron-settlement-information-sheet.*

incidents, rather than the case-by-case oversight approach of the 2019 reconsideration rule.

Regarding alignment with OSHA PSM prevention provisions, the 2019 reconsideration rule indicated that the 2017 amendments rule only represented a departure from PSM requirements. The 2019 reconsideration rule acknowledged there were no legal requirements to defer to OSHA in rulemaking, or for EPA and OSHA to proceed on identical timelines in making changes to the RMP rule and PSM standard, and that some divergence between the RMP rule and PSM standard may at times be necessary given the agencies' separate missions. See 83 FR 24863–64. While EPA, in the 2019 reconsideration rule, decided to take a traditional approach of maintaining consistency with OSHA PSM because benefits were recognized at that time, EPA now believes the benefits of a rule-based prevention for certain high-risk classes of facilities could help prevent high consequence accidents that affect communities, such as the TPC Group explosion. Furthermore, the statute's consult-and-coordinate requirements are to ensure the agencies are working together to ensure rules are compatible and not conflicting. The proposed prevention program provisions presented today are compatible and do not conflict with the prevention provisions of OSHA PSM, as detailed further in the discussions of each provision.

In contrast to the 2019 approach, the approach taken in this proposal for the prevention program provision, STAA, incident investigation root cause analysis, and third-party compliance audits, refines the focused regulatory approach found in the 2017 amendments rule, and proposes provisions modified from those in the 2017 amendments rule, to better identify risky facilities to prevent accidental releases before they can occur. As explained in further detail in following sections of this preamble, EPA therefore maintains that by taking a rule-based, prevention-focused approach in this action rather than the 2019 reconsideration rule's compliance-driven, mostly post-incident, approach, the proposed rule revisions could further protect human health and the environment from chemical hazards through PSM advancement without undue burden. Similarly, other proposed modifications to approaches adopted in 2019 to information disclosure and emergency response will also better balance security concerns with improved community awareness and lead to better community preparedness for accidents.[21] To the extent that both approaches are reasonable, the approach of this proposed rule would be more protective, and thus provide for release prevention, detection, and response ''to the greatest extent practicable'' among the reasonable approaches.

IV. Proposed Action

The RMP rule has been effective in preventing and mitigating chemical accidents in the United States and protecting human health and the environment from chemical hazards, but major accidents continue to occur. More importantly, even though there has been a long-term trend of reducing accidents and the gravity of accidents, this trend can be improved to further protect human health and the environment.

Below EPA presents several proposed amendments for consideration and public comment. Many of these amendments would better focus new prevention program elements on particular classes of facilities than the 2017 amendments rule, and promote more information availability, employee participation and emergency response measures than the 2019 reconsideration rule. As a result of the changes in this proposal, the Agency, as described in further detail below, considered the possibility of potential reliance interests associated with portions of the 2019 reconsideration rule. The Agency views these proposed measures and other aspects of this proposed rule as integrated and reinforcing. As discussed below, some of the proposed rule changes focus enhanced prevention measures like STAA and third-party auditing on individual sources and classes of sources with a history of accidental releases. Were the proposed rule adopted, EPA believes that many if not most sources are likely to respond to this approach of triggering requirements based on accident history by undertaking enhanced prevention measures to comply with the rule and avoid accidents. However, some sources may try to evade these enhanced accident prevention requirements by avoiding reporting incidents that trigger additional requirements. The employee participation, public information availability, and emergency response measures would make it more difficult to evade the accident history-triggered requirements by leveraging workers and the public in facility oversight. Thus, in addition to the merits of each proposed provisions as considered in isolation, the proposed rule changes can be seen as complementary to each other. Adopting these provisions together will help ensure owners and operators have these complementing measures in place to prevent or minimize accidental release of their regulated substances to protect human health and the environment. Nevertheless, while many of the provisions reinforce each other, EPA also views each one as merited on its own if it ultimately adopted, and thus severable should there be judicial review.

A. Prevention Program

1. Hazard Evaluation Amplifications

a. Introduction

A hazard evaluation is defined as the identification of individual hazards of a system, determination of the mechanisms by which they could give rise to undesired events, and evaluation of the consequences of these events on health (including public health), environment, and property. These evaluations often use qualitative techniques to pinpoint weaknesses in the design and operation of facilities that could lead to incidents.[22] Current requirements exist within the RMP rule to conduct these evaluations. RMP hazard evaluation regulations require, among other things, owners or operators with Program 2 processes to conduct hazard reviews under 40 CFR 68.50(a) that identify: (1) The hazards associated with the process and regulated substances; (2) opportunities for equipment malfunctions or human errors that could cause an accidental release; (3) the safeguards used or needed to control the hazards or prevent equipment malfunction or human error; and (4) any steps used or needed to detect or monitor releases. Owners or operators with Program 3 processes are required to conduct process hazard analyses (PHAs) under 40 CFR 68.67(c) that address: (1) The hazards of the process; (2) the identification of any previous incident which had a likely potential for catastrophic consequences; (3) engineering and administrative controls applicable to the hazards and their interrelationships, such as appropriate application of detection methodologies to provide early warning of releases (acceptable detection methods might include process monitoring and control instrumentation

[21] The term ''information disclosure'' refers to specific provisions adopted in 2017 that the 2019 reconsideration rule rescinded. EPA uses the term ''information availability'' in the current rulemaking to mean the broader set of measures the Agency is adopting today.

[22] Center for Chemical Process Safety (CCPS), ''CCPS Process Safety Glossary,'' accessed January 28, 2022, *https://www.aiche.org/ccps/resources/glossary?title=hazard+evaluation#views-exposed-form-glossary-page.*

with alarms, and detection hardware such as hydrocarbon sensors); (4) consequences of failure of engineering and administrative controls; (5) stationary source siting; (6) human factors; and (7) a qualitative evaluation of a range of the possible safety and health effects of failure of controls. The hazard evaluation requirements are key to understanding how to operate safely and prevent accidents and the release of hazardous substances.

In developing the initial 1996 RMP rule, the Agency recognized that many workplace hazards also threaten public receptors and that most accident prevention steps taken to protect workers also protect the public and the environment. Consequently, EPA adopted and built on much of the existing accident prevention language from OSHA's PSM standard, including the process hazard analysis (PHA) language from 29 CFR 1910.119(e). EPA's understanding of the PHA was based on OSHA's: [23] a PHA analyzes potential causes and consequences of fires, explosions, releases of toxic or flammable chemicals, and major spills of hazardous chemicals. The PHA focuses on equipment, instrumentation, utilities, human actions (routine and nonroutine), and external factors that might impact the process. These considerations assist in determining the hazards and potential failure points or failure modes in a process. OSHA pointed to detailed industry guidance that serves as the basis for understanding what hazards are widely recognized as threats to safe chemical process operations. For example, the American Institute of Chemical Engineers' Center for Chemical Process Safety (CCPS) developed the publication ''Guidelines for Hazard Evaluation Procedures,'' [24] which EPA and OSHA agree generally addresses the most common categories of hazards relevant to facilities that handle hazardous chemicals.

While EPA and OSHA have not explicitly added language in their regulations on certain hazard evaluation elements that were assumed implicit and recognized as hazards among industry, EPA seeks to emphasize that some hazards should be explicitly addressed by facilities to further protect human health and the environment. EPA is not proposing additional regulatory requirements from what already exists in the RMP regulations, rather EPA is proposing adding regulatory text to emphasize that natural hazards and loss of power are among the hazards that must be addressed in hazard reviews and PHAs. EPA is also proposing to emphasize that facility siting should be addressed in hazard reviews, and to explicitly define the facility siting requirement for Program 2 and Program 3 hazard evaluations. EPA seeks to better reflect its longstanding regulatory requirement rather than impose additional regulatory requirements (and potential additional costs) that diverge from the OSHA PSM regulatory requirements. EPA has coordinated with OSHA throughout the development of this proposed rule to ensure the intent of adding specificity to these hazard evaluation requirements is consistent with the intent and meaning of the OSHA PSM standard to avoid inconsistencies between the two regulatory programs.

b. Natural Hazards

Natural hazards (*e.g.,* extreme temperatures, high winds, floods, earthquakes, wildfires) are hazards for chemical facilities because they have the potential to initiate accidents and challenge hazardous chemical process equipment and operations. If not properly managed, these hazards can trigger chemical accidents that threaten human health and the environment. EPA believes many facilities with RMP processes are generally managing natural hazards well; however, some RMP accidents are still being reported as linked to natural hazards. Climate change increases the threat of extreme weather as a natural hazard. Therefore, EPA is proposing to emphasize that natural hazards should explicitly be included in the hazards evaluated in hazard reviews and PHAs for Program 2 and Program 3 RMP-regulated processes. EPA believes making more explicit this already-existing accident prevention program requirement [25] will ensure the threats of natural hazards are properly evaluated and managed to prevent or mitigate releases of RMP-regulated substances at covered facilities.

CCPS' ''Guidelines for Hazard Evaluation Procedures'' [26] includes external events as a hazard evaluation category that should be addressed. It defines these as events external to the system/plant caused by: (1) A natural hazard (*e.g.,* earthquake, flood, tornado, extreme temperature, lightning) or (2) a human induced event (aircraft crash, missile, nearby industrial activity, fire, sabotage, *etc.*). At the time of initial RMP rule development, EPA had not explicitly added language about considering external events to the rule. However, EPA did acknowledge that sources must consider the hazards created by external events. In the 1996 RMP final rule Response to Comments,[27] EPA indicated the following: ''As part of a properly conducted PHA, sources would normally consider whether a process is vulnerable to damage caused by external events, such as earthquakes, floods, high winds, and evaluate the potential consequences if such events damaged the integrity of the process.'' To further express this expectation, EPA's RMP guidance states: ''Natural Events and Other Outside Influences: Whichever [hazard review/process hazard analysis] approach you use, you should consider reasonably anticipated external events as well as internal failures. If you are in an area subject to earthquakes, hurricanes, or floods, you should examine whether your process would survive these natural events without releasing the substance. In your hazard review, you should consider the potential impacts of lightning strikes and power failures.'' [28] In comments submitted during the 2021 listening sessions,[29] some industry trade associations stated that the current provisions of the RMP rule are sufficient to protect against climate-related impacts.[30] Specifically, one industry trade association remarked that ''under requirements in the current program, the impact of severe weather events such as storms and flooding on operations and consequently the risk they pose for an accidental release, must already be considered and addressed in the plans submitted to EPA.'' [31]

Despite this general knowledge that natural hazards are process hazards that should be evaluated and addressed during hazard reviews and PHAs, EPA's recent review of the RMP National Database indicates that when reporting accidents, some RMP facilities report ''natural'' and ''unusual weather conditions'' as the respective initiating event or as a contributing factor to their

[23] See 58 FR 54190, October 20, 1993, p. 54204.

[24] CCPS, *CCPS Guidelines for Hazard Evaluation Procedures, 3rd Edition* (New York: American Institute of Chemical Engineers, 2008).

[25] Existing requirements of the hazards to be evaluated in hazard evaluations are found at 40 CFR 68.50(a) for Program 2 processes and at 40 CFR 68.67(a)–(c) for Program 3 processes.

[26] CCPS, *CCPS Guidelines for Hazard Evaluation Procedures, 3rd Edition* (New York: American Institute of Chemical Engineers, 2008).

[27] A–91–73–IX–C–1-Volume-1[H], pp. 9–23.

[28] EPA, General Guidance on Risk Management Programs for Chemical Distributors, Ch. 6: Prevention Programs (2004), pp. 6–10 to 6–11, *https://www.epa.gov/sites/default/files/2013-11/documents/chap-06-final.pdf.*

[29] EPA–HQ–OLEM–2021–0312.

[30] EPA–HQ–OLEM–2021–0312–0005; 0045.

[31] EPA–HQ–OLEM–2021–0312–0005.

accidents.[32] According to the Agency's data from 2004–2020, facilities reported 38 RMP-reportable accidents as having a natural cause as the initiating event of their accident and another 46 RMP-reportable accidents as having unusual weather conditions as a contributing factor of their accident.[33]

In addition to these natural hazard-linked accidents, RMP data indicate that the locations of many RMP facilities leave them exposed to natural hazards. In a review of the National Oceanic and Atmospheric Administration's Storm Events Database from the last two decades, EPA generally found that extreme weather events are common in counties with RMP facilities. For example, during 2000–2020, over 90 percent of counties with RMP facilities experienced flooding, 1 in 4 counties with RMP facilities suffered damage from hurricanes, and counties with RMP facilities have on average experienced 30 floods (over one per year) and 40 extreme winter weather events (approximately two per year), such as blizzards. Some counties with RMP facilities also experience extreme weather events much more often than average. For instance, many regions in Florida, Louisiana, and South Carolina were impacted by more than 30 hurricanes over the prior 20 years. Similarly, regions of northern California and Oregon suffered from over 500 days of wildfires during the same period.[34]

With new studies showing that the threat of natural hazards is increasing, actions to ensure natural hazards are evaluated and properly managed are critical. A recent report by the Center for Progressive Reform, Earthjustice, and the Union of Concerned Scientists—entitled ''Preventing 'Double Disasters'' [35]—indicates that one-third of RMP facilities are at risk of climate-related events, such as wildfire, flooding, hurricane storm surge, and/or coastal flooding. This finding is nearly identical to the estimate of the Government Accountability Office in its recent report, ''Chemical Accident Prevention: EPA Should Ensure Regulated Facilities Consider Risks from Climate Change.'' [36] The 2018 National Climate Assessment [37] and several publications from the Intergovernmental Panel on Climate Change, which are authoritative sources for the impacts of climate change on the severity and frequency of weather events, found that there is a scientific consensus that the future holds increased risks of more severe and frequent extreme weather events, including tropical cyclones, coastal flooding, wildfire, tornados, severe thunderstorms, and extreme precipitation. EPA must consider the increased risk to RMP facilities.

The Chemical Safety and Hazard Investigation Board (CSB) and many public listening session commenters identified the August 2017 Arkema Inc. chemical plant fire in Crosby, Texas, as a significant accident caused by natural hazards.[38] [39] [40] Flooding from Hurricane Harvey disabled the refrigeration system at the Arkema plant, which allowed the temperature of organic peroxides to increase and spontaneously combust. Twenty-one people sought medical attention from reported exposures to the fumes. More than 200 residents living near the facility were evacuated and could not return home for a week. While this part of the Arkema facility was not an RMP-regulated process, the increased occurrence of extreme-weather-caused events like this highlight the importance of ensuring proper evaluation of natural hazards on process operations.

As a result of the Arkema incident, CSB developed a safety alert that includes guidance for chemical plants during extreme weather events.[41] In the final report on the Arkema incident,[42] CSB recommended CCPS develop broad and comprehensive guidance to help companies assess their U.S. facility risk from potential extreme weather events. As a result, CCPS produced the monograph, ''Assessment of and Planning for Natural Hazards.'' [43] In addition to outlining the importance of rising threats, it outlines resources that many of its member companies—many of which have RMP-regulated processes—have successfully used to identify natural hazards, gather data and identify equipment to be addressed in natural hazard assessments, and evaluate and meet design criteria of equipment according to recognized and generally accepted good engineering practices (RAGAGEP).

With climate change-related natural hazards as a global concern, other countries are also expanding efforts to address natural hazards at chemical facilities. For example, the Organisation for Economic Co-operation and Development Programme on Chemical Accidents started work on natural hazards triggering technological accidents (''NaTech'') risk management in 2008 in partnership with the European Commission Joint Research Center, the United Nations Environment Programme, and the United Nations Economic Commission for Europe. The project aimed to investigate NaTech prevention, preparedness, and response to chemical accidents; exchange experience across countries; and provide guidance on NaTech risk management. Studies, databases, and information continue to be collected and published to help countries manage this increasing threat.[44]

While well-prepared hazard evaluations under the RMP rule already address NaTech, EPA is proposing to emphasize that natural hazards, including those associated with climate change, be explicitly addressed in RMP Program 2 hazard reviews and Program 3 PHAs. EPA is proposing to make language changes that include requiring hazard evaluations under 40 CFR 68.50(a)(5) and 68.67(c)(8) to address external events such as natural hazards, including those caused by climate change or other triggering events that could lead to an accidental release.

EPA is also proposing to define natural hazards in a way that is similar

[32] These fields are options when reporting accidents on RMP reports. Description of these options: EPA, *Risk Management Plan: RMP*eSubmit User's Manual* (2019), pp. 76–77. *https://www.epa.gov/sites/default/files/2019-03/documents/rmpesubmit_user_guide_-_march_2019_final_0.pdf.*

[33] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[34] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[35] David Flores, et al., *Preventing ''Double Disasters''* (2021), *https://www.ucsusa.org/sites/default/files/2021-07/preventing-double-disasters%20FINAL.pdf.*

[36] U.S. Government Accountability Office, *Chemical Accident Prevention: EPA Should Ensure Regulated Facilities Consider Risks from Climate Change* (2022), *https://www.gao.gov/assets/gao-22-104494.pdf.*

[37] U.S. Global Change Research Program, *Fourth National Climate Assessment* (2018), *https://nca2018.globalchange.gov/.*

[38] CSB, ''Arkema Inc. Chemical Plant Fire,'' last modified May 24, 2018, *https://www.csb.gov/arkema-inc-chemical-plant-fire-/.*

[39] Center for Progressive Reform, *Preventing Double Disasters* (2021), *https://www.regulations.gov/comment/EPA-HQ-OLEM-2021-0312-0035.* EPA–HQ–OLEM–2021–0312–0035–10.

[40] EPA–HQ–OLEM–2021–0312–0004; 0080, 0081.

[41] CSB, *2020 Hurricane Season: Guidance for Chemical Plants during Extreme Weather Events* (n.d.), *https://www.csb.gov/assets/1/6/extreme_weather_-_final_w_links.pdf.*

[42] CSB, ''Arkema Inc. Chemical Plant Fire,'' last modified May 24, 2018, *https://www.csb.gov/arkema-inc-chemical-plant-fire-/.*

[43] CCPS, *CCPS Monograph: Assessment of and Planning For Natural Hazards* (American Institute of Chemical Engineers, 2019), *https://www.aiche.org/sites/default/files/html/536181/NaturalDisaster-CCPSmonograph.html.*

[44] Organisation for Economic Co-operation and Development, ''Risks from Natural Hazards at Hazardous Installations (Natech),'' accessed January 28, 2022, *https://www.oecd.org/chemicalsafety/chemical-accidents/risks-from-natural-hazards-at-hazardous-installations.htm.*

to the description used by CCPS. Under the proposed rule, natural hazards would be defined as naturally occurring events with the potential for negative impacts, including meteorological hazards due to weather and climactic cycles, as well as geological hazards. EPA seeks comment on this approach.

EPA continues to expect facilities to utilize all available resources to properly evaluate what natural hazards could potentially trigger accidental releases from their regulated processes. EPA understands that natural hazards and process operations vary throughout the United States. However, because the RMP rule is performance-based, EPA believes that all regulated RMP facilities can be successful in addressing natural hazards within their risk management programs. Because natural hazards continue to be a factor in RMP accidents and present a growing threat to process safety at RMP facilities, a requirement to evaluate and control natural hazards should be explicitly stated in the RMP regulation. While EPA will continue to rely on available industry guidance to evaluate compliance with this provision, the Agency requests public comment on whether EPA should develop additional guidance (beyond the Agency's existing RMP general guidance for risk management programs)[45] to help regulated facilities comply with this provision. EPA is particularly interested in comments related to suggested information resources such as databases, checklists, or narrative discussions, as well as commenters' recommendations for regional versus national, or sector-specific guidance.

As an alternative to the preferred approach, EPA seeks comment on whether to specify areas most at risk from climate or other natural events by adopting the list of areas exposed to heightened risk of wildfire, flooding, storm surge, or coastal flooding identified in, ''Preventing Double Disasters,'' discussed above. EPA could also add areas prone to earthquake to this list of areas, which presents a significant risk of NaTech that is unrelated to climate. Would this more definite, but limited, approach be easier to implement for stationary sources? Would this be simpler for public oversight by providing a specific reference such that all parties would know whether there is a heightened risk for a potential climate or earthquake impact at a facility? Should the Agency require sources in these areas to conduct hazard evaluations associated with climate or earthquakes as a minimum, while also requiring that all sources consider the potential for natural hazards unrelated to climate or earthquakes in their specific locations?

c. Power Loss

Whether caused by a natural hazard or some other event, power loss at hazardous chemical facilities can lead to a variety of negative impacts. Pumps and compressors may stop running, stirrers may quit mixing, lights may go out, and instruments and controls may malfunction. These equipment outages can lead to tank overflows, runaway chemical reactions, temperature or pressure excursions, or other process upsets which could lead to a spill, explosion, or fire. Even if there is no immediate release, thermal shock or other factors could result in a delayed effect that compromises the mechanical integrity of equipment during subsequent operations. When power is restored even after a brief interruption, some equipment may automatically restart before process operations are ready, while other equipment may need to be reset and manually restarted. When a facility relies on electrical power for any aspect of its process operations, it is imperative to anticipate how power loss affects the safeguards that prevent releases of hazardous chemicals.

Power loss has resulted in serious accidents at RMP-regulated facilities. The aforementioned 2017 Arkema incident highlighted the hazard of power loss on process safety; other previous incidents have also highlighted this hazard and offered lessons on potential safeguards that could be applied to prevent accidental chemical releases. The accidents described below—all associated with power failure—are examples of these situations and their potential severity. They also highlight the in-depth evaluation needed to prevent loss of power from resulting in an accidental release.

On May 1, 2001, at General Chemical Corp., in Richmond, California, a truck struck a utility pole, causing a power interruption and total plant shutdown. Shortly after, sulfur dioxide and sulfur trioxide began to escape from a boiler exit flue. When power was restored a short time later, a steam turbine that was required to keep the boiler exit flue under negative pressure could not be immediately restarted. While the turbine could not be restarted, residents near the plant were instructed to remain indoors. Somewhere between 50 to 100 individuals sought medical attention following the release. Troubleshooting revealed that an automatically controlled governor valve had malfunctioned.[46]

On August 23, 2010, at the Millard Refrigerated Services in Theodore, Alabama, hydraulic shock caused a roof-mounted suction pipe to catastrophically fail, leading to the release of more than 32,000 pounds of anhydrous ammonia. The hydraulic shock occurred during the restart of the plant's ammonia refrigeration system following a 7-hour power outage. Downwind of the ammonia release were crew members on the ships docked at Millard and over 800 contractors working outdoors at a clean-up site for the Deepwater Horizon oil spill. Nine ship crew members and 143 of the offsite contractors downwind reported exposure. Of the victims, 32 required hospitalization and four were placed in intensive care.[47]

National Response Center data also include information on 3,077 reported accidents from 2004–2020 that were associated with power loss.[48] While most of these incidents did not involve RMP chemicals, processes, or accidental releases as defined in CAA 112(r)(2), these events demonstrate a connection between the loss of power, loss of containment, and release into the environment.

The European Union published a 2021 bulletin that presents lessons learned from incidents worldwide involving power supply failures. The findings point to the importance of understanding the scenarios triggered by a primary failure in external power supply systems, power loss attributed to failures of onsite electrical equipment or electrical components, and even failures of redundant power supplies. In addition to providing statistics on the effects of power outages at chemical facilities, data provided by the European Union indicate that power failures at hazardous sites have resulted in 21 fatalities and over 9,500 injuries worldwide since 1981, as well as significant property damage and production loss from resulting fires and explosions. The most catastrophic event in the study occurred in Sakai (Osaka),

[45] EPA, ''Guidance for Facilities on Risk Management Programs (RMP),'' last modified December 20, 2021, *https://www.epa.gov/rmp/guidance-facilities-risk-management-programs-rmp#general.*

[46] EPA, *Chemical Accidents from Electric Power Outages* (Office of Solid Waste and Emergency Response, 2001), *https://www.epa.gov/sites/default/files/2013-11/documents/power.pdf.*

[47] CSB, ''Millard Refrigerated Services Ammonia Release,'' last modified January 15, 2015, *https://www.csb.gov/millard-refrigerated-services-ammonia-release/.*

[48] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

Japan, in 1982. It killed six people, injured 9,080 others (of which 8,876 were offsite), and destroyed 1,788 buildings.[49]

EPA has long recognized that loss of power can threaten hazardous chemical processes and cause accidental releases if not properly managed. While EPA did not specifically require power loss to be evaluated for Program 2 and Program 3 hazard reviews and PHAs, EPA and OSHA guidance has referred to it. In addition to acknowledging power failure in the Agency's ''General Guidance on Risk Management Programs for Chemical Distributors,'' [50] in 2001 EPA issued the safety alert, ''Chemical Accidents from Electric Power Outages.'' [51] These guidelines warned RMP facilities that power outages and restarts could potentially trigger serious chemical accidents. The alert outlined some of the accidents previously discussed and warned that process operations must be evaluated for the consequences of power outages to ensure that the process remains safe. It also indicates that if there is critical equipment that needs to operate to ensure the safety of the process or work area, facilities should install backup power supplies and services.

In 2008, OSHA published an interpretation letter [52] that addressed the concern about utility systems and their evaluation within the scope of PSM. OSHA indicated that the proper, safe functioning of all aspects of a process, whether they contain a highly hazardous chemical [53] or not, are important for the prevention and mitigation of catastrophic releases of highly hazardous chemicals. OSHA's position is that any engineering control (including utility systems) which does not contain a highly hazardous chemical (HHC) but can affect or cause a release of an HHC or interfere in the mitigation of the consequences of a release must be, at a minimum, evaluated, designed, installed, operated (with appropriate training and procedures), changed, and inspected/tested/maintained per OSHA PSM requirements. OSHA provided the example of an employer that identifies, through its PHA, that safe operation of its covered process relies on the electrical utility system. In response, the employer could determine that an uninterruptible power supply would be an appropriate safeguard against the loss of electrical utility to the process equipment.

EPA believes making more explicit this already-existing accident prevention program requirement, to evaluate hazards of the process [54] will ensure the threats of power loss are properly evaluated and managed to prevent or mitigate releases of RMP-regulated substances at covered facilities. EPA believes many facilities with RMP processes are managing the hazard of power loss. However, some recent RMP accidents are linked to power loss. EPA's review of RMP accident history data from 2004–2020 shows that at least 20 accident history reports have specifically indicated that power failure was a contributing factor to an accident. However, only 63 percent (310) and 44 percent (1,971) of facilities with Program 2 and Program 3 processes, respectively, have implemented backup power at their facilities, despite identifying that the loss of cooling, heating, electricity, and instrument air is a major potential hazard to their process operations.[55] [56]

The frequency and severity of extreme weather events may exacerbate power failure events if the impacts of potential power failures are not identified, and control strategies are not implemented. Climate change poses long-term challenges because it affects the frequency, intensity, and duration of weather events that represent the largest source of disruptions to the U.S. electricity grid. New studies have shown that the threat of power loss is increasing for utility customers. The Department of Energy reported that an increase in extreme weather events has led to an increase in power outages in recent years. Specifically, the Department of Energy's U.S. Energy Information Agency's data showed that electric power for U.S. customers was interrupted for an average of 7.8 hours (470 minutes) in 2017, nearly double the average total duration of interruptions experienced in 2016. Data indicate that more major weather events, such as hurricanes and winter storms, occurred in 2017 than in previous years, and the total duration of power interruptions caused by major events was longer.[57] [58] Recent major power outages also provide examples of this threat. In February 2021 in Texas, Winter Storm Uri left 4.5 million customers without power, some for several days.[59] In January 2022, one of the five worst winter storms in Virginia's history resulted in approximately 400,000 Dominion Energy customers experiencing a power outage when heavy snow and high winds impacted utility services.[60] Events like these also have the potential to impact hazardous chemical process operations.

Therefore, EPA is proposing to further emphasize loss of power in the hazards evaluated in hazard reviews and PHAs for Program 2 and Program 3 RMP-regulated processes. EPA believes further emphasis on these accident prevention program provisions will ensure that the risk of power failure is properly evaluated and managed to prevent or mitigate releases of RMP-regulated substances at covered facilities. EPA is proposing to include emphasizing that hazard evaluations under 40 CFR 68.50(a)(3) and 68.67(c)(3) address standby or emergency power systems.

EPA expects facilities to continue to use available resources to properly evaluate whether power loss is a hazard to their process and, if so, implement appropriate controls to prevent or reduce that hazard. In addition to the hazard evaluation guidance offered by CCPS and other industry-specific resources, below are resources that broadly discuss options for evaluation of power loss and standby power:

- *National Fire Protection Association (NFPA) 70: National Electrical Code.*[61]

[49] *Chemical Accident Prevention & Preparedness* (European Commission, 2021), *https://minerva.jrc.ec.europa.eu/en/shorturl/minerva/mahb_bulletin_15_on_power_failuresfinalpubsypdf.*

[50] EPA, *General Guidance on Risk Management Programs for Chemical Distributors, Ch. 6: Prevention Programs (2012),* pp. 6–10 to 6–11, *https://www.epa.gov/sites/default/files/2013-11/documents/chap-06-final.pdf.*

[51] EPA, *Chemical Accidents from Electric Power Outages* (Office of Solid Waste and Emergency Response, 2001), *https://www.epa.gov/sites/default/files/2013-11/documents/power.pdf.*

[52] OSHA, ''Standard Interpretation 1910.119,'' accessed January 28, 2022, *https://www.osha.gov/laws-regs/standardinterpretations/2008-01-31.*

[53] Term similar to ''RMP-regulated substance.''

[54] Existing requirements of the hazards to be evaluated in hazard evaluations are found at 40 CFR 68.50(a) for Program 2 processes and at 40 CFR 68.67(a)–(c) for Program 3 processes.

[55] EPA recognizes that not all RMP-regulated processes will need emergency backup power (for example, certain RMP-regulated storage processes).

[56] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[57] U.S. Energy Information Administration, ''Today in Energy,'' last modified November 30, 2018, *https://www.eia.gov/todayinenergy/detail.php?id=37652#.*

[58] Department of Energy, ''Electric Disturbance Events (OE–417) Annual Summaries,'' accessed January 28, 2022, *https://www.oe.netl.doe.gov/OE417_annual_summary.aspx.*

[59] Chris Stipes, ''New Report Details Impact of Winter Storm Uri on Texans,'' University of Houston, last modified March 29, 2021, *https://uh.edu/news-events/stories/2021/march-2021/03292021-hobby-winter-storm.php.*

[60] Dominion Energy, ''Dominion Energy Making Significant Progress Restoring Power, Preparing for Second Winter Storm,'' last modified January 5, 2022, *https://news.dominionenergy.com/2022-01-05-Dominion-Energy-Making-Significant-Progress-Restoring-Power,-Preparing-for-Second-Winter-Storm.*

[61] NFPA, *NFPA 70, National Electric Code* (2020), *https://www.nfpa.org/codes-and-standards/all-*

• *NFPA 110:* Standard for Emergency and Standby Power Systems.[62]
• *NFPA 1600:* Standard on Continuity, Emergency, and Crisis Management.[63]
• *3005.4–2020:* Institute of Electrical and Electronics Engineers (IEEE) Recommended Practice for Improving the Reliability of Emergency and Stand By Power Systems.[64]
• *3006.7–2013:* IEEE Recommended Practice for Determining the Reliability of 7x24 Continuous Power Systems in Industrial and Commercial Facilities.[65]
• National Renewable Energy Laboratory (NREL), ''Backup power cost of ownership analysis and incumbent technology,'' *NREL,* NREL/TP–5400–60732, Golden, CO (2014).[66]
• NREL, ''A comparison of fuel choice for backup generators,'' *NREL,* NREL/TP–6A50–72509, Golden, CO (2019).[67]

The Agency is concerned that the threat of extreme weather events has and will be used by some owners or operators to justify disabling equipment designed to monitor and detect chemical releases of RMP-regulated substances at their facility. EPA is concerned that air monitoring and control equipment is often removed from service before natural disasters to potentially prevent damage to equipment or, conceivably in some cases, evade monitoring requirements and therefore may not become operational again until much later, after the event or threat has passed. To prevent accidents, RMP owners or operators are required to develop a program that includes monitoring for accidental releases. EPA does not believe natural disasters should be treated as an exception to this requirement. A large-scale natural disaster may threaten multiple RMP facilities in a community simultaneously, leaving communities to endure the direct effects of a natural disaster without receiving warning of associated chemical releases. EPA wants to ensure RMP-regulated substances at covered processes are continually being monitored so that potential exposure to chemical substances can be measured during and following a natural disaster. Some industry standards already require continuous monitoring of process chemicals. For example, the International Institute of Ammonia Refrigeration's (IIAR's) ''Minimum Safety Requirements for Existing Closed Circuit Ammonia Refrigeration Systems'' requires facilities with ammonia refrigeration systems to provide a means for monitoring the concentration of an ammonia release in the event of a power failure.[68] While EPA is not requiring implementation of standby or emergency power for the entirety of an RMP process, EPA is proposing to require air pollution control or monitoring equipment associated with prevention and detection of accidental releases from RMP-regulated processes to have standby or backup power to ensure compliance with the intent of the rule. EPA seeks comment and data on this proposed provision, particularly on any potential safety issues associated with it.

d. Stationary Source Siting

The location of stationary sources, and the location and configuration of regulated processes and equipment within a source, can significantly affect the severity of an accidental release. The location of the stationary source in relation to public and environmental receptors may exacerbate the impacts of an accidental release, such as blast overpressures or concentrations of toxic gases, or conversely, it may allow such effects to dissipate prior to reaching receptors. Siting of processes and equipment within a stationary source can impact the surrounding community not only through the proximity of the accidental release to offsite receptors adjacent to the facility boundary (*e.g.,* people, infrastructure, environmental resources), but also through increasing the likelihood of a secondary ''knock-on'' release by compromising nearby processes. EPA is proposing to emphasize the requirement to consider stationary source siting in regulatory text to make sure that the intent of the requirement is properly incorporated in siting hazard evaluations.

The lack of sufficient distance between the source boundary and neighboring residential areas was a significant factor in the severity of several chemical accidents in the United States and internationally. The following are examples which illustrate the potential of such effects:

• *1984, Bhopal, India:* Union Carbide release of approximately 40 tons of methyl isocyanate into the air killed over 3,700 people. Most of the deaths and injuries occurred in a residential area near the plant.[69]
• *1984, Juan Ixhuatepec, Mexico:* Pemex liquefied petroleum gas (LPG) tank farm LPG pipeline rupture resulted in a large ground fire that spread to nearby LPG storage vessels, initiating a series of massive explosions. The cascading explosions and fires ultimately destroyed the entire facility and many nearby residences, resulting in over 500 fatalities and thousands of severe injuries.[70]
• *1994, Port Neal, Iowa, United States:* Terra Industries explosion involving ammonium nitrate (AN) killed four workers and damaged onsite ammonia tanks, creating an ammonia cloud that resulted in the evacuation of 2,500 people in nearby neighborhoods.[71]
• *2009, Belvidere, Illinois, United States:* NDK Crystal facility catastrophic rupture of a pressure vessel resulted in one public fatality and one public injury. A building fragment propelled by the force of the blast traveled nearly 650 feet and killed a member of the public at a highway rest stop parking lot. An 8,600-pound vessel fragment traveled 435 feet and impacted a neighboring business, injuring one offsite worker and causing significant property damage.[72]
• *2013, West, Texas, United States:* West Fertilizer Company explosion involving AN damaged an apartment complex and a nursing home located approximately 450 feet and 600 feet, respectively, from the source of the explosion, resulting in 3 public fatalities

codes-and-standards/list-of-codes-and-standards/detail?code=70.

[62] NFPA, *NFPA 110, Standard for Emergency and Standby Power Systems* (2022), *https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=110.*

[63] NFPA, *NFPA 1600, Standard on Continuity, Emergency, and Crisis Management* (2019), *https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1600.*

[64] IEEE, *IEEE Recommended Practice for Improving the Reliability of Emergency and Stand By Power Systems* (2020), *https://standards.ieee.org/ieee/3005.4/6218/.*

[65] IEEE, *IEEE Recommended Practice for Determining the Reliability of 7x24 Continuous Power Systems in Industrial and Commercial Facilities* (2013), *https://ieeexplore.ieee.org/document/6493367.*

[66] Kurtz, J., et al., *Backup Power Cost of Ownership Analysis and Incumbent Technology Comparison* (2014), *https://www.nrel.gov/docs/fy14osti/60732.pdf.*

[67] Ericson, S., and Olis, D., *A Comparison of Fuel Choice for Backup Generators* (2019), *https://www.nrel.gov/docs/fy19osti/72509.pdf.*

[68] IIAR, IIAR–9–2020 Minimum Safety Requirements for Existing Closed Circuit Ammonia Refrigeration Systems 7.4.7.2.

[69] Lees, Frank P. *Loss Prevention in the Process Industries,* Volume 3, 2nd ed. Appendix 5, Bhopal (Oxford: Butterworth-Heinemann, 1996).

[70] Lees, Frank P. *Loss Prevention in the Process Industries,* Volume 3, 2nd ed. Appendix 4, Mexico City (Oxford: Butterworth-Heinemann, 1996).

[71] EPA. Chemical Accident Investigation Report: Terra Industries, Inc., Nitrogen Fertilizer Facility (2014), *https://archive.epa.gov/emergencies/docs/chem/web/pdf/cterra.pdf.*

[72] CSB, ''NDK Crystal Inc. Explosion with Offsite Fatality,'' last modified November 14, 2013, *https://www.csb.gov/ndk-crystal-inc-explosion-with-offsite-fatality-/.*

(out of a total of 15 people killed in the explosion). The explosion also caused over 260 injuries, as well as damage to over 350 homes and 3 schools located near the plant.[73]

• 2018, Superior, Wisconsin, United States: Superior Refining Company, LLC, explosion and subsequent fire in the refinery's fluid catalytic cracking unit resulted in 36 people (workers and community members) seeking medical attention. In addition, a portion of Superior, Wisconsin, had to be evacuated.[74]

• 2020, Visakhapatnam, Andhra Pradesh, India: LG Polymers styrene release incident produced a toxic cloud that caused at least 11 fatalities and hundreds of injuries in the nearby community.[75]

This list of accidents provides examples of the numerous accidents with offsite consequences resulting from the close proximity of industrial facilities to public receptors, demonstrating that selection of locations of processes and process equipment within a stationary source can impact the surrounding community. Communities are affected not only by the proximity of accidental releases to offsite receptors (*e.g.,* people, infrastructure, environmental resources) near the facility boundary, but also by the increased likelihood of subsequent releases from other nearby processes compromised by the initial release. As accidents continue to happen, EPA is proposing to emphasize the intent of the required siting evaluation to ensure protection of human health and the environment.

The OSHA PSM standard and RMP rule both require that facility siting be addressed as one element of a PHA (29 CFR 1910.119(e)(3)(v), and 40 CFR 68.67(c)(5)). In response to comments on the proposed PSM rule, OSHA indicated that facility siting should always be considered during PHAs and therefore decided to emphasize this element by specifically listing siting evaluation in regulatory text.[76] With the adoption of PHA regulatory text, EPA also recognized the offsite benefits of siting evaluations. EPA's approach to the siting requirement is consistent with its general approach to PSM in the 1996 RMP rule: sound, comprehensive PSM systems can protect workers, the public, and the environment.[77] The Agency chose to include additional guidance in a frequently asked questions section of its website to not only indicate the Agency's expectations, but also to provide guidance on the RMP rule's coverage of facility siting evaluation to include consideration of offsite receptors. The guidance states: ''The requirement to consider stationary source siting during the process hazard analysis means that you should consider the location of the covered vessels and evaluate whether their location creates risks for offsite public or environmental receptors, as well as onsite receptors. This analysis should consider the proximity of the vessels that could lead to a release of a regulated substance. The proximity of the vessels to onsite equipment or activities nearby will have been considered for OSHA; the proximity of the vessels in relation to offsite receptors will be considered if not already considered for OSHA. The analysis may be done qualitatively. The analysis addresses whether the location of the vessels creates risks that could be reduced by changing the location or taking other actions, such as installing mitigation systems.'' [78]

As with other aspects of the RMP rule, EPA expects regulated facilities to rely on industry guidance to help adequately address stationary source siting in PHAs. The following examples of relevant industry guidance on siting considerations are available to facility owners and operators:

• American Petroleum Institute (API) Recommended Practice 752, Management of Hazards Associated with Location of Process Plant Buildings.[79]

• API Recommended Practice 753, Management of Hazards Associated with Location of Process Plant Portable Buildings.[80]

• CCPS Guidelines for Evaluating Process Plant Buildings for External Explosions, Fires, and Toxic Releases.[81]

• CCPS Guidelines for Siting and Layout of Facilities.[82]

• NFPA Separation Distances in NFPA Codes and Standards.[83]

The CCPS ''Guidelines for Siting and Layout of Facilities'' addresses external factors influencing site selection, as well as factors internal to the source that could influence site layout and equipment spacing. The most recent edition of this CCPS publication was updated to address many developments in the last decade that have improved how companies survey and select new sites, evaluate acquisitions, and expand their existing facilities.[84] The title was also updated to emphasize not only siting of buildings and unit operations within a facility, but also siting of facilities within a community. The guidance addresses identifying the process hazards and risks, selecting a facility location, selecting process unit layout within a facility, selecting equipment within a process unit, and managing changes.

As an industry-specific example for siting, the Compressed Gas Association's (CGA's) ''G–2.1—Requirements for the Storage and Handling of Anhydrous Ammonia,'' [85] among other things, requires facilities with anhydrous ammonia systems to apply specific location requirements for processes, such as tank loading and unloading operations, and equipment, such as ammonia storage containers, piping, and nurse wagons. It also includes specific minimum separation distances from storage containers to railroad mainlines, highways, lines of

[73] CSB, ''West Fertilizer Explosion and Fire,'' last modified January 28, 2016, *https://www.csb.gov/west-fertilizer-explosion-and-fire-/.*

[74] CSB, ''Husky Energy Refinery Explosion and Fire,'' accessed January 28, 2022, *https://www.csb.gov/husky-energy-refinery-explosion-and-fire/.*

[75] Doyle, Amanda, ''Hundreds Hospitalized After Styrene Gas Leak in India,'' *The Chemical Engineer,* last modified May 7, 2020, *https://www.thechemicalengineer.com/news/hundreds-hospitalised-after-styrene-gas-leak-in-india.*

[76] OSHA, *Final Rule on Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents,* 29 CFR part 1910 (1992), *https://www.osha.gov/laws-regs/federalregister/1992-02-24.*

[77] 61 FR 31687; June 20, 1996.

[78] EPA, ''Is EPA's PHA Stationary Source Siting Requirement Analogous to OSHA's PSM?'' accessed January 31, 2022, *https://www.epa.gov/rmp/epas-pha-stationary-source-siting-requirement-analogous-oshas-psm.*

[79] API, *Recommended Practice 752, Management of Hazards Associated with Location of Process Plant Buildings, 3rd Edition* (December 2020), *https://www.api.org/oil-and-natural-gas/health-and-safety/refinery-and-plant-safety/process-safety/process-safety-standards/rp-752.*

[80] API, *Recommended Practice 753, Management of Hazards Associated with Location of Process Plant Portable Buildings, 1st Edition* (June 2007), *https://www.api.org/oil-and-natural-gas/health-and-safety/refinery-and-plant-safety/process-safety/process-safety-standards/rp-753.*

[81] CCPS, *Guidelines for Evaluating Process Plant Buildings for External Explosions, Fires, and Toxic Releases, 2nd Edition* (2012), *https://www.aiche.org/resources/publications/books/guidelines-evaluating-process-plant-buildings-external-explosions-fires-and-toxic-releases-2nd.*

[82] CCPS, *Guidelines for Siting and Layout of Facilities, 2nd Edition* (Hoboken, NJ: Wiley, 2018), *https://www.aiche.org/ccps/resources/publications/books/guidelines-siting-and-layout-facilities-2nd-edition.*

[83] Argo, Ted, and Evan Sandstrom, *Separation Distances in NFPA Codes and Standards* (The Fire Protection Research Foundation, 2014), *https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Hazardous-materials/RFSeparationDistancesNFPACodesAndStandards.ashx.*

[84] CCPS, *Guidelines for Siting and Layout of Facilities, 2nd Edition* (Hoboken, NJ: Wiley, 2018), *https://www.aiche.org/ccps/resources/publications/books/guidelines-siting-and-layout-facilities-2nd-edition.*).

[85] ANSI/CGA, *Requirements for the Storage and Handling of Anhydrous Ammonia (an American National Standard)* (2014), *https://webstore.ansi.org/standards/cga/ansicga2014.*

adjoining properties, and places of public assembly and residential and institutional occupancy. Asmark Institute,[86] a well-known agricultural industry organization, developed an RMP Program 2 Hazard Review checklist as a resource for its industry to apply CGA G–2.1 and other applicable industry standards.[87]

Despite enforcement and the consequences of catastrophic accidents, issues of siting continue to threaten process safety. For example, in 2018, EPA took an enforcement action against an agricultural anhydrous ammonia sales operation in Missouri that failed to identify the hazards associated with the proximity of the facility to a home and a nearby firehouse.[88] In 2021, EPA took an enforcement action against a chemical manufacturing facility in Maine that did not address the facility's proximity to a nearby bay; lack of proximity to external trained emergency responders; and process layout—specifically, the proximity of shutdown valves to operations.[89]

EPA reviewed data from OSHA PSM PHA enforcement actions. In 2018, 16 cases were filed where facility siting was cited as a serious violation [90] that could cause an accident or illness that would most likely result in death or serious physical harm.[91] One of those cases was also reported as an RMP accident that occurred on September 1, 2016, at the Brookshire Grocery Company's distribution center in Tyler, Texas. A failure in the piping on the roof of the cold storage building caused an ammonia leak. The leak caused 16 injuries and resulted in the evacuation of the building, the closure of a nearby intersection, and the need for nearby residents to shelter in place.[92] Given the potential risk demonstrated by recurring accidents, EPA seeks to ensure that emphasis is placed on the importance of all aspects of a proper facility siting evaluation.

In a 2014 RMP request for information (RFI),[93] EPA requested comments on whether to consider stationary source location requirements for future rulemaking. EPA specifically asked whether it should amend the RMP rule to include more specific siting requirements as part of the PHA. Though EPA received comments on the issue, EPA chose not to move forward with additional action on siting in the amendment's final rule but indicated that the Agency would consider comments for a future rulemaking.

In response to the RFI, commenters opposed adding additional provisions to address stationary source siting, citing as rationale that:

- Existing facilities have limited flexibility to alter locations onsite.[94]
- Specifying or requiring buffer or setback zones is a complicated issue and must be looked at differently for new and existing facilities.[95]
- EPA would be intruding on local zoning codes when establishing siting criteria.[96]
- Existing industry guidance is sufficient.[97]
- Requiring additional siting requirements for both new and existing facilities could result in significant cost to the regulated entity.[98]

One opposing commenter specifically indicated that, to date, EPA has allowed for siting considerations to be included under performance-based elements of the RMP program. The commenter stated that any modification of the existing requirements would be inconsistent with a risk-based management system approach.[99] Another commenter, although generally in opposition to new siting requirements, stated that for existing facilities, the owner/operator should demonstrate that other technologies, such as early detection, early communication, prevention measures, and mitigation measures, are applied to manage risk within acceptable levels. This commenter also stated that in some cases, it may be necessary to make process changes, and in unique cases where the risk cannot be abated, owners/operators should consider relocation of part or all facility operations.[100]

There were also commenters who argued stationary source siting should be expanded in the RMP rule. For example, one commenter stated the PHA must address issues of co-location both in terms of adjacent facilities and in terms of vulnerable populations and infrastructure. This commenter stated that at a minimum, facilities must address hazards to and from adjacent facilities—including impacts that a release from their facility would have on other facilities and the impact that a release from other facilities would have on their facility—and further expansion should address buffer zones for nearby residents, hospitals, and infrastructure. The commenter argued that new facilities or expansion of facilities must consider the cumulative impacts from adjacent facilities and look at the threat that a release from the new facility or expansion would pose to other facilities, infrastructure, populations, and environmental resources.[101] Additionally, CSB encouraged EPA to incorporate more explicit requirements for identifying, evaluating, and addressing facility siting during a PHA to assess both offsite consequences and onsite receptors within that stationary source that may be impacted by chemical fire, explosion, or release.[102]

EPA believes that many matters outlined in comments about the current stationary source siting provision, while not explicitly addressed within the current regulatory text, are implicit and mandatory. Therefore, at this time, EPA is only choosing to make more explicit what is required to be addressed in a stationary source siting evaluation. Rather than propose additional requirements, EPA is expounding on the current regulatory text to ensure that siting evaluations properly account for hazards resulting from the location of processes, equipment, building, and proximate facilities, and their effects on the surrounding community. In addition

[86] Asmark Institute, *https://www.asmark.org/.*

[87] Asmark Institute, *MyRMP Hazard Review Worksheet for Program 2 Facilities with Anhydrous Ammonia* (2015), *https://www.asmark.org/myRMP/Forms/P2AnhydrousWorksheet.pdf.*

[88] Available at *https://yosemite.epa.gov/oa/rhc/epaadmin.nsf/Filings/E54E9167BD7A4EF6852582C0001BCFD5/$File/CAA-07-2018-0214%20United%20Cooperatives%20CAFO.pdf.*

[89] Available at *https://yosemite.epa.gov/OA/RHC/EPAAdmin.nsf/Filings/D26E190D9B6DA9E18525875F006CA916/$File/CAA-01-2021-0070%20CAF)%20ViewPDF%20(8).pdf.*

[90] Identified as a ''serious'' violation under OSHA in: OSHA, ''Federal Employer Rights and Responsibilities Following an OSHA Inspection-1996,'' accessed January 31, 2022, *https://www.osha.gov/publications/fedrites#:~:text=SERIOUS%3A%20A%20serious%20violation%20exists,have%20known%20of%20the%20violation.*

[91] U.S. Department of Labor, ''Data Catalog; OSHA Enforcement Data; osha_violation'' accessed March 17, 2022, *https://enforcedata.dol.gov/views/data_summary.php.*

[92] Louanna Campbell, ''Tyler Fire Marshal's Office Releases Cause of Ammonia Leak at Brookshire's Warehouse,'' last modified September 5, 2017, *https://tylerpaper.com/news/local/tyler-fire-marshals-office-releases-cause-of-ammonia-leak-at-brookshires-warehouse/article_3a7581b2-63b9-57b9-96c2-0b163f546668.html.*

[93] EPA, *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7),* Proposed rule, 79 FR 44603 (July 13, 2014), pp. 44603–44633, *https://www.federalregister.gov/documents/2014/07/31/2014-18037/accidental-release-prevention-requirements-risk-management-programs-under-the-clean-air-act-section.*

[94] EPA–HQ–OEM–2014–0328–0121; 0543, 0548, 0605, 0616, 0624.

[95] EPA–HQ–OEM–2014–0328–0543; 0546, 0584, 0616, 0632.

[96] EPA–HQ–OEM–2014–0328–0543; 0584, 0614, 0616, 0624, 0626, 0646, 0667.

[97] EPA–HQ–OEM–2014–0328–0121; 0543, 0546, 0605, 0620, 0624, 0640, 0665.

[98] EPA–HQ–OEM–2014–0328–0624; 0626.

[99] EPA–HQ–OEM–2014–0328–0691.

[100] EPA–HQ–OEM–2014–0328–0543.

[101] EPA–HQ–OEM–2014–0328–0637.

[102] EPA–HQ–OEM–2014–0328–0689.

to providing some detail on what is intended by the Program 3 regulatory text on stationary source siting, EPA is also proposing to revise language to Program 2 hazard evaluations to ensure that all RMP facilities with the potential to cause offsite consequences to public receptors account for these hazards. Therefore, EPA is proposing to amend regulatory text for Program 2 and Program 3 under 40 CFR 68.50(a)(6) and 68.67(c)(5), respectively, to define stationary source siting evaluation as inclusive of the placement of processes, equipment, buildings, and hazards posed by proximate facilities, and accidental release consequences posed by proximity to the public and public receptors. The proposed amendments would make more explicit the requirement that hazard evaluations for processes under both Program 2 (hazard review) and Program 3 (PHA) need to address the matters in the siting evaluation.

Because there is a breadth of guidance on siting, EPA believes there is adequate information available for facilities to comply with the proposed text. EPA expects facilities to continue to use available resources, including those previously mentioned, and any additional industry-specific guidance to properly evaluate siting hazards.

e. Hazard Evaluation Recommendation Information Availability

Ensuring that communities, local planners, local first responders, and the public have appropriate chemical facility hazard-related information is critical to the health and safety of responders and the local community. In this action, EPA is proposing ways to enhance information sharing and collaboration between chemical facility owners/operators, Tribal and local emergency planning committees (TEPCs/LEPCs), first responders, and the public in a manner that EPA believes balances security and proprietary considerations. In addition to the information accessibility provisions in section IV.C of this preamble, EPA is also proposing that recommendations resulting from hazard evaluations discussed in this section be included in a facility's risk management plan submitted under 40 CFR part 68, subpart G. Specifically, facilities would be required to implement recommendations or list in their risk management plans the recommendations from their natural hazard, loss of power, and siting evaluations that were not adopted and the justification for those decisions. EPA believes this will enable the public to ensure facilities have conducted appropriate evaluations to address potential hazards that can affect communities near the fenceline of facilities. In response to comments in the RFI on increased public disclosure of information, one commenter stated that it is important to help the public understand how the facilities address the hazard present in their community and keep the risk at or below the ''acceptable level.'' EPA believes that when local citizens have adequate information and knowledge about facility hazards, facility owners and operators may be motivated to further improve their safety in response to community pressure and oversight.[103]

EPA is proposing to require facilities to list in section 7 (Program 3) and section 8 (Program 2) of their risk management plans, for each process, recommendations resulting from hazard evaluations of natural hazards, loss of power, and facility siting that the owner/operator chooses to decline. EPA realizes that the number of hazard evaluation recommendations may vary widely, depending on the complexity of the process or facility. Therefore, EPA seeks comments on the format of listing the recommendations, whether EPA should require recommendations to be included in narrative form, or whether the Agency should provide specific categories of recommendations for facilities to choose from when reporting. Another option would be to allow the owner or operator to post this information online and provide a link to the information within their risk management plan.

Regarding the requirement to provide justification for not implementing recommendations, EPA is proposing to allow facilities to choose from pre-selected categories. Under OSHA guidance, an employer may decline to adopt a PHA recommendation if, based upon adequate evidence, the employer can document that one or more of the following conditions is true:[104]

- The analysis upon which the recommendation is based contains material factual errors.
- The recommendation is not necessary to protect the health and safety of the employer's own employees, or the employees of contractors.
- An alternative measure would provide a sufficient level of protection.
- The recommendation is infeasible.

EPA is proposing to adopt these same categories in the risk management plan as justification for declined recommendations, with a modification to account for public receptors (*i.e.,* the recommendation is not necessary to protect public receptors). EPA seeks public comment on this approach and on alternative categories or methods to provide justification for declining relevant recommendations. EPA wants to ensure a balanced approach to providing beneficial data to the public as well as a straightforward method of reporting for facility owners/operators.

Proposed revisions to regulatory text include, requiring risk management plans under 40 CFR 68.170(e)(7) and 68.175(e)(8), reporting declined natural hazard, power loss, and siting hazard evaluation recommendations and their associated justifications in the risk management plan submitted to EPA.

f. Summary of Proposed Regulatory Text

EPA is proposing to emphasize that Program 2 hazard reviews and Program 3 PHAs identify and address natural hazards, loss of power, and facility siting (as described in this document) in order to effectively prevent or minimize accidental releases of regulated substances to protect human health and the environment. EPA is also proposing to require the owner or operator to report any recommendations arising from these evaluations that are declined, along with the owner or operator's justification for declining them, within the risk management plan submitted to EPA. A summary of the proposed regulatory text changes are described below:

- Hazard evaluations under 40 CFR 68.50(a)(5) and 68.67(c)(8) to explicitly address external events such as natural hazards, including those caused by climate change or other triggering events that could lead to an accidental release.
- Hazard evaluations under 40 CFR 68.50(a)(3) and 68.67(c)(3) to explicitly address standby or emergency power systems.
- Hazard evaluations under 40 CFR 68.50(a)(6) and 68.67(c)(5) to explicitly define stationary source siting as inclusive of the placement of processes, equipment, buildings within the facility, and hazards posed by proximate facilities, and accidental release consequences posed by proximity to the public and public receptors.
- Risk management plans under 40 CFR 68.170(e)(7) and 68.175(e)(8) to include declined natural hazard, power loss, and siting hazard evaluation recommendations and their associated justifications.

[103] EPA–HQ–OEM–2014–0328–0543–27.

[104] OSHA, Process Safety Management of Highly Hazardous Chemicals—Compliance Guidelines and Enforcement Procedures, 29 CFR 1910.119 (September 13, 1994), *https://www.osha.gov/sites/default/files/enforcement/directives/CPL02-02-045_CH-1_20150901.pdf.*

EPA realizes, and commenters have indicated in the past,[105] that only a small number of facilities are responsible for a significant percentage of RMP accidents. EPA expects the proposed language will ensure that those owner/operators who are not properly evaluating these hazards will be explicitly required to do so, which will better ensure owner/operators do their due diligence in preventing or minimizing accidental releases of regulated substances to protect human health and the environment. EPA seeks comment on the proposed language or alternative language that will not unnecessarily expand the scope of hazard evaluations.

2. Prevention Program Provisions

The following section describes proposed modifications to the prevention program provisions of the RMP rule. Several of these changes address issues that have been the subject of both the 2017 amendments rule and the 2019 reconsideration rule, including safer technologies and alternatives analysis, root cause analysis incident investigations, and third-party audits. As detailed below, the Agency's preferred options for these topics adjust the scope of the provisions adopted and rescinded by the prior rulemakings. EPA also proposes new requirements for improved employee participation in prevention programs. The options proposed below should enhance community safety, especially in communities facing elevated probability of accidents, without unduly burdening overly broad classes of stationary sources.

a. Safer Technologies and Alternatives Analysis (STAA)

EPA is proposing a requirement in 40 CFR 68.67(c)(9) for some Program 3 regulated processes to consider and document the feasibility of applying safer technologies and alternatives as part of their PHA. This requirement applies to petroleum and coal products manufacturing processes (classified in NAICS code 324) and chemical manufacturing processes (NAICS code 325) that are located within 1 mile of another RMP-regulated facility with these same processes (classified in NAICS 324 and 325). EPA is also proposing that all facilities with petroleum and coal products processes (in NAICS 324) using hydrofluoric acid (HF) in an alkylation unit (approximately 45 facilities) consider safer alternatives to HF alkylation, regardless of proximity to another NAICS 324- or 325-regulated facility.

Current PHA requirements (40 CFR 68.67) under the RMP rule include some aspects of the hierarchy of controls analysis.[106] As discussed in the proposed regulation that became the 2017 amendments rule, Program 3 processes are required to address process hazards using engineering and administrative controls since 1996. However, as EPA pointed out, there is no explicit requirement for owners and operators to address inherent safety—the first tier of the hierarchy of controls. EPA is proposing to expand upon these requirements by requiring the owners or operators to consider safer technology and alternative risk management measures that could eliminate or reduce risk from process hazards. In addition to engineering and administrative controls, owners and operators of facilities with Program 3 processes covered under this provision would have to consider the application of the following safer technology measures, in the following order: inherently safer technology (IST) or inherently safer design (ISD), passive safeguards, active safeguards, and procedural safeguards.

In this proposed regulation, EPA is not requiring facilities to implement identified inherent safety measures; rather, EPA is requiring owners and operators to include an evaluation, including the results of the STAA analysis, as part of the PHA requirements in 40 CFR 68.67(e), and, to document the feasibility of inherent safety measures based on more than cost alone. Submission of STAA analysis summaries to EPA is discussed in further detail under ''STAA technology transfer.'' Finally, EPA is proposing that a facility's STAA team include, and document the inclusion of, one member who works in the process and has expertise in the process being evaluated. EPA is also proposing to include a more comprehensive practicability assessment, in addition to the STAA evaluation requirements as part of the PHA. As part of this analysis, owners and operators would be required to identify, evaluate, and document the practicability of implementing inherent safety measures, including documenting the practicability of publicly available safer alternatives.

i. Background on IST/ISD

EPA discussed safer technology and alternatives at length in its proposed RMP rule amendments published in 2016. ''Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act'' (81 FR 13638, March 14, 2016). ''Safer technology and alternatives'' refers to risk reduction or risk management strategies developed through analysis using a hierarchy of process risk management strategies (or hierarchy of controls). In this context, the hierarchy of controls consists of controls that are inherent, passive, active, and procedural. STAA involves considering IST or ISD, which refer to strategies that permanently reduce or eliminate hazards associated with the materials and operations of a process. As discussed in EPA/OSHA's 2015 chemical safety fact sheet,[107] the four major inherently safer strategies are: (1) substitution: replacing hazardous materials with less hazardous substances; (2) minimization: using smaller quantities of hazardous substances; (3) moderation: creating less hazardous conditions or using less hazardous forms or facility designs to minimize the impact of potential releases of hazardous materials or energy; and (4) simplification: designing facilities to eliminate unnecessary complexity and make operating errors less likely. Inclusion of IST/ISD in the RMP regulations is consistent with several CSB investigations that demonstrated that incidents could have been prevented or consequences mitigated by using IST/ISD.[108] [109] [110] [111]

In the supplemental proposed RMP rule for the initial requirements under CAA 112(r)(7), EPA solicited comments on requiring IST. ''Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)'' (60 FR 13526, March 13, 1995) (1995 supplemental proposal). Prior to the 2017 final RMP amendments, however, EPA had never

[105] EPA–HQ–OEM–2015–0725–1628.

[106] Safety experts have developed a way to group types of controls in an order or ''hierarchy of controls'' that prefers those that are least likely to fail. As discussed in more detail in in section IV.A.2.a.i, below, controls that eliminate the hazard are preferred over those that do not require power or activation, which are preferred over those that do require power or activation, which are preferred over those that depend simply on rules of operation.

[107] EPA and OSHA, *Chemical Safety Alert: Safer Technology and Alternatives* (June 2015), *https://www.epa.gov/sites/default/files/2015-06/documents/alert_safer_tech_alts.pdf.*

[108] CSB, ''Chevron Refinery Fire,'' last modified January 28, 2015, *https://www.csb.gov/chevron-refinery-fire/.*

[109] CSB, ''Tesoro Refinery Fatal Explosion and Fire,'' last modified May 1, 2014, *https://www.csb.gov/tesoro-refinery-fatal-explosion-and-fire/.*

[110] CSB, ''Kleen Energy Natural Gas Explosion,'' last modified June 28, 2010, *https://www.csb.gov/kleen-energy-natural-gas-explosion/.*

[111] CSB, ''Bayer CropScience Pesticide Waste Tank Explosion,'' last modified January 1, 2011, *https://www.csb.gov/bayer-cropscience-pesticide-waste-tank-explosion/.*

required RMP facilities to conduct an STAA or implement identified IST/ISD. The 2017 amendments rule added a requirement to the PHA for regulated sources in specified industrial sectors to identify and address hazards at least every 5 years. Specifically, owners or operators of facilities with Program 3 regulated processes in NAICS codes 322 (paper manufacturing), 324 (petroleum and coal products manufacturing), and 325 (chemical manufacturing) were required to conduct an STAA as part of their PHA and evaluate and document the practicability of any IST identified. The provision was intended to reduce the risk of serious accidental releases by requiring facilities in these sectors to conduct a careful examination of potentially safer technology and designs that they could implement in lieu of, or in addition to, their current technologies. EPA adopted STAA based on recommendations from CSB and other engineering experts, as well as lessons learned from case studies and investigations of accidents. EPA identified the sectors covered by this requirement by using sector-wide accident rates. EPA believes that some of the practicability of implementation will be identified in the course of the PHA and that for many processes, owner/operators will already know if implementing a particular technology is practicable. EPA solicits comments on the industry understanding of the practicability assessment, and how this might differ from the findings identified in the PHA, as well as the additional benefit of such a provision.

In the 2019 rule completing the process of reconsidering the 2017 rule, EPA removed the new regulatory STAA requirement on all facilities in NAICS 322, 324, and 325 that are in the RMP program. ''Accidental Release Prevention Requirements: Risk Management Programs Under the CAA'' (84 FR 69834, December 19, 2019) (2019 reconsideration rule), EPA analyzed accident history data in the RMP database, both nationally and in States and localities with programs that contained some or all the elements of the prevention program provisions. EPA discusses accident trends overall in Section III.C of this preamble. The analysis suggested that accident rates in jurisdictions that adopted STAA-like programs were not lower than national accident rates. Based on this assessment, EPA stated that STAA regulations would likely not be effective at reducing accidents if applied on a national scale, relative to the pre-2017 program. Instead, EPA decided to take a source-specific, compliance-driven approach, using oversight and enforcement tools to identify sources that would appear to benefit from STAA and to then seek STAA adoption at such sources.

ii. Hydrogen Fluoride

Hydrogen fluoride (HF) is an extremely toxic chemical that is lethal at 30 ppm. It is covered by RMP when more than 1,000 pounds are used in a process. HF is an extremely toxic chemical used for alkylation at 27 percent of facilities in NAICS 324 (45 of 163). HF has been the subject of recent catastrophic near-miss investigations by CSB. One of these investigations involved an explosion at the Husky Refinery in Superior, Wisconsin, wherein debris impacted processes at a further distance from the explosion than the refinery's HF storage tank.[112] CSB also investigated a near-miss in Torrance, California, wherein the explosion of ExxonMobil's electrostatic precipitator resulted in debris landing near the refinery's modified HF tanks.[113]

There are recognized potentially safer alternatives available for HF alkylation that have been successfully implemented by refineries, such as sulfuric acid alkylation, ionic liquid alkylation, or solid acid catalyst alkylation.[114] [115] EPA contends that the practicability of these potentially safer alternatives is situation-specific and that owners and operators are usually in the best position to make these determinations. Phasing out HF or switching to an inherently safer alternative may require construction of a new alkylation unit. Depending on the production levels of the refinery, implementation of alternatives to HF alkylation could cost between $35 million and $900 million (see RIA, Appendix A).

iii. Recent Public Input on STAA

During EPA's 2021 listening sessions, approximately 245 commenters provided feedback on STAA. Many commenters, including individual commenters, professional associations, advocacy groups, labor organizations, an association of government agencies, and a Federal agency, supported EPA restoring the 2017 amendments rule requirement for facilities to assess safer technologies and substitute safer alternatives in their processes where feasible.[116] A group of retired Federal agency officials said that facilities should share this analysis with communities and emergency responders, and EPA should establish a ''publicly accessible clearinghouse of safer alternatives.'' [117] Individual commenters stated that STAAs should include an assessment of environmental justice, including the burden on surrounding communities,[118] while another commenter stressed that STAAs would be very beneficial for communities with environmental justice concerns.[119] An environmental advocacy group suggested that RMP facilities should be required to develop and submit a hazard reduction plan made by facility experts and workers that would start at the top of the hierarchy of controls and include considerations of an EPA-generated list of inherently safer chemicals.[120]

Another advocacy group stated that it is interested in having facilities incorporate solutions data into STAAs and—along with a State regulatory agency, labor organizations, advocacy groups, and an individual commenter—supported requiring STAAs from every RMP facility in sectors such as water treatment, not just in oil manufacturing, chemical manufacturing, and paper manufacturing.[121] A State regulatory agency mentioned that many safer technology alternative opportunities exist in other sectors and expressed that there should not be any limit on how many NAICS sectors are included.[122]

An advocacy group suggested that EPA implement an even more robust alternatives analysis and implementation process than that of the STAA proposed during the 2017 amendments rule. The commenter said that, rather than basing the universe of facilities subject to the STAA requirement on the results of data analysis performed in 2017, EPA should require this type of assessment at all facilities. The commenter proposed that,

[112] CSB, ''Husky Energy Refinery Explosion and Fire,'' accessed February 10, 2022, *https://www.csb.gov/husky-energy-refinery-explosion-and-fire/.*

[113] CSB, ''ExxonMobil Refinery Explosion,'' last updated May 3, 2017, *https://www.csb.gov/exxonmobil-refinery-explosion-/.*

[114] Chevron, ''Chevron and Honeywell Announce Start-up of World's First Commercial ISOALKY™ Ionic Liquids Alkylation Unit,'' last modified April 13, 2021, *https://www.chevron.com/stories/chevron-and-honeywell-announce-start-up-of-isoalky-ionic-liquids-alkylation-unit.*

[115] United Steelworkers, *A Risk Too Great: Hydrofluoric Acid in U.S. Refineries* (April 2013), *https://www.usw.org/workplaces/oil/oil-reports/A-Risk-Too-Great.pdf.*

[116] EPA–HQ–OLEM–2021–0312–0028; 0035, 0039, 0044, 0051, 0057, 0058, 0081, 0095, 0387, 0388.

[117] EPA–HQ–OLEM–2021–0312–0004.

[118] EPA–HQ–OLEM–2021–0312–0013; 0380.

[119] EPA–HQ–OLEM–2021–0312–0028.

[120] EPA–HQ–OLEM–2021–0312–0149.

[121] EPA–HQ–OLEM–2021–0312–0014; 0039, 0057, 0152.

[122] EPA–HQ–OLEM–2021–0312–0039.

should EPA determine that ''tiered protection should be implemented,'' it should require IST assessment and implementation at facilities in sectors with known hazard elimination or reduction methods, in areas with climate risks and other natural hazard risks, in communities with more than one RMP facility, and at facilities that are using or storing the highest quantity and toxicity of regulated chemicals and are most accident-prone.[123]

A few industry trade associations stated that STAAs and IST evaluations would not generate tangible safety outcomes beyond the current PHA requirements.[124] One of the industry trade associations also discussed EPA's decision to limit the number of facilities covered by STAA provisions in the 2017 amendments rule, which the commenter described as lacking evidentiary support.[125] An industry trade association that strongly opposed the STAA provision in the 2017 amendments rule supported its removal in the 2019 reconsideration rule, stating that such a STAA requirement would not improve the effectiveness of the rule in relation to protecting communities with environmental justice concerns; instead, it would divert resources.[126] An industry trade association stated that some industries already adopt inherently safer processes and technologies without direction from EPA.[127]

iv. Recent Public Input on HF

During EPA's 2021 listening sessions, many commenters, including individual commenters and advocacy groups, discussed the dangers of HF and modified HF and argued that facilities should be required to transition to safer alternatives.[128] An individual commenter said that HF is often located in facilities in communities with environmental justice concerns that are already exposed to many other hazards. A State elected official said that EPA should require refineries to evaluate the replacement of these chemicals and report their findings to EPA within a year.[129] A form letter campaign recommended an amendment to 40 CFR 68.169 which, if implemented, would convert all HF refineries to safer alternatives within 4 years.[130] A few individual commenters and an advocacy group expressed general support for this amendment.[131] Another individual commenter in support of this amendment stated that over 40 refineries containing large quantities of HF endanger 19 million people, including children, young adults, unhoused people, and more.[132]

v. STAA Applicability

EPA is proposing to limit the applicability of the STAA provisions to sources in the petroleum and coal products manufacturing (NAICS 324) and chemical manufacturing (NAICS 325) sectors, located within 1 mile of another RMP-regulated 324 or 325 facility. EPA is also proposing that all facilities in NAICS 324 using HF in an alkylation unit (approximately 45 facilities) conduct an STAA for the use of safer alternatives compared to HF alkylation. EPA believes that while most sectors regulated under 40 CFR part 68 could identify safer technology and alternatives, sources involved in complex manufacturing operations have the greatest range of opportunities to identify and implement safer technologies and alternatives, particularly related to inherent safety. These sources generally produce, transform, and consume large quantities of regulated substances under sometimes extreme process conditions and using a wide range of complex technologies.

Multiple factors led EPA to propose focusing the STAA requirement on densely co-located petroleum refining and chemical manufacturing facilities (*i.e.,* facilities with processes in NAICS codes 324 and 325 that are within 1 mile of another facility in those NAICS codes). The distance of 1 mile represents the median distance of facilities with 324 and 325 NAICS processes that have had accidents in the period from 2016 to 2020 to the nearest facility with a process in these NAICS in 324 or 325. Facilities in these NAICS codes experience more frequent accidental releases (see IV.A.2.vi, below). In the period from 2016 to 2020, communities near densely co-located facilities in these NAICS codes have experienced more frequent accidents than communities near other facilities in these NAICS codes and have had more offsite impacts from releases than other communities have experienced (see IV.A.2.vii, below). Additionally, 80% of 324 and 325 facilities located within 1 mile of another 324/325 facility have toxic worst case release scenario distance to endpoints reaching or exceeding 1 mile. The proximity of densely co-located refining and chemical manufacturing facilities creates a greater risk of an accident at one facility impacting safety at the nearby facility, thereby increasing the potential for a release at the second facility (a ''knock-on'' release). Communities in areas with such densely co-located petroleum refining and chemical manufacturing facilities face overlapping vulnerability zones and a heightened risk of being impacted by an accidental release relative to other communities. The heightened risk of community impacts presented by densely co-located refineries and chemical manufacturers make it reasonable for EPA to propose the 1 mile criterion for additional prevention measures such as STAA. The 1 mile criterion also serves to limit the burden on portions of both the petroleum refining and chemical manufacturing industries relative to the 2017 amendments rule while promoting accident prevention to a greater extent than the approach taken in the 2019 reconsideration rule (see IV.A.2.viii, below).

EPA is proposing that all HF alkylation processes at petroleum refineries (NAICS 324) conduct a STAA review primarily due the recent incidents discussed above where HF was nearly released when there were explosions, fires, and other releases that could have triggered releases of HF. The recent incident involving Philadelphia Energy Solutions,[133] where some of the HF stored apparently was released in a fire but a worse release was prevented by trained staff activating release mitigation systems close to the time the event started, raises the question of whether a more inherently safe process could have completely avoided a potential catastrophe, or whether reliance on operational procedures and trained staff is adequate. As mentioned above, there are recognized potentially safer alternatives available for HF alkylation that have been successfully implemented by refineries, such as sulfuric acid alkylation, ionic liquid alkylation, or solid acid catalyst alkylation. While EPA is not proposing that all existing refinery processes undergo STAA review, the process of HF alkylation, with several known alternatives and with recent incident

[123] EPA–HQ–OLEM–2021–0312–0170.

[124] EPA–HQ–OLEM–2021–0312–0037; 0053, 0071.

[125] EPA–HQ–OLEM–2021–0312–0071.

[126] EPA–HQ–OLEM–2021–0312–0077.

[127] EPA–HQ–OLEM–2021–0312–0077.

[128] EPA–HQ–OLEM–2021–0312–0013; 0035, 0043, 0054, 0036, 0319, 0146, 0067, 0068, 0096.

[129] EPA–HQ–OLEM–2021–0312–0043.

[130] EPA–HQ–OLEM–2021–0312–0067.

[131] EPA–HQ–OLEM–2021–0312–0354; 0379, 0382, 0384.

[132] EPA–HQ–OLEM–2021–0312–0380.

[133] CSB, ''Philadelphia Energy Solutions (PES) Refinery Fire and Explosions,'' last modified October 16, 2019, *https://www.csb.gov/philadelphia-energy-solutions-pes-refinery-fire-and-explosions-/.*

history, EPA believes may merit a rule-based prevention approach rather than selective oversight.

vi. Accident Frequency

EPA notes that RMP facilities in the two selected sectors have been responsible for a relatively large number of accidents, deaths, injuries, and property damage.[134] Although the per-facility accident rate between 2016 and 2020 for all regulated facilities was 3 percent (n = 382 facilities reporting at least one accident out of 12,855 unique facilities reporting between 2016 and 2020), the sector accident rates (number of unique facilities with accidents per sector divided by the number of unique facilities in each sector) for petroleum and coal manufacturing were seven times higher (23 percent, n = 41 out of 177) and two times higher for chemical manufacturing (6 percent, n = 96 out of 1631). Moreover, of the 70 facilities experiencing two or more incidents between 2016 and 2020, 43 (60 percent) of these facilities were NAICS 324 and 325. Implementation of safer technology and alternatives by these facilities in the chemical manufacturing and petroleum refining sectors may prevent serious accidental releases in the future.

vii. Accident Severity

EPA is proposing to apply STAA requirements to processes at facilities in NAICS 324 and 325 located within 1 mile of another NAICS 324 or 325 facility, as the increased accident frequency found in these industries is exacerbated when examining those facilities in more facility-dense areas (here defined as facilities within 1 mile of another facility).

Based on accidents occurring between 2016 and 2020, communities located near facilities in NAICS 324/325 that are located within 1 mile of another 324/325 facility are 1.5 times more likely to have been exposed to accidents at these facilities as compared to communities near facilities in NAICS 324/325 that are not located within 1 mile of another 324/325 facility. This increased accident frequency in facility-dense areas has resulted in considerably larger offsite impacts, including over 47,000 people sheltering in place, 56,800 people evacuating, and over 153 million dollars in offsite property damage.[135]

Using RMP data from 2016 to 2020, EPA estimates the proposed approach impacts approximately 563 unique, active facilities. EPA is making available in the Technical Background Document, a list of sources it believes would be required to conduct STAA based on the location information currently provided in facility risk management plans. In estimating these facilities, EPA used the latitude and longitude reported to EPA by facilities, which can vary in the measurement of facility location. For example, facilities can report location based on the regulated process, facility fenceline or facility centroid. EPA is proposing to define facility location based on distance to the facility fenceline but seeks comment on other definitions of facility proximity.

Although accident rates for the paper manufacturing sector (NAICS 322, 17 percent, 20 accidents at 11 out of 65 facilities between 2016 and 2020) were similar to NAICS 324, EPA has not proposed STAA requirements at facilities in NAICS 322 due to the low actual number of incidents and comparatively fewer accident consequences. While 30 workers were injured (non-fatally) as a result of these accidents, the accidents resulted in no other reported offsite consequences (*i.e.,* sheltering in place, evacuation, or offsite property damage).[136]

viii. Discussion of Prior STAA Analysis

In its 2019 decision to rescind STAA requirements, EPA relied on data analysis of RMP accidents from States with STAA- and IST-like regulations, primarily New Jersey's Toxic Catastrophe Prevention Act (TCPA) regulation and the Massachusetts Toxic Use Reduction Act. Using the accident data EPA provided in the rulemaking docket, EPA compared accident data for New Jersey and Massachusetts RMP facilities from 2008 through 2016 to the same measures for the national set of RMP facilities.[137] EPA interpreted the results as showing that New Jersey and Massachusetts RMP facilities reported more RMP-reportable accidents than RMP facilities nationally over the same period. Although the rate of RMP facility accidents in New Jersey and Massachusetts have declined, EPA found that this decline is less than the decline in accidents for RMP facilities nationally over the same period. New Jersey and Massachusetts exhibited a 1.7 percent and 3.5 percent annual decline in accident frequency, respectively, whereas nationally, RMP facilities experienced a 4.1 percent decline in accident frequency over the same period. The normalized accident rate in New Jersey and Massachusetts declined by approximately 2 percent and 3 percent per year, respectively, whereas the normalized accident rate at RMP facilities nationwide declined by 3.3 percent per year. Regarding accident severity, EPA examined the impacts of RMP-reportable accidents in New Jersey over the same period and could discern no declining trend in accident severity in New Jersey. Based on this data analysis, EPA concluded the New Jersey and Massachusetts programs had not resulted in a reduction in either accident frequency or severity at RMP-regulated facilities subject to the provision, and therefore the costs were disproportionate to the benefits.

Comments provided by the New Jersey Department of Environmental Protection (NJDEP) point out information that questions the validity of these assumptions.[138] First, EPA based its decision to rescind STAA requirements for NAICS codes 324 and 325 on accident information for all regulated NAICS codes, thereby applying assumptions based on analysis of all accidents, rather than analysis of NAICS 324 and 325 specifically, to the subset of facilities it intended to regulate. Second, NJDEP points out that IST is only one measure to prevent accidental releases; therefore, the absence of a decrease in accidents should not be solely attributed to ineffectiveness of IST. NJDEP also points out that facilities with better accident investigation requirements and release reporting systems may be reporting more accidents than those without additional reporting programs. EPA believes these arguments apply to the 2019 Massachusetts analysis as well. EPA now acknowledges that applying a rate developed through analysis of all regulated facilities cannot be applied to the specific sectors that were selected for regulation (NAICS codes 324 and 325) as a conclusion based on comparing New Jersey's overall accident rate to the national overall accident rate is inconclusive about sectors that would have been subject to the RMP STAA requirement.

Additionally, EPA realizes it may have been important to consider that its conclusions were derived from analysis of a small number of accidents from a small sample size with a high degree of intra-year variability. For example, RMP

[134] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[135] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[136] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[137] EPA–HQ–OEM–2015–0725–2063.

[138] EPA–HQ–OLEM–2021–0312–0039.

data from New Jersey [139] demonstrate that the facility accident rates were 2 per 86 in 2008 and 2 per 80 in 2016, extrapolating a slope showing a 1.7 percent decrease per year. Yet accidents ranging from 0 to 4 and demonstrating a high amount of intra-year variability are inconclusive. EPA examined data for NAICS 324 and 325—those proposed to be regulated in this action—and found similarly low accident counts (0 to 2 per year), prohibiting meaningful conclusions and leaving the Agency unable to determine if STAA provisions are ineffective. Therefore, EPA contends that it is more appropriate to emphasize in this rulemaking factors like the expert views of CSB and other researchers, case studies, and EPA's technical judgment rather than the analysis comparing accident rates under the New Jersey TCPA to national rates for RMP facilities that helped form the basis for rescinding STAA in the 2019 reconsideration rule. Finally, in proposing to reestablish STAA requirements for facilities in NAICS 324 and 325 located within 1 mile of another NAICS 324 or 325 facility and those refineries with HF alkylation processes, EPA has determined that there are likely limited legitimate reliance interests associated with the 2019 reconsideration rule's elimination of these requirements. The compliance date for this requirement on affected facilities is proposed to be three years after this rule becomes final, which, based on EPA's announced plans in the Unified Regulatory Agenda, would be sometime in August 2026. For those sources who last performed a PHA prior to August 2021, they would be able to integrate STAA in their next PHA. For those performed since August 2021 and before this proposed rule (approximately one year), they would need to perform the STAA outside the normal PHA timeframe. This should be a relatively small number of facilities in part because of the limited applicability of the preferred approach and the pattern of years ending in 4s and 9s being the heaviest years for RMP submittals. Sources performing PHAs after this proposed notice are on notice of EPA's intent, so whatever reliance interest there was on the 2019 reconsideration rule to this proposal should be minimal.

ix. STAA Technology Transfer

Since the inception of RMP, the required elements of risk management plans have been a narrative executive summary and primarily fields of check boxes, dates, and numbers that summarize RMP rule compliance activities. The format facilitates electronic submission and data analysis. EPA established central processing and handling to relieve states of data handling burdens while also promoting easy access for stakeholders. As a result of legislation in 1999 and a general increase in security concerns post-September 11, 2001, portions of the risk management plan are restricted, either on a ''need to know'' basis (much of the release scenario information) or only released on compact discs/drives when requested through the Freedom of Information Act (FOIA). In practice, the minimal narrative in risk management plans and the restrictions on access to these plans have minimized the transfer of knowledge of successful accident prevention practices among all stakeholders (*e.g.,* regulated industry, communities, labor, researchers, planners, responders).

In the 2017 amendments rule, EPA added an STAA requirement to the PHA portion of the prevention program requirements for three industry sectors: petroleum refining (324), chemical manufacturing (325), and paper production (322). In addition to the previously existing requirement to report on any changes since the last PHA (40 CFR 68.175(e)(6)), EPA added a requirement for sources to report on whether IST/ISD—one STAA technique—had been adopted since the last PHA, and if yes, to report on the broad technology category (*i.e.,* chemical substitution or minimization, process simplification, and/or moderation of the process conditions). The 2019 final reconsideration rule eliminated the additional reporting requirement when EPA eliminated the STAA prevention provision. EPA is now proposing to reinstate the provisions to 40 CFR 68.175(e)(7) to report whether the current PHA addresses the STAA requirement proposed in 40 CFR 68.67(c)(9), whether any IST/ISD was implemented as a result of 40 CFR 68.67(c)(9)(ii), and if any IST/ISD was implemented, to identify the measure and technology category.

During EPA's 2021 listening sessions and public comment period, some stakeholders supporting IST/ISD advocated for promoting better reporting and public availability of ''solutions data''—the successful practices companies are using to reduce and remove RMP chemical hazards—about IST/ISD and other measures adopted by sources to reduce risk. For example, a few advocacy groups expressed that solutions data should be incorporated into RMP by reporting it in risk management plans from STAAs, reporting it on RMP deregistration forms, including it in public meetings after incidents to address the best options at the top of the hierarchy of prevention, and compiling it into a hazard reduction clearinghouse, through which EPA could collect and disseminate lessons learned from successful industry practices.[140] This sentiment was echoed by another advocacy group, which recommended that EPA ensure that facilities that are no longer regulated under RMP coordinate with regulatory agencies and share practices or approaches with other RMP facilities.[141] These comments suggest ways of promoting accident prevention technology transfer and improving on not only the existing rule, but also the reporting provisions of the 2017 amendments rule. EPA has examples of existing information centers which aggregate best practices, such as the Pollution Prevention Resource Exchange.[142]

EPA has included an outline of the potential information that would be collected from deregistering facilities as well as in the STAA documentation in Section 10 of the Technical Background Document. EPA intends for this not to be a cumbersome exercise, but rather, one that is based on information facilities likely already have, with EPA making it available for other industries to identify safer alternatives. EPA solicits comment on any additional information which would be useful for such a repository.

x. Alternative Options

EPA considered other options and is seeking comment on these alternative approaches. In contrast to the 2017 amendments rule, EPA is not proposing to apply STAA to NAICS 322 (pulp mills) based on the smaller number of accidents at these facilities in the last 5 years (n = 20).[143] EPA considered applying STAA requirements to facilities in NAICS 324 and 325 with a reportable accident within the last 5 years, estimating that this would apply to approximately 140 RMP facilities during their 5-year PHA schedule.

EPA also considered applying these provisions to all NAICS 324 and 325

[139] EPA–HQ–OEM–2015–0725–2063, p. 36.

[140] EPA–HQ–OLEM–2021–0312–0014; 0058, 0148.

[141] EPA–HQ–OLEM–2021–0312–0149–18.

[142] EPA. Pollution Prevention Resource Exchange (P2RX). Available at: *https://www.epa.gov/p2/pollution-prevention-resource-exchange-p2rx#:~:text=The%20Pollution%20Prevention%20Resource%20Exchange,and%20measured%20P2%20program%20results.*

[143] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

facilities, which would be similar to provisions promulgated in the 2017 amendments rule and be estimated to apply to 1,660 active RMP facilities at least every 5 years. Given the high accident rates in NAICS 324 and 325 industries without considering proximity to other facilities, EPA solicits comment on whether the RMP rule should simply reinstate the 2017 rule provisions requiring STAA for NAICS 324 and 325.

As discussed above regarding recent public comments, EPA is aware that some commenters would like for all regulated facilities to implement inherently safer technologies. With respect to whether the Agency should require implementation of IST/ISD, in this rulemaking, EPA does not intend to require facilities implement identified IST. Instead, EPA has required evaluation of STAA as part of the PHA, as well as employee involvement in the STAA evaluation. EPA believes facility owners and operators will adopt IST and other safer technology alternatives when it is practicable technically and economically and when the risk reduction is significant even in the absence of a mandate. Part of the basis for this belief is due to most of the economic savings resulting from reduced accidents will be from reduced on-site property damage to the owner or operator's facility. However, EPA seeks comment on whether the Agency should require implementation of technically practicable IST/ISD and STAAs. With respect to whether all industries should be required to conduct STAA analysis or investigate ISTs, as discussed above, while in theory considering IST may reduce the probability of accidents, the accident history for most industries does not establish that IST would substantially reduce accident likelihood or impacts, and that EPA judges lack as many opportunities for STAA to successfully reduce accidents. To the extent that commenters have additional considerations relating to probability and the effectiveness of STAA provisions if extended to all industries, EPA requests commenters provide this information to EPA.

In this proposed rulemaking, EPA is only requiring STAA in industries with the most frequent and severe accidents with offsite consequences. As discussed in section IV.A.2.v., above, EPA has identified densely co-located refineries and chemical manufacturing facilities (*i.e.,* facilities with processes in NAICS 324 and 324 within 1 mile of another facility with processes in these NAICS) as a class of facilities that present a heightened risk to nearby communities. EPA seeks comment on whether the proposal to limit the STAA provisions to 324 and 325 regulated processes within 1 mile of another 324 and 325 regulated facility is appropriate or if another distance would be appropriate; commenters should provide rationales for proposed distance alternatives. EPA also solicits comment on other industries for which STAA analysis should be required and seeks comment on how EPA might justify extending these provisions to other industries with fewer accidents.

Finally, EPA considered requiring implementation of IST identified in the course of an STAA, both for the proposed regulated industries and for alternative options examined. The known costs of certain STAA changes range from less than $1,000 to over $100 million. For many significant STAA changes, the costs would be facility-specific, and EPA has little information on the potential costs of large STAA projects. Due to the uncertainty of STAA provision implementation, it is challenging to identify the benefits that offset implementation costs.

Commenters have identified industries for which EPA should require the assessment and specifically suggested implementation of safer technologies for water treatment facilities; [144] however, EPA is not requiring STAA analysis for water treatment facilities for specific reasons. EPA relies on two reasons for not requiring STAA analysis for water treatment facilities: our view that the probability of an incident is low, and our understanding that such a requirement would unreasonably burden State and local governments, especially when applied to existing sources. First, in evaluating the potential for large offsite consequences based on the numbers of persons potentially exposed, only one of 22 incidents in NAICS 2213 between 2016 and 2020 reported an offsite impact: an evacuation of 125 people caused by an ammonia leak.[145] Risk to communities is a function of probability, hazard, and exposure. Commenters who asked that the Agency mandate IST for water treatment facilities or at least an assessment have identified the number of persons potentially exposed in the event of an accidental release, but generally do not address the accident history data showing the low probability of an incident when discussing the risk to be addressed by requiring IST or STAA analysis at water treatment facilities. Second, most water treatment facilities are operated by local and State governments. When conducting discretionary rulemaking, EPA considers the costs to State and local governments. The benefits of requiring STAA for these facilities would have to be justified in relation to the costs and EPA needs more information on such costs before applying any requirements to these facilities. Therefore, EPA solicits comments on the actual and updated costs to government-owned water treatment facilities. Additionally, EPA solicits comments on a provision which would require consideration of ISD in the design of new water treatment facilities, when the costs of designing in safer technologies are recognized to be less than the cost of retrofitting existing facilities.

EPA has used accident history data to provide insight into the probability with which these accidents have actually occurred to support requiring STAA analysis for portions of particular industries. However, EPA recognizes that substance and process-specific accident history may not always be an appropriate metric for probability of an accident or the risk communities face. For example, the consequences of an HF release are so potentially catastrophic, and with known alternatives existing, EPA has proposed that facilities with HF alkylation evaluate and document STAA as part of their PHA. In this case, EPA focused on numerous accidental releases that had the potential to cause a secondary release of HF from alkylation units rather than actual HF releases and their consequences. EPA solicits comment on what other information or consideration it can use to assess probability of an accident in other industries without substantial accident history data as well as what specific chemicals or process may merit the most focus, and how EPA may require STAA requirements for industries without a history of accidents.

xi. Proposed Revisions to Regulatory Text

Definitions (40 CFR 68.3). EPA is proposing to add several definitions that relate to the STAA in 40 CFR 68.3. EPA is adding these definitions to describe risk reduction strategies that the owner or operator can use when considering safer technology and alternatives.

First, EPA is proposing a similar definition for IST/ISD as in the 2017 amendments rule. The proposed definition includes risk management measures that would eliminate, replace,

[144] EPA–HQ–OLEM–2021–0312–0014; 0017, 0039, 0149.

[145] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022), Appendix A.

or reduce the use of regulated substances or make operating conditions less hazardous or less complex.

As in the 2017 amendments rule, EPA is also proposing definitions for ''passive,'' ''active,'' and ''procedural'' measures. EPA proposes that ''passive measures'' (in 40 CFR 68.3) be defined as those that rely on measures that reduce a hazard without human, mechanical, or other energy input. EPA also proposes to define ''active measures'' as those that involve engineering controls that rely on mechanical, or other energy input to detect and respond to process deviations. Examples of active measures include alarms, safety instrumented systems, and detection hardware (*e.g.,* hydrocarbon sensors). Lastly, EPA proposes a definition for ''procedural measures'' that includes policies, operating procedures, training, administrative controls, and emergency response actions to prevent or minimize incidents. Examples of procedural measures include administrative limits on process vessel fill levels and procedural steps taken to avoid releases.

Finally, EPA is proposing to define ''practicability'' as the capability of being successfully accomplished within a reasonable time, accounting for technological, environmental, legal, social, and economic factors. EPA clarifies in this definition that environmental factors would include consideration of potential transferred risks for new risk reduction measures. EPA is not requiring owners or operators to implement identified IST/ISD. Although an owner or operator may choose not to implement a safer technology or design identified on account of its cost, EPA is proposing that the evaluation of practicability be first based on technological, environmental, legal, and social factors, with economic considerations evaluated last. EPA proposes that the practicability assessment be documented with the technological, environmental, legal, social and economic factors outlined, along with any methods or processes used to determine practicability.

xii. Process Hazard Analysis (40 CFR 68.67)

EPA is proposing to modify the process hazard analysis (PHA) provisions by adding paragraph (c)(9) to 40 CFR 68.67 to require that the owner or operator of a facility with Program 3 processes in NAICS codes 324 and 325 located within 1 mile of another 324 and 325 regulated facility address safer technology and alternative risk management measures applicable to eliminating or reducing risk from process hazards. EPA proposes that ''1 mile'' be interpreted to mean ''1 mile to the nearest fenceline'' for a facility in NAICS 324 or 325. EPA is proposing to add paragraph (c)(9)(i) to specify that the analysis include, in the following order, IST or ISD, passive measures, active measures, and procedural measures. The owner or operator may evaluate a combination of risk management measures to reduce risk. By incorporating these requirements into the PHA, EPA proposes to require facilities to address STAA in processes that already exist, rather than only during the design phase. The results of the STAA must be documented as part of the current PHA provisions in 40 CFR 68.67(e), which require the owner or operator to document actions to be taken and resolution of recommendations. EPA is also proposing that a summary of this information be submitted to EPA as part of the STAA Technology Transfer section. Finally, EPA is proposing to add paragraph (c)(9)(iii) to require that the STAA team include and document the involvement of one member who works in the process and has expertise in the process being evaluated.

EPA is also proposing to add paragraph (c)(9)(ii) to require that the owner or operator determine and document the practicability of the IST or ISD considered. EPA intends for this process to be separate and additional to the PHA requirements described above. EPA solicits comment on if it should only require the STAA as part of the PHA, without the additional practicability assessment.

The PHA must be updated and revalidated at least every 5 years in accordance with paragraph 40 CFR 68.67(f). This provides the owner or operator opportunities to evaluate the practicability of IST or ISD considered since the last PHA review. EPA contends that 5-year revalidation will give the owner or operator the opportunity to identify new risk reduction strategies, as well as revisit strategies that were previously evaluated to determine whether they are now practicable as a result of changes in cost and technology. EPA seeks comment on these proposed revisions.

b. Root Cause Analysis

EPA is proposing to require all facilities with Program 2 and 3 processes to conduct a root cause analysis as part of an incident investigation for an RMP-reportable accident as defined under 40 CFR 68.42. This includes requiring the root cause analysis to include specific elements, requiring the use of a recognized investigation method, and requiring that investigations are completed within 12 months. Based on RMP-reportable accidents from 2016 to 2020, EPA estimates this provision will apply to an average of 100 facilities per year.

In the 2017 amendments rule, EPA amended 40 CFR 68.81 to add that incident investigations shall include ''the factors that contributed to the incident including the initiating event, direct and indirect contributing factors, and root causes'' and that ''root causes shall be determined by conducting an analysis for each incident using a recognized method.'' In the 2019 reconsideration rule, EPA rescinded the root cause analysis requirements, stating that EPA was ''unable to make a direct connection between the presence or absence of these provisions and a number of accidents prevented'' (84 FR 69834). EPA also stated that it did not rely exclusively on a comparison of costs and benefits to justify the rescission, but also acted to maintain consistency with the OSHA PSM standard. As a result of the 2019 removal of root cause analysis requirements, EPA's current causal incident investigation requirements under 40 CFR 68.60 and 68.81 require investigation into only ''the factors that contributed to the incident.''

Since the 2019 reconsideration rule, EPA has coordinated with OSHA to ensure that any proposed incident investigation root cause analysis provisions do not contradict OSHA PSM requirements. In the 2019 reconsideration rule, EPA also indicated that it had not conducted any overall analysis of data from RMP accident investigations conducted by regulated facilities to determine how well these investigations identified causes and contributing factors (84 FR 69834). However, this is in part because EPA has not required the investigation of root causes and therefore cannot analyze such data. EPA therefore revisited commenters' points concerning facilities with more than one accident. Updated analysis of EPA's RMP accident reporting data identified repeated accidents in facilities within the same process.[146]

For the 2019 reconsideration rule, EPA relied upon data demonstrating that only a subset of facilities experience accidents. This holds true for the updated analysis, with only 3 percent (n = 382) of facilities between

[146] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

2016 and 2020 reporting one RMP-reportable accident and 0.5 percent (n = 70) of all RMP facilities reporting two or more RMP-reportable accidents during that period. Among facilities reporting accidents, facilities who reported one often have multiple accidents, indicating a failure to properly address circumstances leading to subsequent accidents. For example, between 2016 and 2020, these facilities accounted for 36 percent (n = 176) of all accidents reported (n = 488). Additionally, of these 70 facilities, 61 percent (n = 43) had experienced another accident prior to 2016. Between 2004 and 2020, 18 facilities had more than 10 accidents each, with two facilities reporting over 20 incidents each to EPA.[147] These accidents may have been preventable if root cause analyses had been required. EPA believes multiple accidents result, in part, from a failure to thoroughly investigate and learn from prior accidents.

Although EPA cannot be certain that in all cases, subsequent accidents are due to a failure to conduct a root cause analysis of an earlier incident, EPA finds that of the 70 facilities with multiple accidents between 2016 and 2020, 60 percent (n = 42) reported repeat causal factors within the same process.[148] While this could be a failure to implement incident investigation findings or could be unrelated to the earlier incident, multiple accidents within the same process with the same causal factors indicate a likely failure to rectify prior failures and root causes of these incidents. EPA believes the occurrence of such subsequent incidents indicates an overall failure to identify and implement controls that may have prevented future incidents.

In proposing to reestablish the root-cause analysis requirements, EPA has determined that there are likely no legitimate reliance interests associated with the 2019 reconsideration rule's elimination of these requirements. The 2019 rule has only been in place for three years and any accident investigation in the past, under way, or that otherwise would be required that predate the proposed rule will not have to be revised or changed in scope should EPA finalize the proposed change. Further, the burden of the proposed root cause analysis is relatively small. Few sources will have to conduct one because accidents occur at a small number of sources and many sources perform root cause analyses already in a manner consistent with industry or company protocols. The potential benefit from improved incident investigations is apparent from the significant percentage of sources and processes that have another accident after the first. Rather than relying on negotiations in enforcement actions as a basis for promoting root cause analyses as necessary under the approach of the 2019 reconsideration rule, EPA believes the delays of negotiations and the transaction costs of such an approach, and the benefit of a root cause approach to incident investigations, makes it more prudent and reasonable to impose a rule requirement for root cause analysis in incident investigations rather than the approach adopted in 2019.

i. Root Cause Analysis Background

EPA discussed root cause analysis at length in the 2016 proposed amendments. As discussed, CCPS defines root cause analysis as: ''A formal investigation method that attempts to identify and address the management system failures that led to an incident. These root causes often are the causes, or potential causes, of other seemingly unrelated incidents. Root cause analysis identifies the underlying reasons the event was allowed to occur so that workable corrective actions can be implemented to help prevent recurrence of the event (or occurrence of similar events).'' [149] EPA also discussed that causes of incidents are commonly referred to as ''causal factors'' (also known as contributing causes, contributory causes, contributing factors, or critical factors). CCPS defines a causal factor as a ''major unplanned, unintended contributor to an incident (a negative event or undesirable condition), that if eliminated would have either prevented the occurrence of the incident or reduced its severity or frequency.'' [150] Causal or contributing factors usually have underlying reasons for why they occurred, which are known as ''root causes.'' CCPS defines a root cause as a ''fundamental, underlying, system-related reason why an incident occurred that identifies a correctable failure(s) in management systems.'' [151] EPA proposed that root causes shall be determined by conducting a root cause analysis for each incident using a recognized method or approach. CCPS' ''Guidelines for Investigating Chemical Process Incidents'' discusses incident investigation approaches and techniques and root cause analysis methods.[152]

EPA previously discussed that identifying and addressing incident contributing factors and their root causes helps eliminate or substantially reduce the risk of reoccurrence of the incident and other similar incidents, citing notable incidents that CSB investigated. These CSB investigations of the 2004 Formosa Plastics Corporation incident,[153] the 2005 BP Texas City Refinery incidents,[154] and the 2010 Millard Refrigerated Services incident [155] found that root causes of prior, similar incidents were not identified, a lack that contributed to subsequent incidents.

In the 2016 proposed amendments, EPA also discussed that root cause analysis of accidents is an accepted safe management practice used by many industries, noting that the American Chemistry Council (ACC) conducts root cause analyses as part of its Responsible Care program.[156] In addition, New Jersey's TCPA,[157] as well as California's PSM for Refineries,[158] Contra Costa County Health Services,[159] and the City of Richmond, California, Industrial Safety Ordinances, already require root cause analyses for major chemical accidents.[160]

[147] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[148] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[149] CCPS, ''Root Cause Analysis (RCA),'' accessed February 15, 2022, *https://www.aiche.org/ccps/resources/glossary/process-safety-glossary/root-cause-analysis-rca.*

[150] CCPS, *Guidelines for Investigating Process Safety Incidents, 3rd Edition* (2019).

[151] CCPS, *Guidelines for Investigating Process Safety Incidents, 3rd Edition* (2019).

[152] CCPS, *Guidelines for Investigating Process Safety Incidents, 3rd Edition* (2019).

[153] CSB, ''Formosa Plastics Vinyl Chloride Explosion,'' last modified March 6, 2007, *https://www.csb.gov/formosa-plastics-vinyl-chloride-explosion/.*

[154] CSB, ''BP America Refinery Explosion,'' last modified March 20, 2007, *https://www.csb.gov/bp-america-refinery-explosion/.*

[155] CSB, ''Millard Refrigerated Services Ammonia Release,'' last modified January 15, 2015, *https://www.csb.gov/millard-refrigerated-services-ammonia-release/.*

[156] EPA–HQ–OEM–2014–0328–0694.

[157] NJDEP, Toxic Catastrophe Prevention Act Program, *TCPA Program Consolidated Rule Document,* section 68.42 (February 1, 2016), p. 38, *https://www.nj.gov/dep/rules/rules/njac7_31_consolidated.pdf.*

[158] California General Industry Safety Orders, *Process Safety Management for Petroleum Refineries,* General Industry Safety Orders section 5189.1(o) (2017).

[159] Contra Costa County, *Chapter 450–8—Risk Management,* Ord. 98–48 (1998), *https://cchealth.org/hazmat/pdf/iso/Chapter-450-8-RISK-MANAGEMENT.pdf.*

[160] City of Richmond, California, *Chapter 6.43—Industrial Safety* (2016), *https://cchealth.org/hazmat/pdf/iso/RISO-Chapter-6-43-INDUSTRIAL-SAFETY.pdf.*

ii. Recent Public Comments on Root Cause Analysis

EPA received comments on root cause analysis during its 2021 listening sessions. For instance, a labor organization expressed support for requiring RMP facilities to conduct root cause analyses as part of incident investigations, as root cause analyses can prevent similar events from occurring; this commenter suggested that a lot can be learned from near misses and smaller incidents.[161] The commenter suggested that the definition of ''root cause'' could be revised to read, ''a fundamental, underlying, system-related reason why an incident occurred that identifies a correctable failure(s) in management systems or process design.'' The commenter also suggested that EPA should implement a timeline for near-miss investigations, requiring initiation of the incident investigation within 48 hours of an incident, a preliminary report within 90 days, and a final report within 6 months. Further, the commenter suggested that EPA require incident investigation teams including experts involved in the process and the root cause analysis method, as well as employees and their representatives and applicable contractors. Similarly, an advocacy group suggested that the incident investigation should be completed within 12 months of the incident.[162] The advocacy group went on to conclude that incident investigations should include a root cause analysis, and that facilities should investigate near misses as well as accidents where the affected process was decommissioned or destroyed. Another commenter stated that owners or operators should report serious near misses to EPA and that these incidents should be compiled in a publicly available online database.[163]

EPA also received comments that did not support root cause analysis provisions. A regional industry trade association expressed concern about the ''near-miss'' standard of the root cause analysis.[164] This commenter stated that the quality of safety reviews under the 2017 amendments rule could be diluted by applying them to high-frequency, low-consequence events. The commenter also stated that the near-miss requirement would impose significant administrative burdens and economic costs on regulated facilities, especially without a clear threshold for a near-miss event. The commenter requested that EPA not adopt this proposal from the 2017 amendments rule. Similarly, another industry trade association stated that facilities do not benefit from a burdensome, one-size-fits-all requirement.[165] This commenter went on to say that near-miss incidents are often examples of active process protections working as designed and requiring a root cause analysis of near-miss events would create a disincentive for reporting. An industry trade association stated that the root cause analysis under the 2017 amendments rule is duplicative of the root cause analysis conducted for incident investigations under OSHA PSM regulations, as well as some State regulations.[166] An individual commenter also expressed general opposition to the root cause analysis requirement, stating that most companies already have a tiered process for conducting incident investigations—including root cause analyses—and that the size of the investigation should match the size of the incident.[167] Meanwhile, an industry trade association stated that EPA's definition of ''root cause'' in 2017 was too narrow and would potentially exclude non-system-related root causes, such as human error.[168] Another industry trade association stated that requiring an incident investigation before ''de-registering'' a process would provide no benefit.[169]

iii. Investigation Timeframe

In the 2017 amendments rule, EPA discussed that conducting incident investigations as soon as possible after an incident may yield better quality data and information, although it may take time to collect, validate, and integrate data from a range of sources. EPA has discovered situations where owners or operators of regulated facilities indefinitely delayed completing incident investigations.

EPA's own experience with accident investigation has shown that a major accident investigation can take up to a year, or even longer. Taking into consideration the need to complete an investigation while allowing the proper time to determine the correct root causes, EPA is again proposing to require that facility owners or operators complete an incident investigation report as soon as reasonably practicable, but no later than 12 months after an RMP-reportable accident. For very complex incident investigations that cannot be completed within 12 months, EPA is allowing an extension of time if the implementing agency (*i.e.,* EPA and delegated authorities) approves the extension in writing. EPA believes that 12 months is long enough to complete most complex accident investigations but will allow facilities more time if they consult with their implementing agency and receive approval for an extension.

In the 2017 amendments rule, EPA noted that the Agency's own requirements under the Petroleum Refinery Maximum Achievable Control Technology (MACT) and New Source Performance Standards (NSPS) regulations already require root cause and corrective action analyses for certain release events[170] with a more stringent timeframe (*i.e.,* 45 days) for completing these analyses than the 12 months specified in this proposed rule. RMP-regulated facilities that are also required to meet the MACT and NSPS root cause analysis requirements must continue to meet the timeframes specified under those rules, as applicable. EPA again proposes that root cause analyses conducted to meet those requirements may also be used to comply with the root cause analysis requirements proposed herein, provided that the analysis meets the requirements of 40 CFR 68.60 or 68.81. EPA did not receive substantive comments on this provision, but again invites comments on this approach.

iv. Proposed Revisions to Regulatory Text

EPA is proposing to define ''root cause'' as a fundamental, underlying, system-related reason why an incident occurred. For incidents that meet the accident history reporting requirements under 40 CFR 68.42, EPA is also proposing to amend 40 CFR 68.81 and 68.60 to require the owner or operator to investigate the factors that contributed to an incident. In the proposed amendment, these factors will now include root causes, and these root causes shall be determined by conducting an analysis for each incident using a recognized method (such as CCPS). EPA is also amending both 40 CFR 68.81 and 68.60 to require that a report be prepared at the conclusion of the investigation and completed within 12 months of the incident (though it will allow for facility owners or operators to request an extension from the implementing agency).

[161] EPA–HQ–OLEM–2021–0312–0057.
[162] EPA–HQ–OLEM–2021–0312–0170.
[163] EPA–HQ–OLEM–2021–0312–0076.
[164] EPA–HQ–OLEM–2021–0312–0037.
[165] EPA–HQ–OLEM–2021–0312–0078.
[166] EPA–HQ–OLEM–2021–0312–0045.
[167] EPA–HQ–OLEM–2021–0312–0050.
[168] EPA–HQ–OLEM–2021–0312–0071.
[169] EPA–HQ–OLEM–2021–0312–0078.
[170] 40 CFR 63.648(j)(6) and (j)(7)), and 40 CFR 60.103a(d).

v. ''Near Miss'' Definition

In the 2017 amendments rule, EPA considered, but elected not to finalize, a regulatory definition of ''near miss'' to identify incidents that require investigation. At the time, EPA stated that the criteria for determining incidents that require investigation would continue to include events that ''could reasonably have resulted in a catastrophic release.'' As discussed, adding the term ''near miss'' was not intended to expand the types of incidents required to be investigated, but rather, was intended as a clarification of incidents that may have reasonably resulted in a catastrophic release and were already required to be investigated. EPA notes that even without a ''near miss'' definition, these incidents are still currently required to be investigated. EPA also notes that the definition of ''near miss,'' as described here, is unrelated to the root cause analysis provisions described above; 40 CFR 68.42 criteria would not be applicable to near misses. EPA may ultimately believe that adding a definition of a ''near miss'' may help clarify incident investigation requirements overall. During the 2017 rulemaking, however, comments demonstrated that adding the ''near miss'' definition as discussed at that time instead resulted in confusion about incident investigation requirements.

EPA is not proposing a definition of ''near miss'' as part of this rulemaking. Nevertheless, it solicits comments on a potential definition of ''near miss'' that would address difficulties in identifying the variety of incidents that may occur at RMP facilities that could be near misses that should be investigated. For example, CCPS defines a ''near miss,'' as ''an incident in which an adverse consequence could potentially have resulted if circumstances (weather conditions, process safeguard response, adherence to procedure, *etc.*) had been slightly different.'' [171] During the 2019 proposed RMP reconsideration rule comment period, NJDEP provided recommended draft text for 40 CFR 68.81 that would require investigation of all accidental releases and near misses (instead of incidents that resulted in or could reasonably have resulted in a catastrophic release) and included a definition of ''near miss'' to mean ''an unplanned, unforeseen, or unintended incident, situation, condition, or set of circumstances which does not directly or indirectly result in a regulated substance release. Examples of a near miss include, but are not limited to, process upsets such as excursions of process parameters beyond pre-established critical control limits; activation of layers of protection such as relief valves, interlocks, rupture discs, blowdown systems, halon systems, vapor release alarms, and fixed vapor spray systems; and activation of emergency shutdowns. A near miss also includes an incident at a nearby process or equipment outside of a regulated process if the incident had the potential to cause an unplanned, unforeseen, or unintended incident, situation, condition, or set of circumstances at the regulated process.'' [172] EPA solicits comments on a universal ''near miss'' definition, as well as comments on strengths and limitations of the definition provided by NJDEP and how the definition may clarify requirements for incident investigations. Based on these comments, in a future rulemaking, EPA may propose a definition of ''near miss.''

c. Third-Party Compliance Audits

Section IV.A.2.b of this preamble, ''root cause analysis,'' explains that incident investigations following an accident often reveal multiple causal factors related to prevention program elements. However, incident investigations generally evaluate only the affected process; they do not necessarily address all covered processes [173] at a facility or even all prevention program elements for the affected process. EPA expects that the proposed requirement to conduct a formal root cause analysis after an RMP-reportable accident will be helpful to ensure deficient prevention program areas are thoroughly investigated for the specific covered processes involved in the accident.

Compliance audits, in contrast, help to ensure a systematic evaluation of the full prevention program for all covered processes. EPA's RMP general guidance explains, ''A compliance audit is a way for you to evaluate and measure the effectiveness of your risk management program. An audit reviews each of the prevention program elements to ensure that they are up-to-date and are being implemented and will help you identify problem areas and take corrective actions.'' [174]

As discussed in the 2019 reconsideration rule, EPA recognizes that a relatively small number of RMP-regulated facilities have RMP-reportable accidents. However, EPA continues to be concerned with RMP facilities that—despite current RMP regulations, enforcement, and lessons learned from previous accidents—continue to have accidents and, in some cases, multiple accidents. EPA RMP accident history data show that while 97 percent of all RMP facilities had no RMP-reportable accidents from 2016–2020, 3 percent of all RMP facilities had at least one RMP-reportable accident and 0.5 percent of all RMP facilities had two or more RMP-reportable accidents. Facilities responsible for two or more accidents in those 5 years generally were within industry sectors where regulated facilities have multiple RMP-regulated processes. RMP facilities within the chemical manufacturing (NAICS 325) and petroleum and coal products manufacturing (NAICS 324) industries represent over 50 percent of the facilities with two or more accidents in 5 years, and they have on average two and eight RMP-regulated processes, respectively, at their facilities.[175] When RMP facilities have multiple accidents within a 5-year period, EPA is concerned that those facilities have not been able to identify measures on their own (through incident investigations, hazard evaluations, and compliance self-audits) to properly evaluate and apply appropriate prevention program measures to stop accidents from occurring.

EPA also has similar concerns for facilities with NAICS code 324 and 325 Program 3 processes that have had one RMP-reportable accident and are located within a 1-mile radius of another 324 and 325 regulated facility. EPA discusses the increased accident severity, frequency, and consequences for these facilities in the STAA section (IV.A.2.a) of this preamble. Between 2016 and 2020, 66 accidents occurred among facilities in NAICS codes 324 and 325 located within 1 mile of another 324 or 325 facility.[176]

Stationary sources that have had multiple accidents within a short period; substantial non-compliance with RMP requirements; and/or high accident

[171] CCPS, *Guidelines for Investigating Process Safety Incidents, 3rd Edition* (2019).

[172] EPA–HQ–OEM–2015–0725–0973.

[173] See 2019 RMP reconsideration rule discussion of ''representative sampling'' to satisfy compliance audit evaluation of multiple processes, 84 FR 69882–69883.

[174] EPA, *General Risk Management Program, Ch. 6: Prevention Programs* (2012), p. 6–24, *https://www.epa.gov/sites/default/files/2013-11/documents/chap-06-final.pdf.*

[175] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[176] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

severity, frequency, and consequences pose a greater risk to surrounding communities. EPA therefore believes it is appropriate to require such stationary sources to undergo auditing by competent and independent third-party auditors.

i. Third-Party Compliance Audits in Previous RMP Rulemakings

EPA discussed third-party compliance audits at length in the 2016 proposed amendments. EPA discussed that self-auditing may be insufficient to prevent accidents, determine compliance with the RMP rule's prevention program requirements, and ensure safe operation. In the preamble to the 1996 RMP rule, EPA identified the potential to use independent third-party auditors for RMP compliance audits as an issue for further consideration. In the 2016 proposed amendments, EPA explained that poor compliance audits have been cited by EPA and CSB as a contributing factor to the severity of past chemical accidents and that in some cases, EPA has required third-party audits in enforcement settlement agreements.

The 2016 proposed amendments noted that other Federal programs require third-party audits in existing rules to ensure safe operations. The Administrative Conference of the United States' ''Third-Party Programs Final Report'' (October 22, 2012) describes a variety of third-party programs in Food and Drug Administration, Consumer Product Safety Commission, and Federal Communications Commission regulations.[177] The Bureau of Safety and Environmental Enforcement (BSEE) also promulgated revisions to their Safety and Environmental Management Systems (SEMS II) requirements (78 FR 20423, April 5, 2013) to help ensure the safe operations of offshore oil and natural gas drilling and production facilities.

The 2016 proposed amendments also discussed how industry recognizes the benefits of third-party auditing programs and has established programs and standards for third-party audits for some types of operations, many of which are also subject to the RMP rule. Some of these programs still in use are:

- National Association of Chemical Distributors (NACD)—Responsible Distribution.[178]
- ACC—Responsible Care program.[179]
- API—Process Safety Site Assessments.[180]
- Society of Chemical Manufacturers & Affiliates (SOCMA)—ChemStewards program.[181]

In the 2017 amendments rule, EPA added compliance audit provisions under 40 CFR 68.58 and 68.79 to require independent third-party compliance audits after an RMP-reportable accident or findings of significant non-compliance by an implementing agency for facilities with Program 2 and Program 3 processes. EPA explained that independent third-party auditing can assist owners and operators, EPA (or the implementing agency), and the public to better determine whether the procedures and practices developed by owners or operators for the prevention program requirements are adequate and being followed.

The 2019 reconsideration rule rescinded the third-party compliance audit requirements. EPA's decision to rescind the third-party audit requirements was to ''allow for coordination of process safety requirements with OSHA before proposing future regulatory changes, and to reduce unnecessary regulatory costs and burdens of a broad rule-based approach to third-party audits rather than a case-by-case approach (84 FR 69875)''; it was not based on a determination that third-party audits are not beneficial or justified in certain cases. In the 2019 reconsideration rule, EPA further indicated that ''while EPA cannot inspect every RMP facility every year, the Agency performs approximately 300 RMP facility inspections each year and prioritizes inspections at facilities that have had accidental releases. Therefore, EPA's enforcement resources and posture are capable of addressing accident-prone facilities without additional broad regulatory mandates. The Agency's choice to use a more surgical approach to accident prevention at these facilities is reasonable and practicable (84 FR 69853).''

In proposing to reestablish third-party compliance audits, EPA has determined that there are likely no legitimate reliance interests associated with the 2019 reconsideration rule's elimination of these requirements. Similar to the possible reliance interests regarding root cause analysis, the 2019 rule has only been in place for three years, and any compliance audit in the past, under way, or that otherwise would be required that predate the proposed rule will not have to be revised or changed in scope should EPA finalize the proposed change. Since the 2019 reconsideration rule, EPA has coordinated with OSHA to ensure that any proposed third-party compliance audit provisions do not contradict OSHA PSM requirements. The Agency continues to require third parties to conduct compliance audits for the settlement of some RMP civil enforcement cases. Facilities in those cases are often required to also comply with the OSHA PSM standard, and conflicts between the third-party audit provisions of settlement agreements and the compliance self-auditing requirements of the PSM standard have not arisen with OSHA.[182] [183] [184] The Agency now recognizes that there are some impracticalities of relying on EPA inspections, particularly in the wake of the COVID–19 pandemic and in consideration of the long time period over which some enforcement matters are settled. EPA realizes that a better approach is to be more proactive with respect to prevention and aim to prevent further accidents at facilities, particularly facilities that have proven to be accident-prone.

ii. Recent Public Input on Third-Party Compliance Audits

Commenters provided feedback on third-party audits during the two 2021 listening sessions and in written comments submitted in response to an associated request for comments.

Several commenters expressed general support for the third-party audit requirement of the 2017 amendments

[177] McCallister, Lesley. October 22, 2012. *Third-Party Programs Final Report* (2012). *https://www.acus.gov/report/third-party-programs-final-report.*

[178] National Association of Chemical Distributors, ''About Responsible Distribution,'' accessed February 15, 2022, *https://www.nacd.com/responsible-distribution/about-responsible-distribution/.*

[179] ACC, ''Responsible Care®: Driving Safety & Industry Performance,'' accessed February 15, 2022, *https://www.americanchemistry.com/chemistry-in-america/responsible-care-driving-safety-industry-performance?gclid=EAIaIQobChMIov_h7qbw9QIVj67ICh3g5guDEAAYASAAEgLHCfD_BwE.*

[180] API, ''Process Safety Site Assessments (PSSAP®),'' accessed February 15, 2022, *https://www.api.org/products-and-services/site-safety.*

[181] Society of Chemical Manufacturers & Affiliates (SOCMA), ''SOCMA'S ChemStewards® Program,'' accessed February 15, 2022, *https://www.socma.org/operations-manufacturing/chemstewards/.*

[182] United States of America v. Harcros Chemicals Inc, No. 2:17–cv–02432, Document 3–1 (January 31, 2017), *https://www.justice.gov/enrd/consent-decree/file/1280071/download.*

[183] United States of America and the State of Kansas, ex rel. Kansas Department of Health and Environment v. HollyFrontier El Dorado Refining LLC, No. 2:20–cv–02270, Document 1 (May 28, 2020), *https://www.justice.gov/opa/press-release/file/985591/download.*

[184] United States of America v. Formosa Plastics Corporation, Texas, No. 6:21–cv–00043, Document 2–1 (September 13, 2021), *https://www.justice.gov/opa/press-release/file/1432401/download.*

rule.[185] A labor organization expressed support for requiring third-party audits after an accidental release or discovery of significant non-compliance. The commenter stated that these audits are critical to protecting high-risk facilities and suggested that EPA ensure these audits are not used to merely satisfy a requirement. The commenter also suggested that EPA require auditors to be accredited by an auditing accreditation organization and prohibit auditors from developing relationships with facilities.[186] Another individual commenter supported including a requirement for third-party audits in the RMP rule and said that auditors should engage with employees and their representatives to become more familiar with the facilities; this commenter also suggested that auditors should include comments provided by employee representatives in the draft and final audit report.[187] Another commenter suggested that it is feasible to train engineers and chemists to be auditors so that they ensure industry standard practices are being followed, but noted that there should not be a ''revolving door'' between auditors and industry employees.[188]

Several commenters expressed opposition to the third-party audit requirement of the 2017 amendments rule. An industry trade association stated that the third-party audit requirement is not realistic, would not support better audits of RMP facilities, and would potentially ''degrade rather than improve safety.'' [189] This commenter and others expressed concern about the potential costs and availability of third-party auditors.[190] One commenter stated that the industry would be subject to third-party consultant pricing demands, as well as administrative and recordkeeping burdens. The commenter stressed that third-party auditors may be unacquainted with certain processes, industries, or businesses, and argued that the 3-year disqualifier for auditors who have conducted past research, development, or consulting with the owner or operator of a facility is unrealistic, overly restrictive, and especially difficult for facilities in more rural areas.[191]

Other commenters, including industry trade associations and an individual commenter, expressed concerns about the auditors' lack of industry and process knowledge.[192] An industry trade association said that the audit teams at facilities are highly trained and report directly to a chief executive officer. These teams visit different facilities under one company and transfer safety knowledge from one facility to another without concerns about disclosing confidential information. The commenter explained that the potential disclosure of confidential information would be a concern with independent third-party auditors who observe production processes at many facilities.[193] Another industry trade association expressed agreement, saying that independent auditors do not hold certain industry knowledge and cannot be trusted.[194] Another industry trade association said that because the audit mandate would not enhance chemical safety at facilities, it supported EPA's decision to rescind this provision in 2019. This commenter suggested that EPA use its own inspection powers to better enforce auditing practices at facilities, focusing on facilities responsible for the majority of the accidents.[195] Another industry trade association stated that requiring a third-party audit after a release would be redundant due to the current requirement to perform a root cause analysis.[196] The industry trade association further commented that requiring a compliance audit for each covered process every 3 years under Program 2 and Program 3 would impose substantial burdens and cause inefficiencies and operation disruptions.

iii. Proposed Third-Party Compliance Audit Requirements

2017 provisions. EPA is proposing to adopt the independent third-party compliance audit provisions as outlined in the 2017 amendments rule with modifications to account for EPA's recent review of the current RMP rule, which included data analyses and solicitation of comments. The proposed provisions for this action reflect that the most accident-prone facilities have not been able to properly evaluate and apply appropriate prevention program measures to regulated processes to stop accidents from occurring and that the availability of some qualified third-party auditors may be limited.

EPA is proposing to use the same definition of ''third-party audit'' as in 40 CFR 68.3 in the 2017 amendments rule. Regarding when a third-party audit must be performed, EPA is proposing to modify the first condition from the 2017 amendments rule (at 40 CFR 68.58 and 68.79) that requires a third-party audit after one accidental release meeting the criteria in 68.42, instead requiring it after two accidental releases within a 5-year period. Based on RMP-reportable accidents from 2016 to 2020, EPA estimates this will apply to an average of 70 facilities. Additionally, EPA is proposing to require all facilities with regulated NAICS code 324 and 325 Program 3 processes that have had one RMP-reportable accident and are located within a 1-mile radius of another facility with a regulated NAICS code 324 and 325 process to conduct a third-party audit after one accident. EPA discusses the increased accident severity, frequency, and consequences for these facilities in the STAA section (IV.A.2.a) of this preamble. Between 2016 and 2020, 66 accidents occurred among facilities in NAICS codes 324 and 325 located within 1 mile of another 324 or 325 facility.[197]

Regarding requirements for third-party auditors and third-party audits in new sections 68.59 and 68.80, EPA is proposing to restore the provisions from the 2017 amendments rule but remove the following auditor independence requirements contained in 40 CFR 68.59 and 68.80(c)(2)(iii) and (iv) to allow more flexibility in choosing auditors:

- Auditors cannot have conducted past research, development, design, construction services, or consulting for the owner or operator within the last 2 years.
- Auditors cannot provide other business or consulting services to the owner or operator, including advice or assistance to implement the findings or recommendations of an audit report, for a period of at least 2 years following submission of the final audit report.

As noted earlier in this section, several trade associations in the chemical manufacturing and petroleum refining industries have third-party auditing as part of their industry programs on process safety (NACD, ACC, API, SOCMA). For owners and operators with processes in NAICS codes 324 and 325, the Agency expects that there would be ample auditors experienced in the relevant industries and knowledgeable of the processes available for sources in these particular NAICS codes. The 2017 final RMP

[185] EPA–HQ–OLEM–2021–0312–0170; 0057, 0076.

[186] EPA–HQ–OLEM–2021–0312–0057.

[187] EPA–HQ–OLEM–2021–0312–0076.

[188] EPA–HQ–OLEM–2021–0312–0383–2.

[189] EPA–HQ–OLEM–2021–0312–0037.

[190] EPA–HQ–OLEM–2021–0312–0037; 0077.

[191] EPA–HQ–OLEM–2021–0312–0037.

[192] EPA–HQ–OLEM–2021–0312–0077; 0045, 0050, 0071.

[193] EPA–HQ–OLEM–2021–0312–0045.

[194] EPA–HQ–OLEM–2021–0312–0071.

[195] EPA–HQ–OLEM–2021–0312–0077.

[196] EPA–HQ–OLEM–2021–0312–0078.

[197] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

amendments approach to the independence criteria assumed that the RMP rule would establish a market for parties meeting the more stringent independence criteria, but the Agency's approach now is to be more flexible and take the market as it is and to better recognize within the rule structure the voluntary measures of industry. EPA solicits comment on this proposed independence criterion modified from the 2017 rule. EPA also seeks comment on whether the selected auditor should be mutually approved by the owner or operator and employees and their representatives, and if direct participation from employees and their representative should be required when the third party conducts the audit.

EPA contends that the remaining third-party compliance audit provisions, when restored, will help ensure that owners and operators of RMP facilities without strong prevention programs objectively and adequately explore all opportunities to prevent or minimize accidental releases of regulated substances to protect human health and the environment.

Third-Party-Issued Compliance Audit Findings Information Availability. As discussed in section IV.A.1.e of this preamble, ensuring that communities, local planners, local first responders, and the public have appropriate chemical facility hazard-related information is critical to the health and safety of responders and the local community. EPA is proposing ways to enhance information sharing and collaboration between chemical facility owners and operators, LEPCs/TEPCs, first responders, and the public in a manner that EPA believes balances security and proprietary considerations with the need for public and local responder information availability. In addition to the information availability provisions in section IV.C of this preamble, EPA is proposing to require facilities conducting third-party compliance audits for the proposed provisions under 40 CFR 68.58, 68.79, 68.59 and 68.80 to list in section 7 (Program 3) and section 8 (Program 2) of their risk management plans, for each process, findings resulting from the audit that the owner or operator chooses to decline. EPA realizes that the number of third-party-issued findings may vary widely, depending on the complexity of the process or facility. Therefore, as in section IV.A.1.e of this preamble, EPA seeks comments on the format of listing the findings—whether EPA should require findings to be included in narrative form, or whether the Agency should provide specific categories of findings for facilities to choose from when reporting. Another option would be to allow the owner or operator to post this information online and provide a link to the information within their risk management plan.

EPA is also proposing to adopt the same categories outlined in section IV.A.1.e of this preamble for owners and operators to justify declined third-party-issued compliance audit findings. EPA seeks public comment on this approach and on alternative categories or methods for providing justification for declining relevant findings. EPA wants to ensure a balanced approach to providing beneficial data to the public as well as a straightforward method of reporting for facility owners and operators.

d. Employee Participation

i. Introduction

Employees directly involved in operating and maintaining a process are most exposed to its hazards. These same employees are typically the most knowledgeable about the daily requirements for safely operating the process and maintaining process equipment; they may sometimes be the only source of process-specific knowledge—knowledge that has been gained through their unique experiences. Their direct participation and involvement in ensuring and enhancing the safety of process operations are often essential to protecting their own welfare.[198] [199] Such actions help keep communities safe as well. A long-standing premise of the RMP rule is that actions that promote worker safety as part of a well-designed process safety system generally help protect the public and the environment.[200]

Employee participation is a key element of a company's commitment to process safety. The CCPS's ''Guidelines for Risk Based Process Safety'' [201] outlines how to design and implement—or further correct and improve—effective PSM practices to prevent accidents based on process risks. It identifies essential characteristics of strong commitment to employee participation such as:

- Empowering individuals to successfully fulfill their safety responsibilities.
- Deferring to expertise.
- Ensuring open and effective communication.
- Fostering mutual trust.
- Providing timely responses to process safety issues and concerns.

Employee participation and a company's commitment to process safety can be critical to preventing accidents. CSB recently identified ineffective worker participation as a contributing factor to certain catastrophic accidents because workers and their representatives were not properly engaged in process operations to help identify and mitigate hazards and reduce risks. To highlight this issue, in September 2019, CSB published ''Safety Digest: The Importance of Worker Participation.'' [202] The digest discusses four catastrophic incidents that led to 13 employee deaths, 179 employee injuries, and, in one case, 15,000 residents living near the facility having to seek medical evaluation. The incidents took place at an explosives manufacturing site in Nevada, a chemical production facility in Louisiana, and oil refineries in Washington and California. The digest concludes that workers and their representatives play a critical role in hazard identification, risk reduction, and incident prevention. Each of these CSB investigations found that employee participation programs were inadequate, despite the existence of current Federal regulations and industry standards.[203] Recommendations from CSB to create an effective worker participation program include:

- Creating or improving opportunities for workers to participate directly in matters involving PSM and major incident prevention.
- Empowering workers to provide input on how work is performed, whether through safety-related committees, special projects, inspections and audits, hazard analyses, and/or other specific measures.
- Sharing safety information or communicating safety improvements as a part of strengthening a company's or

[198] CCPS, ''Introduction to Workforce Involvement,'' accessed February 3, 2022, *https://www.aiche.org/ccps/introduction-workforce-involvement.*

[199] CCPS, *Guidelines for Risk Based Process Safety* (March 2007), *https://www.aiche.org/resources/publications/books/guidelines-risk-based-process-safety,* p. 47.

[200] See EPA, *Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),* 61 FR 31687 (June 20, 1996).

[201] CCPS, *Guidelines for Risk Based Process Safety* (March 2007), *https://www.aiche.org/resources/publications/books/guidelines-risk-based-process-safety.*

[202] CSB, *Safety Digest: The Importance of Worker Participation* (n.d.), *https://www.csb.gov/assets/1/6/worker_safety_digest.pdf.*

[203] The CSB Safety Digest identifies applicable regulations and industry standards including OSHA PSM, EPA RMP, Bureau of Safety and Environmental Enforcement's Safety and Environmental Management Systems rule, and the American National Standard-Occupational Safety and Health management Systems, ANSI/AIHA Z10.

facility's overall safety management system.

- Enabling workers to bring safety issues to the attention of management without fear of retaliation or reprisal.
- Collecting data to help ensure critical information is retained and used to continuously improve safety.
- Worker training opportunities and information sharing regarding the nature of hazards present in the workplace, lessons learned from other sites, the outcomes of incident investigations, and exposure to both established industry best practices and the results of safety-related research relevant to a company's or facility's operations.
- Strengthened worker participation requirements in industry standards and State and Federal regulations.

Although process industries are aware of the value of worker participation programs, opportunities exist to strengthen these programs and requirements for RMP-regulated facilities in a way that will protect human health and the environment. A 2017 study by Dupont Sustainable Solutions of 80 executives in high-hazard industries, such oil and gas, chemical and petrochemical, utilities, metals and mining, and manufacturing, found that employee participation to reduce catastrophic accidents that threaten their businesses could be improved. The study found that ''executives acknowledge there is an organizational disconnect and misalignment among leadership and employees with respect to risk management, which greatly contributes to the likelihood of a catastrophic event.'' One of the most notable discoveries of the study was that 88 percent of company executives felt workforce engagement was important to risk management, but only 35 percent believed it to be a strong part of their organization.[204]

Many commenters, including labor unions, advocacy groups, and individual commenters from the 2021 listening sessions, stated that EPA must strengthen the RMP rules to support and facilitate effective participation by workers and their representatives, arguing that worker participation is an essential component of incident prevention and safety management systems.[205] One advocacy group remarked that doing so would be essential to protecting public health and safety.[206] A labor union asserted that genuine worker involvement in RMP development, program enforcement, and corrective actions would translate to better communication and engagement with local communities and more effective response plans.[207] In discussing the need for updated regulations relating to worker participation, an individual commenter pointed out that the current RMP rule provides opportunities for employee participation, but these elements have not been updated since the regulations were first issued.[208]

The existing RMP rule already requires owners or operators of regulated facilities to include employees in RMP-regulated process operations. At 40 CFR 68.83, owners or operators with Program 3 processes are required to: (1) Develop a written plan of action regarding the implementation of employee participation requirements; (2) consult with employees and their representatives about the conduct and development of process hazards analyses and the development of the other elements of PSM; and (3) provide employees and their representatives with access to PHAs and all other information required to be developed under the rule.

In development of the initial 1996 RMP rule, the Agency recognized that many workplace hazards also threaten public receptors and that most accident prevention steps taken to protect workers also protect the public and the environment. Therefore, EPA adopted and built on much of the existing accident prevention language from OSHA's PSM standard, including the employee participation language in 29 CFR 1910.119(c). EPA considers these employee participation requirements to be a good basis for promoting a commitment to process safety because workers who are intimately familiar with the process, equipment operation, and possible failure modes and consequences of deviations serve as a mechanism for greater communication and understanding of specific process hazards (as opposed to general chemical hazards).[209]

Taking into account lessons learned from accidents, current guidance, and recent discussions within regulated industry sectors indicating there is room for improvement in this area, EPA believes that further worker involvement in process safety could help prevent and mitigate accidents. Therefore, EPA is proposing to add additional regulatory provisions to the employee participation requirements for owners and operators of regulated facilities with Program 2 and Program 3 processes. EPA is specifically proposing to require employers to consult with employees when making decisions on implementing recommendations from PHAs, compliance audits, and incident investigations; provide employees the opportunity to stop work under certain circumstances; and provide opportunities for employees to report late or unreported accidents and other areas of RMP non-compliance to EPA and other relevant authorities. EPA is proposing these provisions so that owners and operators without strong employee participation programs will have further measures in place to ensure process safety and to prevent or minimize accidental releases of hazardous substances. EPA does not expect these new provisions to be a burden to owners and operators that already have made this commitment.

ii. Recommendation Decisions

Although employees may be involved in the development of plans and procedures (through 40 CFR 68.83 or otherwise), they may not be guaranteed ''a seat at the table'' when final decisions are made about process operations they are directly involved in that could threaten their health and safety. EPA realizes that practicable recommendations from hazard evaluations, incident investigations, and compliance audits that may reduce hazards at RMP facilities are not always implemented, for various reasons. The Agency believes that involving directly affected employees in these discussions and decisions will help ensure that the most effective recommendations for reducing hazards and mitigating risks to employees and the public are given the proper consideration.

In 2019, CCPS published its ''Guide for Making Acute Risk Decisions (GMARD)'' [210] to complement its Risk Based Process Safety (RBPS) guidelines. The GMARD is a source for recognized

[204] DuPont Sustainable Solutions, ''Lack of Internal Alignment and Commitment of Resources to Manage Risk Threaten Corporate Business Performance,'' last modified 2017, *https://www.consultdss.com/global-operational-risk-management-survey-report/#:~:text=Lack%20of%20Internal%20Alignment%20and,Risk%20Threaten%20Corporate%20Business%20Performance&text=Instead%2C%20better%20understanding%20operational%20risks,new%20value%20from%20emerging%20opportunities.*

[205] EPA–HQ–OLEM–2021–0312–0079; 0170, 0151, 0058, 0032, 0057.

[206] EPA–HQ–OLEM–2021–0312–0094.

[207] EPA–HQ–OLEM–2021–0312–0044.

[208] EPA–HQ–OLEM–2021–0312–0076.

[209] EPA, *Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),* (June 20, 1996), 61 FR 31697.

[210] CCPS, *Guide for Making Acute Risk Decisions* (October 2019), *https://www.aiche.org/ccps/resources/publications/books/guide-making-acute-risk-decisions.*

good industry practices on how to conduct risk decision-making in the chemical industry. This publication aims to guide the decision process of common and practical risk evaluation and risk analysis tools to analyze decisions. The guidance outlines specific considerations when making decisions in chemical process safety regarding implementation of hazard assessments, audits, and incident investigation recommendations. The GMARD indicates that selection of members to analyze decisions—like a PHA team—should be based on the skills needed to analyze the problem and define solutions and the level of responsibility required to authorize the decision team's recommendations. Stakeholders who may be affected by the risk decision should also be represented. These groups may include production and plant stakeholders such as those in engineering, operations, maintenance, safety, and health; and environmental managers. Ultimately, the team composition should be appropriate to the level of risk and the complexity of the potential resolution actions.

The American National Standards Institute (ANSI)/American Society of Safety Professionals (ASSP) Z10.0–2019 standard [211] offers additional guidance on health and safety management systems for different types of organizations and risks. It explains that organizations must establish a process to ensure effective worker participation by those most threatened by hazards. Worker involvement helps determine and validate acceptable levels of risks and provides transparency when alternate decisions are made. This standard reflects industry consensus and was in part developed by the ACC and API—both major stakeholders representing RMP-regulated facilities.

In 2017, the California Department of Industrial Relations (DIR) formalized including employees in all phases of PSM by making additions and modifications to its regulations on ''Process Safety Management for Petroleum Refineries.'' [212] Specifically, in the employee participation section of the rule, it added that employee participation shall occur ''throughout all phases'' and required involvement of affected operating and maintenance employees and employee representatives in developing, training, implementing, maintaining, and performing various process safety elements. DIR indicated that this modification would ensure meaningful participation and decision-making for employees and employee representatives from all program teams for all analyses required by their PSM regulations.[213]

Additionally, the United Kingdom has had regulations in place since 1996 that address consulting employees on matters that affect their health and safety. The Health and Safety (Consultation with Employees) Regulations of 1996,[214] specifically Regulation 4A, require employers to consult their health and safety representatives before making decisions involving work equipment, processes, or the organization that could have health and safety consequences for employees.[215]

One of the accident investigations from the CSB safety digest highlights the severe consequences of a lack of an effective employee participation program. On April 2, 2010, the Tesoro Refining and Marketing Company LLC (Tesoro) petroleum refinery in Anacortes, Washington, experienced a catastrophic rupture of a heat exchanger. Hydrocarbons released from the ruptured heat exchanger ignited, causing an explosion and an intense fire that burned for more than 3 hours. The rupture fatally injured seven Tesoro employees who were working in the immediate vicinity of the heat exchanger at the time of the incident. Prior to the incident, workers had repeatedly provided input on how to improve the safety of the process. During a 2006 PHA revalidation on the unit involved in the accident, workers noted 31 near misses in the unit during the previous 5 years. The PHA team requested a review of experience and training for relevant operators to address their safety concerns. [216] The action item was closed without resolution of the concerns expressed by the Tesoro workers on the PHA team. The Tesoro accident highlights what can happen when employees' views are not considered when making comprehensive decisions about process hazards and risks.

EPA analyzed OSHA PSM violations from 2018 to 2020 to better understand the breadth of unresolved or improper closure of recommendations from PHAs, compliance audits, and incident investigations.[217] In these 3 years, there were 70 violations of non-compliance where PHA, incident investigation, or compliance audit recommendations were not addressed, resolved, completed, documented, or communicated to employees. Of these violations, the majority (56 percent) were violations associated with PHA recommendations, 38 percent were from compliance audits, and 6 percent were from incident investigations. Some of these violations were associated with RMP-reportable accidents, which suggests that worker involvement may have been useful in making sure options were appropriately considered.[218]

During the 2021 listening sessions, some commenters recommended allowing workers to be involved in making decisions about process safety. One idea was for EPA to issue specific provisions that enable workers and their unions to participate in the prevention of chemical releases by requiring the facility owner and operator to provide for meaningful employee participation when developing, implementing, maintaining, and evaluating all RMP activities—including hazard assessments, the prevention program, and emergency response activities—and to keep current a written plan that describes such opportunities.[219] A commenter stated that effective worker participation includes having an employee representative with veto power. This representative—chosen by employees—would participate in all stages of developing and implementing a risk management program and have access to all documents or information pertaining to the facility's RMP.[220] [221] A

[211] ANSI and ASSP, *ANSI/ASSP Z10.0—2019 Occupational Health and Safety Management Systems* (2019), *https://store.assp.org/PersonifyEbusiness/Store/Product-Details/productId/197785872.*

[212] DIR, *Process Safety Management for Petroleum Refineries,* CCR Title 8: section 5189.1 (July 27, 2017), *https://www.dir.ca.gov/title8/5189_1.html.*

[213] DIR, *Final Statement of Reasons,* CCR Title 8: new section 5189.1 (September 15, 2016), *https://www.dir.ca.gov/oshsb/documents/Process-Safety-Management-for-Petroleum-Refineries-FSOR.pdf.*

[214] John Selwyn Gummer, *The Health and Safety (Consultation with Employees) Regulations 1996,* 1996 No. 1513 (June 10, 1996), *https://www.legislation.gov.uk/uksi/1996/1513/made.*

[215] Health and Safety Executive, *Consulting Workers on Health and Safety,* L146 (Second edition with amendments) (2014), *https://www.hse.gov.uk/pubns/priced/l146.pdf.*

[216] CSB, ''Tesoro Refinery Fatal Explosion and Fire,'' last modified May 1, 2014, *https://www.csb.gov/tesoro-refinery-fatal-explosion-and-fire/.*

[217] EPA did not use EPA RMP enforcement information because statistical data on enforcement under the 1996 RMP rule is not available at this level of detail.

[218] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[219] EPA–HQ–OLEM–2021–0312–0079; 0149, 0058, 0148, 0076.

[220] EPA–HQ–OLEM–2021–0312–0079.

[221] Note that the current 1996 RMP rule requires the owner or the operator of a Program 3 process to ''provide to employees or their representatives

Continued

few commenters stated that increased worker participation would reduce the occurrence of catastrophic incidents at RMP facilities because workers are an excellent source of knowledge for reducing hazards in collaboration with plant engineers.[222]

As a result of this concern and need for employees to be involved in decision-making, EPA is proposing to require in 40 CFR 68.83(c) that the written plan of action include consultation of employees and their representatives on addressing, correcting, resolving, documenting, and implementing recommendations of PHAs, incident investigations, and compliance audits, at a minimum. EPA expects this would be similar to involving employees in the hazard evaluations under 40 CFR 68.83(b) but would go a step further to offer suggestions and concerns about why a recommendation should be adopted or declined or whether other alternatives should be taken. EPA expects this would address safety concerns that threaten the lives of workers and potentially others if a major chemical accident were to occur, as well as involving workers in ensuring items are completed in a timely manner. EPA seeks comment on whether there should be a representative number or percentage of employees and their representatives involved in these recommendations decision teams as well as the development of other process safety elements as outlined in 40 CFR 68.83(b). EPA also expects regulated facilities to use some of the guidance materials referenced in this section (*e.g.,* CCPS' RBPS and GMARD guidelines and ANSI/ASSP Z.10) to comply with the requirement to effectively involve employees in decision-making processes. EPA seeks comment on other relevant sources that have provided useful guidance in making risk decisions.

iii. Stop Work Authority

Allowing process operation employees to stop work when witnessing a dangerous activity could help better protect human health and the environment.

In the 2014 RMP RFI, EPA requested comments on whether it should add provisions to the RMP rule giving workers the ability to stop work if they believe a situation is dangerous—an authority similar to the one that BSEE had recently provided for workers in the offshore oil industry. BSEE promulgated revisions to their SEMS II requirements to help ensure the safe operation of their regulated facilities.[223] The revisions included several management system elements not addressed in the RMP regulation. In its SEMS II fact sheet, BSEE describes the stop work authority as an authority that creates procedures and authorizes offshore industry personnel who witness an imminent risk or dangerous activity to stop work.[224] While the requirements of SEMS II focus on offshore facilities under the jurisdiction of BSEE, the same concept could be applied to facilities subject to RMP regulation. EPA chose not to pursue proposing stop work regulations in the 2017 amendments rule, but it is revisiting this idea to address an area that may help reduce accidents, particularly for those facilities that have not fully developed a strong prevention program.

Various commenters from the 2014 RFI, including a consultant, the Mary Kay O'Connor Process Safety Center, and CCPS, supported adding this provision.[225] The Mary Kay O'Connor Process Safety Center suggested adding a stop work authority to the RMP employee participation provision (40 CFR 68.83). While CSB supported EPA's consideration of a stop work authority, it asserted that a stop work authority is a less effective measure for incident prevention than good planning and noted that its success is contingent upon the existence of a ''culture of safety'' wherein workers are encouraged and empowered to advocate for their safety on the job. CSB argued that any program that does not appropriately enable stop work authority permits risks to occur and accumulate.[226]

Industry commenters generally opposed adding this authority to the RMP rule.[227] API and other associations noted that employees already have the right to refuse work in light of a hazardous condition that could cause serious bodily injury or death.[228] API stated that stop work authority is an inherent part of the oil and gas industry and pointed to training programs and API standards that outline this authority.[229] API indicated that their standards inform employees that:

- Safety is and will always be the industry's primary focus.
- As part of the oil and gas industry, workers have a duty to work in a safe manner.
- Workers have a personal responsibility to assure the safety of themselves and those around them.
- Safety and safe practices should always be at the forefront when carrying out job functions.
- All workers have stop work authority.
- Workers should stop and ask questions when in doubt about the safety of any operations.
- Workers should stop work at the jobsite if the working conditions or behaviors are considered unsafe.
- If a worker is discouraged from exercising their stop work authority or is penalized for doing so, they should report this action to management immediately.

After the 2012 Chevron Refinery fire in Richmond, California,[230] CSB recommended that the California State Legislature/Governor of California, in its PSM regulations, should provide workers and their representatives with the authority to stop work that is perceived to be unsafe until the employer resolves the matter or the regulator intervenes. As a result, in DIR's modifications to their Process Safety Management for Petroleum Refineries rule,[231] they included stop work procedures. In the employee participation section, the rule indicates that the employer, in consultation with employees, must develop and implement stop work procedures that ensure there is authority for employees to refuse to perform a task or recommend an operation or process be partially or completely shut down. It also provides authority for a qualified operator in charge of a unit to partially or completely shut down an operation or process based on process safety hazards.[232] In addition, the regulation

access to [PHAs] and to all other information required to be developed under this rule''—that is, the current 1996 RMP rule (40 CFR 68.83(c)).

[222] EPA–HQ–OLEM–2021–0312–0032.

[223] Bureau of Safety and Environmental Enforcement (BSEE), *Oil and Gas and Sulphur Operations in the Outer Continental Shelf-Revisions to Safety and Environmental Management Systems,* 78 FR 20423–20443 (April 5, 2013).

[224] BSEE, *Safety and Environmental Management Systems (SEMS) Fact Sheet* (n.d.), *https://www.bsee.gov/fact-sheet/safety/sems-ii-fact-sheet.*

[225] EPA–HQ–OEM–2014–0328–0121; 0543, 0546.

[226] EPA–HQ–OEM–2014–0328–0689.

[227] EPA–HQ–OEM–2014–0328–0560; 0605, 0619, 0624, 0643, 0645, 0665, 0676.

[228] EPA–HQ–OEM–2014–0328–0624; 0626, 0640, 0643, 0665.

[229] API, ''Stop Work Authority,'' accessed February 3, 2022, *https://www.api.org/oil-and-natural-gas/health-and-safety/worker-and-worksite-safety-resources/worker-safety-rules-to-live-by/stop-work-authority.*

[230] CSB, ''Chevron Refinery Fire,'' last modified January 28, 2015, *https://www.csb.gov/chevron-refinery-fire/.*

[231] DIR, *Process Safety Management for Petroleum Refineries,* CCR Title 8: section 5189.1 (September 26, 2017), *https://www.dir.ca.gov/title8/5189_1.html.*

[232] DIR, *Process Safety Management of Acutely Hazardous Materials,* CCR Title 8: section 5189, *https://www.dir.ca.gov/title8/5189.html#:~:text=%C2%A75189.,Management%20of%20Acutely%20Hazardous%20Materials.&text=The%20establishment%20of%20process%20safety,(b)%20Application.*

requires that employers document and respond in writing to employee reports of hazards or requests to shut down a process. CSB also made a similar recommendation to the State of Washington to address related issues after the fatal explosion and fire at Tesoro Refinery.[233] The State of Washington is currently considering changes to its PSM rule for refineries.[234]

Recent articles and studies have attempted to examine stop work authority, how it is applied, and the perception of its usefulness. A 2018 article in *Safety+Health* magazine indicated that while specific stop work authorities are not mandatory, safety professionals insist on their use. According to the article, key elements of a successful stop work authority policy include employee recognition, empowering employees in the stop work authority process, ensuring leadership supports the program, identifying expectations, promoting positive outcomes and correct application, and publishing effective stop work authority efforts as examples for employees.[235]

In a 2018 study, Weber et al. examined the factors that support or hinder stopping work for safety.[236] Thirty-four workers from different roles in the LPG industry in Australia were interviewed in focus groups. The study found that having a stop work policy supports stopping work for safety and that support from management positively affects its use. It also found that the training, experience, and seniority of employees were factors in employees choosing whether to use the stop work authority. The study concluded that a stop work authority is a starting point. To encourage, promote, and alleviate drawbacks to stopping work, a stop work authority has to be embedded in and supported by a work environment that provides the necessary conditions for people to discontinue work. The authors believe this can only be achieved when company leadership collaborates with its workforce to identify hazards and help resolve the challenges of everyday work.

In a 2021 study, Havinga et al. continued the conversation about factors that influence stopping work.[237] Taking an ethnographic approach, the researchers followed 10 employees of a municipal water provider over 3 months. The aim of the study was to understand how decisions to stop work were made and when work was expected to be stopped based on procedures. The study concluded that these employees did not generally find stop work decisions to be important or difficult, as they often found an alternative method for completing work, rather than stopping work completely. Procedures were linked to considerations of stopping work, but they were unlikely to lead to a decision to stop work. These findings challenge the idea that stop work decisions are best supported through procedures, training, and policies, as these interventions suggest that workers consider stop work decisions difficult and significant. An alternative strategy to encourage workers to stop work in dangerous situations would be for organizations to provide alternative methods for workers to complete a job.

EPA recognizes, and other industry commenters in the past have concluded,[238] that the current RMP rule, although not containing explicit requirements for stop work, already addresses many aspects of a stop work authority that provides means to identify and resolve imminent operational risks before they occur. For example, operating procedures developed under the RMP rule (40 CFR 68.69) address how and under what circumstances a facility should conduct normal and temporary operations, emergency shutdown (including the assignment of a responsible qualified operator to do so), emergency operations, and normal shutdown. Operating procedures should also address when process operations deviate from operating limits, steps to correct and avoid deviation, safety and health conditions to consider, and safety systems and their functions. Mechanical integrity requirements (40 CFR 68.73(e)) ensure equipment deficiencies that are outside acceptable limits are corrected in a safe and timely manner or before further use to assure safe operation. The associated trainings for operating procedures (40 CFR 68.71) and maintenance (40 CFR 68.73(c)) are key to ensuring that those processes are well understood. EPA believes all these components create a stop work authority as they address the circumstances and procedures to identify unsafe operations. Furthermore, EPA believes each facility's individual operating procedures and approach to correcting equipment deficiencies give owners and operators the flexibility to design a stop work authority for their process operations that remains adaptable to the procedures already in place.

With the current provisions in the RMP rule, EPA believes many facilities with RMP processes already have the appropriate measures to identify, reduce, and mitigate the threat of an accidental release before it happens. The fact that only a small number of facilities have RMP accidents further supports this. However, RMP accidents do still occur. According to the Agency's RMP accident data, among the most commonly instituted changes after RMP-reportable accidents were improved or upgraded equipment, revised training, and revised operating procedures.[239] Rather than make significant changes to these specific prevention program areas, EPA believes a better approach would be to ensure facilities' employees are aware of authorities to manage unsafe work, one of the last lines of defense to protect human health and the environment from a catastrophic release.

Therefore, EPA is proposing to require at 40 CFR 68.83(d) that the written plan of action regarding the implementation of the employee participation for Program 3 processes include and ensure effective methods are in place so that employees and their representatives have authority to:

- Refuse to perform a task when doing so could reasonably result in a catastrophic release.
- Recommend to the operator in charge of a unit that an operation or process be partially or completely shut down, in accordance with procedures established in 40 CFR 68.69(a), based on the potential for a catastrophic release.
- Allow a qualified operator in charge of a unit to partially or completely shut down an operation or process, in accordance with procedures established in 40 CFR 68.69(a), based on the potential for a catastrophic release.

[233] CSB, ''Tesoro Refinery Fatal Explosion and Fire,'' last modified May 1, 2014, *https://www.csb.gov/tesoro-refinery-fatal-explosion-and-fire/.*

[234] Washington State Department of Labor & Industries, ''Semi-Annual Rules Development Agenda: January 1, 2022–June 30, 2022'' (January 31, 2022), *https://lni.wa.gov/dA/ad667425ad/Rules Agenda.pdf.*

[235] Bush, J., ''Stop-Work Authority,'' last modified July 26, 2018, *https://www.safetyandhealthmagazine.com/articles/17242-stop-work-authority#:~:text=Stop%2Dwork%20authority%20permits%20any,Health%20insist%20on%20its%20use.*

[236] David E. Weber et al., ''We Can Stop Work, but then Nothing Gets Done.' Factors that Support and Hinder a Workforce to Discontinue Work for Safety,'' *Safety Science* 108 (2018): 149–160, doi: 10.1016/j.ssci.2018.04.032.

[237] Jop Havinga, Kym Bancroft, and Andrew Rae, ''Deciding to Stop Work or Deciding How Work Is Done?'' *Safety Science* 141 (2021): 105334, doi: 10.1016/j.ssci.2021.105334.

[238] EPA–HQ–OEM–2014–0328–0605.

[239] EPA Office of Land and Emergency Management, *Risk Management Plan RMP*eSubmit User's Manual* (August 2019), *https://www.epa.gov/sites/default/files/2019-03/documents/rmpesubmit_user_guide_-_march_2019_final_0.pdf.*

Additionally, EPA is proposing to require that stop work authority processes within employee participation plans outline how employers should document and respond, in writing and within 30 days, to employee reports of hazards or employee recommendations to shut down or partially shut down a process.

iv. Accident and Non-Compliance Reporting

Accident history reporting provides an avenue for disseminating valuable information about potential hazards and steps needed to prevent future accidents. Accident information submitted within a risk management plan, as required by the 5-year accident history provisions, includes information that could help states and EPA learn which types of sources are having problems, understand more about accident causes, track trends in chemical accidents and prevention activities, monitor the progress of risk management programs, focus future prevention activities, and avoid overregulation of industry sectors or substances. These important activities depend on accurate and timely information provided by accident reports.

Current accident reporting provisions in the RMP rule (40 CFR 68.42(a)) require that 5-year accident histories include all accidental releases from covered processes that resulted in deaths, injuries, and significant property damage onsite, and known offsite deaths, injuries, evacuations, sheltering in place, property damage, and environmental damage.

When the RMP rule was first promulgated, it required that when a risk management plan was updated per 40 CFR 68.190, it had to contain an updated 5-year accident history, including all the accidents that met the 40 CFR 68.42 reporting criteria and those that occurred within 5 years of the date on which the updated risk management plan was submitted. On April 9, 2004, EPA published a final rule that amended the accident history reporting requirement and certain other provisions of the Risk Management Program.[240] From that date, if an accident occurs that meets the reporting criteria, it must be reported in the RMP 5-year accident history within 6 months of the accident (as required by 40 CFR 68.195) unless it is included in a risk management plan update prior to that time. EPA took this action so that government, industry, and the public would be more quickly alerted to the possibility of similar accidents occurring elsewhere.[241]

Commenters from the 2021 listening sessions drew attention to the issue of RMP-reportable accidents that have not been reported or have been reported late. One commentor specifically provided a data analysis showing the lag in reporting.[242] In recognition of these comments, EPA further examined RMP accident history reporting from 2004 to 2020, analyzing accidents where either the risk management plan correction date or the full risk management plan submission date was more than 6 months from the date of the accident. This analysis found 163 RMP accidents reported late out of a total of 2,436 total accidents reported over this period (*i.e.,* a 6.7 percent late accident reporting rate). One commentor indicated that there seems to be little or no consequence for failures and delays in accident reporting. This may prevent EPA from performing relevant inspections and requiring corrective action to prevent serious harm.[243]

Other commenters from the 2021 listening sessions, including advocacy groups and individual commenters, recommended specific changes to the RMP rule addressing worker involvement in reporting areas of RMP non-compliance. For example, an individual commenter stated that EPA must strengthen worker participation, encourage workers to take action to protect safety and avoid incidents, ensure fast compliance deadlines for all requirements, and require more reporting to EPA on compliance. Some commenters, including advocacy groups and an individual commenter, emphasized that an updated RMP rule must address near-miss reporting by workers at RMP facilities.[244] A few of these commenters added that near-miss reporting must be anonymous.[245] One of these advocacy groups and an individual commenter suggested that EPA provide a hotline that allows workers, contractors, and anyone else with relevant information to report anonymous near-miss and safety information directly to the Agency, remarking that this would be a valuable service that would help ensure that EPA gets important information quickly.[246]

EPA is also concerned about other areas of RMP non-compliance, as compliance with the regulations helps facilities operate and maintain a safe facility and consistently implement recognized good engineering practices that prevent accidents from occurring. EPA inspections have revealed significant non-compliance and an ongoing need for additional compliance assistance to decrease the likelihood of chemical accidents and reduce the risk to human health and the environment. Over the last 5 fiscal years (October 2017 to September 2021), RMP and General Duty Clause (GDC) inspections resulted in a 71 percent rate of action taken by facilities to address issues of non-compliance with the RMP rule and GDC.[247] [248]

Further, EPA recognizes the right workers have to participate in implementing agency inspections. On February 11, 2011, EPA issued a memo that outlined EPA's policy on involvement of facility employees and employee representatives in onsite compliance inspections as provided by CAA section 112(r)(6)(L). [249] This section states that when EPA or another authorized agency conducts an inspection of a facility, employees and their representatives shall have the same rights to participate in the inspection, as provided in the Occupational Safety and Health Act [29 U.S.C. 651 *et seq.*] [250] CSB also recently highlighted this authority of employees in a board addendum on October 24, 2018.[251] The policy sets out to ensure opportunities for the participation of workers in the agency's investigative process.

[240] EPA, Accidental Release Prevention Requirements: Risk Management Program Requirements Under Clean Air Act Section 112(r)(7); Amendments to the Submission Schedule and Data Requirements, 40 CFR part 68 (69 FR 18819; April 9, 2004), *https://www.govinfo.gov/content/pkg/FR-2004-04-09/pdf/04-7777.pdf.*

[241] EPA Office of Solid Waste and Emergency Response, ''Chapter 3: Five-Year Accident History,'' *General Guidance on Risk Management Programs for Chemical Accident Prevention* (March 2009), *https://www.epa.gov/sites/default/files/2013-10/documents/chap-03-final.pdf.*

[242] EPA–HQ–OLEM–2021–0312–0058.

[243] EPA–HQ–OLEM–2021–0312–0149.

[244] EPA–HQ–OLEM–2021–0312–0035; 0032, 0020, 0170.

[245] EPA–HQ–OLEM–2021–0312–0035; 0035, 0170, 0032.

[246] EPA–HQ–OLEM–2021–0312–0076.

[247] EPA, ''General Duty Clause Under the Clean Air Act Section 112(r)(1),'' last modified December 21, 2021, *https://www.epa.gov/rmp/general-duty-clause-under-clean-air-act-section-112r1.*

[248] EPA, ''National Compliance Initiative: Reducing Accidental Releases at Industrial and Chemical Facilities,'' last modified May 18, 2021, *https://www.epa.gov/enforcement/national-compliance-initiative-reducing-accidental-releases-industrial-and-chemical.*

[249] EPA, Involvement of Employees and Employee Representatives in Clean Air Act (CAA) Section 112(r) On-Site Compliance Inspections—Final Guidance (February 11, 2021), *https://www.epa.gov/sites/default/files/2013-10/documents/clean_air_memo.pdf.*

[250] OSHA, *Representatives of Employers and Employees,* 1903.8 (n.d.), *https://www.osha.gov/laws-regs/regulations/standardnumber/1903/1903.8.*

[251] CSB, *Worker Participation in Investigations—Board Order Addendum 40a* (October 24, 2018), *https://www.csb.gov/assets/record/bo40a.pdf.*

After considering the issues of late reporting of accidents, non-reporting of other compliance issues, and the role workers could plan in promoting compliance, EPA is proposing to require that facilities with Program 3 processes include in their employee participation plans explicit language addressing worker participation and reporting, along with information for how to report RMP-reportable accidents or related RMP non-compliance issues. Specifically, EPA is proposing to add additional language at 40 CFR 68.83 to indicate that written plans should include information for anonymously reporting unaddressed hazards that could lead to a catastrophic release, unreported RMP-reportable accidents, or any other issue of non-compliance with 40 CFR part 68. EPA is also proposing to add an additional section under subpart C for owners and operators of Program 2 processes to implement an employee participation plan that addresses these issues. Although facilities with Program 2 processes account for only approximately 15 percent (n = 357 out of 2,436) of all RMP-reportable accidents (83 percent (n = 2,011 out of 2,436) are Program 3; 3 percent (n = 68 out of 2,436) are Program 1)), their accidents still have the potential to affect public receptors.[252] In 2017, for example, a chlorine release from a Program 2 process in Texas caused 20 people to require medical treatment and 125 people to evacuate.[253] In 2018, a facility with a Program 2 process in Iowa had an ammonia release that caused 500 members of the public to evacuate and 45 people to shelter in place.[254]

EPA expects facilities to use available resources for their specific process operations and other appropriate RMP rule guidance to include the new anonymous reporting provisions in employee participation plans. EPA resources to help owners and operators understand what is required and how to enforce provisions include:

- EPA's Report Environmental Violations—an online portal for reporting possible violations of environmental laws and regulations.[255]
- Guidance for Facilities on Risk Management Programs—an online resource hub for helping the regulated community understand the RMP rule.[256]
- Region 7 Risk Management Program Webinars—webinar slides that discuss the requirements of CAA 112(r)(7), common compliance pitfalls, preparing for inspections, and case studies. [257]
- ''Guidance for Conducting Risk Management Program Inspections under Clean Air Act Section 112(r)''—guidance for implementing agencies explaining how to conduct inspections of facilities subject to RMP.[258]
- ''Final Combined Enforcement Policy for Clean Air Action Sections 112(r)(1), 112(r)(7) and 40 CFR part 68, 2012''—guidance for determining the appropriate enforcement response and penalty amount for violations in failing to comply with RMP and GDC.[259]
- EPA chemical accident prevention publications—publications that address the specific need for safety and chemical emergency and preparedness measures based on enforcement and lessons learned from accidents.[260]

EPA recognizes that workers may often overlook hazards or areas that they know are non-compliant with standards for fear that it will affect their employment. This may particularly be the case for the stop work and accident reporting provisions. The Agency reminds owners and operators that OSHA enforces whistleblower protections provided under the CAA, the Occupational Safety and Health Act, and other Federal laws. Further information about those rights can be found at *https://www.whistleblowers.gov.*

In addition to employee participation, CCPS' RBPS guidance identifies compliance with standards as a key element in committing to process safety. It indicates that this element helps identify, develop, acquire, evaluate, disseminate, and provide access to applicable standards, codes, regulations, and laws that affect a facility and the process safety requirements applicable to a facility.[261] As with the other new provisions proposed in this employee participation section, EPA is proposing these RMP accident and non-compliance employee participation provisions because it wants to ensure that owners and operators who have not fully developed strong employee participation programs have further measures in place to ensure their commitment to process safety in order to prevent and minimize accidental releases of hazardous substances. EPA seeks comment on these proposed RMP accident and non-compliance employee participation provisions. EPA also seeks comments on whether owners and operators should distribute an annual written or electronic notice to employees that employee participation plans and other RMP information is readily accessible upon request and provide training for those plans and how to access the information.

B. Emergency Response

1. Review of Emergency Response Notification, Detection, and Response

Subpart E of the RMP rule, the emergency response provisions, applies to facilities with Program 2 or 3 processes. These provisions require owners or operators of regulated facilities with Program 2 or 3 processes to coordinate with local response authorities and, in some cases, develop an emergency response program in accordance with 40 CFR 68.95 to address how the owner or operator of the facility will respond to accidental releases. The rule requires the owner or operator to prepare and implement an emergency response program to protect public health and the environment, unless the stationary source is a ''non-responding'' facility included in the community emergency response plan developed under section 303 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (for sources with regulated toxic substances) and has coordinated response actions with the local fire department (for sources with only regulated flammable substances).

[252] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[253] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[254] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[255] EPA, ''Report Environmental Violations,'' last modified January 26, 2022, *https://echo.epa.gov/report-environmental-violations.*

[256] EPA, ''Guidance for Facilities on Risk Management Programs (RMP),'' last modified December 20, 2021, *https://www.epa.gov/rmp/guidance-facilities-risk-management-programs-rmp.*

[257] EPA, ''Region 7 Risk Management Program Webinars,'' last modified February 24, 2021, *https://www.epa.gov/rmp/region-7-risk-management-program-webinars.*

[258] EPA Office of Solid Waste and Emergency Response and EPA Office of Enforcement and Compliance Assurance, *Guidance for Conducting Risk Management Program Inspections under Clean Air Act Section 112(r)* (January 2011), *https://www.epa.gov/sites/default/files/2013-10/documents/clean_air_guidance.pdf.*

[259] EPA, Transmittal of the Final Combined Enforcement Policy for Clean Air Act Sections 112(2)(1), 112(r)(7) and 40 C.F. R. Part 68 (June 20, 2012), *https://www.epa.gov/sites/default/files/documents/112rcep062012.pdf.*

[260] EPA, ''Chemical Accident Prevention Publications,'' last modified November 16, 2021, *https://www.epa.gov/rmp/chemical-accident-prevention-publications#advisories.*

[261] CCPS, Guidelines for Risk Based Process Safety (March 2007), *https://www.aiche.org/resources/publications/books/guidelines-risk-based-process-safety.*

An owner or operator who needs to develop an emergency response program (*i.e.,* be a ''responding'' facility) will need to include the following elements in that program:

- An emergency response plan that includes procedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases; documentation of proper first aid and emergency medical treatment necessary to treat accidental human exposures; and procedures and measures for emergency response after an accidental release of a regulated substance.
- Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.
- Training for employees.
- Procedures to review and update the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes.

The owner or operator must also coordinate with local response authorities on the emergency response plan.

Facility owners or operators who rely on local responders to respond to an accidental release (*i.e.,* a ''non-responding'' facility) when the stationary source has been included in the community emergency response plan developed under section 303 of EPCRA (for sources with regulated toxic substances) or who have coordinated response actions with the local fire department (for sources with only regulated flammable substances and without regulated toxic substances) are not required to develop an emergency response program. However, owners or operators must also ensure that appropriate notification mechanisms are in place to notify emergency responders when there is a need for a response and must perform annual emergency response coordination and notification activities.

An RMP-regulated facility must indicate in its risk management plan whether it is a non-responding facility (*i.e.,* by indicating compliance with mandatory elements of emergency response plans required in 40 CFR 68.95(a)(1)) and identify the plans and procedures in place should an accidental release occur. EPA's review of the RMP database has shown that approximately 47 percent of RMP facilities claim to be non-responding facilities. However, during facility inspections, EPA has often found that facilities either are not included in the community emergency plan or have not properly coordinated response actions with local authorities. State and local response officials echoed this concern during the 2013 to 2014 listening sessions conducted under E.O. 13650, in responses to the 2014 RMP RFI,[262] and again in the 2021 listening sessions.[263]

New emergency response requirements added in the 2017 amendments rule and the 2019 reconsideration rule offer opportunities to address some of these concerns, such as coordination meetings with local responders and notification, tabletop, and field exercises.[264] In particular, EPA believes the annual coordination meeting and notification exercises will provide a wide range of useful outcomes, including information sharing and evaluation of the effectiveness of notification, evacuation, and sheltering systems and procedures. The annual coordination requirement is expected to help make continual improvements to emergency response systems and procedures, as appropriate.

Nevertheless, in reviewing opportunities to continually improve the effectiveness of emergency responses for RMP accidents, EPA reviewed additional data points from the RMP database and carefully considered comments from the 2021 listening sessions. After reviewing the data, EPA believes that more can be done to improve emergency responses, particularly in the field of timely notification of releases to the public and detection of those releases. The following three sections provide an overview of the RMP regulations and includes background information on accidental release notifications to both the surrounding community and local emergency response agencies. These sections serve to support EPA's proposed amendments to the emergency response requirements.

a. Concerns About Notification of Accidents

Communities surrounding RMP facilities need information to appropriately prepare for and respond to potential emergencies related to the facilities. Yet commentors from the 2021 listening sessions pointed out that they were first notified of chemical releases impacting their homes and families hours after the release via television news or social media; this delay in notification has created fear among the public.[265]

During the 2021 listening sessions, the National Association of SARA (Superfund Amendments and Reauthorization Act) Title III Program Officials (NASTTPO) provided comments containing recommendations to remedy this, urging EPA to require facilities to provide community notification for releases that have the potential to cross a facility's fenceline. NASTTPO argued that communities must receive more timely notification of chemical releases and accidents if they are to act in the ways LEPCs, emergency planners, and responders emphasize through public outreach and education. While only local response authorities can officially call for evacuations or shelter-in-place responses, the fundamental obligation to inform the public about whether a release has occurred—and about the magnitude of the release—falls upon the facility owner or operator, as they will have the best information available. NASTTPO also stated that education and awareness programs by LEPCs and others on protective actions for chemical release events cannot be successful unless the people who are expected to act receive timely and adequate warning information; the facility owner or operator must be the source of this information.[266]

While EPA acknowledges that the accident rate from RMP facilities has declined, EPA also recognizes that approximately 39 percent (n = 962) of reported accidents from 2004 to 2020 had offsite impacts. Further analysis shows that no offsite responders were notified in 192 of the 962 accidents with offsite impacts (19 percent). Furthermore, approximately 19 percent (n = 36) of the facilities with the 192 accidents self-identified as non-responders and relied on local responders to handle the release and public communication efforts. To be clear, that means that in these 36 incidents, there was no notification by the facilities to the entities they had designated would respond to incidents per the submitted risk management plans. Moreover, only 10 of these 192 accident investigations indicated that there was a revised emergency response plan because of the accident. These data points suggest that there is still a disconnect between the roles of regulated facilities and local responders, particularly when there are offsite impacts or the threat of such impacts.[267]

[262] EPA–HQ–OEM–2014–0328–0679; 0641.

[263] EPA–HQ–OLEM–2021–0312–0072.

[264] EPA, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, 84 FR 69893–69906 (December 19, 2019).

[265] EPA–HQ–OLEM–2021–0312–0072; 0020.

[266] EPA–HQ–OLEM–2021–0312–0072.

[267] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

Responding facilities also had problems notifying the public of releases, even though they are required to develop procedures for informing the public and the appropriate Federal, State, and local emergency response agencies. Eighty-one percent (n = 156) of responding facilities still did not notify local responders when there were offsite impacts.[268] Per 40 CFR 68.95(c), responding facilities are required to promptly provide local emergency response officials with information necessary for developing and implementing the community emergency response plan.[269]

When local responders are not notified, they cannot implement the community response plan that communities rely on for their safety. For example, on June 10, 2014, in St. David, Cochise County, Arizona, Apache Nitrogen Products Inc. (ANPI) released 52,000 pounds of anhydrous ammonia from a rail car when a sight glass in the ammonia piping broke. The community alarm process identified in the facility's emergency response program required the deployment of an employee to drive to the facility's fenceline and use a handheld ammonia monitor to determine if the alarm should be activated. However, the facility did not carry out the employee deployment and fenceline ammonia monitoring needed for action, so appropriate notification did not occur. This facility's emergency response program exemplifies that current compliance to the RMP rule's existing public notification provision can be ineffective and that notifications can improve. In a subsequent enforcement action, in addition to requiring upgraded ammonia detection devices, EPA had the facility owner develop response procedures and training. The procedures require relevant ANPI employees and contractors to request that Cochise County send an alert to mobile phones in areas where a release of anhydrous ammonia may reach public receptors. This community notification system must also provide appropriate instructions to the public, such as shelter-in-place or evacuation warnings.[270]

CSB also highlighted these emergency response concerns in a 2018 safety digest: ''Emergency Planning and Response—The Importance of Preparation, Training and Communication.'' [271] The digest gives examples from four major catastrophic accidents: the Bayer Crop Science pesticide waste tank explosion in Institute, West Virginia in 2008; [272] the West Fertilizer explosion and fire in West, Texas, in 2013; [273] the MGPI Processing, Inc., toxic chemical release in Atchison, Kansas, in 2016; [274] and the Arkema Inc. chemical plant fire in Crosby, Texas, in 2017.[275] These examples highlight the importance of an effective emergency response to prevent injuries and fatalities from chemical accidents. The digest further highlights lessons learned from at least 16 CSB accident investigations from 2010 to 2018 wherein there was ineffective emergency response training, planning, and communication between companies, emergency responders, and the community. Among others, some of the key lessons were:

- There must be effective communications and information sharing between facilities with hazardous chemicals, emergency responders, and community members before, during, and after emergencies.
- Communities should have redundant communication systems in place to notify residents of a chemical emergency.

b. Release Detection

CAA section 112(r)(7)(B)(ii) clearly anticipated a potential regulatory requirement for facilities to detect accidental releases of their substances to protect human health and the environment. Conforming to the performance-based nature of the RMP rule, the existing regulations allow facility owners or operators to develop mechanisms to detect releases and notify local authorities and the public—either directly or through local authorities—of releases at their facility.

Currently, RMP facilities are required to collect information and evaluate how they will detect releases at their facility. For example, facilities with Program 2 processes are required in their hazard review to identify any steps used or needed to detect or monitor releases (40 CFR 68.50(a)(4)). Facilities with Program 3 processes are required to identify detection systems when compiling their process safety information (40 CFR 68.65(d)(1)(viii)) and address appropriate application of detection methodologies to provide early warning of releases in their PHA (40 CFR 68.67(c)(3)).

RMP facilities with Program 2 and 3 processes are also required to report in their risk management plans, the monitoring and detection systems in use for their regulated processes (40 CFR 68.170(e)(5) and 68.175(e)(5)). When reporting in their risk management plans, owners and operators can select up to four categories that apply to how releases are detected from their processes: ''process area detectors'', ''perimeter monitors'', ''none'', or ''other monitoring/detection system in use''. When process area detectors or perimeter monitors are selected, no further information is collected. To better understand electronic detection methodologies available and in use among RMP facilities, EPA is proposing to require owners and operators to input, in an open text field in the risk management plan, specific information on their process area detectors and perimeter monitor technologies and models in use to detect RMP-regulated substances.

Due to the numerous RMP-regulated substances—and different technologies and methods available of accurately detecting those substances—EPA expects facilities to identify the most effective method of detecting releases of their specific substances, from their specific process operations, based on RAGAGEP. For example, EPA would expect facilities with anhydrous ammonia in ammonia refrigeration systems to adopt IIAR 9–2020, ''Minimum System Safety Requirements for Existing Closed-Circuit Ammonia Refrigeration Systems'' [276] (specifically, section 7.3.12), to address the specific requirements for ammonia detection and alarms in machinery rooms. For water and wastewater treatment facilities using gaseous chlorine, EPA would expect adoption of the Chlorine Institute's ''Pamphlet 73, Atmospheric Monitoring Equipment for Chlorine

[268] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[269] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

[270] *Plaintiff* v. *Apache Nitrogen Products, Inc.,* an Arizona Corporation, No. 4:20–cv–00463–BGM, Document 3–1 (October 28, 2020), *https://www.justice.gov/enrd/consent-decree/file/1332206/download.*

[271] CSB, *Safety Digest: Emergency Planning and Response* (2018), *https://www.csb.gov/assets/1/17/csb_emerg_resp_safety_digest.pdf?16429.*

[272] CSB, ''Bayer CropScience Pesticide Waste Tank Explosion,'' last modified January 20, 2011, *https://www.csb.gov/bayer-cropscience-pesticide-waste-tank-explosion/.*

[273] CSB, ''West Fertilizer Explosion and Fire,'' last modified January 28, 2016, *https://www.csb.gov/west-fertilizer-explosion-and-fire-/.*

[274] CSB, ''MGPI Processing, Inc. Toxic Chemical Release,'' last modified January 3, 2018, *https://www.csb.gov/mgpi-processing-inc-toxic-chemical-release-/.*

[275] CSB, ''Arkema Inc. Chemical Plant Fire,'' last modified May 24, 2018, *https://www.csb.gov/arkema-inc-chemical-plant-fire-/.*

[276] IIAR, *ANSI/IIAR Standard 9–2020* (2020).

(2021)'' [277] to ensure best practices for detecting chorine. For petroleum refineries using HF in alkylation units, an appropriate guideline is API's ''Safe Operation of Hydrofluoric Acid Alkylation Units (2021)'' [278] (section K.3.2), which covers how to provide early and reliable HF detection.

c. Emergency Response Guidance

Current widely accepted industry guidance indicates that timely notification is necessary during hazardous chemical release events and that relying only on emergency responders, particularly those with inadequate resources, may not be enough to protect the public.

The NFPA 1600®, ''Standard on Continuity, Emergency, and Crisis Management (2019),'' [279] indicates that entities shall develop a plan and procedures to disseminate information to—and respond to requests for information from—both internal and external audiences. It states that the entity should determine its warning, notification, and communication needs; in addition, the systems must be reliable, undergo testing, and include issuing warnings through authorized agencies. It also states that facilities should establish and implement a process whereby all appropriate stakeholders have a common reference for the types of incidents that could adversely affect people, property, operations, or the environment and are able to warn, notify, and report on the circumstances.

The American Society for Testing and Materials (ASTM) International's 2020 ''Standard Guide for Coordination and Cooperation between Facilities, Local Emergency Planning Committees, and Emergency Responders'' (ASTM E3241–20) [280] aims to provide increased coordination and cooperation among stakeholders to develop better community preparedness for accidents involving hazardous chemicals. The standard indicates that facilities must be part of the preparedness effort because of their greater expertise on the properties of the hazardous chemicals present, as well as their knowledge of operating systems and procedures, hazard assessments, and their emergency response capabilities. ASTM E3241–20 specifically indicates that facilities must participate in the development of public warning and evacuation procedures and that they must collaborate with local emergency responders to mutually develop protocols for public warning and orders to shelter or evacuate.

The United Nations Environment Programme's 2015 ''Awareness and Preparedness for Emergencies at the Local Level'' handbook [281] offers processes to improve community awareness and preparedness for technological hazards and environmental emergencies. The handbook indicates that facility owners and operators are fully responsible for accident prevention and emergency response procedures for their operations. The handbook also states that the facility will best understand the hazards and risks, protective measures, and response procedures—and that these must be shared both during preparedness planning and during the response to any accident.

These guidance documents outline the importance of having a coordinated effort to ensure public notification of accidental releases. They also encourage facility owners and operators to be accountable in their role for providing accurate information to the necessary authorities to ensure appropriate data are shared with the people who are affected by the release.

2. Proposed Modification and Amplifications of Emergency Response Requirements

a. Proposed Regulations To Address Community Notification of RMP Accidents

EPA is proposing to amend 40 CFR 68.90(b) by adding a requirement necessary for RMP facility owners and operators to designate their facility as a non-responding facility. The proposed provision would require facilities to develop and implement, as necessary, procedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases of RMP-regulated substances and ensure that a community notification system is in place to warn the public within the area threatened by a release. Expanding the recordkeeping and implementation aspect of this provision to non-responding facilities would help ensure that all facilities subject to subpart E, have documented knowledge of the public notification process that would occur when there is an accidental release at the facility. Consistent with the overall performance-based nature of the RMP rule, the owner or operator of a facility has some flexibilities in the development of its procedures so long as the procedures meet the performance-based requirement to inform and notify the public and response agencies. This provides facilities with flexibility in the design of the procedures so long as the procedures are implemented in the event of an accidental release.

The proposed amendment would also help clarify the facility's role in the implementation of that notification process by requiring the owner or operator to provide the information needed to initiate a public release notification. EPA anticipates that in most cases, these notification procedures may be identical to those coordinated with and relied upon by local public responders. EPA expects that this proposed provision, in combination with the required annual emergency coordination meetings and notification exercises, would enhance coordinated notification to the public and improve documented accountability for the notification process. EPA is also proposing that these notification procedures be available by the facility upon request to the public living in close proximity (approximately within 6 miles) to RMP facilities, to help ensure that members of the public are aware of the steps the facility has taken to notify them when a release occurs. Further details pertaining to information available to the public is discussed in section IV.C of this preamble.

EPA is also proposing to amend 40 CFR 68.95(a)(1)(i), which currently requires responding facilities to have procedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases. This proposed amendment would ensure that a community notification system is in place in order to quickly and efficiently warn the public within the area that could be threatened by a release.

EPA can expect facilities to ensure that a community notification system is available because the Federal Emergency Management Agency (FEMA) has established the Integrated

[277] The Chlorine Institute, *Pamphlet 73) Atmospheric Monitoring Equipment for Chlorine* (2021), *https://bookstore.chlorineinstitute.org/pamphlet-73-atmospheric-monitoring-equipment-for-chlorine.html?Session_ID=66da3abed669d2ecb4448e5c1c17ba5e.*

[278] API, *Recommended Practice 751* (2021), *https://www.api.org/oil-and-natural-gas/health-and-safety/refinery-and-plant-safety/process-safety/process-safety-standards/rp-751.*

[279] NFPA, *NFPA 1600: Standard on Continuity, Emergency, and Crisis Management* (2019), *https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1600.*

[280] ASTM International, ''Standard Guide for Coordination and Cooperation Between Facilities, Local Emergency Planning Committees, and Emergency Responders,'' last modified May 25, 2020, *https://www.astm.org/e3241-20.html.*

[281] United Nations Environment Programme, *Awareness and Preparedness for Emergencies at Local Level* (2015), *https://www.preventionweb.net/files/45469_unepawarenesspreparednessemergencie.pdf.*

Public Alert & Warning System (IPAWS) for community notification.[282] This system provides authenticated emergency and life-saving information to the public through mobile phones using wireless emergency alerts. It also provides alerts to radio and television via the Emergency Alert System and on the National Oceanic and Atmospheric Administration's Weather Radio. The Emergency Alert System devices found at radio, TV and cable stations can support multiple languages and wireless Emergency Alerts can support both English and Spanish.[283] EPA believes that the presence of State and/or local IPAWS alerting authorities—with the designated authority to alert and warn the public when there is an impending natural or human-made disaster, threat, or dangerous or missing person [284]—in all 50 states provides the necessary infrastructure for facilities to ensure that a community notification system is operational within any impact zones of releases that occur from their facility. The most applicable alerts through this system would be the imminent threat and public safety alerts. Imminent threat alerts include natural or human-made disasters, extreme weather, active shooters, and other threatening emergencies that are current or emerging. Public safety alerts contain information about a threat that may not be imminent, or about an imminent threat that has occurred.[285]

EPA expects local responding authorities to notify the community as authorized through IPAWS. In the RMP General Guidance, EPA states that although a non-responding facility is not responsible for developing emergency response capabilities, it is responsible for ensuring effective emergency response to any releases at the facility. If local public responders are not capable of providing such response, EPA guidance urges facilities to take steps to ensure that effective response is available.[286] Therefore, EPA expects facilities to work with the local responders to ensure that, during a release, all necessary resources are in place for a community notification system to function and operate as expected.

EPA is also proposing to amend 40 CFR 68.90(b)(3) and 68.95(c) to require facilities to provide necessary entities with initial RMP accidental release information during releases of regulated substances in order to ensure that information is available to the public and the appropriate Federal, State, and local emergency response agencies. Specifically, EPA is proposing that whichever method is used to detect accidental releases,[287] the facility—regardless of responding status—must ensure that the public is promptly notified by the method outlined in the facility's emergency response plan in coordination with local responders. Facilities should do this by providing appropriate, timely data and information to local responders, and detailing the current understanding and best estimates of the nature of the release. This should include the regulated substance released, estimated time the release began, estimated quantity already released and potential quantity to be released, and potential consequences of the release to human health and the environment. EPA realizes that when facility owners and operators first detect a release, they may not have all the details of the situation. However, EPA expects RMP facility owners and operators to be familiar enough with their regulated substances, processes, and potential release scenarios to promptly notify the public to support timely protective actions. EPA would also expect owners and operators to provide follow-up information about the release to local responders as soon as possible, to either provide more accurate data or to correct erroneous data that had been previously relayed. EPA expects that the annual emergency response coordination meetings (40 CFR 68.93) and notification exercises (40 CFR 68.96(a)) will help to ensure that these plans and procedures are discussed and practiced.

The Agency recognizes the possible tradeoff between early notification and accuracy. In some cases, a potential or actual release may be averted or mitigated within the facility well before any exposure to toxic fumes, intense heat, or blast overpressure occurs to the community. Early notification, or even ''false positives'' have the potential to disrupt communities and divert public response resources. Nevertheless, given the gravity of potential accidental releases of regulated substances from processes subject to the RMP rule—and in light of repeated expressions of concern heard at the 2021 listening sessions—EPA believes its proposed amendments will provide a greater level of comfort and overall safety to communities surrounding RMP facilities. EPA requests public comment on the Agency's proposed approach.

While responding and non-responding facilities should have mechanisms and procedures in place to notify the public through emergency response plans at 40 CFR 68.90(b)(3) and 68.95(a)(1)(i), amending the current requirements to explicitly include the current understanding and best estimates of data and information pertaining to the release would help ensure timely decisions about notification of those releases, particularly those with offsite impacts. EPA expects that the requirement to provide this information will help ensure that local responders have sufficient information to make the best decision on whether community notification is appropriate. Through this proposed provision, along with the recently promulgated requirements for annual coordination meetings and notification exercises, EPA expects that emergency response efforts and communications will be practiced and refined. EPA also seeks comment on what additional information would be useful to share in these scenarios.

b. Community Emergency Response Plan Amplifications

According to 40 CFR 68.90(b)(1) and 40 CFR 68.95(c), respective non-responding and responding facilities are currently required to be coordinated with the community emergency response plan developed under EPCRA Section 303, 42 U.S.C. 11003, ''Comprehensive Emergency Response Plans.'' [288] The plan is prepared by LEPCs/TEPCs to evaluate the need for resources necessary to develop, implement, and exercise the emergency plan. The plan must include at least the following:

[282] FEMA, ''Integrated Public Alert & Warning System,'' last modified January 27, 2022, *https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system.*

[283] FEMA, ''Alerting People with Disabilities and Access and Functional Needs,'' accessed March 17, 2022, *https://www.fema.gov/es/emergency-managers/practitioners/integrated-public-alert-warning-system/public/alerting-people-disabilities.*

[284] FEMA, ''Alerting Authorities,'' last modified January 6, 2022, *https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/public-safety-officials/alerting-authorities.*

[285] FEMA, *TIP 38: Imminent Threat* vs. *Public Safety* (2021), *https://www.fema.gov/sites/default/files/documents/fema_ipaws-tip-38-it-vs-ps.pdf.*

[286] EPA, *General Guidance on Risk Management Programs Chapter 8: Emergency Response* (2021), p. 8–6, *https://www.epa.gov/sites/default/files/2013-11/documents/chap-08-final.pdf?VersionId=vLaBwe1S2zXXrwsxM3HfR0Ko4ZvYXvWD.*

[287] EPA acknowledges the multiple comments received regarding fence-line monitoring of RMP releases and seeks additional comment to gather further information on the consideration of fenceline monitoring for the RMP rule. Information sought per this issue is outlined in the Technical Background Document.

[288] *Comprehensive Emergency Response Plans,* 42 U.S.C. 11003, (October 17, 1986), *https://www.govinfo.gov/content/pkg/USCODE-2020-title42/pdf/USCODE-2020-title42-chap116-subchapI-sec11003.pdf.*

- Identification of facilities within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of EPCRA subchapter I under Title 42, Chapter 116, such as hospitals or natural gas facilities.
- Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.
- Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.
- Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred.
- Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.
- Description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of EPCRA subchapter I under Title 42, Chapter 116, and an identification of the persons responsible for such equipment and facilities.
- Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.
- Training programs, including schedules for training of local emergency response and medical personnel.
- Methods and schedules for exercising the emergency plan.

EPA wants to ensure RMP-regulated facilities understand how their facility's processes could impact the larger community emergency response plan, and the facility's role in coordination on the required plan provisions. Therefore, EPA is proposing to explicitly state the required provisions of the community response plan in the RMP regulatory text. EPA would expect the facility to discuss the community plan with appropriate LEPC officials as part of the facility's coordination activities. Only if the LEPC plan was clearly deficient would EPA consider any action against the facility for relying on it for response.

Additionally, the Agency realizes community emergency response plans contain useful information for the public to learn how RMP facility processes are accounted and planned for if there is an RMP-regulated accidental release. EPA seeks comment about impediments to accessing community emergency response plans and potential solutions to having the plans more accessible within the scope of the RMP regulations.

3. Emergency Response Exercises

a. Proposed Amendments to the Emergency Response Requirements

EPA is proposing to revise 40 CFR 68.96(b)(1)(i) to require all facilities with Program 2 and Program 3 processes and subject to the emergency response program requirements of subpart E (*i.e.,* the responding stationary source), at a minimum, conduct field exercises involving a simulated accidental release of a regulated substance once every 10 years, unless local responders indicate that frequency is infeasible. EPA is also proposing to amend 40 CFR 68.96(b)(3) to require that the current recommended field and tabletop exercise evaluation report components be mandatory.

b. Field Exercise Frequency

The 2017 amendments rule added the field exercise provision to support reducing accident impacts by ensuring that emergency response personnel understood their roles in the event of an incident, that local responders were familiar with the hazards at a facility, and that the emergency response plans were up to date. The Agency believed that even the smallest sources would be able to hold field exercises at least once each decade and, in many cases, it expected sources would hold field exercises more often.[289]

In the 2019 reconsideration rule, EPA modified the frequency of field exercises by removing the minimum frequency requirement of at least every 10 years. The Agency removed the 10-year field exercise frequency to reduce burden on local emergency responders with multiple RMP-covered facilities and on small counties with limited resources—many of which are rural and rely on volunteers.[290] The final rule was therefore modified to require the owner or operator to consult with local emergency response officials to establish an appropriate frequency.

Emergency response field exercise frequency was the theme of multiple comments submitted during the 2021 listening sessions. Labor unions, multiple advocacy groups, and an individual commenter all submitted comments requesting EPA to not only require emergency response exercises, but to also set deadlines for their completion.[291] Further, a State regulatory agency suggested that EPA require RMP facilities to complete an annual full-scale emergency response exercise that would include testing containment, mitigation, and monitoring equipment. The commenter indicated that regular, hands-on practice is important due to the frequent turnover of RMP facility personnel.[292] In contrast, an industry trade association argued that the emergency response exercises under the current regulations work well and that flexibility regarding the timing of the exercises benefits both RMP facilities and emergency response organizations.[293]

EPA is cognizant of the resources (*e.g.,* staff, experts, funds) that field exercises demand, particularly in small rural communities and those with multiple RMP facilities. However, EPA maintains that exercising emergency response plans within a reasonable, frequent time frame is vital to ensuring that emergency response programs will work well in the event of an accidental release. The NFPA 1600® Standard on Continuity, Emergency, and Crisis Management takes a similar position, indicating that exercises and tests should be conducted at the frequency needed to establish and maintain required capabilities.[294]

A 2016 NASTTPO survey, which aimed to gather information about levels of activity of LEPCs and identify areas for improvement, found that the number of LEPCs had decreased nationwide due to complacency, time, interest, and funding.[295] [296] While 87 percent of LEPCs indicated that they had participated in emergency response

[289] EPA, *2017 Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act* 82 FR 4594 (January 13, 2017).

[290] EPA, *2019 Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act,* 84 FR 69834 (December 19, 2019).

[291] EPA–HQ–OLEM–2021–0312–0057; 0058, 0079, 0149, 0032, 0170.

[292] EPA–HQ–OLEM–2021–0312–0039.

[293] EPA–HQ–OLEM–2021–0312–0071.

[294] NFPA, ''NFPA 1600® Standard on Continuity, Emergency, and Crisis Management,'' accessed March 1, 2022, *https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1600.*

[295] NASTTPO, *2016 Local Emergency Planning Committee (LEPC) Survey: Final Report* (2016), *https://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Local%20Emergency%20Planning%20Committee/Meetings%20Agendas%20and%20Minutes/2016/2016%20LEPC%20Survey%20Final%20Report%20-%20FInal.pdf.*

[296] EPA, 2008 Nationwide Survey of Local Emergency Planning Committees (LEPCs): Final Report (2008), *https://www.epa.gov/sites/default/files/2013-08/documents/2008_lepcsurv.pdf.*

exercises, over 50 percent reported that conducting drills/exercises was an area where they felt additional assistance could be provided. EPA wants to ensure that facilities are accountable to the communities in which they are located. One way to do this is to make sure that communities have mechanisms to evaluate the resources and capabilities needed to assist in a response to an accidental release and that they can perform field exercises involving actual emergency response functions to simulated release events.

EPA believes many responding facilities with RMP processes are making plans and intending to conduct field exercises on a timeline that is appropriate for establishing and maintaining required emergency response capabilities. However, EPA is concerned that some responding sources may use the flexibility in the current regulation to never hold field exercises with local responders or to hold them so infrequently that the owner or operator's response to an accidental release would be ineffective. One listening session commentor in support of setting deadlines for field exercises indicated that without a compliance frequency, the provision to conduct emergency field exercises is purely symbolic and is an empty requirement.[297] EPA wants to ensure all facilities conduct regular field exercises if they have the resources and capabilities to do so. The Agency hopes to avoid a scenario where responding sources impose a schedule that practically exempts them from the exercise program requirements, particularly if the local responders know that conducting exercises would be beneficial for response efforts.

Therefore, EPA is proposing to amend 40 CFR 68.96(b)(1)(i) to require all facilities with Program 2 and Program 3 processes and subject to the emergency response program requirements of subpart E (*i.e.,* the responding stationary source) to, at a minimum, conduct field exercises involving a simulated accidental release of a regulated substance once every 10 years unless local responders indicate that frequency is impractical. EPA expects assigning this frequency to the provision, but providing for relief in specific circumstances, will work for all organizations and communities to prepare for or further assess the ability to respond to accidental releases. Because facilities have always had a requirement to do a field exercise, an added provision with a 10-year phase in should have minimal impact on sources who may have relied upon the 2019 provision, which has been in place for only three years. Moreover, local responders continue to have the option not to participate, which also diminishes any possible reliance interests. EPA expects that the frequency of field exercises and any justification for not being able to conduct them on a 10-year schedule will be discussed through annual coordination meetings. Although written justification from local responders will allow facilities with relief from this proposed provision, EPA expects this dialogue will address supposed barriers to carrying out field exercises with some frequency and result in creative solutions such as focusing the scope of exercises or conducting joint exercises with neighboring facilities. This proposed amendment will help ensure the safety of communities by more frequently confirming that local responders are prepared for an accidental release.

c. Exercise Evaluation Reports

The 2017 amendments rule added the field and tabletop exercise evaluation report provision. This provision required either the preparation of a report within 90 days of each field and tabletop exercise (40 CFR 68.96(b)(3)) or, an after-action report comparable to the exercise evaluation report required when owners or operators use a response to an accidental release to meet their field exercise requirement (40 CFR 68.96(c)(2)). The report in either situation would be required within 90 days of the exercise or accident and must include a description of the scenario, names and organizations of each participant, an evaluation of the exercise results including lessons learned, recommendations for improvement or revisions to the emergency response exercise program and emergency response program, and a schedule to promptly address and resolve recommendations. EPA believed that maintaining a written record including, among other things, the identification and affiliation of exercise participants, would be useful in planning future exercises.

The 2019 reconsideration rule scaled back the exercise reporting requirements, making the exercise report elements recommended rather than mandatory. The Agency indicated that making the reporting requirements non-mandatory would reduce the regulatory burden and allow emergency response personnel the flexibility to decide which exercise documentation would be most appropriate for the facility and community.

EPA now recognizes there may be an inconsistency between the recommended exercise evaluation and mandatory incident investigation documentation requirements, as one provision can be used to satisfy the other. Current incident investigation regulations under 40 CFR 68.60 and 68.81 require incident investigation reports to include specific elements: the date of incident, the date the investigation began, a description of the incident, the factors that contributed to the incident, and any recommendations resulting from the investigation. Under the current field and tabletop documentation provisions, facilities would be allowed to satisfy the documentation requirement for field and tabletop exercises through an after-action report following an accidental release. EPA believes that, in most cases, these accidental releases would be those that need to be investigated per 40 CFR 68.60 and 68.81. Many of the incident investigation and exercise evaluation reporting requirements are similar. EPA believes it should be consistent in its requirements to ensure there is no confusion related to reports that can be used interchangeably.

Therefore, EPA is proposing to amend 40 CFR 68.96(b)(3) to require that the current recommended exercise evaluation report elements be mandatory rather than recommended. EPA contends that making these exercise report components mandatory will help not only to eliminate confusion about what is required when evaluating an actual or simulated response, but also provide consistency on elements that are crucial to the exercise improvement planning process.

C. Information Availability

EPA is proposing to amend 40 CFR 68.210 to allow the public to request specific chemical hazard information if they reside within 6 miles of a facility. As discussed below, the 6-mile restriction would allow access to information for the vast majority of the public that are within worst case scenario impact zones. Having received such a request, the facility would be required to provide certain chemical hazard information and access to community emergency preparedness information. This proposal is similar to the 2017 amendments rule, with the added modification that information be restricted to those persons within 6 miles of the facility.

1. Recent Public Input on Information Availability

During EPA's 2021 listening sessions, approximately 210 commenters

[297] EPA–HQ–OLEM–2021–0312–0170.

provided feedback on information availability requirements. Multiple commenters, including advocacy groups, individual commenters, and labor unions, expressed support for expanding information availability to improve the safety of first responders and community members.[298] An association of government agencies said that LEPCs' access to information is vital and suggested that EPA grant LEPCs the ability to request relevant information from RMP facilities, similar to the level of access under EPCRA for facilities with extremely hazardous substances.[299] Multiple advocacy groups, via a joint submission, and an individual wrote that EPA's Chemical Emergency Preparedness and Prevention Office and CSB agreed that ''transparency between industry and the public improves community safety.'' [300] An advocacy group said that many residents near RMP facilities are not aware that they are located near these facilities, as EPA has not shared a list of where the communities most at risk are located.[301] Multiple advocacy groups and an individual commenter said that risk management plans should be available online—for example, through EPA's website, the RMP facility's corporate website, and public libraries.[302] A State elected official suggested that EPA create an online database through which the public can read summaries of risk management plans; this would avoid releasing sensitive security information about RMP facilities while also informing the public of relevant community safety concerns.[303]

2. Information Availability in the 2017 Amendments and the 2019 Reconsideration Rule

The 2017 amendments rule added new information availability requirements, including the requirement for the owner or operator to provide—within 45 days of receiving a request by any member of the public—specified chemical hazard information for all RMP-regulated processes. The provision required the owner or operator to provide ongoing notification on a company website, on social media platforms, or through other publicly accessible means such that the information is available to the public upon request, along with the information elements that may be requested and instructions for how to request the information. In the 2019 reconsideration rule, EPA removed these elements because of a benefit versus risk calculation, observing that much RMP information was available through other means while widespread anonymous access to the consolidated information posed potential security risks.

EPA stated in its 2019 reconsideration rule that part of its rationale for rescinding information availability provisions was that the 2017 amendments rule ''underweighted security concerns in balancing the positive effects of information availability on accident prevention and the negative effects on public safety from the utility to terrorists and criminals of the newly available information and dissemination methods.'' In its rationale for the 2019 reconsideration, EPA cited the Department of Justice (DOJ) report ''Assessment of the Increased Risk of Terrorist or Other Criminal Activity Associated with Posting Off-Site Consequence Analysis Information on the internet,'' [304] which found that assembling the otherwise-public data is valuable in identifying and focusing on sources that have conducted criminal acts. The goal of DOJ's assessment was to determine which variables and forms of dissemination would create vulnerabilities enabling a terrorist attack. In the 2019 reconsideration rule, EPA stated the 2017 provisions would make otherwise-public information newly anonymously accessible via the web and other means in a more consolidated fashion. EPA observed that this consolidated information ''may present a more comprehensive picture of the vulnerabilities of a facility than would be apparent'' otherwise, and thus potentially increasing terrorist risk (84 FR 69887, December 19, 2019).

EPA is proposing a provision to increase information availability to communities that balances information availability to communities with the previously identified security concerns. EPA believes the proposed amendment to add a 6-mile radius ensures that even if community members obtain information related to offsite consequences analysis (OCA) data, it would require a difficult nationwide-coordinated effort among people within 6 miles of each facility to create the type of online database described in DOJ's report. The proposed provisions simply require RMP facilities to provide their chemical hazard information to communities within a 6-mile radius of the facility, when previously they were not required to. Because RMP facilities were, and will continue to be, in possession of this information, it is unlikely that such a change would result in any possible prejudice to the facilities based on their reliance on the 2019 reconsideration rule provisions, which have only been in place for 3 years.

In its 2019 reconsideration rule, EPA mentioned that members of the public can view risk management plans at Federal Government reading rooms, obtain risk management plan information from State or local government officials with risk management plan data access, or submit a request to EPA under the FOIA (for non-OCA risk management plan information). EPA also mentioned that owners and operators of regulated facilities may disclose risk management plan information for their own facilities if they so choose. While current OCA provisions allow for a person visiting a reading room to request information of up to 10 facilities per year regardless of location as well as the OCA information for all facilities with a vulnerable zone that extends into the jurisdiction of the LEPC/TEPC where the person lives or works, there are a limited number of reading rooms even in large states, and these reading rooms generally are not located close to the communities potentially impacted by process safety at particular facilities. While the reading room restrictions are necessary for OCA information, the restrictions in locations and access make them an inefficient way to access information in the risk management plans that Congress chose not to restrict when it enacted the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act 42 U.S.C. 7412(r)(7)(H)(ii). By creating a 6-mile radius, EPA allows communities with more than one facility to request information on all the sources to which they may be potentially exposed in the event of a release.

The 2019 reconsideration rule mentioned that community members may request information from their LEPCs; however, subsequent analysis of active facility risk management plan submissions demonstrates that 10 percent of active facilities have not provided information on the names of their LEPCs.[305] Without further

[298] EPA–HQ–OLEM–2021–0312–0016; 0020, 0025, 0026, 0035, 0036, 0040, 0042, 0051, 0057, 0058, 0060, 0072, 0358, 0387.

[299] EPA–HQ–OLEM–2021–0312–0072.

[300] EPA–HQ–OLEM–2021–0312–0151; 0149.

[301] EPA–HQ–OLEM–2021–0312–0170.

[302] EPA–HQ–OLEM–2021–0312–0035; 0042, 0036, 0060, 0149.

[303] EPA–HQ–OLEM–2021–0312–0043.

[304] DOJ, *Assessment of the Increased Risk of Terrorist or Other Criminal Activity Associated with Posting Off-Site Consequence Analysis Information on the internet* (2000), *https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-2003,* EPA–HQ–OEM–2015–0725–2003.

[305] 40 CFR 68.160(b)(18).

information as to why facilities left this portion of the risk management plan submission blank, it is possible that LEPCs may not exist for those facilities, that the LEPC may have existed but is inactive, or that the facility is not in communication with its LEPC. EPA routinely receives FOIA requests for OCA and non-OCA versions of the risk management plan database from local and State emergency response entities, which may indicate that local emergency response entities also have difficulty in obtaining this information from facilities.

EPA also conducted a parallel benefits assessment in 2000, describing the benefits of providing community access to risk management plan information.[306] EPA found that public disclosure of risk management plan information would likely lead to a reduction in the number and severity of accidents. It also found that comparisons between facilities, processes and industries would likely lead industry to make changes and would stimulate dialogue among facilities, the public, and local officials to reduce chemical accident risks. EPA also concluded that given the opportunity, the public would use hazard information to take action, thus lead to risk reduction, citing the reduction in emissions following publicly available TRI information.

EPA is proposing individuals within a 6-mile radius of RMP facilities be able to obtain specific chemical hazard information. EPA believes this distance to be reasonable as 90 percent of all toxic worst-case distances to endpoints are 6 miles or less, and almost all flammable worst-case distances are less than 1 mile. The 6-mile radius for being able to request information from facilities allows people in most areas potentially impacted by a WCS to have access to information while also providing a limit on widespread access to nationwide assembly of data. The proposed approach uses aggregate worst case scenario data and does not rely on individual worst cases for each facility because EPA cannot by rule force disclosure of OCA information to the public. EPA notes that 5 percent of worst-case distances for toxics are more than10 miles, while 67 percent of scenarios are under 3 miles. EPA seeks comment on whether the 6-mile radius is appropriate and provides the information on 10 miles and 3 miles as potential alternatives. For alternative distances supported by commenters, EPA requests information on the justification for these alternative distances.

3. Proposed Regulatory Revisions

In the 2017 amendments rule, EPA added several new provisions to 40 CFR 68.210, ''Availability of Information to the Public.'' These included:

- A requirement for the owner or operator to provide, upon request by any member of the public, specified chemical hazard information for all regulated processes, as applicable, including names of regulated substances held in a process; Safety Data Sheets (SDSs) for all regulated substances located at the facility; accident history information required to be reported under 40 CFR 68.42; and emergency response program information, including whether or not the source responds to releases of regulated substances, name and phone number of local emergency response organizations, and procedures for informing the public and local emergency response agencies about accidental releases.
- A requirement for the owner or operator to provide ongoing notification on a company website, on social media platforms, or through other publicly accessible means that the above information is available to the public upon request, along with the information elements that may be requested and instructions for how to request the information, as well as information on where members of the public may access information on community preparedness, including shelter-in-place and evacuation procedures.
- A requirement for the owner or operator to provide the requested chemical hazard information within 45 days of receiving a request from any member of the public.

EPA is proposing to restore these provisions for community members living within 6 miles of a facility. EPA contends this will allow affected communities to obtain information from RMP facilities. Allowing all community members demonstrating residence within 6 miles of the facility to request this information would ensure information availability in areas without LEPCs/TEPCs. The proposed 6-mile limitation seeks to limit the potential security risk of allowing anonymous confidential access of this information to the entire public that was of concern to EPA in the 2019 reconsideration rule. The proposed approach strikes a better balance between those security concerns and the interests of people living near facilities who could benefit from the information: personal preparedness in the event of an accident, knowledge of safety conditions where one lives, and more informed participation in community safety planning. EPA seeks comment on the 6-mile limitation and whether it balances security concerns and community access to information. While much, if not all, of the information to be disclosed upon request to facilities under this proposed provision is otherwise publicly available with little geographic limitation, the additional method of access EPA is proposing make access simpler for people who are near facilities.

a. Request for Comment on Potential Non-Rule RMP Access Policy Changes

While these proposed regulatory changes will improve information sharing within communities, they do not resolve concern that fenceline communities are often unaware of RMP facilities near them. To request facility information, a member of the public would need to know how to access it, have the means to access it, and know that the facility exists in their community in order to determine how to access and request the information. These barriers do not appropriately facilitate community right-to-know or equitable distribution of knowledge on fenceline community risks to those most affected by potential releases. In the 2019 proposed rule comment period, commenters pointed out that reading rooms are not a realistic avenue for public access to information.[307] EPA also recognizes the additional impracticalities that the COVID–19 pandemic has imposed on reading room options. Many commenters mentioned delays in accessing information and limitations on data requests from reading rooms. Further, most states only have one reading room, which complicates public access to information from that source. Commenters also mentioned equity issues given the expertise and language issues required to access information. In its 2000 benefits assessment,[308] EPA also noted that obtaining information from LEPCs is difficult and a central repository would improve ease of information access. EPA's past experience in implementing EPCRA had shown that many State and local officials needed assistance in managing the chemical information submitted to them on paper by industry under that

[306] EPA. April 18, 2000. Assessment of the incentives created by public disclosure of off-site consequence analysis information for reduction in risk of accidental releases.

[307] EPA–HQ–OEM–2015–0725–1598; 1869, 1925, 1969.

[308] EPA. April 18, 2000. Assessment of the incentives created by public disclosure of off-site consequence analysis information for reduction in risk of accidental releases.

law, and that the public often did not take advantage of this information since it was not conveniently available. Additionally, information on multiple RMP facilities is needed as it allows communities to compare risks between facilities, as well as potential cumulative risks owing to multiple facilities within a community. For communities with more than one facility, *e.g.,* communities like Harris County, Texas with large numbers of facilities, residents should not be expected to request information from each of these facilities, but rather, EPA should aggregate this information in a central location.

By policy, EPA has restricted access to the RMP database even though only a portion of the database is restricted by CAA 112(r)(7)(H) and its implementing regulations in 40 CFR part 1400. Other programs within EPA have demonstrated that facility and chemical information can be made publicly available, in a readily accessible format. EPA intends to, at a prospective date, begin publishing non-OCA risk management plan data annually, less any CAA 112(r)(7)(H) protected sensitive information. EPA has received comments in the past with concerns regarding confidential business information and directs these commenters to the requirements in 40 CFR 68.152 for substantive criteria set forth in 40 CFR 2.301. EPA notes that 40 CFR 1400.5 allows for the Administrator to include only the following OCA data elements in a database on the internet: (a) the concentration of the chemical; (b) the physical state of the chemical; (c) the statistical model used; (d) the endpoint used for the flammables in the worst-case scenario; (e) the duration of the chemical release for the worst-case scenario; (f) the wind speed during the chemical release; (g) the atmospheric stability; (h) the topography of the surrounding area; (i) the passive mitigation systems considered; and (j) the active mitigation systems considered. This initiative is in line with other hazardous substance reporting programs that have been long established at EPA. Further, EPA believes it can no longer not make this information available, as 5 U.S.C. 552(a)(2)(D)(ii)(II) requires that information that has been requested via FOIA three or more times be made ''available for public inspection in an electronic format'' when the information is likely to be requested again in the same format and is not otherwise privileged from disclosure. EPA is requesting comment on the variables provided in the Technical Background Document (Section 10), most of which are for public availability, and which (or combination of which) pose potential significant security risks.

b. Current Data Availability of Risk Management Plan Information

Currently, with few exceptions as indicated below, EPA does not make any of its OCA or non-OCA data available to the public online. The public can access or request risk management plan information through the methods described below. Based on these methods, EPA contends that current, publicly available information on the risk management plan national database is insufficient for informing communities about RMP-regulated facilities.

- Facility Registry Service (FRS) and Envirofacts.[309] EPA's FRS provides information about facilities regulated by a large number of EPA regulations under various statutes. Currently, the only information provided in the FRS for RMP-regulated facilities is the EPA Facility ID, EPA's unique identifier for RMP-regulated facilities. Because Envirofacts provides a multi-system search of facilities, including FRS, RMP EPA Facility IDs are also available in Envirofacts. Currently, neither public-facing version of the databases provides additional information or allows users to export information on more than one RMP facility.
- FOIA requests. EPA has processed FOIA requests for non-OCA data 242 times since 2015, an average of 35 times a year. Because the database is provided in Microsoft Access format and requires some technical background to examine results, most requestors tend not to be individuals or nonprofit environmental groups, but rather other government entities (both Federal and State), as well as consulting groups and government contractors.
- Federal reading rooms. 40 CFR part 1400 requires the Federal Government to allow any member of the public to obtain access to OCA information for up to 10 facilities per calendar month located anywhere in the country, without geographical restrictions, as well as any stationary sources in the jurisdiction of the LEPC where the person lives or works and for any other stationary source that has a vulnerable zone that extends into that LEPC's jurisdiction. Although EPA does not have plans to release protected OCA information on the internet, EPA hopes that making non-OCA risk management plan data publicly available will reduce the need for the public to access risk management plan data only through Federal reading rooms.
- Other information already publicly available. EPA notes that it appears information from the risk management plan database, less OCA sections, has been publicly available on the internet for over 20 years.[310] EPA is aware of other sources of information online for risk management plan data, however, these data are often outdated. The dataset provides information on location, amount of chemical stored, emergency response capabilities (*i.e.,* responding versus non-responding facility status), contact information, executive summary, and 5-year accident history.

c. Other EPA Facility Hazardous Substance Registries

EPA makes information available for several other Federal hazardous substances programs, such as the Toxics Release Inventory [311] under EPCRA and Chemical Data Reporting (CDR) [312] under the Toxic Substances Control Act, both of which have readily downloadable information (in Microsoft Excel format) [313] on facility quantity and location for facilities with regulated, threshold quantities of listed hazardous substances. EPA likewise seeks to make its non-OCA risk management plan information available in a readily accessible manner, akin to these two programs, and will coordinate with these two long-standing programs to consider relevant data quality and security concerns.

d. Balancing Security Risks and Community Right-To-Know

EPA maintains that public disclosure of risk management plan information would likely lead to a reduction in the number and severity of accidents.[314] Although EPA does intend to make its risk management plan data publicly available, it seeks comment on an approach that balances community

[309] Facility Registry Service, *https://www.epa.gov/frs.* Envirofacts, *https://enviro.epa.gov/.*

[310] The Right-to-Know Network, ''Risk Management Plans (RMP),'' last modified March 14, 2019, *https://rtk.rjifuture.org/rmp/.*

[311] EPA, ''Toxics Release Inventory (TRI) Program,'' last modified January 20, 2022, *https://www.epa.gov/toxics-release-inventory-tri-program.*

[312] EPA, ''Chemical Data Reporting Under the Toxic Substances Control Act,'' last modified August 25, 2021, *https://www.epa.gov/chemical-data-reporting.*

[313] EPA, ''Access CDR Data,'' last modified November 9, 2021, *https://www.epa.gov/chemical-data-reporting/access-cdr-data#2020.*

[314] EPA, *Assessment of the Incentives Created by Public Disclosure of Off-Site Consequence Analysis Information for Reduction in Risk of Accidental Releases* (April 18, 2000).

right-to-know and security concerns that arise by making such data publicly available in an easily accessible, consolidated location. EPA requests public comment on which specific information would be of most benefit and most concern.

EPA has long received comments on the potential security concerns in releasing risk management plan information. For example, in EPA's recent 2021 listening sessions, some commenters, including several industry trade associations, expressed opposition to expanding risk management plan information availability due to increased risks of terrorist attacks, cyberattacks, or other intentional acts of harm.[315] One industry trade association argued that certain information about RMP facilities needs to be kept confidential, such as the information deemed ''Chemical-terrorism Vulnerability Information'' or ''Sensitive Security Information'' under the Department of Homeland Security (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) and the Maritime Transportation Security Act, respectively.[316] However, these comments did not specifically explain how releasing risk management plan data would increase particular security risks. EPA already protects OCA information as required by the CAA and will ensure that this action does not violate the CAA.

There exists no publicly available database of intentional acts upon the chemical process industries in the United States. In a 2021 study, researchers attempted to compile a database of such incidents, finding documentation of 84 incidents in the chemical and petrochemical industries.[317] [318] Root cause data on these incidents, which are not available, would be needed to determine if availability of information on the facility contributed to terrorist incidents, which were second to cybersecurity incidents as the most frequent overall cause. According to the database, no terrorist event in the process industries (excluding transportation and pipelines) has occurred in North America after the 1970s.[319] However, a lack of incidents may result from the safeguards currently in place. DHS promulgated CFATS in accordance with the Homeland Security Appropriations Act of 2007, owing to insufficient security at industrial facilities. In promulgating CFATS, DHS did not intend for information created under CAA 112(r) to constitute ''Chemical-terrorism Vulnerability Information,'' which is sensitive information pursuant to CFATS requirements (72 FR 17714). EPA routinely coordinates with DHS as part of the Chemical Facility Security and Safety Working Group and commits to working with DHS to find regulatory solutions that balance community right-to-know with security concerns.

Accidental releases occur much more often than intentional events (about 100 per year using EPA RMP-reportable accidents). Pre-incident information, such as the locations of facilities and potential disasters, allows communities to be more prepared for disasters,[320] which DOJ also recognized in its 2000 risk assessment.[321] With over 20 years of data now, EPA has based many of the proposed provisions on prior accident information.

EPA acknowledges that the Agency must consider whether some non-OCA data elements, or combinations of elements, may not be suitable for public release and should be restricted based on potential security risks. EPA has been and will continue to work with DHS, DOJ, and other Federal partners on identifying these risks. EPA is also involving the public through seeking comment. EPA requests comments on which elements, or combinations of elements, may pose a security risk if released to the public. EPA also notes that, while several commenters offered support in the 2019 reconsideration comment period for rescinding information availability requirements on the part of the facility, no commenters provided additional information to support security concerns.[322] For each element or combination of elements identified, EPA requests: (1) Specific comments on why the element or combination of elements presents a security risk and (2) documentation or basis for these security claims, such as risk or intelligence analysis, a prior incident, security threat, or near miss incident.

D. Other Areas of Technical Clarification

EPA has provided compliance assistance, conducted inspections, and undertaken enforcement of the RMP program since 1996. During that time, the Agency developed guidance documents, model RMPs, and answers to frequently asked questions to help facilities implement the RMP rule. Based on experience, EPA has identified various aspects of the RMP rule that use different terminology for the same requirement, have outdated definitions, or would be simpler for sources to implement with more discussion in the text of the regulation. The intent of the proposed changes to the regulatory text discussed in this section is to simplify implementation for facilities as well as oversight, thereby improving chemical safety. The proposed amendments do not change the meaning of the RMP rule. These points are raised below.

1. Process Safety Information

RMP regulations require that facilities keep process safety information up to date. For processes subject to Program 2 requirements, RMP regulatory text explicitly states in 40 CFR 68.48(a) that ''[t]he owner or operator shall compile and maintain the following up-to-date safety information related to the regulated substances, processes, and equipment.'' This is also addressed in 40 CFR 68.48(c), which states: ''The owner or operator shall update the safety information if a major change occurs that makes the information inaccurate.''

For processes subject to Program 3 requirements, the process safety information requirements within 40 CFR 68.54 do not explicitly address updating process safety information. Instead, that subject is addressed in several other parts of the Program 3 requirements, including the management of change requirements in 40 CFR 68.75, the pre-startup review requirements in 40 CFR 68.77, and the requirement to document that

[315] EPA–HQ–OLEM–2021–0312–0005; 0020, 0031, 0045, 0053, 0071, 0077.

[316] EPA–HQ–OLEM–2021–0312–0031.

[317] Valeria Casson Moreno et al., ''Analysis of Physical and Cyber Security–Related Events in the Chemical and Process Industry,'' *Process Safety and Environmental Protection* 116 (2018), 621–31, doi:10.1016/j.psep.2018.03.026.

[318] Matteo Iaiani et al., ''Analysis of Events Involving the Intentional Release of Hazardous Substances from Industrial Facilities,'' *Reliability Engineering & System Safety* 212 (2021), 107593, doi:10.1016/j.ress.2021.107593.

[319] This is not a complete dataset, because it was developed based on publicly available information. Available in the supplemental material of Matteo Iaiani et al., ''Analysis of Events Involving the Intentional Release of Hazardous Substances from Industrial Facilities,'' *Reliability Engineering & System Safety* 212 (2021), 107593, doi:10.1016/j.ress.2021.107593.

[320] Holly Carter, John Drury, and Richard Amlôt, ''Recommendations for Improving Public Engagement with Pre-incident Information Materials for Initial Response to a Chemical, Biological, Radiological or Nuclear (CBRN) Incident: A Systematic Review,'' *International Journal of Disaster Risk Reduction* 51 (2020), 101796, doi:10.1016/j.ijdrr.2020.101796.

[321] DOJ, Assessment of the Increased Risk of Terrorist or Other Criminal Activity Associated with Posting Off-Site Consequence Analysis Information on the internet (2000), *https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-2003,* EPA–HQ–OEM–2015–0725–2003.

[322] EPA–HQ–OEM–2015–0725–1461; 1867, 1904, 1909.

equipment complies with RAGAGEP in 40 CFR 68.65(d)(2).

Management of change requirements only apply to processes subject to Program 3 requirements, because there are no corresponding requirements for Program 2 processes. The management of change requirements address changes to process chemicals, technology, equipment, and procedures, as well as changes to stationary sources that affect covered processes. Pursuant to 40 CFR 68.75(d), process safety information is required to be kept up to date ''If a change covered by this paragraph results in a change in the process safety information required by § 68.65 of this part, such information shall be updated accordingly.''

The pre-startup review requirements in 40 CFR 68.77(a) apply to new stationary sources and modified stationary sources when the modification is significant enough to require a change in process safety information. Pursuant to 40 CFR 68.77(b), the pre-startup safety review must confirm that construction and equipment meets design specifications.

Therefore, in order to make the regulation more consistent throughout, EPA is proposing to clarify that the requirement to keep process safety information up to date also explicitly applies to Program 3 processes. 40 CFR 68.65 states that ''[t]he owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule.'' Refining the language of 40 CFR 68.65 to reflect existing requirements would clarify that such process safety information is required to be up to date for Program 3 processes—just as for Program 2 processes—without the need for evaluating compliance with management of change, conducting a pre-startup safety review, or meeting PHA requirements.

2. Program 2 and 3 Requirements for Compliance With RAGAGEP

The current RMP regulations outline two different, albeit similar, ways to comply with RAGAGEP. First, the requirement for Program 2 processes at 68.48(b) states: ''The owner or operator shall ensure that the process is designed in compliance with recognized and generally accepted good engineering practices. Compliance with Federal or State regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph.'' Second, the requirement for Program 3 processes at 40 CFR 68.65(d)(2) states: ''The owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.''

EPA is therefore proposing to harmonize these two provisions so that the requirements are identical. EPA has found that the distinction between ''ensure'' for Program 2 processes and ''document'' for Program 3 processes creates confusion. Additionally, the language for Program 3 refers to ''equipment,'' while the language of Program 2 refers to the ''process.'' Requiring facilities to document compliance, rather than merely ''ensure'' compliance, removes this ambiguity. EPA is also proposing to remove the sentence ''Compliance with Federal or State regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph.'' In some cases, Federal or State regulations lag behind current RAGAGEP and thus do not provide the same level of protection. For example, OSHA recognized that OSHA's flammable liquid standard at 49 CFR 1910.106 is not as up to date as NFPA or International Fire Code standards for flammable liquids.[323] EPA therefore proposes to replace both provisions to indicate that the owner or operator shall ensure and document that the process is designed in compliance with RAGAGEP.

3. Retention of Hot Work Permits

The requirement to issue a hot work permit,[324] including documentation of necessary fire protection and prevention measures, is currently in the RMP regulation only for Program 3 processes. Pursuant to 40 CFR 68.85(b), ''The permit shall be kept on file until completion of the hot work operations.''

Under the existing RMP regulations, it can be difficult for implementing agencies to determine if the facility has been conducting hot work in compliance with the requirements of 40 CFR 68.85, unless the facility is conducting hot work at the time of the inspection and has hot work permits on file. Adding a requirement to retain hot work permits after the completion of operations would address this issue.

Therefore, EPA is proposing to require retention of hot work permits for 5 years, in accordance with the recordkeeping requirements in 40 CFR 68.200.[325] Implementing agencies would be able to determine whether: (1) The owner or operator of the facility had any hot work permits, and (2) the hot work permits are in compliance with the documentation requirements of 40 CFR 68.85(b).[326] EPA seeks comment on this proposed hot work provision amendment.

4. Storage Incident to Transportation

Currently, under 40 CFR 68.3, the term ''stationary source'' does not apply to transportation activities, including storage incident to transportation for any regulated substance or any other extremely hazardous substance.[327] A stationary source *does* include transportation containers connected to loading/unloading equipment or used for storage not incident to transportation, but the term ''storage not incident to transportation'' is not defined in the RMP regulations. Preamble language and responses to frequently asked questions posted on the Agency's website clarify that a container is considered to be in transportation as long as it is attached to the motive power (*e.g.,* truck or locomotive) that delivered it to the site.[328] [329] If the tank car is detached

[323] *https://www.osha.gov/laws-regs/standardinterpretations/2001-08-27.*

[324] 40 CFR 68.3: ''Hot work means work involving electric or gas welding, cutting, brazing, or similar flame or spark-producing operations.''

[325] 40 CFR 68.200: ''The owner or operator shall maintain records supporting the implementation of this part at the stationary source for five years, unless otherwise provided in subpart D of this part.''

[326] 40 CFR 68.85(b): ''The permit shall document that the fire prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed. The permit shall be kept on file until completion of the hot work operations.''

[327] ''Stationary source'' is defined at 40 CFR 68.3 as follows: ''Stationary source means any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. Transportation includes, but is not limited to, transportation subject to oversight or regulation under 49 CFR parts 192, 193, or 195, or a State natural gas or hazardous liquid program for which the State has in effect a certification to DOT under 49 U.S.C. 60105. A stationary source does not include naturally occurring hydrocarbon reservoirs. Properties shall not be considered contiguous solely because of a railroad or pipeline right-of-way.''

[328] EPA, *List of Regulated Substances and Thresholds for Accidental Release Prevention; Amendments,* 40 CFR part 68 (January 6, 1998).

[329] EPA, ''Are Chemicals in a Tank Car Exempt from Threshold Determinations Under 40 CFR part

from the motive power, and therefore no longer in transportation, the contents of the tank car must be considered in the threshold determination.

EPA is proposing additional regulatory language that includes a specified number of hours that a transportation container may be disconnected from the motive power that delivered it to the site before being considered part of the stationary source. EPA believes that this provision would provide clarity for regulated parties and implementing agencies on whether a transportation container used for onsite storage must be incorporated into a facility's risk management plan. EPA is proposing to apply a 48-hour time frame to this term based on the Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration, Carriage by Rail regulations at 49 CFR 174.14(a), that indicate rail carriers must forward each shipment of hazardous materials promptly within 48 hours after acceptance or receipt. EPA seeks comment on this 48-hour time frame, suggestions for other appropriate time frames, and any safety concerns that may arise from transportation containers being exempt from the RMP regulations when disconnected for less than 48 hours. The 48 hours would be the total amount of time, such that a railyard could not move a rail car around in the railyard using a mobile railcar mover to start the clock again.

EPA is also proposing to modify the definition of stationary source to further clarify ''storage incident to transportation'' in 40 CFR 68.3 by adding an explanation to the transportation container language in the stationary source definition. The proposed regulatory text would add examples of what a transportation container could be, such as a truck or railcar, and that for RMP purposes, railyards and other stationary sources actively engaged in transloading activities may store regulated substances up to 48 hours total in a disconnected transportation container without counting the regulated substances contained in that transportation container toward the regulatory threshold.

5. Retail Facility Exemption

The current definition of ''retail facility'' at 40 CFR 68.3 is ''a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.''

The period of sales to end users is unclear; it lacks a definite time frame in which to calculate whether more than one-half of the facility's direct sales are to end users. Specifying a definite period of time would eliminate this uncertainty and allow owners and operators to determine more accurately whether regulated substances in a process are subject to the RMP provisions. It also may reduce the amount of sales documentation that the owner or operator of a regulated facility must provide to establish its status as a retail facility.

EPA is therefore proposing to adjust the regulatory text to clarify that the definition of ''retail facility'' is one in which more than one-half of the ''annual'' income ''in the previous calendar year'' is obtained from direct sales to end users or at which more than one-half of the fuel sold over that period, by volume, is sold through a cylinder exchange program. EPA is proposing one year of sales activity because the Agency believes it captures the seasonality of propane sales at propane distribution facilities. EPA seeks comment on the proposed annual time frame for sales documentation.

6. RAGAGEP

EPA initially looks to the latest version of industry codes, standards, and guidelines to determine whether an owner or operator has documented compliance with RAGAGEP under 40 CFR 68.65(d)(2), given that 40 CFR part 68 does not define the phrase ''recognized and generally accepted good engineering practices.'' EPA believes this application makes sense, because the plain meaning of the phrase is that practices should be ''recognized,'' ''good,'' and ''generally accepted'' and the latest version of RAGAGEP contains industry's most up-to-date assessment of practices that meet these criteria. Also, under the structure of the CAA, stationary sources subject to 40 CFR part 68 are also subject to the GDC in 42 U.S.C. 7412(r)(1).[330] Neither the text nor the legislative history of the GDC mentions locking obsolete industry standards into place. EPA also believes there is no practical reason to have a stricter standard for facilities that are subject to the GDC, but not to 40 CFR part 68.[331] Further, a facility subject to the GDC may have RMP-regulated substances in amounts lower than the RMP regulatory threshold.

To address these concerns, EPA is proposing that the RMP regulations clarify that PHAs must include an analysis of the most recently promulgated RAGAGEP in order to identify any gaps between practices related to the facility's design, maintenance, and operation and the most current version of RAGAGEP.

EPA is also proposing to require owners or operators to specify in their risk management plans why PHA recommendations associated with adopting practices from the most recent version of RAGAGEP are not implemented. EPA is proposing to adopt three of the four rationales identified in section IV.A.1.e of this preamble.[332] EPA is not proposing to adopt the rationale that ''[t]he recommendation is not necessary to protect public receptors,'' because there are many safety measures such as pipe labeling, training, and some standard operating procedures that do not directly affect public receptors, but that can have indirect or secondary effects on responders or public receptors. By allowing owners or operators to screen out recommendations that do not directly affect public receptors, the Agency is concerned that facilities may discount important recommendations. For this provision, the Agency is also proposing to modify the rationale that ''[a]n alternative measure would provide a sufficient level of protection'' by adding that the safety measures adopted in lieu of the ones recommended by the PHA team must be recognized and generally accepted. This will help ensure that facilities do not ignore updated RAGAGEP when making decisions about which PHA recommendations to accept or reject. EPA seeks comment on the proposed rationales for not adopting practices from the most recent version of RAGAGEP.

E. Compliance Dates

The initial 1996 RMP rule was applied 3 years after promulgation of the rule on June 20, 1996, which is consistent with the last sentence of CAA section 112(r)(7)(B)(i). The statute does not directly address when amendments should become applicable. The provisions of this proposal modify terms of the existing rule, and, in some cases,

68?'' last modified September 1, 2021, *https://www.epa.gov/rmp/are-chemicals-tank-car-exempt-threshold-determinations-under-40-cfr-part-68.*

[330] See 40 CFR 68.1.

[331] For example, subjecting facilities with 5,000 lbs. of anhydrous ammonia, which are subject only to the GDC, to higher standards than a facility with 50,000 pounds, which would be subject to 40 CFR part 68.

[332] The four rationales are: 1. The analysis upon which the recommendation is based contains material factual errors. 2. The recommendation is not necessary to protect to protect public receptors. 3. An alternative measure would provide a sufficient level of protection. 4. The recommendation is infeasible.

amplify or clarify existing requirements. Therefore, in modifications to 40 CFR 68.10, EPA is proposing to:

- Require regulated sources to comply with new STAA, incident investigation root cause analysis, third-party compliance audit, employee participation, emergency response public notification and exercise evaluation reports, and information availability provisions, unless otherwise stated, 3 years after the effective date of the final rule (*i.e.,* FR publication date).
- Require regulated sources to comply with the revised emergency response field exercise frequency provision by March 15, 2027, or within 10 years of the date of an emergency response field exercise conducted between March 15, 2017, and August 31, 2022 in accordance with 40 CFR 68.96(b)(1)(ii).
- Allow regulated sources 1 additional year (*i.e.,* 4 years after the effective date of the final rule) to update and resubmit risk management plans to reflect new and revised data elements.

For STAA, this means that by 3 years after the effective date of the final rule, the owner or operator of a source with a regulated RMP process involving HF alkylation, or a source with a process in NAICS code 324 or 325, located within 1 mile of another NAICS code 324 or 325 RMP facility process, must have completed or updated their PHA to include an STAA. Recognizing that some facilities may have performed PHAs recently or may be due to perform PHAs shortly after EPA issues a final rule, the Agency seeks comment on a second option for STAA compliance, which would require any stationary source that must perform STAA as part of its PHA to comply with the STAA requirement for PHAs performed after 1 year from the date of the final rule.

For incident investigation root cause analysis, this means that the owner or operator of a source that experiences any RMP-reportable accident more than 3 years after the effective date of the rule must conduct a root cause analysis for their incident investigation of the accident.

For third-party compliance audits, this means that the owner or operator of a source where a second RMP-reportable accident occurs within 5 years—or of a source where one reportable accident in an RMP-regulated process in NAICS code 324 or 325, located within 1 mile of another source's RMP-regulated NAICS code 324 or 325 process, occurs after 3 years of the effective date of the final rule—must obtain a third-party audit for their next required compliance audit.

For employee participation, this means that by 3 years after the effective date of the final rule, the owner or operator of a source must have updated or developed—and begun implementing—an employee participation plan that addresses employee consultation when resolving PHA, compliance audit, and incident investigation recommendations and decisions; stop work authorities; and RMP accident and non-compliance reporting.

For emergency response, the proposed provisions means that by 3 years after the effective date of the final rule, the owner or operator of a non-responding source must have onsite documentation of emergency response public notification procedures. It also means that by 3 years after the effective date of the final rule, owners or operators of non-responding and responding sources must have the means to ensure that a community notification system is in place to warn the public of releases. It also means that for any RMP-reportable accident occurring more than 3 years after the effective date of the final rule, sources must provide appropriate and timely data and information to local responders detailing their current understanding and best estimates of the nature of the release. It also means that by 3 years after the effective date of the rule, emergency exercise evaluation reports must include documentation of specific exercise elements.

For information availability, this means that by 3 years after the effective date of the final rule, the owner or operator must make the required chemical hazard information available to the public upon request and provide notification to the public that the information is available.

EPA is proposing to provide this 3-year phase-in for several reasons. First, the initial 1996 RMP rule required compliance per the statute within 3 years. EPA believes the proposed provisions outlined today are not as extensive as developing a full RMP program. While some may argue that some sources already had an accident prevention program in place due to the OSHA PSM standard, some facilities did not, yet the rule still required development and compliance within 3 years. Therefore, EPA does not believe compliance with these proposed provisions should require a longer time frame than compliance with the initial rule. Second, while EPA believes that for most sources, activities associated with these proposed provisions may reasonably require significant time to complete, the 3-year phase-in is as expeditious as practicable considering the circumstances. For example, the new incident investigation root cause analysis, employee participation, emergency response, and information availability requirements will involve training and program development activities. For the third-party audit provisions, the extended compliance timeframe will allow potential auditors enough time to meet the competency and independence criteria necessary to serve as a third-party auditor. EPA believes that in many cases, sources subject to the STAA provisions will prefer to perform a full PHA update when implementing the STAA requirements. Sources subject to STAA provisions are among the largest and most complex sources regulated under 40 CFR part 68, and therefore, PHAs and PHA updates at these sources typically require a significant level of effort. Since PHA updates are normally done at 5-year intervals, EPA believes it would be appropriate to allow most sources to adopt these provisions in their normal PHA update cycle if they so choose. For the emergency response provisions, evaluating and securing resources for public notification systems and the associated training with local responders will take time to be coordinated. Lastly, EPA intends to publish guidance for certain provisions, such as STAA, incident investigation root cause analysis, third-party audits, employee participation, and emergency response. Once these materials are complete, owners and operators will need time to familiarize themselves with the new materials and incorporate them into their risk management programs.

For field exercises, EPA is proposing to require the owners or operators of sources to have planned, scheduled, and conducted their first field exercise by March 15, 2027. For this provision, EPA is proposing to revert to the original timeframe in the 2017 amendments rule, based on the Agency's view that this change will allow local authorities to set longer time periods to address the major concern that the 2019 reconsideration rule identified with the practicability of the 2017 date, which was the potential inability of local authorities to voluntarily participate in the exercises when they had multiple facilities in their jurisdiction.

EPA is also proposing to provide 1 additional year for owners or operators to update risk management plans to reflect proposed new or revised data elements in subpart G of the regulations. The additional year will allow owners and operators an opportunity to begin to comply with the new or revised regulatory provisions prior to certifying

compliance in the risk management plan. Additionally, the Agency will need to make significant revisions to its online risk management plan submission system, RMP*eSubmit, to accommodate the newly required and revised data elements, and sources will not be able to update risk management plans with new or revised data elements until the submission system is ready. Also, once it is ready, allowing an additional year for sources to update risk management plans will prevent potential problems with thousands of sources submitting updated risk management plans on the same day.

V. Additional Considerations

EPA acknowledges the need for reviewing the list of RMP-regulated substances. Section 112(r)(3) requires periodic review of the RMP regulated substance list. A priority chemical for EPA's upcoming review will be ammonium nitrate. EPA also acknowledges the need for considering expanding fenceline monitoring for RMP-regulated facilities. While EPA is considering both of these issues for a future action, they are beyond the scope of this NPRM. EPA welcomes comment on these issues which are further discussed in the Technical Background Document.[333]

VI. Statutory and Executive Orders 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 an economically 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. The EPA prepared a Regulatory Impact Analysis (RIA) of the potential costs and benefits associated with this action. This RIA is available in the docket (Docket ID Number EPA–HQ–OLEM–2022–0174). Chapters 4–6 of the RIA developed for this proposed action provide additional details on costs and benefits.

[333] Technical Background Document for Notice of Proposed Rulemaking: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Safer Communities by Chemical Accident Prevention (April 19, 2022).

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule will be submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2725.01. A copy of the ICR is available in the docket for this rule, and it is briefly summarized here.

This new ICR adds new information collection activities related to a previously approved ICR (1656.18), OMB Control No. 2050–0144. That ICR covers the Risk Management Program rule, originally promulgated on June 20, 1996; and the current rule, including previous amendments, codified as 40 CFR part 68. This ICR addresses the proposed information requirements that are part of the proposed revision to the rule.

EPA believes that the Risk Management Program regulations have been effective in preventing and mitigating chemical accidents in the United States. However, EPA believes that revisions could further protect human health and the environment from chemical hazards through advancement of process safety management based on lessons learned. These revisions are a result of review of the existing Risk Management Program and information gathered from the 2021 listening sessions. State and local authorities will use the information in RMPs to modify and enhance their community response plans. The agencies implementing the RMP rule will use RMPs to evaluate compliance with part 68 and to identify sources for inspection because they may pose significant risks to the community. Citizens may use the information to assess and address chemical hazards in their communities and to respond appropriately in the event of a release of a regulated substance. These revisions are a result of a review of the existing Risk Management Program and are proposed under the statutory authority provided by section 112(r) of the CAA as amended (42 U.S.C. 7412(r)).

Respondents/affected entities: The industries that are likely to be affected by the requirements in the proposed regulation fall into numerous NAICS codes. The types of stationary sources affected by the proposed rule range from petroleum refineries and large chemical manufacturers to water and wastewater treatment systems; chemical and petroleum wholesalers and terminals; food manufacturers, packing plants, and other cold storage facilities with ammonia refrigeration systems; agricultural chemical distributors; midstream gas plants; and a limited number of other sources that use RMP-regulated substances. Among the stationary sources potentially affected, the Agency has determined that 2,911 are regulated private sector small entities and 630 are small government entities.

Respondent's obligation to respond: Mandatory ((CAA sections 112(r)(7)(B)(i) and (ii), CAA section 112(r)(7)(B)(iii), 114(c), CAA 114(a)(1))).

Estimated number of respondents: 14,226.

Frequency of response: On occasion.

Total estimated burden: 797,642 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $79,248,522 (per year); includes $2,817,907 annual operations and maintenance costs and $78,400 annual capital costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than October 31, 2022.

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. The small entities subject to the requirements of this action include small businesses and small governmental entities. The Agency has determined that among the 2,911 potentially regulated private sector small entities so impacted, 2,822, or 96.9 percent, may experience an impact of less than one percent with an average small entity cost of $10,618; and 84, or 2.9 percent, may experience an impact of between one and three percent of revenues with an average small cost entity of $108,921. The industry sectors of Farm Product Warehousing and Storage, and All Other

Miscellaneous Chemical Product and Preparations Manufacturing had the most entities potentially affected between one and three percent of revenues, with 5 and 6 entities, respectively. For detailed costs by provision and NAICS code see Chapter 8 of the RIA.

Among the 630 small government entities potentially affected, 488, or 77 percent would incur costs of less than $1,000; 109, or 17 percent costs ranging from $1,000 to $2,000; 18, or 3 percent costs ranging from $2,000 to $3,000; and only one would incur costs greater than $10,000, and EPA estimated that for the rule to have a larger than one percent impact on this entity, it would need to have revenue of less than $103 per resident.

EPA solicits comment on the number of small entities affected and the estimated cost impacts on small entities. Details of these analyses are presented in Chapter 8 of the proposed rule RIA, available in the docket.

D. Unfunded Mandates Reform Act (UMRA)

This action does not include 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 million or more (adjusted for inflation) in any one year and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538).

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 has Tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt Tribal law. There are approximately 260 RMP facilities located on Tribal lands. Tribes could be impacted by the final rule either as an owner or operator of an RMP-regulated facility or as a Tribal government when the Tribal government conducts emergency response or emergency preparedness activities under EPCRA.

EPA consulted with Tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes on previous RMP rulemakings. EPA will consult again with Tribal officials as it develops this regulation to permit them to have meaningful and timely input into its development. Consultation will include conference calls, webinars, and meetings with interested Tribal representatives to ensure that their concerns are addressed before the rule is finalized. In the spirit of E.O. 13175 and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicits comment on this proposed rule from Tribal officials.

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

This action is not subject to E.O. 13045 because EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the Chapter 9 of the RIA for this rule, available in the docket.

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. This action is not anticipated to have notable impacts on emissions, costs or energy supply decisions for the affected electric utility industry.

I. National Technology Transfer and Advancement Act (NTTAA)

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 believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in E.O. 12898 (59 FR 7629, February 16, 1994). To the extent that populations living closer to facilities are more likely to be exposed if an accidental release at an RMP facility occurs, these releases pose a greater risk to these key demographic groups. Therefore, the benefits of this regulation would reduce risk for historically underserved and overburdened populations.

E.O. 12898 directs Federal agencies, to the greatest extent practicable and permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States. The consideration of EJ into EPA rulemaking is guided by two EPA documents: (1) ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis'' [334] and (2) ''Guidance on Considering Environmental Justice During the Development of Regulatory Action.'' [335] The first of these documents [336] establishes the expectation that analysts conduct the highest quality EJ analysis feasible in support of rulemakings, recognizing that what is possible will be context specific. One method recommended by the guidance documents includes screening for potential EJ concerns by identifying the proximity of regulated sources to historically underserved and overburdened communities. E.O. 12898 places a responsibility on Federal agencies for ''identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.''

EPA conducted an EJ analysis using the Agency's EJ screening tool, EJSCREEN.[337] The EJ analysis shows that historically underserved and overburdened populations live within proximity to those facilities (and thus at greater risk) than other populations. The analysis also found evidence that included facilities are disproportionately located within historically underserved and overburdened communities. Thus, EPA recognizes that accidental releases of regulated chemicals from facilities regulated by this action would likely pose disproportionate risks to historically marginalized communities. However, EPA has concluded that the regulatory requirements will advance

[334] EPA. (2016). Technical Guidance for Assessing Environmental Justice in Regulatory Analysis. *https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf.*

[335] EPA. (2018). Guidance on Considering Environmental Justice During the Development of Regulatory Actions. *https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf.*

[336] EPA. (2016). Technical Guidance for Assessing Environmental Justice in Regulatory Analysis. *https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf.*

[337] *https://www.epa.gov/ejscreen.*

fair treatment of those populations by reducing the disproportionate damages from accidental releases from RMP-regulated facilities might otherwise inflict on those populations. EPA's full EJ analysis is documented in the RIA, which is available in the docket for this action.

List of Subjects in 40 CFR Part 68

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

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, Title 40, chapter I, part 68, of the Code of Federal Regulations is proposed to be amended as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

■ 1. The authority citation for part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

■ 2. Amend § 68.3 by

■ a. Adding in alphabetical order definitions for ''Active measures,'' ''Inherently safer technology or design'', ''Natural hazard'', ''Passive measures'', ''Practicability'', and ''Procedural measures'';

■ b. Revising the definition of ''Retail facility'';

■ c. Adding in alphabetical order a definition for ''Root cause'';

■ d. Revising the definition of ''Stationary source''; and

■ e. Adding in alphabetical order a definition for ''Third-party audit''.

The additions and revisions read as follows:

§ 68.3 Definitions.

* * * * *

Active measures mean risk management measures or engineering controls that rely on mechanical, or other energy input to detect and respond to process deviations. Examples of active measures include alarms, safety instrumented systems, and detection hardware (such as hydrocarbon sensors).

* * * * *

Inherently safer technology or design means risk management measures that minimize the use of regulated substances, substitute less hazardous substances, moderate the use of regulated substances, or simplify covered processes in order to make accidental releases less likely, or the impacts of such releases less severe.

* * * * *

Natural hazard means naturally occurring events that have the potential for negative impact including meteorological or geologic hazards. Meteorological hazards include those that naturally occur due to the weather cycle or climatic cycles, and include flooding, temperature extremes, snow/ice storms, wildfire, tornado, tropical cyclones, hurricanes, storm surge, wind, lightening, hailstorms, drought, etc. Geologic hazards are those occurring due to the movement of the earth and the internal earth forces, and include seismic events, earthquakes, landslides, tsunami, volcanic eruptions, and dam rupture.

* * * * *

Passive measures mean risk management measures that use design features that reduce either the frequency or consequence of the hazard without human, mechanical, or other energy input. Examples of passive measures include pressure vessel designs, dikes, berms, and blast walls.

* * * * *

Practicability means the capability of being successfully accomplished within a reasonable time, accounting for environmental, legal, social, technological and economic factors. Environmental factors would include consideration of potential transferred risks for new risk reduction measures.

Procedural measures mean risk management measures such as policies, operating procedures, training, administrative controls, and emergency response actions to prevent or minimize incidents.

* * * * *

Retail facility means a stationary source at which more than one-half of the annual income (in the previous calendar year) is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

* * * * *

Root cause means a fundamental, underlying, system-related reason why an incident occurred.

* * * * *

Stationary source means any buildings, structures, equipment, installations, or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. A transportation container is in storage incident to transportation as long as it is attached to the motive power that delivered it to the site (*e.g.,* a truck or locomotive); however, railyards and other stationary sources actively engaged in transloading activities may store regulated substances up to 48 hours total in a disconnected transportation container without counting the regulated substances contained in that transportation container toward the regulatory threshold. Transportation includes, but is not limited to, transportation subject to oversight or regulation under 49 CFR part 192, 193, or 195, or a State natural gas or hazardous liquid program for which the State has in effect a certification to DOT under 49 U.S.C. 60105. A stationary source does not include naturally occurring hydrocarbon reservoirs. Properties shall not be considered contiguous solely because of a railroad or pipeline right-of-way.

Third-party audit means a compliance audit conducted pursuant to the requirements of § 68.59 and/or § 68.80, performed or led by an entity (individual or firm) meeting the competency and independence requirements described in § 68.59(c) or § 68.80(c).

* * * * *

■ 3. Amend § 68.10 by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (g) through (k) as paragraphs (j) through (n); and

■ c. Adding new paragraphs (g) through (i).

The revisions and additions read as follows:

§ 68.10 Applicability.

(a) Except as provided in paragraphs (b) through (i) of this section, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under § 68.115, shall comply with the requirements of this part no later than the latest of the following dates:

(1) June 21, 1999;

(2) Three years after the date on which a regulated substance is first listed under § 68.130;

(3) The date on which a regulated substance is first present above a threshold quantity in a process; or

(4) For any revisions to this part, the effective date of the final rule.

* * * * *

(g) By [DATE 3 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], the owner or operator shall comply with the following provisions promulgated on [EFFECTIVE DATE OF FINAL RULE]:

(1) Third-party audit provisions in §§ 68.58(f) through (h), 68.59, 68.79(f) through (h), and 68.80;

(2) Incident investigation root cause analysis provisions in §§ 68.60(d)(7) and 68.81(d)(7);

(3) Safer technology and alternatives analysis provisions in § 68.67(c)(8);

(4) Employee participation provisions in §§ 68.62(d)(7) and 68.82(d)(7);

(5) Emergency response provisions in §§ 68.90(b) and 68.95(a).

(6) Availability of information provisions in § 68.210(d) through (f).

(h) By March 15, 2027, or within 10 years of the date of an emergency response field exercise conducted between March 15, 2017, and August 31, 2022 in accordance with § 68.96(b)(1)(ii).

(i) By [DATE 4 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], the owner or operator shall comply with the risk management plan provisions of subpart G of this part promulgated on [EFFECTIVE DATE OF FINAL RULUE].

Subpart C—Program 2 Prevention Program

■ 4. Amend § 68.48 by revising paragraph (b) to read as follows:

§ 68.48 Safety information.

* * * * *

(b) The owner or operator shall ensure and document that the process is designed in compliance with recognized and generally accepted good engineering practices.

* * * * *

■ 5. Amend § 68.50 by revising paragraph (a)(3) and adding paragraphs (a)(5) and (6) to read as follows:

§ 68.50 Hazard review.

(a) * * *

(3) The safeguards used or needed to control the hazards or prevent equipment malfunction or human error including standby or emergency power systems;

* * * * *

(5) External events such as natural hazards, including those caused by climate change or other triggering events that could lead to an accidental release; and

(6) Stationary source siting, including the placement of processes, equipment, buildings within the facility, and hazards posed by proximate facilities, and accidental release consequences posed by proximity to the public and public receptors.

* * * * *

■ 6. Amend § 68.58 by revising paragraph (a) and adding paragraphs (f) through (h) to read as follows:

§ 68.58 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart for each covered process, at least every three years to verify that the procedures and practices developed under this subpart are adequate and are being followed. When required as set forth in paragraph (f) of this section, the compliance audit shall be a third-party audit.

* * * * *

(f) *Third-party audit applicability.* The next required compliance audit shall be a third-party audit when one of the following conditions applies:

(1) Two accidental releases within five years meeting the criteria in § 68.42(a) from a covered process at a stationary source have occurred; or

(2) One accidental release within five years meeting the criteria in § 68.42(a) from a covered process at a stationary source in NAICS code 324 or 325, located within 1 mile of another stationary source having a process in NAICS code 324 or 325, has occurred; or

(3) An implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance, or when a previous third-party audit failed to meet the competency or independence criteria of § 68.59(c).

(g) *Implementing agency notification and appeals.* (1) If an implementing agency makes a preliminary determination that a third-party audit is necessary pursuant to paragraph (f)(3) of this section, the implementing agency will provide written notice to the owner or operator that describes the basis for this determination.

(2) Within 30 days of receipt of such written notice, the owner or operator may provide information and data to, and may consult with, the implementing agency on the determination. Thereafter, the implementing agency will provide a final determination to the owner or operator.

(3) If the final determination requires a third-party audit, the owner or operator shall comply with the requirements of § 68.59, pursuant to the schedule in paragraph (h) of this section.

(4) *Appeals.* The owner or operator may appeal a final determination made by an implementing agency under paragraph (g)(3) of this section within 30 days of receipt of the final determination. The appeal shall be made to the EPA Regional Administrator or, for determinations made by other implementing agencies, the administrator or director of such implementing agency. The appeal shall contain a clear and concise statement of the issues, facts in the case, and any relevant additional information. In reviewing the appeal, the implementing agency may request additional information from the owner or operator. The implementing agency will provide a written, final decision on the appeal to the owner or operator.

(h) *Schedule for conducting a third-party audit.* The audit and audit report shall be completed as follows, unless a different timeframe is specified by the implementing agency:

(1) For third-party audits required pursuant to paragraph (f)(1) of this section, within 12 months of the second of two releases within five years; or

(2) For third-party audits required pursuant to paragraph (f)(2) of this section, within 12 months of the release; or

(3) For third-party audits required pursuant to paragraph (f)(3) of this section, within 12 months of the date of the final determination pursuant to paragraph (g)(3) of this section. However, if the final determination is appealed pursuant to paragraph (g)(4) of this section, within 12 months of the date of the final decision on the appeal.

■ 7. Section 68.59 is added to read as follows:

§ 68.59 Third-party audits.

(a) *Applicability.* The owner or operator shall engage a third party to conduct an audit that evaluates compliance with the provisions of this subpart in accordance with the requirements of this section when any criterion of § 68.58(f) is met.

(b) *Third-party auditors and auditing teams.* The owner or operator shall either:

(1) Engage a third-party auditor meeting all of the competency and independence criteria in paragraph (c) of this section; or

(2) Assemble an auditing team, led by a third-party auditor meeting all of the competency and independence criteria in paragraph (c) of this section. The team may include:

(i) Other employees of the third-party auditor firm meeting the independence criteria of paragraph (c)(2) of this section; and

(ii) Other personnel not employed by the third-party auditor firm, including facility personnel.

(c) *Third-party auditor qualifications.* The owner or operator shall determine and document that the third-party auditor(s) meet the following competency and independence requirements:

(1) *Competency requirements.* The third-party auditor(s) shall be:

(i) Knowledgeable with the requirements of this part;

(ii) Experienced with the stationary source type and processes being audited and applicable recognized and generally accepted good engineering practices; and

(iii) Trained and/or certified in proper auditing techniques.

(2) *Independence requirements.* The third-party auditor(s) shall:

(i) Act impartially when performing all activities under this section;

(ii) Receive no financial benefit from the outcome of the audit, apart from payment for auditing services. For purposes of this paragraph, retired employees who otherwise satisfy the third-party auditor independence criteria in this section may qualify as independent if their sole continuing financial attachments to the owner or operator are employer-financed or managed retirement and/or health plans;

(iii) Ensure that all third-party personnel involved in the audit sign and date a conflict of interest statement documenting that they meet the independence criteria of this paragraph (c)(2); and

(iv) Ensure that all third-party personnel involved in the audit do not accept future employment with the owner or operator of the stationary source for a period of at least two years following submission of the final audit report. For purposes of this requirement, employment does not include performing or participating in third-party audits pursuant to § 68.59 or § 68.80.

(3) The auditor shall have written policies and procedures to ensure that all personnel comply with the competency and independence requirements of this section.

(d) *Third-party auditor responsibilities.* The owner or operator shall ensure that the third-party auditor:

(1) Manages the audit and participates in audit initiation, design, implementation, and reporting;

(2) Determines appropriate roles and responsibilities for the audit team members based on the qualifications of each team member;

(3) Prepares the audit report and where there is a team, documents the full audit team's views in the final audit report;

(4) Certifies the final audit report and its contents as meeting the requirements of this section; and

(5) Provides a copy of the audit report to the owner or operator.

(e) *Audit report.* The audit report shall:

(1) Identify all persons participating on the audit team, including names, titles, employers and/or affiliations, and summaries of qualifications. For third-party auditors, include information demonstrating that the competency requirements in paragraph (c)(1) of this section are met;

(2) Describe or incorporate by reference the policies and procedures required under paragraph (c)(3) of this section;

(3) Document the auditor's evaluation, for each covered process, of the owner or operator's compliance with the provisions of this subpart to determine whether the procedures and practices developed by the owner or operator under this rule are adequate and being followed;

(4) Document the findings of the audit, including any identified compliance or performance deficiencies;

(5) Summarize any significant revisions (if any) between draft and final versions of the report; and

(6) Include the following certification, signed and dated by the third-party auditor or third-party audit team member leading the audit:

''I certify that this RMP compliance audit report was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information upon which the audit is based. I further certify that the audit was conducted and this report was prepared pursuant to the requirements of subpart C of 40 CFR part 68 and all other applicable auditing, competency, independence, impartiality, and conflict of interest standards and protocols. Based on my personal knowledge and experience, and inquiry of personnel involved in the audit, the information submitted herein is true, accurate, and complete.''

(f) *Third-party audit findings*—(1) *Findings response report.* As soon as possible, but no later than 90 days after receiving the final audit report, the owner or operator shall determine an appropriate response to each of the findings in the audit report, and develop a findings response report that includes:

(i) A copy of the final audit report;

(ii) An appropriate response to each of the audit report findings;

(iii) A schedule for promptly addressing deficiencies; and

(iv) A certification, signed and dated by a senior corporate officer, or an official in an equivalent position, of the owner or operator of the stationary source, stating:

''I certify under penalty of law that I have engaged a third party to perform or lead an audit team to conduct a third-party audit in accordance with the requirements of 40 CFR 68.59 and that the attached RMP compliance audit report was received, reviewed, and responded to under my direction or supervision by qualified personnel. I further certify that appropriate responses to the findings have been identified and deficiencies were corrected, or are being corrected, consistent with the requirements of subpart C of 40 CFR part 68, as documented herein. Based on my personal knowledge and experience, or inquiry of personnel involved in evaluating the report findings and determining appropriate responses to the findings, the information submitted herein is true, accurate, and complete. I am aware that there are significant penalties for making false material statements, representations, or certifications, including the possibility of fines and imprisonment for knowing violations.''

(2) *Schedule implementation.* The owner or operator shall implement the schedule to address deficiencies identified in the audit findings response report in paragraph (f)(1)(iii) of this section and document the action taken to address each deficiency, along with the date completed.

(3) *Submission to Board of Directors.* The owner or operator shall immediately provide a copy of each document required under paragraphs (f)(1) and (2) of this section, when completed, to the owner or operator's audit committee of the Board of Directors, or other comparable committee or individual, if applicable.

(g) *Recordkeeping.* The owner or operator shall retain at the stationary source, the two most recent final third-party audit reports, related findings response reports, documentation of actions taken to address deficiencies, and related records. This requirement does not apply to any document that is more than five years old.

■ 8. Amend § 68.60 by adding paragraph (h) to read as follows:

§ 68.60 Incident investigation.

* * * * *

(h) The owner or operator shall ensure the following are addressed when the incident in § 68.60(a) meets the accident history reporting requirements under § 68.42:

(1) The report shall be completed within 12 months of the incident, unless the implementing agency approves, in writing, to an extension of time.

(2) The report in paragraph (d) of this section shall include factors that contributed to the incident including the initiating event, direct and indirect contributing factors, and root causes. Root causes shall be determined by conducting an analysis for each incident using a recognized method.

■ 9. Section 68.62 is added to subpart C to read as follows:

§ 68.62 Employee participation.

(a) The owner or operator shall develop a written plan of action regarding the implementation of the employee participation required by this section.

(b) The owner or operator shall develop and implement a process to allow employees and their representatives to anonymously report unaddressed hazards that could lead to a catastrophic release, unreported RMP-reportable accidents, or any other noncompliance with this part.

(c) The owner or operator shall provide to employees and their representatives access to hazard reviews and to all other information required to be developed under this rule.

Subpart D—Program 3 Prevention Program

■ 10. Amend § 68.65 by revising paragraphs (a) and (d)(2) to read as follows:

§ 68.65 Process safety information.

(a) The owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule and shall keep process safety information up to date. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

* * * * *

(d) * * *

(2) The owner or operator shall ensure and document that the process is designed and maintained in compliance with recognized and generally accepted good engineering practices.

* * * * *

■ 11. Amend § 68.67 by revising paragraphs (c)(3) and (5) and adding paragraph (c)(8) through (10) to read as follows:

§ 68.67 Process hazard analysis.

* * * * *

(c) * * *

(3) Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases and standby or emergency power systems.

* * * * *

(5) Stationary source siting, including the placement of processes, equipment, and buildings within the facility, hazards posed by proximate facilities, and potential accidental release consequences to nearby public and environmental receptors;

* * * * *

(8) External events such as natural hazards, including those caused by climate change or other triggering events that could lead to an accidental release;

(9) For processes in NAICS codes 324 and 325, located within 1 mile of another stationary source having a process in NAICS codes 324 or 325 and for processes in NAICS 324 with hydrofluoric acid alkylation processes, safer technology and alternative risk management measures applicable to eliminating or reducing risk from process hazards.

(i) The owner or operator shall consider and document, in the following order of preference inherently safer technology or design, passive measures, active measures, and procedural measures. A combination of risk management measures may be used to achieve the desired risk reduction.

(ii) The owner or operator shall determine and document the practicability of the inherently safer technologies and designs considered. The owner or operator shall include in documentation any methods used to determine practicability. For any inherently safer technologies and designs implemented, the owner or operator shall document and submit to EPA a description of the technology implemented.

(iii) The analysis shall be performed by a team that includes members with expertise in the process being evaluated, including at least one member who works in the process. The team members shall be documented.

(10) Any gaps in safety between the codes, standards, or practices to which the process was designed and constructed and the most current version of applicable codes, standards, or practices.

* * * * *

■ 12. Amend § 68.79 by revising paragraph (a) and adding paragraphs (f) through (h) to read as follows:

§ 68.79 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart for each covered process, at least every three years to verify that the procedures and practices developed under the subpart are adequate and are being followed. When required as set forth in paragraph (f) of this section, the compliance audit shall be a third-party audit.

* * * * *

(f) *Third-party audit applicability.* The next required compliance audit shall be a third-party audit when one or more of the following conditions applies:

(1) Two accidental releases within five years meeting the criteria in § 68.42(a) from a covered process at a stationary source has occurred; or

(2) One accidental release within five years meeting the criteria in § 68.42(a) from a covered process at a stationary source in NAICS code 324 or 325, located within 1 mile of another stationary source having a process in NAICS code 324 or 325; or

(3) An implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance, or when a previous third-party audit failed to meet the competency or independence criteria of § 68.80(c).

(g) *Implementing agency notification and appeals.* (1) If an implementing agency makes a preliminary determination that a third-party audit is necessary pursuant to paragraph (f)(3) of this section, the implementing agency will provide written notice to the owner or operator that describes the basis for this determination.

(2) Within 30 days of receipt of such written notice, the owner or operator may provide information and data to, and may consult with, the implementing agency on the determination. Thereafter, the implementing agency will provide a final determination to the owner or operator.

(3) If the final determination requires a third-party audit, the owner or operator shall comply with the requirements of § 68.80, pursuant to the schedule in paragraph (h) of this section.

(4) *Appeals.* The owner or operator may appeal a final determination made by an implementing agency under paragraph (g)(3) of this section within 30 days of receipt of the final determination. The appeal shall be made to the EPA Regional Administrator or, for determinations made by other implementing agencies, the administrator or director of such implementing agency. The appeal shall contain a clear and concise statement of the issues, facts in the case, and any relevant additional information. In reviewing the appeal, the implementing agency may request additional information from the owner or operator. The implementing agency will provide a written, final decision on the appeal to the owner or operator.

(h) *Schedule for conducting a third-party audit.* The audit and audit report shall be completed as follows, unless a different timeframe is specified by the implementing agency:

(1) For third-party audits required pursuant to paragraph (f)(1) of this section, within 12 months of the second of two releases within five years; or

(2) For third-party audits required pursuant to paragraph (f)(2) of this section, within 12 months of the release; or

(3) For third-party audits required pursuant to paragraph (f)(3) of this section, within 12 months of the date of the final determination pursuant to paragraph (g)(3) of this section. However, if the final determination is appealed pursuant to paragraph (g)(4) of this section, within 12 months of the date of the final decision on the appeal.

■ 13. Section 68.80 is added to read as follows:

§ 68.80 Third-party audits.

(a) *Applicability.* The owner or operator shall engage a third party to conduct an audit that evaluates compliance with the provisions of this subpart in accordance with the requirements of this section when any criterion of § 68.79(f) is met.

(b) *Third-party auditors and auditing teams.* The owner or operator shall either:

(1) Engage a third-party auditor meeting all of the competency and independence criteria in paragraph (c) of this section; or

(2) Assemble an auditing team, led by a third-party auditor meeting all of the competency and independence criteria in paragraph (c) of this section. The team may include:

(i) Other employees of the third-party auditor firm meeting the independence criteria of paragraph (c)(2) of this section; and

(ii) Other personnel not employed by the third-party auditor firm, including facility personnel.

(c) *Third-party auditor qualifications.* The owner or operator shall determine and document that the third-party auditor(s) meet the following competency and independence requirements:

(1) *Competency requirements.* The third-party auditor(s) shall be:

(i) Knowledgeable with the requirements of this part;

(ii) Experienced with the stationary source type and processes being audited and applicable recognized and generally accepted good engineering practices; and

(iii) Trained and/or certified in proper auditing techniques.

(2) *Independence requirements.* The third-party auditor(s) shall:

(i) Act impartially when performing all activities under this section;

(ii) Receive no financial benefit from the outcome of the audit, apart from payment for auditing services. For purposes of this paragraph, retired employees who otherwise satisfy the third-party auditor independence criteria in this section may qualify as independent if their sole continuing financial attachments to the owner or operator are employer-financed or managed retirement and/or health plans;

(iii) Ensure that all third-party personnel involved in the audit sign and date a conflict of interest statement documenting that they meet the independence criteria of this paragraph (c)(2); and

(iv) Ensure that all third-party personnel involved in the audit do not accept future employment with the owner or operator of the stationary source for a period of at least two years following submission of the final audit report. For purposes of this requirement, employment does not include performing or participating in third-party audits pursuant to § 68.59 or this section.

(3) The auditor shall have written policies and procedures to ensure that all personnel comply with the competency and independence requirements of this section.

(d) *Third-party auditor responsibilities.* The owner or operator shall ensure that the third-party auditor:

(1) Manages the audit and participates in audit initiation, design, implementation, and reporting;

(2) Determines appropriate roles and responsibilities for the audit team members based on the qualifications of each team member;

(3) Prepares the audit report and where there is a team, documents the full audit team's views in the final audit report;

(4) Certifies the final audit report and its contents as meeting the requirements of this section; and

(5) Provides a copy of the audit report to the owner or operator.

(e) *Audit report.* The audit report shall:

(1) Identify all persons participating on the audit team, including names, titles, employers and/or affiliations, and summaries of qualifications. For third-party auditors, include information demonstrating that the competency requirements in paragraph (c)(1) of this section are met;

(2) Describe or incorporate by reference the policies and procedures required under paragraph (c)(3) of this section;

(3) Document the auditor's evaluation, for each covered process, of the owner or operator's compliance with the provisions of this subpart to determine whether the procedures and practices developed by the owner or operator under this rule are adequate and being followed;

(4) Document the findings of the audit, including any identified compliance or performance deficiencies;

(5) Summarize any significant revisions (if any) between draft and final versions of the report; and

(6) Include the following certification, signed and dated by the third-party auditor or third-party audit team member leading the audit:

> ''I certify that this RMP compliance audit report was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information upon which the audit is based. I further certify that the audit was conducted and this report was prepared pursuant to the requirements of subpart D of 40 CFR part 68 and all other applicable auditing, competency, independence, impartiality, and conflict of interest standards and protocols. Based on my personal knowledge and experience, and inquiry of personnel involved in the audit, the information submitted herein is true, accurate, and complete.''

(f) *Third-party audit findings*—(1) *Findings response report.* As soon as possible, but no later than 90 days after receiving the final audit report, the owner or operator shall determine an

appropriate response to each of the findings in the audit report, and develop a findings response report that includes:

(i) A copy of the final audit report;

(ii) An appropriate response to each of the audit report findings;

(iii) A schedule for promptly addressing deficiencies; and

(iv) A certification, signed and dated by a senior corporate officer, or an official in an equivalent position, of the owner or operator of the stationary source, stating:

''I certify under penalty of law that I have engaged a third party to perform or lead an audit team to conduct a third-party audit in accordance with the requirements of 40 CFR 68.80 and that the attached RMP compliance audit report was received, reviewed, and responded to under my direction or supervision by qualified personnel. I further certify that appropriate responses to the findings have been identified and deficiencies were corrected, or are being corrected, consistent with the requirements of subpart D of 40 CFR part 68, as documented herein. Based on my personal knowledge and experience, or inquiry of personnel involved in evaluating the report findings and determining appropriate responses to the findings, the information submitted herein is true, accurate, and complete. I am aware that there are significant penalties for making false material statements, representations, or certifications, including the possibility of fines and imprisonment for knowing violations.''

(2) *Schedule implementation.* The owner or operator shall implement the schedule to address deficiencies identified in the audit findings response report in paragraph (f)(1)(iii) of this section and document the action taken to address each deficiency, along with the date completed.

(3) *Submission to Board of Directors.* The owner or operator shall immediately provide a copy of each document required under paragraphs (f)(1) and (2) of this section, when completed, to the owner or operator's audit committee of the Board of Directors, or other comparable committee or individual, if applicable.

(g) *Recordkeeping.* The owner or operator shall retain at the stationary source the two most recent final third-party audit reports, related findings response reports, documentation of actions taken to address deficiencies, and related records.

■ 14. Amend § 68.81 by adding paragraph (h) to read as follows:

§ 68.81 Incident investigation.

* * * * *

(h) The owner or operator shall ensure the following are addressed when the incident in § 68.81(a) meets the accident history reporting requirements under § 68.42:

(1) The report shall be completed within 12 months of the incident, unless the implementing agency approves, in writing, an extension of time.

(2) The report in paragraph (d) of this section shall include factors that contributed to the incident including the initiating event, direct and indirect contributing factors, and root causes. Root causes shall be determined by conducting an analysis for each incident using a recognized method.

■ 15. Revise § 68.83 to read as follows:

§ 68.83 Employee participation.

(a) The owner or operator shall develop a written plan of action regarding the implementation of the employee participation required by this section.

(b) The owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses, and on the development of the other elements of process safety management in this rule.

(c) The owner or operator shall consult with employees and their representatives on addressing, correcting, resolving, documenting, and implementing recommendations and findings of process hazard analyses under § 68.67(e), compliance audits under § 68.79(d), and incident investigations under § 68.81(e).

(d) The owner or operator shall provide the following authorities to employees and their representatives, and document and respond, in writing within 30 days of the authority being exercised:

(1) Refuse to perform a task when doing so could reasonably result in a catastrophic release.

(2) Recommend to the operator in charge of a unit that an operation or process be partially or completely shut down, in accordance with procedures established in § 68.69(a), based on the potential for a catastrophic release.

(3) Allow a qualified operator in charge of a unit to partially or completely shut down an operation or process, in accordance with procedures established in § 68.69(a), based on the potential for a catastrophic release.

(e) The owner or operator shall develop and implement a process to allow employees and their representatives to anonymously report unaddressed hazards that could lead to a catastrophic release, unreported RMP-reportable accidents, or any other noncompliance with this part.

(f) The owner or operator shall provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under this rule.

■ 16. Revise § 68.85 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 68.85 Hot work permit.

* * * * *

(b) The permit shall document that the fire prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed.

(c) The permit shall be retained for five years after the completion of the hot work operations.

Subpart E—Emergency Response

■ 17. Amend § 68.90 by revising paragraphs (b)(1) and (3) and adding paragraph (b)(6) to read as follows:

§ 68.90 Applicability.

* * * * *

(b) * * *

(1) For stationary sources with any regulated toxic substance held in a process above the threshold quantity, the stationary source is included in the community emergency response plan developed under 42 U.S.C. 11003. The community emergency response plan should include the following components: identification of facilities within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities, such as hospitals or natural gas facilities; methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances; designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan; procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred; methods for determining the occurrence of a release, and the area or population likely to be affected by such release; description of emergency equipment and facilities in the community and at each facility in the community, and an identification of the persons responsible for such equipment

and facilities; evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes; training programs, including schedules for training of local emergency response and medical personnel; and methods and schedules for exercising the emergency plan.

* * * * *

(3) Appropriate mechanisms are in place to notify emergency responders when there is a need for a response, including providing timely data and information detailing the current understanding and best estimates of the nature of the release.

* * * * *

(6) The owner or operator maintains and implements, as necessary, procedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases of RMP-regulated substances and ensure that a community notification system is in place to warn the public within the area potentially threatened by the release.

■ 18. Amend § 68.95 by revising paragraphs (a)(1)(i) and (c) to read as follows:

§ 68.95 Emergency response program.

(a) * * *

(1) * * *

(i) Procedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases, including assurance that a community notification system is in place to warn the public within the area threatened by the release;

* * * * *

(c) The emergency response plan developed under paragraph (a)(1) of this section shall include providing timely data and information detailing the current understanding and best estimates of the nature of the release when a release occurs and be coordinated with the community emergency response plan developed under 42 U.S.C. 11003. The community emergency response plan should include identification of facilities within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities, such as hospitals or natural gas facilities; methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances; designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan; procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred; methods for determining the occurrence of a release, and the area or population likely to be affected by such release; description of emergency equipment and facilities in the community and at each facility in the community, as well as an identification of the persons responsible for such equipment and facilities; evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes; training programs, including schedules for training of local emergency response and medical personnel; and methods and schedules for exercising the emergency plan. Upon request of the LEPC or emergency response officials, the owner or operator shall promptly provide to the local emergency response officials information necessary for developing and implementing the community emergency response plan.

■ 19. Amend § 68.96 by revising paragraphs (b)(1)(i) and (b)(3) to read as follows:

§ 68.96 Emergency response exercises.

* * * * *

(b) * * *

(1) * * *

(i) As part of coordination with local emergency response officials required by § 68.93, the owner or operator shall conduct a field exercise at least once every 10 years unless the appropriate Federal, State, and local emergency response agencies agree in writing that such frequency is impractical. If emergency response agencies so agree, the owner or operator shall consult with emergency response officials to establish an alternate appropriate frequency for field exercises.

* * * * *

(3) *Documentation.* The owner or operator shall prepare an evaluation report within 90 days of each field and tabletop exercise. The report shall include a description of the exercise scenario, names and organizations of each participant, an evaluation of the exercise results including lessons learned, recommendations for improvement or revisions to the emergency response exercise program and emergency response program, and a schedule to promptly address and resolve recommendations.

* * * * *

Subpart G—Risk Management Plan

■ 20. Amend § 68.160 by adding paragraph (b)(22) to read as follows:

§ 68.160 Registration.

* * * * *

(b) * * *

(22) Method of communication and location of the notification that chemical hazard information is available to the public residing within 6 miles of the stationary source, pursuant to § 68.210(d).

■ 21. Amend § 68.170 by adding paragraph (e)(7) revising paragraph (i) to read as follows:

§ 68.170 Prevention program/Program 2.

* * * * *

(e) * * *

(7) Recommendations declined from natural hazard, power loss, and siting hazard evaluations and justifications.

* * * * *

(i) The date of the most recent compliance audit; the expected date of completion of any changes resulting from the compliance audit and identification of whether the most recent compliance audit was a third-party audit, pursuant to §§ 68.58 and 68.59; and findings declined from third-party compliance audits and justifications.

* * * * *

■ 22. Amend § 68.175 by adding paragraphs (e)(7) through (9) and revising paragraph (k) to read as follows:

§ 68.175 Prevention program/Program 3.

* * * * *

(e) * * *

(7) Inherently safer technology or design measures implemented since the last PHA, if any, and the technology category (substitution, minimization, simplification and/or moderation).

(8) Recommendations declined from natural hazard, power loss, and siting hazard evaluations and justifications.

(9) Recommendations declined from safety gaps between codes, standards, or practices to which the process was designed and constructed and the most current version of applicable codes, standards, or practices.

* * * * *

(k) The date of the most recent compliance audit; the expected date of completion of any changes resulting from the compliance audit; and identification of whether the most recent compliance audit was a third-

party audit, pursuant to §§ 68.79 and 68.80.

* * * * *

Subpart H—Other Requirements

■ 23. Amend § 68.210 by adding paragraphs (d) through (f) to read as follows:

§ 68.210 Availability of information to the public.

* * * * *

(d) *Chemical hazard information.* The owner or operator of a stationary source shall provide, upon request by any member of the public residing within 6 miles of the stationary source, the following chemical hazard information for all regulated processes in the language requested, as applicable:

(1) *Regulated substances information.* Names of regulated substances held in a process;

(2) Safety Data Sheets (SDSs). SDSs for all regulated substances located at the facility;

(3) *Accident history information.* Provide the five-year accident history information required to be reported under § 68.42;

(4) *Emergency response program.* The following summary information concerning the stationary source's compliance with § 68.10(f)(3) and the emergency response provisions of subpart E as applicable:

(i) Whether the stationary source is a responding stationary source or a non-responding stationary source;

(ii) Name and phone number of local emergency response organizations with which the owner or operator last coordinated emergency response efforts, pursuant to § 68.180; and

(iii) For stationary sources subject to § 68.95, procedures for informing the public and local emergency response agencies about accidental releases;

(5) *Exercises.* A list of scheduled exercises required under § 68.96; and

(6) *LEPC contact information.* Include LEPC name, phone number, and web address as available.

(e) *Notification of availability of information.* The owner or operator shall provide ongoing notification on a company website, social media platforms, or through other publicly accessible means that:

(1) Information specified in paragraph (d) of this section is available to the public residing within 6 miles of the stationary source upon request. The notification shall:

(i) Specify the information elements, identified in paragraph (b) of this section, that can be requested; and

(ii) Provide instructions for how to request the information (*e.g.,* email, mailing address, and/or telephone or website request);

(2) Identify where to access information on community preparedness, if available, including shelter-in-place and evacuation procedures.

(f) *Timeframe to provide requested information.* The owner or operator shall provide the requested information under paragraph (d) of this section within 45 days of receiving a request.

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Part III

Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Test Procedures for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2017–BT–TP–0011]

RIN 1904–AD85

Energy Conservation Program: Test Procedures for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: In this final rule, the U.S. Department of Energy (''DOE'') is adopting amendments to the test procedures for general service fluorescent lamps (''GSFLs''), incandescent reflector lamps (''IRLs''), and general service incandescent lamps (''GSILs'') to update references to industry test standards and provide citations to specific sections of these standards; amend definitions; reference specific sections within industry test standards for further clarity; provide test methods for measuring coloring rendering index (''CRI'') for incandescent lamps and measuring lifetime of IRLs; clarify test frequency and inclusion of cathode power in measurements for GSFLs; decrease the sample size and specify all metrics for all lamps be measured from the same sample; and align terminology across relevant sections of the Code of Federal Regulations relating to GSFLs, IRLs and GSILs.

DATES: The effective date of this rule is September 30, 2022. The final rule changes will be mandatory for product testing starting February 27, 2023. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register on September 30, 2022. The incorporation by reference of certain other publications listed in this rule was approved by the Director of the Federal Register as of June 30, 1997, March 23, 2009, September 14, 2009, and February 27, 2012.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket web page can be found at *www.regulations.gov/document/EERE-2017-BT-TP-0011.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email: *ApplianceStandardQuestions@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standards into 10 CFR part 430:

ANSI Standard C78.21–2011 (R2016), ''American National Standard for Electric Lamps—PAR and R Shapes,'' approved August 23, 2016 (''ANSI C78.21–2011 (R2016)'').

ANSI Standard C78.79–2014 (R2020), ''American National Standard for Electric Lamps—Nomenclature for Envelope Shapes Intended for Use with Electric Lamps,'' approved January 17, 2020 (''ANSI C78.79–2014 (R2020)'').

ANSI Standard C78.81–2016, ''American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics,'' approved June 29, 2016 (''ANSI C78.81–2016'').

ANSI Standard C78.375A–2014 (R2020), ''American National Standard for Electric Lamps—Fluorescent Lamps—Guide for Electrical Measures,'' approved January 17, 2020 (''ANSI C78.375A–2014 (R2020)'').

ANSI/NEMA Standard C78.901–2016, ''American National Standard for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics,'' approved August 23, 2016 (''ANSI/NEMA C78.901–2016'').

ANSI Standard C82.3–2016, ''American National Standard for Electric Lamps—Reference Ballasts for Fluorescent Lamps,'' approved April 8, 2016 (''ANSI C82.3–2016'').

CIE 015:2018, ''Colorimetry, 4th Edition,'' copyright 2018 (''CIE 15:2018'').

ANSI/IES Test Method LM–9–20, ''ANSI/IES LM–9–2020 Approved Method: Electrical and Photometric Measurement of Fluorescent Lamps,'' approved February 7, 2020 (''IES LM–9–20'').

ANSI/IES Test Method LM–20–20, ''ANSI/IES LM–20–20 Approved Method: Photometry of Reflector Type Lamps,'' approved February 7, 2020 (''IES LM–20–20'').

ANSI/IES Test Method LM–45–20, ''ANSI/IES LM–45–20 Approved Method: Electrical and Photometric Measurements of General Service Incandescent Filament Lamps,'' approved February 7, 2020 (''IES LM–45–20'').

ANSI/IES Test Method LM–49–20, ''ANSI/IES LM–49–20 Approved Method: Life Testing of Incandescent Filament Lamps,'' approved February 7, 2020 (''IES LM–49–20'').

ANSI/IES Test Method LM–54–20, ''ANSI/IES LM–54–20 Approved Method: IES Guide to Lamp Seasoning,'' approved February 7, 2020 (''IES LM–54–20'').

ANSI/IES Test Method LM–58–20, ''ANSI/IES LM–58–20 Approved Method: Spectroradiometric Measurement Methods for Light Sources,'' approved February 7, 2020 (''IES LM–58–20'').

ANSI/IES Test Method LM–78–20, ''ANSI/IES LM–78–20 Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer,'' approved February 7, 2020 (''IES LM–78–20'').

Copies of ANSI C78.21–2011(R2016), ANSI C78.79–2014(R2020), ANSI C78.81–2016, ANSI C78.375A–2014(R2020), ANSI/NEMA C78.901–2016, and ANSI C82.3–2016 are available from the American National Standards Institute (ANSI) at *www.ansi.org* or the National Electrical Manufacturers Association (NEMA) at *www.nema.org.*

Copies of CIE 15:2018 are available from the International Commission on Illumination (''CIE'') at *cie.co.at/publications.*

Copies of IES LM–9–20, IES LM–20–20, IES LM–45–20, IES LM–49–20, IES LM–54–20, IES LM–58–20, and IES LM–78–20 are available from ANSI at *www.ansi.org* or from the Illuminating Engineering Society (''IES'') at *www.ies.org/store.*

For a further discussion of these standards, see section IV.N.

Table of Contents

I. Authority and Background

GSFLs, IRLs, and GSILs are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(14)) DOE's test procedures for GSFLs, IRLs, and GSILs appear at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix R (''appendix R''). The following sections discuss DOE's authority to establish and amend test procedures for GSFLs, IRLs, and GSILs, as well as relevant background information regarding DOE's amendments to the test procedures for these products.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include GSFLs, IRLs, and GSILs, the subject of this document. (42 U.S.C. 6292(a)(14))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA, as codified, directs DOE to prescribe test procedures for fluorescent lamps and IRLs, taking into consideration the applicable standards of IES or ANSI. (42 U.S.C. 6293(b)(6)) Consideration of IES and ANSI standards aligns DOE test procedures with latest industry practices for testing electric lamps; therefore, DOE also considers these industry test standards when prescribing test procedures for GSILs.

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including GSFLs, IRLs, and GSILs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)). If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A))

If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (*Id.*) Any such amendment must consider the most current versions of the International Electrotechnical Commission (''IEC'') Standard 62301 [3] and IEC Standard 62087 [4] as applicable. (42 U.S.C. 6295(gg)(2)(A))

DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

DOE's existing test procedures for GSFLs, IRLs, and GSILs appear at appendix R (''Uniform Test Method for Measuring Average Lamp Efficacy (''LE''), Color Rendering Index (''CRI''), and Correlated Color Temperature (''CCT'') of Electric Lamps'').

DOE most recently amended the test procedures for GSFLs and GSILs in a final rule published on January 27, 2012. 77 FR 4203. DOE updated several references to the industry test standards referenced in DOE's test procedures and established a lamp lifetime test method for GSILs. *Id.* In that final rule, DOE determined that amendments to the existing test procedure for IRLs were not necessary. *Id.*

On August 8, 2017, DOE published in the **Federal Register** a request for information (''RFI'') seeking comments on the current test procedures for GSFLs, IRLs, and GSILs. 82 FR 37031 (''August 2017 RFI''). On June 3, 2021, DOE published in the **Federal Register** a notice of proposed rulemaking (''NOPR'') proposing amendments to the current test procedures for GSFLs, IRLs, and GSILs. 86 FR 29888 (''June 2021 NOPR'').

DOE received comments in response to the June 2021 NOPR from the interested parties listed in Table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE JUNE 2021 NOPR

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
National Electrical Manufacturers Association.	NEMA	12	Industry Association.
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	13	Utility.
Illuminating Engineering Society	IES	14	Industry Association.

This document addresses information and comments received in response to the June 2021 NOPR. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5]

II. Synopsis of the Final Rule

In this final rule, DOE amends 10 CFR part 429, 430.2, 430.3, 430.23, 430.32, and appendix R as follows: (1) updates references to industry test standards to reflect current industry practices; (2) modifies, adds, and removes definitions to better align with the scope and test methods; (3) references specific sections within industry test standards for further clarity; (4) provides a test method for measuring CRI for incandescent lamps to support DOE requirements; (5) provides a test method for measuring lifetime of incandescent reflector lamps to support the Federal Trade Commission's (''FTC's'') labeling requirements; (6) clarifies test frequency and inclusion of cathode power in measurements for GSFLs; (7) decreases the sample size and specifies all metrics for all lamps be measured from the same sample of units. In addition, this final rule aligns terminology across appendix R, the relevant sections of 10 CFR part 429, 430.23(r), 430.32(n) and 430.32(x) and updates language for conciseness and clarity.

The adopted amendments are summarized in Table II.1 of this document compared to the test procedure provision prior to the amendment, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

DOE test procedure prior to amendment	Amended test procedure	Attribution
References lamp data sheets in the 2010 version of ANSI C78.81 and 2005 version of ANSI C78.901 to specify the appropriate reference ballast to use when testing a particular lamp.	Adopts newer versions of ANSI standards only for voluntary representations for GSFLs at high frequency settings.	Harmonize with updated industry standard.
References of ANSI C78.375, ANSI C82.3, IES LM–9, IES LM–58, IES LM–45, IES LM–49, IES LM–20, CIE 15.	Adopts latest versions of these referenced industry standards.	Harmonize with updated industry standard.
Does not clearly state in all instances whether testing for GSFLs should be performed at low or high frequency and whether cathode power should be included.	Clarifies in all instances whether testing should be performed at low or high frequency and whether cathode power should be included.	Improve reproducibility of test results.

[3] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[4] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for GSFLs, IRLs, and GSILs. (Docket No. EERE–2017–BT–TP–0011, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE—Continued

DOE test procedure prior to amendment	Amended test procedure	Attribution
Does not include a method for determining CRI of incandescent lamps.	Adds test method for measuring CRI for GSILs and IRLs.	Provide test method to comply with the statutory minimum CRI requirement.
Does not include a method for determining lifetime of incandescent reflector lamps.	Adds test method for measuring lifetime of incandescent reflector lamps.	Support FTC labeling requirements.
Definitions of IRL types do not reference the latest industry standards.	Updates definitions for BPAR, R20, ER, and BR incandescent reflector lamps and defines PAR and R incandescent lamps with references to latest versions of ANSI C78.21–2011 (R2016) and ANSI C78.79–2014 (R2020), as appropriate.	Reference latest industry standards.
Specifies only CRI to be measured from the same sample of units.	Specifies all metrics for all lamps be measured from the same sample of units.	Improve representativeness of test results.
Requires testing a minimum of 21 lamps by selecting a minimum of three lamps from each month of production for a minimum of 7 out of a 12-month period.	Decreases the minimum number of lamps tested to be 10 instead of 21 and removes the requirement for lamps to be selected from at least 7 different months of a 12-month period.	Align sampling requirements with those of other lighting products.
Includes inconsistent terminology across appendix R, 10 CFR part 429, 430.23(r), 430.32(n), and 430.32(x).	Aligns terminology across appendix R, the 10 CFR 429 sections, and 10 CFR 430.23(r), 430.32(n), and 430.32(x).	Improve readability of test procedure.

DOE has determined that the amendments described in section III of this document and adopted in this document will not alter the measured efficiency of GSFLs, IRLs, or GSILs, or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. Additionally, DOE has determined that the amendments will not increase the cost of testing. Discussion of DOE's actions are addressed in detail in section III of this document.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule.

III. Discussion

In response to the June 2021 NOPR, DOE received several comments on the proposed amendments. The CA IOUs stated general support for updating the GSFL, IRL, and GSIL test procedures and encouraged the process to proceed expeditiously. (CA IOUs, No. 13 at pp. 2–3) Other comments addressed specific topics including updates to industry standards incorporated by reference, test methodologies, sampling and certification requirements, and test procedures costs and impacts. DOE discusses the comments received on the June 2021 NOPR in the following sections.

A. Scope of Applicability

This final rule covers those consumer products that meet the definitions of ''general service fluorescent lamp,'' ''incandescent reflector lamp,'' and ''general service incandescent lamp'' as codified in DOE's regulations at 10 CFR 430.2.

DOE defines a general service fluorescent lamp as a lamp that can be used to satisfy the majority of fluorescent lighting applications; and also specifies that it cannot be designed and marketed for eight non-general applications. 10 CFR 403.2.

DOE defines an incandescent reflector lamp to mean any lamp in which light is produced by a filament heated to incandescence by an electric current and that: (1) has an inner reflective coating on the outer bulb to direct the light; (2) is not colored; (3) is not designed for rough or vibration service applications; (3) is not an R20 short lamp; (3) has an R, PAR, ER, BR, BPAR, or similar bulb shapes with an E26 medium screw base; (4) has a rated voltage or voltage range between 115 and 130 volts; (5) has a diameter greater than 2.25 inches; and (6) has a rated wattage that is 40 watts or higher. 10 CFR 430.2.

DOE defines a general service incandescent lamp as an incandescent or halogen lamp type intended for general service applications and that: (1) has a medium screw base; (2) has a lumen range of not less than 310 lumens and not more than 2,600 lumens or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens; and (3) has a voltage range between 110 and 130 volts. The definition also specifies 16 types of lamps to which the definition does not apply. 10 CFR 430.2.

DOE received comments regarding rulemaking scope in response to the June 2021 NOPR.

The CA IOUs commented that under DOE's definitional rulemaking published on January 19, 2017,[6] GSILs, IRLs, compact fluorescent lamps (''CFLs''), as well as integrated light-emitting diode (''LED'') lamps and organic light-emitting diode (''OLED'') lamps are general service lamps (''GSLs''). The CA IOUs asserted that the statutory GSL efficacy requirement of 45 lumens per watt (''lm/W'') (*i.e.,* the ''backstop'')[7] has been triggered. The

[6] On January 19, 2017, DOE published two final rules (''January 2017 Definition Final Rules'') revising the definitions of GSL and GSIL by bringing certain categories of lamps that had been excluded by statute from the definition of GSIL within the definitions of GSIL and GSL. 82 FR 7276; 82 FR 7322. On September 5, 2019, DOE published a final rule withdrawing the definitions in the January 2017 Definition Final Rules and instead maintained the existing regulatory definitions of GSL and GSIL. 84 FR 46661. On August 19, 2021, DOE published a NOPR proposing to amend the existing regulatory definitions of GSL and GSIL to be those specified in the January 2017 Definition Final Rules. 86 FR 46611. On May 9, 2022, DOE published a final rule adopting definitions of GSL and GSIL and associated supplemental definitions as set forth in the January 2017 Definition Final Rules. 87 FR 27461 (''May 2022 Definition Final Rule'').

[7] EPCA directs DOE to initiate a rulemaking process for GSLs prior to January 1, 2014, to determine whether: (1) to amend energy conservation standards for GSLs and (2) the exemptions for certain incandescent lamps should be maintained or discontinued. (42 U.S.C. 6295(i)(6)(A)(i)) The rulemaking is not limited to incandescent lamp technologies and must include a consideration of a minimum standard of 45 lumens per watt for GSLs. (42 U.S.C. 6295(i)(6)(A)(ii)) EPCA provides that if the Secretary determines that the standards in effect for GSILs should be amended, a final rule must be published by January 1, 2017, with a compliance

Continued

CA IOUs stated that applying the 45 lm/W standard across different lamps with common consumer utility would be a significant step towards a technology-neutral approach to regulating lighting efficiency. The CA IOUs further stated that GSILs and IRLs are both GSLs per DOE regulation and therefore are subject to the GSL test procedure published by DOE in September 2016.[8] (CA IOUs, No. 13 at p. 2)

In the May 2022 Definition Final Rule and May 2022 Backstop Final Rule, DOE addressed the CA IOUs comments regarding the applicability of the 45 lm/W backstop requirement for GSLs. The May 2022 Backstop Final Rule codified the backstop requirement for GSLs, which includes IRLs and GSILs. Further, DOE provides test procedures for all GSLs in certain appendices to subpart B of 10 CFR part 430. DOE's test procedure codified in appendix DD, *Uniform Test Method for Measuring the Energy Consumption and Energy Efficiency of General Service Lamps That Are Not General Service Incandescent Lamps, Compact Fluorescent Lamps, or Integrated LED Lamps,* applies as the title indicates to all GSLs that are not GSILs, CFLs, or integrated LED lamps. The DOE test procedure for GSILs and IRLs is codified in appendix R; the DOE test procedure for CFLs is codified in appendix W, *Uniform Test Method for Measuring the Energy Consumption of Compact Fluorescent Lamps;* and the DOE test procedure for integrated LED lamps is codified in appendix BB, *Uniform Test Method for Measuring the Input Power, Lumen Output, Lamp Efficacy, Correlated Color Temperature (CCT), Color Rendering Index (CRI), Power Factor, Time to Failure, and Standby Mode Power of Integrated Light-Emitting Diode (LED) Lamps.* The scope of this rulemaking is limited to the review and revision of appendix R and the associated sampling and certification requirements.

B. Incorporation by Reference of Industry Test Standards

The GSFL, IRL, and GSIL test procedures described in appendix R reference certain ANSI and IES standards. Industry periodically updates its testing standards to account for changes in technology, developments in test methodology, developments in test instruments, and/or changes in industry practice. Several of the referenced industry test standards have been updated by industry since DOE last amended its test procedures for GSFLs, IRLs and GSILs. In the June 2021 NOPR, DOE identified updated versions of the referenced industry standards incorporated by reference for appendix R as shown in Table III.1 of this document. DOE tentatively determined that the proposed updates to industry test standard references are clarifications and would not involve substantive changes to the test setup and methodology. 86 FR 29888, 29892. DOE also initially determined that incorporation by reference of the latest versions of the industry standards would better align DOE test procedures with industry practice and further increase the clarity of the test methods. *Id.* DOE requested comment in the June 2021 NOPR on its proposed adoption of the updated versions of the referenced industry test standards and its tentative determination that such adoption would not result in substantive changes to the DOE test procedure. *Id.*

NEMA commented that it approved of adopting the latest versions of consensus standards proposed in the June 2021 NOPR. NEMA stated that none of the standards for which NEMA is Secretariat are slated for updates within the next six months and recommended that DOE proceed as proposed without concern as to whether new versions of the consensus standards are imminent. (NEMA, No. 12 at p. 2) IES stated that all IES standards have been elevated to ANSI status over the past two years and that it is an appropriate practice for DOE to adopt ANSI standards when they are available. IES also noted that previous versions of IES standards referenced by DOE are no longer supported or sold by IES. IES also requested that DOE reference its standards with the initialism ''IES'' rather than ''IESNA'' and noted its new resource for illumination engineering terms, ANSI/IES LS–1–20, *Lighting Science: Nomenclature and Definitions for Illuminating Engineering.* (IES, No. 14 at pp. 1–2)

At the time of this final rule analysis, DOE did not identify more recent versions of industry standards than those proposed for adoption in the June 2021 NOPR. For the reasons discussed in the June 2021 NOPR and in the preceding paragraphs, DOE is adopting the latest versions of industry standards as proposed in the June 2021 NOPR. Further, for purposes of reference and accuracy, DOE specifies industry standards in the CFR according to the titles that appear in the industry test standard publication. DOE reviewed the titles of the relevant industry test standards to determine if they were accurately specified in the June 2021 NOPR. DOE determined that in the June 2021 NOPR it had erroneously specified the title of the 2020 version of standard LM–78 with ''IESNA,'' whereas it is labeled as ''IES'' in the industry test standard publication. Accordingly, in this final rule, DOE has included the title of this industry standard using the initialism ''IES.'' DOE also reviewed ANSI/IES LS–1–20 and did not find terms in DOE's GSFL, IRL, and GSIL test procedures that required reference to ANSI/IES LS–1–20.

TABLE III.1—INDUSTRY STANDARDS REFERENCED IN APPENDIX R WITH UPDATED VERSIONS ADOPTED IN FINAL RULE

Industry standard currently referenced in Appendix R	Updated version adopted in this final rule *
ANSI C78.375 version 1997[9] (section 4.1.1 of appendix R)	ANSI C78.375A version 2020.[10]
ANSI C78.81 version 2010[11] (section 4.1.1 of appendix R)	ANSI C78.81 version 2016[12] (adopted for voluntary representations).
ANSI C78.901 version 2005[13] (section 4.1.1 of appendix R)	ANSI C78.901 version 2016[14] (adopted for voluntary representations).
ANSI C82.3 version 2002[15] (section 4.1.1 of appendix R)	ANSI C82.3 version 2016.[16]
IES LM–9 version 2009[17] (sections 2.1, 2.9, 3.1, 4.1.1, 4.4.1 of appendix R).	IES LM–9 version 2020.[18]
IESNA LM–58 version 1994[19] (sections 2.1, 4.4.1 of appendix R)	IES LM–58 (retitled) version 2020.[20]

date at least 3 years after the date on which the final rule is published. (42 U.S.C. 6295(i)(6)(A)(iii)) The Secretary must also consider phased-in effective dates after considering certain manufacturer and retailer impacts. (42 U.S.C. 6295(i)(6)(A)(iv)) If DOE fails to complete a rulemaking in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv), or if the final rule does not produce savings greater than or equal to the savings from a minimum efficacy standard of 45 lm/W, the statute provides a ''backstop'' under which DOE must prohibit sales of GSLs that do not meet a minimum 45 lm/W standard. (42 U.S.C. 6295(i)(6)(A)(v)) On May 9, 2022, DOE published a final rule codifying the 45 lm/W backstop requirement. 87 FR 27439 (''May 2022 Backstop Final Rule'').

[8] On October 20, 2016, DOE published a final rule adopting test procedures for GSLs that are not general service incandescent lamps, compact fluorescent lamps, or integrated light-emitting diode (''LED'') lamps. The test procedures were codified in 10 CFR part 430, subpart B, appendix DD. 81 FR 72493.

TABLE III.1—INDUSTRY STANDARDS REFERENCED IN APPENDIX R WITH UPDATED VERSIONS ADOPTED IN FINAL RULE—Continued

Industry standard currently referenced in Appendix R	Updated version adopted in this final rule *
IES LM–45 version 2009[21] (sections 2.1, 2.9, 3.2, 4.2.1, 4.2.2 of appendix R).	IES LM–45 version 2020.[22]
IESNA LM–49 version 2001[23] (section 4.2.3 of appendix R)	IES LM–49 (retitled) version 2020.[24]
IESNA LM–20 version 1994[25] (sections 2.1, 2.9, 3.3, 4.3 of appendix R).	IES LM–20 (retitled) version 2020.[26]
CIE 15 version 2004[27] (section 4.4.1 of appendix R)	CIE 15 version 2018.[28]

* **Note:** Additionally, this final rule incorporates by reference IES LM–54–20 and IES LM–78–20 in appendix R.

Table III.1 shows the industry test standards currently referenced in appendix R and the updated version that DOE has adopted in this final rule. In addition, DOE is incorporating by reference IES LM–54–20[29] (the industry standard for lamp seasoning) and IES LM–78–20[30] (the industry standard for using an integrating sphere) for appendix R. IES LM–54–20 and IES LM–78–20 are referenced by IES LM–9–20, IES LM–20–20, and IES LM–45–20 for testing the performance of GSFLs, IRLs, and GSILs, respectively.

DOE has determined that, because these updates to industry standard references do not involve substantive changes to the test setup and methodology but rather clarifications that align DOE's test procedures with latest industry best practices, they would not affect measured values. Hence, in this final rule, DOE incorporates by reference for appendix R the industry standards ANSI C78.375A–2014 (R2020), ANSI C78.81–2016 (adopted for voluntary representations, as described further in this section), ANSI C78.901–2016 (adopted for voluntary representations, as described further in this section), ANSI C82.3–2016, IES LM–9–20, IES LM–58–20, IES LM–45–20, IES LM–49–20, IES LM–20–20, IES LM–54–20, IES LM–78–20, and CIE 15:2018.

For certain lamps, in the latest versions of the industry standards ANSI C78.81–2016 and ANSI C78.901–2016, only high frequency reference ballast settings are specified, whereas previously low frequency settings were provided.[31] Because cathode heat is not used at high frequency, the measured lamp efficacy would likely increase during high frequency operation compared to low frequency operation. DOE's test procedure requires testing at low frequency unless only high frequency settings are provided. Hence, the adoption of ANSI C78.81–2016 and ANSI C78.901–2016, which specify only high frequency ballast settings for certain lamps, would result in certain lamps that were previously tested at low frequency being tested at high frequency, negating the consideration of cathode heat.

In the June 2021 NOPR, DOE proposed to maintain the current references to ANSI C78.81–2010 and ANSI C78.901–2005 for determining compliance and to add provisions to allow manufacturers to make voluntary representations of applicable GSFLs at the high frequency settings specified in the 2016 versions of ANSI C78.81 and ANSI C78.901 in accordance with test procedures specified in appendix R and associated sampling requirements. The voluntary representations would not be used for compliance but rather would be in addition to values obtained for compliance and used for determining if and how standards for GSFLs should be amended to accommodate testing at high frequency settings. 86 FR 29888, 29894.

[9] American National Standards Institute, *ANSI C78.375–1997, Revision of ANSI C78.375–1991, American National Standard for electric lamps: Fluorescent Lamps—Guide for Electrical Measurements.* Approved September 25, 1997.

[10] American National Standards Institute, *ANSI C78.375A–2014 (R2020) Revision of ANSI C78.375–2014, American National Standard for Electric Lamps-Fluorescent Lamps-Guide for Electrical Measures.* Approved January 17, 2020.

[11] American National Standards Institute, *ANSI_ ANSLG C78.81–2010 Revision of ANSI C78.81–2005. American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics.* Approved January 14, 2010.

[12] American National Standards Institute, *ANSI C78.81–2016 American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps— Dimensional and Electrical Characteristics.* Approved June 29, 2016.

[13] American National Standards Institute, ANSI_ IEC C78.901–2005 Revision of ANSI C78.901–2001, *American National Standards for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics.* Approved March 23, 2005.

[14] American National Standards Institute, *ANSI/ NEMA C78.901–2016 American National Standards for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics.* Approved August 23, 2016.

[15] American National Standards Institute, *ANSI C82.3–2002 American National Standard For Lamp Ballasts—Reference Ballasts for Fluorescent Lamps.* Approved January 1, 2002.

[16] American National Standards Institute, *ANSI C82.3–2016 American National Standard For Reference Lamp Ballasts for Fluorescent Lamps.* Approved April 8, 2016.

[17] Illuminating Engineering Society of North America, *IES LM–9–09 IES Approved Method for the Electrical and Photometric Measurements of Fluorescent Lamps.* Approved January 31, 2009.

[18] Illuminating Engineering Society, *ANSI/IES LM–9–20—Approved Method: Electrical and Photometric Measurements of Fluorescent Lamps.* Approved February 7, 2020.

[19] Illuminating Engineering Society of North America, *LM–58 IESNA Guide to Spectroradiometric Measurements.* Approved December 3, 1994.

[20] Illuminating Engineering Society, *ANSI/IES LM–58–20 Approved Method: Spectroradiometric Measurement Methods for Light Sources.* Approved February 7, 2020.

[21] Illuminating Engineering Society, *IES LM–45–09 IES Approved Method for The Electrical and Photometric Measurement of General Service Incandescent Filament Lamps.* Approved December 14, 2009.

[22] Illuminating Engineering Society, *ANSI/IES LM–45–20 Approved Method: Electrical and Photometric Measurement of General Service Incandescent Filament Lamps.* Approved February 7, 2020.

[23] Illuminating Engineering Society, *IES LM–49–01 Approved Method: Life Testing of Incandescent Filament Lamps.* Approved December 1, 2001.

[24] Illuminating Engineering Society, *ANSI/IES LM–49–20 Approved Method: Life Testing of Incandescent Filament Lamps.* Approved February 7, 2020.

[25] Illuminating Engineering Society of North America, *LM–20 IESNA Approved Method for Photometric Testing of Reflector-Type Lamps.* Approved December 3, 1994.

[26] Illuminating Engineering Society, *ANSI/IES LM–20–20 Approved Method: Photometry of Reflector Type Lamps.* Approved February 7, 2020.

[27] International Commission on Illumination, *Colorimetry, 3rd Edition.* Approved 2004.

[28] International Commission on Illumination, *Colorimetry, 4th Edition.* Approved 2018.

[29] Illuminating Engineering Society, *ANSI/IES LM–54–20 Approved Method: IES Guide to Lamp Seasoning.* Approved February 7, 2020.

[30] Illuminating Engineering Society, *ANSI/IES LM–78–20 Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer.* Approved February 7, 2020.

[31] ANSI C78.81–2016 and/or ANSI C78.901–2016 remove low frequency reference ballast settings and provide only high frequency reference ballast settings for the following lamps: 32 Watt (''W''), 48-Inch T8 lamp; 32 W U-shaped, 6-Inch Center T8 lamp; 31 W, U-shaped, 1–5/8 Inch Center T8 lamp; 59 W, 96-Inch T8, Single Pin Instant Start lamp; and 25 W, 28 W, and 30 W 48-Inch T8 lamps. Additionally, two new lamp data sheets were added providing only high frequency reference ballast settings for the following lamps: 30 W, U-shaped, 6-Inch Center T8 lamp and 54 W 96-Inch T8, Single Pin Instant Start lamp.

NEMA commented that it supports conducting GSFL tests using high frequency reference ballasts for purposes of making product performance claims. NEMA did not support use of high frequency ballast settings for the purposes of certification to DOE. NEMA commented that tests conducted using high frequency ballasts produce different results from those conducted on older technology. Further, NEMA commented that amending the DOE test procedure to use high frequency ballasts would add unnecessary burden without any benefit, because there is no new product development in GSFL technology, the technology is mature, and sales are declining. (NEMA, No. 12 at p. 2)

As discussed in the June 2021 NOPR, DOE understands that the change in measured efficacy when testing on high frequency versus low frequency settings resulting from updated versions of ANSI C78.81 and ANSI C78.901 is not de minimis. 86 FR 29888, 29894. Adoption of test procedures that reference the latest versions of ANSI C78.81 and ANSI C78.901 would impact compliance under the current GSFL energy conservation standards and require reassessment of the energy conservation standards based on measured values tested according to DOE test procedures using the updated industry test standards (*e.g.,* ANSI C78.81–2016 and ANSI C78.901–2016). *Id.* For these reasons and those discussed in the June 2021 NOPR, DOE is maintaining the ballast frequency specifications through references to ANSI C78.81–2010 and ANSI C78.901–2005 for determining compliance, as proposed. DOE is adding provisions to allow manufacturers to make voluntary representations of applicable GSFLs at the high frequency settings specified in the 2016 versions of ANSI C78.81 and ANSI C78.901 in accordance with test procedures specified in appendix R and associated sampling requirements. DOE will not use the voluntary representations to determine compliance with GSFL energy conservation standards. DOE may consider voluntary representations to evaluate whether standards for GSFLs should be amended to accommodate testing at high frequency settings.

In this final rule, as proposed in the June 2021 NOPR, DOE is providing instructions in a new section 5.0 in appendix R for making voluntary representations for GSFLs that have high frequency reference ballast settings in ANSI C78.81–2016 and ANSI C78.901–2016.

C. Amendments to Appendix R

In this final rule, DOE amends appendix R to improve the organization of the test procedures, further clarify test conditions and measurement steps, and cite specific sections of referenced industry test standards. Additionally, in this final rule, DOE removes references to rounding and sample size from appendix R, as these requirements are addressed in 10 CFR 429.27, and also removes references to minimum lifetime standards, as these are provided in 10 CFR 430.32(x)(1)(iii)(A)–(B). DOE has determined that these updates to appendix R are not substantive, improve the clarity and consistency of the test method, provide explicit instructions for test methods likely already in use, and thereby, will not affect measured values. DOE details these amendments to appendix R in the following subsections.

1. Definitions

In the June 2021 NOPR, DOE proposed to add and define the term ''time to failure'' to support the procedure for determining lamp lifetime of lamps that use incandescent technology. 86 FR 29888, 29899. Section 4.2.3 of appendix R specifies a measurement procedure for testing the lifetime of GSILs. Furthermore, DOE's sampling plan for GSFLs at 10 CFR 429.27 specifies sampling requirements and procedures for determining a basic model's rated lifetime. 10 CFR 429.27(a)(2)(iv). As discussed further in section III.D.3 of this document, in the June 2021 NOPR, DOE proposed to remove language in 10 CFR 429.27(a)(2)(iv) stating that lifetime is the length of operating time between first use and failure of 50 percent of the sample size, and to instead directly describe what failure of 50 percent sample size means by specifying that the represented value of lifetime is equal to or less than the median time to failure of the sample. DOE proposed that this change would apply to both GSILs and IRLs (in newly proposed representation requirements for IRLs). To support these changes, DOE proposed in the June 2021 NOPR to add a definition in appendix R for ''time to failure,'' as well as test methods, measurements, and calculations for determining time to failure, as discussed further in section III.C.4 of this document. In appendix R, DOE proposed to define ''time to failure'' as the time elapsed between first use and the point at which the lamp ceases to produce measurable lumen output. *Id.*

In the June 2021 NOPR, DOE also proposed certain changes related to the definition of ''lamp efficacy.'' Section 2.6 of appendix R defines ''lamp efficacy'' as the ratio of measured lamp lumen output in lumens to the measured lamp electrical power input in watts, rounded to the nearest tenth, in units of lumens per watt. DOE also defines ''lamp efficacy'' at 10 CFR 430.2 as the measured lumen output of a lamp in lumens divided by the measured lamp electrical power input in watts expressed in units of lumens per watt. In the June 2021 NOPR, DOE proposed to replace the term ''lamp efficacy'' with ''initial lamp efficacy,'' and to simplify and clarify the definition by: (1) referencing lamp efficacy as defined in 10 CFR 430.2; (2) specifying that the value is determined after the lamp is stabilized and seasoned; and (3) removing references to rounding requirements, which DOE proposed to be addressed in 10 CFR 429.27 (see section III.D.5 for details on DOE's amendments to rounding requirements in 10 CFR 429.27). 86 FR 29888, 29899.

In the June 2021 NOPR, DOE also proposed certain changes related to the definition of ''lamp lumen output.'' Section 2.7 of appendix R defines ''lamp lumen output'' as the total luminous flux produced by the lamp, at the reference condition, in units of lumens. DOE proposed to replace the term ''lamp lumen output'' with ''initial lumen output'' and to simplify the definition to ''lumen output of the lamp,'' and add the clarification that the initial lumen output of the lamp is measured at the end of the lamp seasoning and stabilization. *Id.*

In the June 2021 NOPR, DOE also proposed certain changes related to the definition of ''lamp electrical power input.'' Section 2.8 of appendix R defines ''lamp electrical power input'' as the total electrical power input to the lamp, including both arc and cathode power where appropriate, at the reference condition, in units of watts. DOE proposed to replace the term ''lamp electrical power input'' with ''initial input power,'' and to simplify the definition to ''the input power to the lamp,'' and add the clarification that initial input power of the lamp is measured at the end of the lamp seasoning and stabilization. *Id.* DOE explained in the June 2021 NOPR that these proposed changes would more accurately describe the values being determined and measured by the test methods in appendix R. *Id.*

Section 2.9 of appendix R defines ''reference condition'' as the test condition specified in IES LM–9 for general service fluorescent lamps, in IESNA LM–20 for incandescent reflector lamps, and in IES LM–45 for general

service incandescent lamps. In the June 2021 NOPR, DOE proposed to remove the term ''reference condition'' because it is neither referenced in nor necessary for the test procedure. 86 FR 29888, 29899.

Section 2.2 of appendix R defines ''ANSI Standard'' as a standard developed by a committee accredited by the American National Standards Institute. Section 2.3 of appendix R defines ''CIE'' as the International Commission on Illumination. Section 2.5 of appendix R defines ''IESNA'' as the Illuminating Engineering Society of North America. In the June 2021 NOPR, DOE proposed to remove these definitions for ''ANSI Standard,'' ''CIE,'' and ''IESNA'' in appendix R because 10 CFR 430.3 contains the relevant terms—specifically, ''ANSI'', ''CIE'', and ''IESNA'' and the associated full names of these industry standards organizations.

Section 2.4 of appendix R defines ''CRI'' as Color Rendering Index as defined in 10 CFR 430.2. In the June 2021 NOPR, DOE proposed to remove the definition for ''CRI,'' which only references the definitions in 10 CFR 430.2. Further, in the June 2021 NOPR, DOE incorrectly proposed to remove the definition of ''CCT'' in appendix R. However, the definition of ''CCT'' does not appear in appendix R. 86 FR 29888, 29899.

Section 2.1 of appendix R specifies that to the extent that definitions in the referenced IESNA and CIE standards do not conflict with the DOE definitions, the definitions specified in Section 3.0 of IES LM–9, Section 3.0 of IESNA LM–20, section 3.0 and the Glossary of IES LM–45, Section 2 of IESNA LM–58, and Appendix 1 of CIE 13.3 shall be included. In the June 2021 NOPR, DOE proposed to update the section reference from Section 2 of IES LM–58 to the corresponding Section 3 of IES LM–58–20 (which DOE proposed to incorporate by reference) and to delete the reference to the Glossary of IES LM–45, as it no longer exists in the updated 2020 version (which DOE proposed to incorporate by reference). 86 FR 29888, 29899.

NEMA agreed with DOE's proposals to modify these definitions. (NEMA, No. 12 at p. 3) No other comments were received on the proposed amendments regarding definitions.

For the reasons discussed in the preceding paragraphs and in the June 2021 NOPR, in this final rule DOE is adopting these revisions to definitions as proposed in the June 2021 NOPR.

2. General Instructions

In the June 2021 NOPR, DOE proposed to add a ''General Instructions'' section to appendix R to improve the readability of and streamline the test methods in appendix R. This section would specify test practices applicable to all lamps covered by appendix R. Specifically, to ensure consistency in measurements, DOE proposed to include in the ''General Instructions'' section the following specifications: (1) where there is a conflict, the language of the test procedure in this appendix takes precedence over any materials incorporated by reference; (2) maintain lamp operating orientation throughout seasoning and testing, including storage and handling between tests; (3) if a lamp breaks, becomes defective, fails to stabilize, exhibits abnormal behavior (such as swirling),[32] or stops producing light prior to the end of the seasoning period, replace the lamp with a new unit; however, if a lamp exhibits one of the conditions listed in the previous sentence only after the seasoning period ends, include the lamp's measurements in the sample; and (4) operate GSILs and IRLs at the rated voltage for incandescent lamps as defined in 10 CFR 430.2. 86 FR 29888, 29899. DOE tentatively concluded that these proposals only explicitly state best practices already being followed by labs for testing lamps, and would not change current requirements of the DOE test procedure. 86 FR 29888, 29899–29900.

In particular, the proposed specification to operate GSILs and IRLs at the rated voltage for incandescent lamps as defined in 10 CFR 430.2 would maintain consistency with the current specifications for determining the test voltage of incandescent lamps as specified in the definition of ''rated voltage with respect to incandescent lamps'' in 10 CFR 430.2. DOE proposed to move this voltage specification currently codified as part of the definition in 10 CFR 430.2 to the ''General Instructions'' section of appendix R to make explicit that the specification applies to GSIL and IRL test methods in appendix R. 86 FR 29888, 29900.

DOE did not receive any comments on the proposed specifications regarding lamp breakage. For the reasons discussed in the preceding paragraphs and in the June 2021 NOPR, in this final rule DOE adopts the proposed general instructions regarding lamp breakage.

[32] This term refers to the visual observation that a beam or line of light appears to be ''swirling'' or ''spiraling'' within a fluorescent tube lamp.

DOE received several comments on the remaining proposed general instructions specifications. NEMA supported adding general instructions in appendix R but recommended certain revisions to the proposed text. In the case of conflicting requirements, NEMA suggested that industry and DOE work mutually to resolve conflicts between referenced industry standards and appendix R rather than allow appendix R to take precedence. (NEMA, No. 12 at pp. 3–4)

By requiring that appendix R shall take precedence when there are conflicts between it and referenced industry standards, DOE ensures that all testing is conducted using a consistent methodology and not a case-by-case approach. Further, most instructions in appendix R currently reference industry standards, with the exception of DOE's instructions for addressing lamps without industry standard data sheets and recording measured values.

For the reasons discussed in the preceding paragraphs and in the June 2021 NOPR, in this final rule DOE adopts the proposed provision in the June 2021 NOPR that appendix R shall take precedence over industry standards in the event of conflicting requirements.

In regard to lamp orientation, NEMA recommended that lamp orientation be maintained during storage and handling only if it is practical, rather than always be maintained as proposed by DOE. NEMA referenced IES LM–54, which states that maintaining orientation through storage and handling is recommended but not required. In addition, NEMA stated that instruction should be added that for 4-foot T5 miniature bipin standard and high output lamps, the procedure in Section 6.2.2 of IES LM–9–20 should be followed. This section specifies that these lamp types must be seasoned in the vertical orientation but measured horizontally. (NEMA, No. 12 at pp. 3–4)

DOE notes that Section 6.1.1 of IES LM–54–20 states that for fluorescent lamps, maintaining the orientation during seasoning when handling, transporting, or storing the lamps can reduce lamp stabilization time, and that this practice is generally not required but is effective and recommended. DOE notes that Section 6.1 of IES LM–9–20 specifies for 4-foot T5 miniature bipin standard and high output lamps an exception to the rule of maintaining lamp orientation during seasoning and testing and references Section 6.2.2 of IES LM–9–20, which specifies that they be seasoned in the vertical position and measured in the horizontal position. DOE also notes that Section 6.2.4 of IES

LM–9–20 states that when transferring lamps, the pin connections and orientation used during warm-up should be maintained.

To incorporate the recommended and required specifications in industry standards, in this final rule, DOE is specifying in the General Instructions that (1) lamp operating orientation should be maintained throughout seasoning and testing, except for T5 miniature bipin standard and high output GSFLs, which should follow Section 6.2.2 of IES LM–9–20; (2) for all GSFLs, lamp orientation must be maintained when transferring lamps from a warm-up position to the photometric equipment per Section 6.2.4 of IES LM–9–20; and (3) lamp orientation must be maintained at all other times, if practical.

Regarding the proposed instructions for rated voltage, the CA IOUs commented that the current DOE test procedures requiring that GSILs and IRLs be tested at the marked voltage could result in exemption of certain lamps from standards and thereby, reduced energy savings. The CA IOUs stated that the current definitions for GSILs encompass lamps that operate between 110 and 130 V with a minimum light output of 310 lumens; therefore, a GSIL rated at 100 V may produce less than 310 lumens when tested and thus not be subject to regulation, even though it could produce greater than 310 lumens when operated at the more common 120 V. The CA IOUs cited concerns expressed by the Appliance Standards Awareness Project (''ASAP'') that manufacturers may re-rate medium-screw base incandescent lamps at voltages lower than they are operated in common use, yielding results not representative of actual performance for the majority of consumers. Hence, the CA IOUs recommended that DOE test procedures for GSILs and IRLs should require all medium base lamps to be tested at either 120 or 240 V. (CA IOUs, No. 13 at pp. 2–3)

As noted in the June 2021 NOPR, DOE did not propose to change the test voltage requirements for GSILs and IRLs. 86 FR 29888, 29900. For IRLs, modifying the test voltage requirements would change the rated voltage for certain IRLs and potentially exclude them from the definition of IRL, which is defined as having a rated voltage or voltage range that lies at least partially in the range of 115 and 130 V. 10 CFR 430.2. Further, because energy conservation standards are in part determined by the rated voltage of the IRL, changes to rated voltage may subject lamps to different standards. Regarding GSILs, DOE's review of the market has shown that even with the current test voltage requirements, GSILs are predominantly rated at 120 V. Hence, DOE does not find that manufacturers are re-rating voltages of GSILs to be excluded from regulation. Therefore, in this final rule, DOE is maintaining the current specifications for determining the test voltage of incandescent lamps as specified in the definition of ''rated voltage with respect to incandescent lamps'' in 10 CFR 430.2.

3. Test Method for Determining Initial Lamp Efficacy, CRI, and CCT

In this final rule, as proposed in the June 2021 NOPR, DOE is establishing a section called ''Test Method for Determining Initial Input Power, Initial Lumen Output, Initial Lamp Efficacy, CRI, and CCT'' and including existing sections regarding these measurements as subsections. DOE also proposed changes to test conditions, setup, methods, measurements and calculations that are detailed in the sections below. 86 FR 29888, 29900.

a. Test Conditions and Setup

In the June 2021 NOPR, for clarity, DOE proposed to include the term ''setup'' in the title of ''Test Conditions'' (*i.e.,* ''Test Conditions and Setup'') and modify the existing language to use the phrase ''establish ambient, physical, and electrical conditions'' consistently. Additionally, for GSFLs, DOE proposed to move the specifications regarding appropriate voltage and current conditions and reference ballast settings from the ''Test Methods and Measurements'' section to ''Test Conditions and Setup,'' as these requirements are part of the electrical conditions and setup that must be met prior to taking any measurements. 86 FR 29888, 29900. DOE received no comments regarding these modifications. For the reasons discussed in the June 2021 NOPR, DOE is adopting these proposed changes in this final rule.

Further, in the June 2021 NOPR, DOE proposed to specify that when operating at low frequency, cathode power must be included in the measurement if ANSI C78.81 or ANSI C78.901 classifies the circuit application as ''rapid start'' for that GSFL lamp type. 86 FR 29888, 29901. If these industry test standards classify the circuit application as something other than ''rapid start,'' DOE proposed that cathode power should not be included. *Id.* DOE also proposed to specify that cathode power must not be included in measurements when operating at high frequency. *Id.*

Additionally, for GSFL lamp types that do not have lamp data sheets listed in industry test standards, section 4.1.2 of appendix R provides reference ballast settings with which to test. In the June 2021 NOPR, DOE proposed to add to the specified reference ballast settings instructions on whether the lamp must be tested at low or high frequency or include cathode power (*see* Table III.2 of this document). 86 FR 29888, 29900–29901. DOE's proposal was intended to base the newly established instructions on how the lamp types most similar to the lamp type not contained in the industry test standard are tested. 86 FR 29888, 29901.

TABLE III.2—PROPOSED FREQUENCY AND CATHODE POWER TEST SPECIFICATIONS FOR GSFLS IN THE JUNE 2021 NOPR [33]

Lamp type	Test frequency	Test with cathode power?
4-foot medium bipin (T8, T10, T12)	Low	Yes.
2-foot U-shaped (T8 and T12)	Low	Yes.
8-foot slimline (T8 and T12)	Low	No.
8-foot high output (T12)	Low	Yes.
8-foot high output (T8)	High	No.
4-foot medium bipin standard output and high output (T5)	High	No.

As indicated by Table III.2 of this document, DOE's proposed instructions provided cathode power and frequency operation instructions by lamp length, base, and diameter for GSFL types lacking ANSI data sheets.

NEMA, in its comments, suggested revisions to the proposed instructions in Table III.2 of this document. NEMA suggested adding lamp wattage as a determining factor. Specifically, NEMA requested the following changes: (1) 4-foot medium bipin (''MBP'') T8 lamps greater than or equal to 25 W, but less than 32 W, tested at low frequency should be tested without cathode power rather than with cathode power as proposed; (2) 2-foot U-shaped T8 lamps greater than or equal to 25 W, but less than 31 W, tested at low frequency should be tested without cathode power rather than with cathode power as proposed. NEMA also recommended that DOE's instructions in Table III.2 of this document apply to wattages greater than or equal to 49 W for the 8-foot slimline single pin (''SP'') T8 and T12 lamps. NEMA stated that its changes were based on the most similar lamp type in the industry test standard. (NEMA, No. 12 at pp. 2–3)

As noted, in proposing the test frequency and cathode power specifications for a lamp that does not have a lamp data sheet in industry standards, DOE used the lamp data sheet of a lamp type most similar to the lamp without a lamp data sheet. NEMA commented that it used the same approach in recommending revisions to DOE's proposals. Based on this comment, DOE assumes that NEMA's recommendation that 4-foot MBP T8 and 2-foot U-shaped T8 lamps, respectively less than 32 W and 31 W, be tested without cathode power is based on lamp datasheets for reduced wattage (*i.e.,* 25 W, 28 W, 30 W) 4-foot MBP lamp types in ANSI C78.81–2010. Reduced wattage 4-foot MBP lamp types have lamp datasheets that specify an instant start/program start circuit and provide specifications for testing at low frequency either with or without cathode power. NEMA indicates that manufacturers are choosing to test these lamps without cathode power. (NEMA, No. 12 at pp. 2–3) To use the proxy lamp data sheet that most accurately reflects the lamp without a data sheet and to reflect how manufacturers are using the specifications in the lamp data sheet, in this final rule, DOE adopts NEMA's suggested revisions to test these 4-foot MBP T8 and 2-foot U-shaped T8 lamps without cathode power. Additionally, because the circuit design may not be apparent (*i.e.,* rapid/instant/program start marked on the lamp) for a lamp without a lamp data sheet, DOE agrees to use wattage to identify the lamps that should not be tested with cathode power for these 4-foot MBP T8 and 2-foot U-shaped T8 lamps. DOE has amended the table provided in the June 2021 NOPR to reflect this change (see Table III.3 of this document).

In its comments, NEMA also recommended that DOE's instruction regarding test frequency and cathode power should be limited to lamps with certain wattages (*i.e.,* 4-foot MBP lamps and 2-foot U-shaped lamps greater than or equal to 25 W and 8-foot SP slimline lamps greater than or equal to 49 W). (NEMA, No. 12 at pp. 2–3) This suggested change would capture some but not all of the lamps covered under the definition of ''fluorescent lamp.'' [34] DOE's proposed instructions for addressing lamp types that are not included in ANSI C78.81 or ANSI C78.901 lamp data sheets are to address all lamp types and wattages, including lamps that may be introduced by a manufacturer in the future and/or may become the subject of standards. Hence, DOE is not including NEMA's suggested wattage limitations in this final rule.

Finally, NEMA commented that the label in Table III.2 of this document for the 4-foot T5 standard and high output lamp type should be ''miniature bipin (''MiniBP'')'' rather than ''MBP.'' (NEMA, No. 12 at pp. 2–3) DOE agrees that the base type for the 4-foot T5 standard and high output lamps was mislabeled in Table III.2 of the June 2021 NOPR and should be MiniBP rather than MBP (see Table III.3 for correction).

Table III.3 summarizes the revised frequency and cathode power test specifications for GSFLs adopted in this final rule.

TABLE III.3—FREQUENCY AND CATHODE POWER TEST SPECIFICATIONS FOR GSFLS ADOPTED IN THIS FINAL RULE

Lamp type	Test frequency	Test with cathode power?
4-foot medium bipin (T8, T10, T12):		
T10, T12, T8 ≥ 32 W	Low	Yes.
T8 < 32 W	Low	No.
2-foot U-shaped (T8 and T12):		
T12, T8 ≥ 31 W	Low	Yes.
T8 < 31 W	Low	No.
8-foot slimline (T8 and T12)	Low	No.
8-foot high output (T12)	Low	Yes.
8-foot high output (T8)	High	No.
4-foot miniature bipin standard output and high output (T5)	High	No.

Appendix R currently references IES LM–9, IES LM–45, and IES LM–20 in their entirety for test conditions. In the June 2021 NOPR, DOE proposed to specify the relevant sections of the industry test standards; specifically, that ambient, physical, and electrical conditions be established as described in Sections 4.0, 5.0, 6.1, 6.5 and 6.6 of

[33] 86 FR 29888, 29901.

[34] ''Fluorescent lamp'' is defined as a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light, including only the following: (1) Any straight-shaped lamp (commonly referred to as 4-foot medium bipin lamps) with medium bipin bases of nominal overall length of 48 inches and rated wattage of 25 or more; (2) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bipin bases of nominal overall length between 22 and 25 inches and rated wattage of 25 or more; (3) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches; (4) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 49 or more; (5) Any straight-shaped lamp (commonly referred to as 4-foot miniature bipin standard output lamps) with miniature bipin bases of nominal overall length between 45 and 48 inches and rated wattage of 25 or more; and (6) Any straight-shaped lamp (commonly referred to 4-foot miniature bipin high output lamps) with miniature bipin bases of nominal overall length between 45 and 48 inches and rated wattage of 44 or more. 10 CFR 430.2.

IES LM–9 for GSFLs; Sections 4.0, 5.0, 6.1, 6.3 and 6.4 of IES LM–45 for GSILs; and Sections 4.0 and 5.0 of IES LM–20 for IRLs. 86 FR 29888, 29901.

In its comments, NEMA agreed with the proposed references to the specified sections of IES LM–9, IES LM–45, and IES LM–20 for establishing ambient, physical, and electrical conditions, as well as seasoning and stabilization. (NEMA, No. 12 at p. 4) For the reasons discussed in the June 2021 NOPR and in the preceding paragraphs, in this final rule DOE adopts the proposed amendments to test conditions and setup in appendix R.

b. Test Methods, Measurements, and Calculations

Section 3.1 of appendix R specifies that for GSFLs, the ambient conditions of the test and the electrical circuits, reference ballasts, stabilization requirements, instruments, detectors, and photometric test procedure and test report shall be as described in the relevant sections of IES LM–9. Section 3.2 of appendix R specifies that for GSILs, the selection and seasoning (initial burn-in) of the test lamps, the equipment and instrumentation, and the test conditions shall be as described in IES LM–45. Section 3.3 of appendix R specifies that for IRLs, the selection and seasoning (initial burn-in) of the test lamps, the equipment and instrumentation, and the test conditions shall conform to Sections 4.2 and 5.0 of IESNA LM–20.

In the June 2021 NOPR, DOE proposed to replace these references of industry test standards in general to list specific sections of the industry standard. 86 FR 29888, 29901. The proposed section references as well as proposed changes to seasoning, stabilization, initial power and initial lumen output measurements, and certain calculations are detailed in the sections which follow.

Seasoning and Stabilization

In the June 2021 NOPR, DOE proposed to state explicitly that lamps must be seasoned and stabilized according to Section 6.2 of IES LM–45 for GSILs and Section 6.0 of IES LM–20 for IRLs. 86 FR 29888, 29901. For GSFLs, DOE proposed to state that lamps must be seasoned and stabilized in accordance with Sections 6.1, 6.2, 6.3, and 6.4 of IES LM–9. 86 FR 29888, 29902. DOE tentatively determined that the proposed updates would only specify more exact industry reference to current specifications and would not change current requirements of the DOE test procedure. 86 FR 29888, 29901, 29902. DOE received no comments on the proposed changes. For the reasons discussed in the June 2021 NOPR and in the preceding paragraphs, DOE is adopting the proposed amendments regarding references for seasoning and stabilization.

Photometric Measurements

DOE proposed to specify that initial lumen output measurements be taken in accordance with Section 7.0 in IES LM–9 for GSFLs, Section 7.0 in IES LM–45 for GSILs, and Section 7.0 or 8.0 in IES LM–20 for IRLs. 86 FR 29888, 29902. DOE tentatively determined that these section references would not limit manufacturers from using one specific method for taking photometric measurements (*i.e.,* goniophotometer, integrating sphere). *Id.* Additionally, for IRLs, DOE proposed to require measuring initial lumen output rather than total forward lumens. *Id.* DOE tentatively found that, because a reflector lamp is designed to focus lumens in a specific direction rather than in all directions, the term ''total forward lumens'' has the same meaning as ''initial lumen output.'' *Id.*

Regarding photometric measurements and DOE's proposal to continue to allow multiple methods for taking photometric measurements, the CA IOUs reiterated its comment submitted in response to the August 2017 RFI in which the CA IOUs expressed support for the exclusive use of the integrating sphere method for measuring the light output of GSFLs, IRLs, and GSILs. The CA IOUs stated that they understand that while there are aspects of lamp performance (such as color rendering), reliability, and standby energy consumption that are technology-specific, not requiring exclusive use of the integrating sphere method was a missed opportunity to set a technology-neutral test method. In addition, the CA IOUs expressed support for DOE's proposal to measure initial lumens rather than total forward lumens for IRLs. (CA IOUs, No. 13 at p. 2)

For this final rule, DOE reviewed whether to require exclusive use of the integrating sphere method and came to the same conclusion as in the June 2021 NOPR that both the goniophotometer and integrating sphere method should be allowed for measurement, as this may provide logistical flexibility for manufacturers. Additionally, the integrating sphere and goniophotometer methods can be used across lamp technologies. Therefore, DOE continues to allow the use of both the goniophotometer and integrating sphere methods. In this final rule, for the reasons discussed in the June 2021 NOPR and in the preceding paragraphs, DOE is adopting the industry standard section references for photometric measurements and changing the term ''total forward lumens'' to ''initial lumen output'' for IRLs in appendix R as proposed in the June 2021 NOPR.

Determining CRI and CCT

Manufacturers of GSILs are required to certify CRI values (*see* 10 CFR 429.27(b)(2)(iii)), and DOE's standards for GSILs include a minimum CRI requirement (*see* 10 CFR 430.32(x)(1)(iii)(A) and (B)). In addition, the Energy Independence and Security Act of 2007 (''EISA;'' Pub. L. 110–140) established a CRI requirement for IRLs.[35] Section 4.4 of appendix R provides specifications for determining CRI for GSFLs, but does not address determining CRI for either GSILs or IRLs.

In the June 2021 NOPR, DOE proposed to include a test method for determining CRI of GSILs and IRLs in appendix R. 86 FR 29888, 29902. Specifically, DOE proposed to require that CRI of GSILs be determined in accordance with Section 7.4 of IES LM–45 and CIE 13.3 and that CRI of IRLs be determined in accordance with CIE 13.3. *Id.* Additionally, regarding GSFLs, for completeness, DOE proposed to state that, in addition to CIE 13.3, the CRI of GSFLs be determined in accordance with Section 7.6 of IES LM–9. *Id.* Because CIE 13.3 is the industry test standard for testing CRI of all lamps, DOE tentatively found that CRI is likely already being measured in accordance with this standard, and therefore, tentatively concluded that the proposed test method for CRI would establish procedures already being followed. *Id.*

Currently, appendix R requires CCT for GSFLs to be determined in accordance with IES LM–9, and CCT for incandescent lamps to be determined in accordance with CIE 15. In the June 2021 NOPR, DOE proposed to require that CCT of GSFLs be determined in accordance with Section 7.6 of IES LM–9 and CIE 15; CCT of GSILs be determined in accordance with Section 7.4 of IES LM–45 and CIE 15; and CCT of IRLs be determined in accordance with CIE 15. 86 FR 29888, 29902.

In its comments, NEMA agreed with the proposed industry test standard references for measuring CCT and CRI.

[35] Section 321(a) of the Energy Independence and Security Act of 2007 (''EISA 2007'') established CRI requirements for lamps that are intended for a general service or general illumination application (whether incandescent or not); have a medium screw base or any other screw base not defined in ANSI C81.61–2006; are capable of being operated at a voltage at least partially within the range of 110 to 130 volts; and are manufactured or imported after December 31, 2011.

(NEMA, No. 12 at p. 4) For the reasons discussed in the June 2021 NOPR and in the preceding paragraphs, DOE adopts the industry standard section references for the measurement of CRI and CCT as proposed in the June 2021 NOPR.

4. Test Methods, Measurements, and Calculations for Determining Time to Failure

In the June 2021 NOPR, to improve the organization of appendix R, DOE proposed to create a section called ''Test Method for Determining Time to Failure for General Service Incandescent Lamps and Incandescent Reflector Lamps'' and subsections, ''Test Conditions and Setup,'' and ''Test Methods, Measurements, and Calculations.'' 86 FR 29888, 29903. To clarify the existing test method for determining the time to failure of GSILs and adopt the same test method for determining time to failure of IRLs, DOE proposed to include information on test conditions, seasoning and stabilization, and to remove information not pertinent to determining the time to failure value of the lamp. *Id.* Specifically, DOE proposed to measure lifetime of IRLs in accordance with IES LM–49 and use the same methods as for GSIL lifetime testing. *Id.* To specify the ambient, physical, and electrical conditions for lifetime testing of GSILs and IRLs, DOE proposed to reference Sections 4.0 and 5.0 of IES LM–49. DOE also proposed to specify that the lamps must be seasoned and stabilized and to reference Section 6.2 of IES LM–45 for these procedures. *Id.* Further, DOE proposed to require measuring ''time to failure'' in accordance with Section 6.0 of IES LM–49 (see section III.C.1 for definition). *Id.* Additionally, DOE proposed to update the existing reference from Section 6.1 of IES LM–49–01 to corresponding Section 6.4 of IES LM–49–20 in the provision disallowing accelerated testing. *Id.* Finally, because it relates to the standard rather than the test procedure, DOE proposed to remove language in section 4.2.3 of appendix R stating that the lamp will be deemed to meet minimum rated lifetime standards if greater than 50 percent of the sample size meets the minimum rated lifetime. *Id.*

DOE tentatively determined that these proposed updates would not change current requirements for testing lifetime of GSILs, as the updates only explicitly state certain steps of the referenced industry standard for determining time to failure for incandescent lamps and provide the associated section references to an industry test standard already incorporated by reference. *Id.* DOE also tentatively determined that because the proposed requirements for testing lifetime of IRLs reference IES LM–49, the industry standard for testing lifetime of incandescent lamps, they are not substantively different from those manufacturers are currently using to conduct this test. *Id.*

In its comments, NEMA agreed with DOE's proposed section references in IES LM–49 for establishing ambient, physical, and electrical conditions and measuring time to failure, as well as proposed section references in IES LM–45 for seasoning and stabilization. (NEMA, No. 12 at p. 4) DOE received no other comments on its proposals regarding test methods, measurements, and calculations for determining time to failure. For the reasons discussed in the June 2021 NOPR and in the preceding paragraphs, DOE adopts the updates to the organization of test procedure provisions and to the method of determining time to failure as proposed in the June 2021 NOPR.

D. Amendments to 10 CFR 429.27, 10 CFR 429.33 and 10 CFR 430.2

Sampling, certification, and rounding requirements for GSFLs, IRLs, and GSILs are currently specified in 10 CFR 429.27. In this final rule, as proposed in the June 2021 NOPR (*see* 86 FR 29888, 29903), DOE is reorganizing 10 CFR 429.27 to apply only to GSFLs (as opposed to GSFLs, GSILs, and IRLs), establishing new § 429.55 [36] for IRLs, and establishing new § 429.66 for GSILs, so that each lamp type (*i.e.,* GSFL, IRL, GSIL) has its own section within 10 CFR part 429. Accordingly, as proposed (*see* 86 FR 29888, 29903), DOE is also revising 10 CFR 429.33 to replace references to 10 CFR 429.27 with references to the specific, separate sections for each lamp type. DOE has determined that the updates to 10 CFR 429.27, 10 CFR 429.33 and 10 CFR 430.2 are not substantive changes, improve the clarity of the sampling, certification, and rounding requirements for GSFLs, IRLs, and GSILs, and thereby will not affect measured values. DOE details these amendments in the following subsections.

1. Definitions

Basic Model

In the June 2021 NOPR, DOE proposed, for clarity, to update the definition of ''basic model'' in 10 CFR 430.2 to replace ''lumens per watt (lm/W)'' with ''lamp efficacy.'' 86 FR 29888, 29903. DOE tentatively determined that this change would improve clarity by using the name of the metric instead of the unit of measure. DOE received no comments on the proposed change. *Id.* In this final rule DOE is adopting the proposed modification to the definition of ''basic model.''

Definitions and References to ''Rated''

In the June 2021 NOPR, DOE proposed to replace references to ''rated lumen output'' and ''rated lifetime'' in 10 CFR 429.27 with, respectively, ''initial lumen output'' and ''lifetime.'' 86 FR 29888, 29904. DOE stated that the term ''rated'' can lead to misunderstanding to the extent a reader interprets it as a standardized value rather than one that is determined through measurements. *Id.*

In its comments, NEMA agreed with the proposed replacements of ''rated lumen output'' and ''rated lifetime.'' (NEMA, No. 12 at p. 5) For the reasons discussed in the June 2021 NOPR and in the preceding paragraphs, DOE is replacing the references of ''rated lumen output'' and ''rated lifetime'' in 10 CFR 429.27 with, respectively, ''initial lumen output'' and ''lifetime'' as proposed in the June 2021 NOPR.

''Rated wattage'' for GSILs, IRLs, and GSFLs (without a lamp datasheet) is defined in 10 CFR 430.2 as the electrical power measured according to appendix R. In the June 2021 NOPR, DOE proposed to clarify this definition by replacing the references to appendix R with references to the relevant sections in 10 CFR part 429 and replacing ''electrical power'' with ''initial input power.'' 86 FR 29888, 29904. The resulting modification provided clearer directions for determining rated wattage by specifying that the rated wattage is the represented value of electrical power as determined in the appropriate 10 CFR part 429 section derived from the initial input power measured in appendix R.

In 10 CFR 430.2, the term ''rated lifetime for general service incandescent lamps'' means the length of operating time of a sample of lamps (as defined in 10 CFR 429.27(a)(2)(iv)) between first use and failure of 50 percent of the sample size in accordance with test procedures described in IESNA LM–49, as determined in section 4.2 of appendix R. The operating time is based on the middle lamp operating time for an odd number of samples and the average operating time of the two middle lamps for an even number of samples. *See* 10 CFR 430.2. Instructions for determining the length of operating time using middle samples are specified

[36] In the June 2021 NOPR, DOE had proposed establishing 10 CFR 429.38 for IRLs. Subsequent to publishing the June 2021 NOPR, DOE has reserved 10 CFR 429.38 for non-class A external power supplies.

in the relevant sections at 10 CFR part 429.

In the June 2021 NOPR, DOE proposed to replace the term ''rated lifetime for general service incandescent lamps'' with the term ''lifetime.'' With respect to an incandescent lamp, this would mean the length of operating time between first use and failure of 50 percent of the sample units (as specified in 10 CFR 429.27 and 10 CFR 429.38), determined in accordance with the test procedures described in appendix R. In proposing this definition for the term ''lifetime'', DOE proposed to remove the term ''rated'' from the current term ''rated lifetime for general service incandescent lamps'' to maintain consistency with DOE's proposal to remove the term ''rated'' from instances of ''rated lifetime'' in the relevant sections of 10 CFR 429.27. Additionally, because the term ''lifetime'' rather than ''lifetime for general service incandescent lamps'' is used in 10 CFR 429.27, DOE also proposed to remove the phrasing ''for general service incandescent lamps'' from the defined term. *Id.*

In its comments, NEMA agreed with the proposed modifications to definitions for ''lifetime'' and ''rated wattage.'' (NEMA, No. 12 at p. 5) For the reasons discussed in the June 2021 NOPR and in the preceding paragraphs, DOE is making clarifying amendments to the definitions of ''rated wattage'' and ''lifetime for general service incandescent lamp'' and changing the latter term to ''lifetime'' as proposed in the June 2021 NOPR.

In the provisions for determining the represented value of rated wattage for GSFLs, GSILs, and IRLs, in the June 2021 NOPR, DOE proposed to change any current references of ''rated lamp wattage'' to ''rated wattage'' for consistency within 10 CFR part 429 and to conform to the relevant term used in the energy conservation standards in 10 CFR 430.32. 86 FR 29888, 29904. DOE received no comments on the proposed change. In this final rule, as proposed in the June 2021 NOPR, DOE is amending ''rated lamp wattage'' to ''rated wattage.''

In the June 2021 NOPR, in the provisions for determining the rated wattage of GSILs, DOE proposed to change from using a two-tailed confidence interval to a one-tailed confidence interval when determining the 95-percent upper confidence limit. 86 FR 29888, 29904. A two-tailed confidence interval test is typically utilized to determine whether a set of results could be either higher or lower, while a one-tailed confidence interval test is typically utilized to determine whether a set of results are going in one specific direction (*i.e.,* either higher or lower). All represented values of lamp metrics required by DOE are either the greater of or lower of the mean or the upper/lower confidence limit of the results—depending on how the consumer may value that metric. (For example, where lower values are favored, such as wattage, the represented value is greater of the mean or upper confidence limit of the results). A represented value of rated wattage for a GSIL is the greater of the mean or the upper 95-percent confidence limit. 10 CFR 429.27(a)(2)(iii) Because DOE is interested in the greater value from the tested results for wattage, a one-tailed confidence interval (which indicates whether results are going higher or lower), rather than two-tailed confidence interval test is appropriate.

In its comments, NEMA agreed with the proposal to base the 95 percent upper confidence limit for input power on the one-tailed confidence interval. (NEMA, No. 12 at p. 5) For the reasons discussed in the June 2021 NOPR and in the preceding paragraphs, DOE adopts a one-tailed confidence interval to determine the 95-percent upper confidence limit as proposed in the June 2021 NOPR.

Definitions of IRL Types

In the June 2021 NOPR, DOE proposed to update the definitions in 10 CFR 430.2 for the bulged parabolic aluminized reflector (''BPAR''), 20/8-inch reflector (''R20''), elliptical reflector (''ER''), and bulged reflector (''BR'') incandescent reflector lamps with references to the latest versions of the currently referenced industry standards. 86 FR 29888, 29904. Additionally, DOE proposed definitions for reflector (''R'') and parabolic aluminized reflector (''PAR'') incandescent reflector lamps that reference ANSI C78.21–2011 (R2016). *Id.* Accordingly, DOE proposed to incorporate by reference ANSI C78.21–2011 (R2016) and ANSI C78.79–2014 (R2020) for 10 CFR 430.2. *Id.* DOE received no comments on the proposed changes. In this final rule, DOE adopts the amendments to definitions of IRL types as proposed in the June 2021 NOPR. DOE notes that, as specified in the proposed rule language, the definitions of ''R'' and ''PAR'' reference ANSI C78.79–2014 (R2020), not ANSI C78.21–2011 (R2016) as incorrectly stated in the section titled ''Definition of IRL Types'' in the preamble of the June 2021 NOPR. 86 FR 29888, 2990. Additionally, DOE removes the duplicate definition of the term ''BR incandescent reflector lamp'' in 10 CFR 430.2 and retains the definition of this term as proposed in the June 2021 NOPR. This amendment is consistent with the statutory definition of ''BR incandescent reflector lamp'' in 42 U.S.C. 6291(55) and does not impact the scope of coverage for DOE's test procedure or energy conservation standards.

2. Sampling Requirements

In the June 2021 NOPR, DOE proposed certain clarifying and organizational modifications to the sampling provisions in 10 CFR 429.27(a). 86 FR 29888, 29904. First, to be consistent with sampling requirement language for other lamp types (*i.e.,* CFLs and integrated LED lamps), DOE proposed to state explicitly that represented values and certified ratings must be determined in accordance with the sampling provisions described in 10 CFR part 429. *Id.* DOE also proposed to specify the same sample of units as the basis for representations for all metrics for each basic model. *Id.*

Further, in the June 2021 NOPR, to reduce burden and confusion, DOE proposed to change the minimum sample size from 21 lamps to 10 lamps and to remove the requirement that a minimum of three lamps be selected from each month of production for a minimum of 7 out of a 12-month period. *Id.* Reducing the sample size from 21 to 10 lamps aligns with the sampling requirements of other lighting products (*e.g.,* CFLs, integrated LED lamps). DOE proposed to remove the minimum of 7 out of 12 months requirement because it has led to confusion among manufacturers who interpreted this to mean that DOE requires re-testing every calendar year. Further, selecting a few sample units from multiple months of the year can be difficult to coordinate and execute. In particular, if a manufacturer does not initially know the number of months in which it will produce the basic model, it would need to reserve lamps from each production month and later decide how many to test. 86 FR 29888, 29904–29905.

DOE also proposed to eliminate the requirement to identify the production months of sample units in 10 CFR 429.27(c) by providing the production date codes and accompanying decoding schemes for all test units. *Id.* DOE tentatively concluded that this change would not require manufacturers to retest products. *Id.* Certifications based on 21 lamps would meet the proposed requirement to base certification on a minimum of 10 units. However, manufacturers would likely choose to test fewer lamps when they certify new

products and therefore save testing costs.

In its comments, NEMA agreed with the proposed reduction in minimum sample size from 21 to 10, stating that GSFLs, IRLs, and GSILs are legacy technologies with less frequent production runs, making flexibility in sampling beneficial. NEMA also commented that DOE should consider sample size reductions in other product categories where sample size and testing cost can be non-trivial. (NEMA, No. 12 at p. 5)

In response to NEMA's comment to reduce the sample size for other products generally, DOE notes that it is outside the scope of this rulemaking, which relates only to the test procedures and associated sampling and certification requirements for GSFLs, IRLs, and GSILs.

In this final rule, as proposed in the June 2021 NOPR, DOE is reducing the minimum sample size from 21 to 10 for GSFLs, IRLs, and GSILs, and removing the associated requirement that a minimum of three lamps be selected from each month of production for a minimum of 7 months out of a 12-month period. Also, as proposed in the June 2021 NOPR, DOE is specifying that the same sample of units be used as the basis for representations for all metrics for each basic model. Additionally, as proposed in the June 2021 NOPR, DOE is explicitly stating that represented values and certified ratings must be determined in accordance with the sampling provisions described in 10 CFR part 429. The expected cost savings from this adopted change are described in section III.G of this document.

Because sample units would no longer have to be selected over a 12-month period, DOE also proposed in the June 2021 NOPR to remove the requirement in 10 CFR 429.12(e)(2) to submit an initial certification report prior to or concurrent with the distribution of a new basic model for GSFLs and IRLs. 86 FR 29888, 29905. Instead, for GSFLs and IRLs, the complete certification report described in 10 CFR 429.12(b) would be required at that time. *Id.* DOE stated that it expected a manufacturer would complete the testing needed to submit a certification of compliance with standards prior to distribution in commerce, so a subsequent report would not be needed to reflect additional test results. *Id.*

In its comments, NEMA agreed with the removal of initial certification report submissions for GSFLs and IRLs and noted that no new product offerings are expected that would require said reports. (NEMA, No. 12 at p. 6) In this final rule, DOE adopts its proposal in the June 2021 NOPR to remove initial certification report submissions for GSFLs and IRLs and to require that a complete test report be submitted prior to distribution in commerce of a basic model.

3. Represented Value Determinations

Under the FTC lighting facts labeling requirement, manufacturers of GSILs and IRLs are required to include on the lamp packaging basic and consistent information, including lumen output, wattage, life, CCT, and costs of annual energy consumption. 16 CFR 305.23(b). In support of FTC labeling requirements for GSILs and IRLs, in the June 2021 NOPR, DOE proposed adding determinations for the represented values of life (in years), estimated annual energy cost (in dollars per year), CCT, wattage (for IRLs only), and initial lumen output (for IRLs only). 86 FR 29888, 29905.

Specifically, DOE proposed that represented values of CCT for GSILs and IRLs, and wattage for IRLs, be determined as the mean of the sample and initial lumen output for IRLs be determined using a lower confidence limit (''LCL'') calculation. Further, DOE proposed that represented values of life (in years) for GSILs and IRLs be determined by dividing the represented lifetime of these lamps, as determined by DOE requirements in 10 CFR part 429, by the estimated annual operating hours as specified by FTC in 16 CFR 305.23(b)(3)(iii). To support this calculation, DOE proposed that the lifetime for IRLs be determined as equal to or less than the median time to failure of the sample. DOE proposed that represented values of estimated annual energy cost (in dollars per year) for GSILs and IRLs be determined in accordance with FTC requirements (*i.e.,* a usage rate of 3 hours per day, and 11 cents ($0.11) per kWh), using the average initial wattage for the tested sample of lamps (*see* 16 CFR 305.23(b)(3)(ii)). *Id.*

DOE's current test procedure for GSFLs includes measurement of wattage and CCT, and in this final rule DOE is adopting a test procedure for measuring CRI of IRLs (see section III.C.3 of this document). Therefore, in the June 2021 NOPR, DOE proposed to provide instructions that the represented values for wattage and CCT of GSFLs be determined as the mean of the sample, and CRI for IRLs be determined using a LCL calculation. *Id.*

DOE also proposed to revise existing represented value determinations of initial lumen output for GSILs from a mean (average) to an LCL calculation; and determination of CRI for GSFLs from an LCL to an average calculation. *Id.* Finally, DOE proposed to remove language stating that lifetime is the length of operating time between first use and failure of 50 percent of the sample size. *Id.* Instead, DOE proposed to directly specify how failure of 50 percent of the sample is determined by stating that the represented value of lifetime is equal to or less than the median time to failure of the sample. *Id.* For an odd sample size, the median time to failure is simply the middle unit's time to failure. For an even sample size, it is the arithmetic mean of the time to failure of the two middle samples. DOE proposed this change would apply to both GSILs and IRLs. *Id.*

DOE received no comments on these proposed changes. In this final rule, DOE adopts the aforementioned updates to determinations of represented values as proposed in the June 2021 NOPR.

4. Reporting Requirements

To align the proposed amendments with the sampling requirements (*see* section III.D.2 of this document), in the June 2021 NOPR, DOE proposed removing the requirement to report production dates of units tested and removing ''12-month average'' from the description for GSFLs, IRLs, and GSILs. 86 FR 29888, 29905. Further, to align with the proposed method of referencing wattage (adopted in this final rule, see section III.D.1 of this document), DOE proposed clarifying the description of ''lamp wattage'' so that it instead reads as ''rated wattage'' for GSFLs, IRLs, and GSILs. *Id.* Additionally, to align with the proposed method of referencing lifetime (adopted in this final rule, see section III.D.1), DOE proposed clarifying the description of ''average minimum rated lifetime'' so that it instead reads as ''lifetime'' for GSILs. *Id.*

DOE received no comments on these proposed changes. In this final rule, DOE adopts conforming amendments to the terminology in reporting requirements as proposed in the June 2021 NOPR.

5. Rounding Requirements

In the June 2021 NOPR, for completeness and clarity, DOE proposed to specify rounding requirements for all represented values. 86 FR 29888, 29906. DOE proposed to require rounding initial input power to the nearest tenth of a watt, initial lumen output to three significant digits, CRI to the nearest whole number, and lifetime to the nearest whole hour. *Id.* DOE proposed to modify the CCT rounding requirement to the nearest 100 Kelvin

rather than nearest 10 Kelvin. *Id.* DOE tentatively determined that these updates to rounding requirements would align with other DOE lamp test procedures such as CFLs and integrated LED lamps, and tentatively determined they provide the necessary level of precision for evaluating compliance with the applicable metric(s). *Id.*

Additionally, DOE proposed to move the rounding requirements for lamp efficacy and CCT from appendix R to 10 CFR part 429. *Id.* DOE also proposed to consolidate all rounding provisions in a single paragraph in each of the relevant product-specific sections in 10 CFR part 429. *Id.*

NEMA commented that it did not perceive any potential negative impact as a result of DOE's proposed rounding proposal, because it pertains to different functional parameters, and testing of GSFL, IRL, and GSIL technology is very mature and well understood. (NEMA, No. 12 at p. 5)

In this final rule, DOE adopts the aforementioned updates to rounding requirements as proposed in the June 2021 NOPR.

E. Amendments to 10 CFR 430.23(r)

Test procedures and measurements for GSFLs, IRLs, and GSILs are specified in 10 CFR 430.23(r). Because they are also established in appendix R, DOE proposed in the June 2021 NOPR to remove calculations for determining annual energy consumption, lamp efficacy, CRI, and lifetime from 10 CFR 430.23(r). 86 FR 29888, 29906. Additionally, DOE proposed to reference appendix R in general rather than specifying sections, so that any future amendments to sections in appendix R do not require changes in 10 CFR 430.23(r). *Id.* Finally, DOE proposed to remove all references to annual energy consumption, as this metric is not required by DOE. DOE proposed to replace the current language in 10 CFR 430.23(r) with a requirement to measure initial lumen output, initial input power, initial lamp efficacy, CRI, CCT, and time to failure in accordance with appendix R. *Id.*

DOE received no comments regarding these proposed changes. DOE has determined that these changes to 10 CFR 430.23(r) improve the clarity of the GSFL, IRL, and GSIL test procedures. In this final rule, DOE adopts the amendments to 10 CFR 430.23(r) as proposed in the June 2021 NOPR.

F. Conforming Amendments to Energy Conservation Standard Text at 10 CFR 430.32

In the June 2021 NOPR, to avoid confusion and align with the proposed new terminology for appendix R and 10 CFR 429.27, DOE proposed to modify certain terms related to the energy conservation standards for GSFLs, IRLs, and GSILs. 86 FR 29888, 29906. Specifically, the tables in 10 CFR 430.32(n)(6) and 10 CFR 430.32(x) provide the energy conservation standards for IRLs and GSILs, respectively, for which the wattage terms are measured values. For IRLs, DOE proposed to change ''rated lamp wattage'' to ''rated wattage'' in 10 CFR 430.32(n)(6). 86 FR 29888, 29906. Also, in existing footnote 1 in the table in 10 CFR 430.32(n)(6), DOE proposed to specify the ''P'' in the minimum standard equation as ''rated wattage'' rather than ''rated lamp wattage.'' *Id.* For GSILs, DOE proposed to change the term ''maximum rate wattage'' to ''maximum rated wattage'' in 10 CFR 430.32(x). *Id.*

Further, for GSIL standards in 10 CFR 430.32(x), in the June 2021 NOPR, DOE proposed to remove the term ''rated'' from ''rated lumen ranges'' and add an explanatory footnote to use the measured initial lumen output to determine the applicable lumen range. *Id.* Finally, DOE proposed to remove the term ''rate'' from ''minimum rate lifetime'' and add an explanatory footnote to use lifetime determined in accordance with 10 CFR 429.27 to assess compliance with this standard. *Id.*

Additionally, DOE proposed to remove the lamp efficacy requirements for GSFLs manufactured after May 1, 1994, and November 1, 1995, and on or before July 14, 2012, listed in 10 CFR 430.32(n)(1) and for IRLs manufactured after November 1, 1995, and on or before July 14, 2012, listed in 10 CFR 430.32(n)(5). *Id.* New standards superseded these standards, and there are likely no units on the market to which they apply.

Finally, DOE proposed to change the subparagraph numbering in 10 CFR 430.32(x) as follows: 10 CFR 430.32(x)(1)(iii)(A) and (B) to respectively 10 CFR 430.32(x)(2) and (3); and subsequently renumber 10 CFR 430.32(x)(2) and (3) to 10 CFR 430.32(x)(4) and (5). This would reduce any confusion that standards under these subparagraphs are applicable only for lamps that fall under 10 CFR 430.32(x)(1)(iii). *Id.*

In its comments, NEMA agreed with the proposal to align terminology. (NEMA, No. 12 at p. 5) DOE has determined that these changes to 10 CFR 430.32 improve the clarity of the GSFL, IRL, and GSIL test procedures. As these changes are conforming amendments that generally align the terminology used in the energy conservation standards and test procedures, these amendments will not impact the stringency of the required energy conservation standard or compliance with the applicable energy conservation standards. In this final rule, DOE adopts the amendments to energy conservation standard text at 10 CFR 430.32 as proposed in the June 2021 NOPR.

G. Test Procedures Costs and Impacts

In this final rule, DOE amends the existing test procedures for GSIL, IRLs, and GSFLs by: (1) updating references to industry test standards to reflect current industry practices; (2) modifying, adding, and removing definitions to better align with the scope and test methods; (3) referencing specific sections within industry test standards for further clarity; (4) providing a test method for measuring CRI for incandescent lamps to support DOE requirements; (5) providing a test method for measuring lifetime of IRLs to support the FTC's labeling requirements; (6) clarifying test frequency and inclusion of cathode power in measurements for GSFLs; (7) decreasing the sample size and specifying all metrics for all lamps be measured from the same sample of units. In addition, this final rule aligns terminology across appendix R, the relevant sections of 10 CFR part 429, 10 CFR 430.23(r), 10 CFR 430.32(n) and 10 CFR 430.32(x) and updates language for conciseness and clarity. DOE also updates certain represented value calculations and rounding requirements. DOE has determined that the test procedure as amended by this final rule would impact testing costs as discussed in the following paragraphs.

DOE has determined that the updates to the GSFL, IRL, and GSIL test procedures will not increase test burden and would result in cost savings. The amendments adopted in this final rule primarily provide updates and clarifications for how to conduct the test procedures and do not add complexity to test conditions or setup. This final rule adds references to specific sections of industry test standards to provide precise direction when conducting the test procedures. Revisions to definitions and test conditions only clarify the test method. Further, the reorganization and alignment of terminology among relevant sections of the CFR improves readability and provides clarity throughout the sampling requirements, test procedure, and applicable energy conservation standards.

The adopted provision specifying the frequency for testing and whether

cathode heat is included in measurements reflects the stated direction in industry test standards referenced by the current test procedures and also standard industry practice as verified by product submissions in DOE's Compliance Certification Database. Because DOE is specifying details that are already required or in use, DOE concludes that there are no costs incurred due to this final rule.

Measurement of the CRI of incandescent lamps and measuring lifetime of incandescent reflector lamps is already required by DOE, EISA 2007, or FTC. As such, manufacturers already conduct this test for covered products. The method of measuring CRI has not changed substantively in over 20 years (the referenced industry test standard was last updated in 1995) and therefore the method of measurement used by manufacturers is likely substantively similar to the method adopted by this final rule. Further, the data required for CRI can be gathered via an integrating sphere at the same time the sphere is used to measure lumen output. Thus, the data to determine CRI can be gathered while measuring a quantity that is used in a metric already reported to DOE (*i.e.,* lamp efficacy).

Regarding lifetime, the FTC requires manufacturers to report life (in years) of IRLs on its Lighting Facts label. 16 CFR 305.23(b)(3)(ii) The lifetime test method used in support of the Lighting Facts label is likely substantively similar to the method adopted by DOE. The industry test method that describes measuring the lifetime of incandescent filament lamps is IES LM–49. Although IES LM–49 was updated in 2020, DOE concludes that changes in the updated version are only explicitly stating what is already practiced by test labs. Therefore, because industry is already conducting tests for the CRI of incandescent lamps and the lifetime of IRLs, and using methods that are substantively similar to the methods adopted in this final rule, DOE concludes that there are no costs incurred due to these proposed test methods. 86 FR 29888, 29908.

DOE is also allowing manufacturers to make voluntary representations of certain GSFLs. Manufacturers can voluntarily make representations at the high frequency settings specified in the 2016 versions of ANSI C78.81 and ANSI C78.901 in accordance with test procedures specified in appendix R and sampling requirements in 10 CFR 429.27. These values will not be used for compliance but rather would be in addition to values obtained for compliance and used by DOE for determining if and how standards for GSFLs should be amended in the future to accommodate testing at high frequency settings.

DOE adopts updates to represented value calculations and rounding requirements in this final rule. These do not pose added burden as determination of represented values and rounding are actions manufacturers are already required to do when they annually certify basic models to DOE.

In the June 2021 NOPR, DOE determined the cost savings associated with the proposal to change the minimum sample size to 10 lamps instead of 21 lamps. Because current certifications already must be based on a sample size of more than 10 units, products currently certified to DOE would not have to be retested as a result of this change. However, manufacturers would be able to use the new sampling requirements when new products are introduced and certified to DOE. Based on a review of submission dates for GSFL, IRL, and GSIL basic models in DOE's Compliance Certification Database, DOE determined the number of new model certifications during the period 2016–2018. An average of 196 GSFL, 30 IRL, and 84 GSIL new models were certified over these years. The cost to test efficacy, CCT, and CRI at a third-party laboratory is approximately $90 per unit for a GSFL and approximately $75 per unit for an IRL or GSIL. Based on feedback from laboratories, a reduction in sample size would not change costs for lifetime testing for GSILs. Thus, in the June 2021 NOPR, DOE estimated the annual industry-wide savings for GSFLs due to reduced sample size requirements to be $193,710, for IRLs to be $24,475 and for GSILs to be $69,025. *Id.*

NEMA commented that cost savings opportunities are small, as GSFLs, IRLs, and GSILs are highly mature technologies with declining sales. As an alternative NEMA encouraged DOE to reduce test costs for other, newer technology options sooner than has been proposed for this sector. (NEMA, No. 12 at p. 6)

DOE notes that the scope of this rulemaking is to review and amend, as applicable, the test procedures for GSFLs, IRLs, and GSILs and the associated sampling and certification requirements. DOE has determined that for these covered products, the amendments to the sampling requirements adopted in this final rule will result in test cost savings as estimated in the June 2021 NOPR.

DOE did not receive any comments on the cost estimates presented in the June 2021 NOPR. In this final rule, DOE maintains the conclusion that the adopted updates do not result in added test burden and the change to sample size results in cost savings as previously discussed in the June 2021 NOPR and in this document. Further, the amendments adopted in this final rule will not require changes to the designs of GSFLs, IRLs, or GSILs, and the adopted amendments will not impact the utility of such products or impact the availability of GSFL, IRL, or GSIL products. The adopted amendments will not impact the representations of GSFL, IRL, or GSIL energy efficiency. As such, the retesting of GSFLs, IRLs, or GSILs will not be required solely as a result of DOE's adoption of the proposed amendments to the test procedure.

H. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory

approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (''FRFA'') for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.*

DOE reviewed this rule to amend the test procedures for GSFLs, IRLs, and GSILs under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that this final rule will not have a significant impact on a substantial number of small entities. The factual basis for this certification is set forth in the following paragraphs.

The Small Business Administration (''SBA'') considers a business entity to be a small business if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The size standards and codes are established by the 2017 North American Industry Classification System (''NAICS'').

GSFL, IRL, and GSIL manufacturers are classified under NAICS code 335110, ''electric lamp bulb and part manufacturing.'' The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this NAICS code. DOE conducted a focused inquiry into small business manufacturers of the GSFLs, IRLs, and GSILs covered by this rulemaking. DOE used available public information to identify potential small manufacturers. DOE accessed the Compliance Certification Database [37] to identify basic models of GSFLs, IRLs, and GSILs. DOE then used other publicly available data sources, such as California Energy Commission's Modernized Appliance Efficiency Database System and company specific product literature, to create a list of companies that import or otherwise manufacture the GSFL, IRL, and GSIL models covered by this rulemaking. Using these sources, DOE identified a total of 20 distinct companies that import or manufacture GSFLs, IRLs, or GSILs in the United States.

DOE then reviewed these companies to determine whether the entities met the SBA's definition of a ''small business'' as it relates to NAICS code 335110 and screened out any companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated. DOE did not identify any small businesses that manufacture GSFLs, IRLs, or GSILs in the United States.

In response to the June 2021 NOPR, NEMA stated that it is not aware of any small businesses that manufacture GSFLs, IRLs, and GSILs in the United States. (NEMA, No. 12 at p. 6)

Because DOE identified no small businesses that manufacture GSFLs, IRLs, or GSILs in the United States, DOE concludes and certifies that the cost effects accruing from the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of GSFLs, IRLs, and GSILs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including GSFLs, IRLs, and GSILs. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not adding to the certification or reporting requirements for GSFLs, IRLs, or GSILs in this final rule.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for GSFLs, IRLs, and GSILs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined

[37] U.S. Department of Energy Compliance Certification Database, available at: *www.regulations.doe.gov/certification-data/products.html#q=Product_Group_s%3A*.

that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse

effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the FTC concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedures for GSFLs, IRLs, and GSILs adopted in this final rule incorporate testing methods contained in certain sections of the following industry standards:

(1) ANSI C78.21, ''American National Standard for Electric Lamps—PAR and R Shapes,'' 2011 (R2016);

(2) ANSI C78.79, ''American National Standard for Electric Lamps—Nomenclature for Envelope Shapes Intended for Use with Electric Lamps,'' 2014 (R2020);

(3) ANSI C78.81, ''American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics,'' 2016;

(4) ANSI C78.375A, ''American National Standard for Electric Lamps—Fluorescent Lamps—Guide for Electrical Measures,'' 2014 (R2020);

(5) ANSI C78.901, ''American National Standard for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics,'' 2016;

(6) ANSI C82.3, ''American National Standard for Electric Lamps—Reference Ballasts for Fluorescent Lamps,'' 2016;

(7) IES LM–9, ''ANSI/IES LM–9–2020—Approved Method: Electrical and Photometric Measurements of Fluorescent Lamps,'' 2020;

(8) IES LM–20, ''ANSI/IES LM–20–20 Approved Method: Photometry of Reflector Type Lamps,'' 2020;

(9) IES LM–45, ''ANSI/IES LM–45–20 Approved Method: Electrical and Photometric Measurements of General Service Incandescent Filament Lamps,'' 2020;

(10) IES LM–49, ''ANSI/IES LM–49–20 Approved Method: Life Testing of Incandescent Filament Lamps,'' 2020;

(11) IES LM–54, ''ANSI/IES LM–54–20 Approved Method: IES Guide to Lamp Seasoning,'' 2020;

(12) IES LM–58, ''ANSI/IES LM–58–20 Approved Method: Spectroradiometric Measurement Methods for Light Sources,'' 2020;

(13) IES LM–78, ''ANSI/IES LM–78–20 Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer,'' 2020; and

(14) CIE 15:2018, ''Colorimetry, 4th Edition,'' 2018.

DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

ANSI C78.21–2011 (R2016) is an industry accepted test standard that provides physical and electrical characteristics of the group of incandescent lamps that have PAR and R bulb shapes. Specifically, the test procedure codified by this final rule references sections of ANSI C78.21–2011 (R2016) for definitions of incandescent reflector lamps. .

ANSI C78.79–2014 (R2020) is an industry accepted test standard that describes a system of nomenclature that provides designations for envelope shapes used for all electric lamps. Specifically, the test procedure codified by this final rule references sections of ANSI C78.79–2014 (R2020) for definitions of IRLs.

ANSI C78.375A–2014 (R2020) is an industry accepted test standard that describes procedures for measuring the electrical characteristics of fluorescent lamps. Specifically, the test procedure codified by this final rule references sections of ANSI C78.375A–2014 (R2020) for voltage and current conditions when testing performance of fluorescent lamps.

ANSI C82.3–2016 is an industry accepted standard that describes characteristics and requirements of fluorescent lamp reference ballasts. Specifically, the test procedure codified by this final rule references ANSI C82.3–2016 for setting up the reference circuit when testing the performance of fluorescent lamps.

ANSI C78.81–2016 is an industry accepted standard that provides electrical characteristics for double base fluorescent lamps and reference ballasts. Specifically, the test procedure codified by this final rule references ANSI C78.81–2016 for reference ballast settings to test the performance of fluorescent lamps using high frequency reference ballast settings for making voluntary representations to DOE.

ANSI C78.901–2016 is an industry accepted standard that provides electrical characteristics for single base fluorescent lamps and reference ballasts. Specifically, the test procedure codified by this final rule references ANSI C78.901–2016 for reference ballast settings to test the performance of fluorescent lamps using high frequency reference ballast settings for making voluntary representations to DOE.

These test standards are all reasonably available from ANSI (*https://webstore.ansi.org*) or NEMA (*www.nema.org*).

IES LM–9–20 is an industry accepted standard that describes the method for taking electrical and photometric measurements of fluorescent lamps. Specifically, the test procedure codified by this final rule references IES LM–9–20 for testing GSFLs.

IES LM–20–20 is an industry accepted standard that describes the method for taking photometric measurements of reflector lamps. Specifically, the test procedure codified by this final rule references IES LM–20–20 for IES LM–

45–20 is an industry accepted standard that describes the method for taking electrical and photometric measurements of incandescent lamps. Specifically, the test procedure codified by this final rule references IES LM–45–20 for testing GSILs.

IES LM–49–20 is an industry accepted standard that describes the method for determining the lifetime of an incandescent filament lamp. Specifically, the test procedure codified by this final rule references IES LM–49–20 for testing the lifetime of incandescent lamps.

IES LM–54–20 is an industry accepted test standard that specifies a method for seasoning lamps. Specifically, the test procedure codified by this final rule references IES LM–9–20, IES LM–20–20, and IES LM–45–20 for testing the performance of GSFLs, IRLs, and GSILs, respectively, which in turn references IES LM–54–20 for seasoning lamps.

IES LM–58–20 is an industry accepted standard that describes methods for taking spectroradiometric measurements for light sources. Specifically, the test procedure codified by this final rule references IES LM–58–20 for determining the CRI and CCT of fluorescent lamps and incandescent lamps and CRI of incandescent reflector lamps.

IES LM–78–20 is an industry accepted standard that specifies a method for measuring lumen output in an integrating sphere. Specifically, the test procedure codified by this final rule references IES LM–9–20, IES LM–20–20, and IES LM–45–20 for testing the performance of GSFLs, IRLs, and GSILs, which in turn references IES LM–78–20 for integrating sphere photometer calibration and measurements. IES LM–78 is readily available on IES's website at *www.ies.org/store*.

These test standards are all reasonably available from ANSI (*https://webstore.ansi.org*) or IES (*www.ies.org/store*).

CIE 15:2018 is an industry accepted test standard that specifies methods for taking color measurements. Specifically, the test procedure codified by this final rule references CIE 15:2018 for testing CCT. CIE 15:2018 is reasonably available from CIE (*https://cie.co.at/publications*).

In this final rule, DOE included revisions to regulatory text that contained references to ANSI C78.3, ANSI C78.21–1989, and CIE 13.3. These standards were previously approved for incorporation by reference (IBR); no changes are being made. In addition, DOE is renaming the abbreviated term ''ANSI C78.901'' to ''ANSI C78.901–2005'' and the abbreviated term ''ANSI C78.81'' to ''ANSI C78.81–2010'' in the regulatory text of § 430.3. These standards were also previously approved for IBR in the regulatory text where they are referenced; no changes are being made.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on August 14, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 15, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

§ 429.11 [Amended]

■ 2. Amend § 429.11 by:

■ a. In paragraph (a) removing ''429.62'' and adding in its place ''429.66''; and

■ b. In paragraph (b)(1) removing, ''429.65'' and adding in its place ''429.66''.

§ 429.12 [Amended]

■ 3. Amend § 429.12 by removing paragraph (e)(2) and redesignating paragraph (e)(3) as paragraph (e)(2).

■ 4. Revise § 429.27 to read as follows:

§ 429.27 General service fluorescent lamps.

Note 1 to § 429.27: Prior to February 17, 2023, certification reports must be submitted as required either in this section or 10 CFR 429.27 as it appears in the 10 CFR parts 200 through 499 edition revised as of January 1, 2022. On or after February 17, 2023, certification reports must be submitted as required in this section.

(a) *Determination of Represented Value.* Each manufacturer must determine represented values, which include certified ratings, for each basic model by testing, in accordance with the following sampling provisions.

(1) Units to be tested.

(i) When testing, use a sample comprised of production units. The same sample of units must be tested and used as the basis for representations for rated wattage, average lamp efficacy, color rendering index (CRI), and correlated color temperature (CCT).

(ii) For each basic model, randomly select and test a sample of sufficient size, but not less than 10 units, to ensure that represented values of average lamp efficacy are less than or equal to the lower of:

(A) The arithmetic mean of the sample: or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by .97, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

(2) Any represented values of measures of energy efficiency or energy consumption for all individual models represented by a given basic model must be the same.

(3) Represented values of CCT, CRI and rated wattage must be equal to the arithmetic mean of the sample.

(b) *Certification reports.* (1) The requirements of § 429.12 apply to general service fluorescent lamps; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, average lamp efficacy in lumens per watt (lm/W), rated wattage in watts (W), CCT in Kelvin (K), and CRI.

(c) *Rounding Requirements.* (1) Round rated wattage to the nearest tenth of a watt.

(2) Round average lamp efficacy to the nearest tenth of a lumen per watt.

(3) Round CCT to the nearest 100 kelvin (K).

(4) Round CRI to the nearest whole number.

§ 429.33 [Amended]

■ 5. Amend § 429.33 by:

■ a. In paragraph (a)(2)(iv) removing ''§ 429.27'' and adding ''§ 429.40, § 429.55 or § 429.66, as applicable'' in its place; and

■ b. In paragraph (a)(3)(i)(C) removing ''§ 429.27'' and adding ''§ 429.40, § 429.55 or § 429.66, as applicable,'' in its place.

■ 6. Add § 429.55 to read as follows:

§ 429.55 Incandescent reflector lamps.

Note 1 to § 429.55: Prior to February 17, 2023, certification reports must be submitted as required either in this section or 10 CFR 429.27 as it appears in the 10 CFR parts 200 through 499 edition revised as of January 1, 2022. On or after February 17, 2023, certification reports must be submitted as required in this section.

(a) *Determination of Represented Value.* Each manufacturer must determine represented values, which include the certified ratings, for each basic model, in accordance with the following sampling provisions.

(1) Units to be tested.

(i) When testing, use a sample comprised of production units. The same sample of units must be tested and used as the basis for representations for initial lumen output, rated wattage, lamp efficacy, color rendering index (CRI), correlated color temperature (CCT), and lifetime.

(ii) For each basic model, randomly select and test a sample of sufficient size, but not less than 10 units, to ensure that represented values of average lamp efficacy, CRI and initial lumen output are less than or equal to the lower of:

(A) The arithmetic mean of the sample; or,

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by .97, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

(2) Any represented values of measures of energy efficiency or energy consumption for all individual models represented by a given basic model must be the same.

(3) Represented values of CCT and rated wattage must be equal to the arithmetic mean of the sample.

(4) Represented values of lifetime must be equal to or less than the median time to failure of the sample (calculated as the arithmetic mean of the time to failure of the two middle sample units (or the value of the middle sample unit if there are an odd number of units) when the measured values are sorted in value order).

(5) Calculate represented values of life (in years) by dividing the represented lifetime of these lamps as determined in paragraph (a)(4) of this section by the estimated daily operating hours as specified in 16 CFR 305.23(b)(3)(iii) multiplied by 365.

(6) Represented values of the estimated annual energy cost, expressed in dollars per year, must be the product of the rated wattage in kilowatts, an electricity cost rate as specified in 16 CFR 305.23(b)(1)(ii), and an estimated average daily use as specified in 16 CFR 305.23(b)(1)(ii) multiplied by 365.

(b) *Certification reports.* (1) The requirements of § 429.12 apply to incandescent reflector lamps; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, average lamp efficacy in lumens per watt (lm/W), rated wattage in watts (W), rated voltage (V), diameter in inches, and CRI.

(c) *Rounding Requirements.* (1) Round rated wattage to the nearest tenth of a watt.

(2) Round initial lumen output to three significant digits.

(3) Round average lamp efficacy to the nearest tenth of a lumen per watt.

(4) Round CCT to the nearest 100 kelvin (K).

(5) Round CRI to the nearest whole number.

(6) Round lifetime to the nearest whole hour.

(7) Round life (in years) to the nearest tenth.

(8) Round annual energy cost to the nearest cent.

■ 7. Add § 429.66 to read as follows:

§ 429.66 General service incandescent lamps.

Note 1 to § 429.66: Prior to February 17, 2023, certification reports must be submitted as required either in this section or 10 CFR 429.27 as it appears in the 10 CFR parts 200 through 499 edition revised as of January 1, 2022. On or after February 17, 2023, certification reports must be submitted as required in this section.

(a) *Determination of Represented Value.* Each manufacturer must determine represented values, which include certified ratings, for each basic model by testing in accordance with the following sampling provisions.

(1) Units to be tested.

(i) When testing, use a sample comprised of production units. The same sample of units must be tested and used as the basis for representations for initial lumen output, rated wattage, color rendering index (CRI), correlated color temperature (CCT), and lifetime.

(ii) For each basic model, randomly select and test a sample of sufficient size, but not less than 10 units, to ensure that—

(A) Represented values of initial lumen output and CRI are less than or equal to the lower of:

(*1*) The arithmetic mean of the sample: or,

(*2*) The lower 95 percent confidence limit (LCL) of the true mean divided by .97, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A).

(B) Represented values of rated wattage are greater than or equal to the higher of:

(*1*) The arithmetic mean of the sample: or,

(*2*) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.03, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

and $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from appendix A to this subpart).

(2) Any represented values of measures of energy efficiency or energy consumption for all individual models represented by a given basic model must be the same.

(3) Represented values of CCT must be equal to the arithmetic mean of the sample.

(4) Represented values of lifetime must be equal to or less than the median time to failure of the sample (calculated as the arithmetic mean of the time to failure of the two middle sample units (or the value of the middle sample unit if there are an odd number of units) when the measured values are sorted in value order).

(5) Calculate represented values of life (in years) by dividing the represented lifetime of these lamps as determined in paragraph (a)(4) of this section by the estimated daily operating hours as specified in 16 CFR 305.23(b)(3)(iii) multiplied by 365.

(6) Represented values of the estimated annual energy cost, expressed in dollars per year, must be the product of the rated wattage in kilowatts, an electricity cost rate as specified in 16 CFR 305.23(b)(1)(ii), and an estimated average daily use as specified in 16 CFR 305.23(b)(1)(ii) multiplied by 365.

(b) *Certification reports.* (1) The requirements of § 429.12 apply to general service incandescent lamps; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The testing laboratory's ILAC accreditation body's identification number or other approved identification assigned by the ILAC accreditation body, rated wattage in watts (W), the lifetime in hours, CRI, and initial lumen output in lumens (lm).

(c) *Rounding Requirements.* (1) Round rated wattage to the nearest tenth of a watt.

(2) Round initial lumen output to three significant digits.

(3) Round CCT to the nearest 100 kelvin (K).

(4) Round CRI to the nearest whole number.

(5) Round lifetime to the nearest whole hour.

(6) Round life (in years) to the nearest tenth.

(7) Round annual energy cost to the nearest cent.

§ 429.102 [Amended]

■ 8. In § 429.102 amend paragraph (a)(1) by removing ''429.62'' and adding in its place ''429.66''.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 9. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 10. Amend § 430.2 by:

■ a. In the definition for ''Basic model'' revising paragraph (1);

■ b. Revising definitions for ''BPAR incandescent reflector lamp'', ''BR incandescent reflector lamp'', and ''ER incandescent reflector lamp'';

■ c. Adding, in alphabetical order, definitions for ''Lifetime'', ''PAR incandescent reflector lamp'', and ''R incandescent reflector lamp'';

■ d. Revising the definition for ''R20 incandescent reflector lamp'';

■ e. Removing the definition for ''Rated lifetime for general service incandescent lamps'' and the second definition of ''BR incandescent reflector lamp''; and

■ f. In the definition for ''Rated wattage'' revising paragraphs (1)(iii) and (2) and adding paragraph (3).

The revisions and addition read as follows:

§ 430.2 Definitions.

* * * * *

Basic model * * *

(1) With respect to general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps: Lamps that have essentially identical light output and electrical characteristics—including lamp efficacy and color rendering index (CRI).

* * * * *

BPAR incandescent reflector lamp means a reflector lamp as shown in figure C78.21–278 of ANSI C78.21–2016 (incorporated by reference; see § 430.3).

* * * * *

BR incandescent reflector lamp means a reflector lamp that has a bulged section below the bulb's major diameter and above its approximate base line as shown in Figure 1 (RB) of ANSI C78.79–2020. A BR30 lamp has a lamp wattage of 85 or less than 66 and a BR40 lamp has a lamp wattage of 120 or less.

* * * * *

ER incandescent reflector lamp means a reflector lamp that has an elliptical section below the major diameter of the bulb and above the approximate base line of the bulb, as shown in Figure 1 (RE) of ANSI C78.79–2020 (incorporated by reference; see § 430.3) and product space drawings shown in ANSI C78.21–2016 (incorporated by reference; see § 430.3).

* * * * *

Lifetime with respect to an incandescent reflector lamp or general service incandescent lamp means the length of operating time between first use and failure of 50 percent of the sample units (as specified in 10 CFR 429.55 and 429.66), determined in accordance with the test procedures described in appendix R to subpart B of this part.

* * * * *

PAR incandescent reflector lamp means a reflector lamp formed by the sealing together during the lamp-making process of a pressed glass parabolic section and a pressed lens section as shown in Figure 1 (PAR) of ANSI C78.79–2020, (incorporated by reference; see § 430.3). The pressed lens section may be either plain or configured.

* * * * *

R incandescent reflector lamp means a reflector lamp that includes a parabolic or elliptical section below the major diameter as shown in Figure 1 (R) of ANSI C78.79–2020 (incorporated by reference; see § 430.3).

R20 incandescent reflector lamp means an R incandescent reflector lamp that has a face diameter of approximately 2.5 inches, as shown in Figure C78.21–254 of ANSI C78.21–2016 (incorporated by reference; see § 430.3).

* * * * *

Rated wattage means:

(1) * * *

(iii) If the lamp is neither listed in one of the ANSI standards referenced in paragraph (1)(i) of this definition, nor a residential straight-shaped lamp, a represented value of electrical power for a basic model, determined according to 10 CFR 429.27, and derived from the measured initial input power of a lamp tested according to appendix R to subpart B of this part.

(2) With respect to general service incandescent lamps, a represented value of electrical power for a basic model, determined according to 10 CFR 429.27, and derived from the measured initial input power of a lamp tested according to appendix R to subpart B of this part.

(3) With respect to incandescent reflector lamps, a represented value of electrical power for a basic model, determined according to 10 CFR 429.55, and derived from the measured initial input power of a lamp tested according to appendix R to subpart B of this part.

* * * * *

■ 11. Amend § 430.3 by:
■ a. Revising paragraph (e)(4);
■ b. Removing paragraph (e)(17);
■ c. Redesignating paragraphs (e)(5) through (16) as paragraphs (e)(6) through (17);
■ d. Adding new paragraph (e)(5);
■ e. In newly redesignated paragraph (e)(6), removing the text ''(''ANSI C78.81'')'' and adding, in its place, the text ''(''ANSI C78.81–2010'')'';
■ f. In newly redesignated paragraph (e)(7),
■ i. Removing the text ''(''ANSI C78.81–2016''),''; and
■ ii. Removing the text ''appendix Q'', and adding, in its place, the text ''appendices Q and R'';
■ g. Revising newly redesignated paragraph (e)(9);
■ h. In newly redesignated paragraph (e)(10), removing the text ''Revision of ANSI C78.901–2001 (''ANSI C78.901'')'', and adding, in its place, the text '' (''ANSI C78.901–2005'')'';
■ i. In newly redesignated paragraph (e)(12), removing the text ''appendix Q'', and adding, in its place, the text ''appendices Q and R'';
■ j. In newly redesigned paragraph (e)(15), remove the text ''§ 430.2'' and add, in its place, the text ''§§ 430.2; 430.32'';
■ k. In paragraph (e)(18), removing the text ''appendix Q'', and adding, in its place, the text ''appendices Q and R''
■ l. Revising note 1 to paragraph (e);
■ m. In paragraph (m)(2), removing the text ''appendices R and W'', and adding, in its place, the text ''appendix W'';
■ n. Adding new paragraph (m)(3);
■ o. Revising the introductory text to paragraph (q);
■ p. In paragraph (q)(2), removing the text ''appendices R, V, and V1'' and adding, in its place, the text ''appendices V and V1'';
■ q. Redesignating paragraphs (q)(4) through (20) as follows:

Old paragraph	New paragraph
(q)(4)	(q)(5).
(q)(5)	(q)(7).
(q)(7)	(q)(9).
(q)(9) and (10)	(q)(10) and (11).
(q)(11) through (15) ..	(q)(13) through (17).
(q)(16) through (20) ..	(q)(19) through (23).

■ r. Adding new paragraph (q)(4);
■ s. Revising newly redesignated paragraphs (q)(7), (9) and, (10);
■ t. Adding new paragraph (q)(12);
■ u. Revising newly redesignated paragraph (q)(13); and
■ v. Adding new paragraph (q)(18).

The revisions and additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(e) * * *

(4) ANSI C78.21–2011 (R2016) (''ANSI C78.21–2016''), *American National Standard for Electric Lamps—PAR and R Shapes,* ANSI-approved August 23, 2016; IBR approved for § 430.2.

(5) ANSI C78.79–2014 (R2020) (''ANSI C78.79–2020''), *American National Standard for Electric Lamps—Nomenclature for Envelope Shapes Intended for Use with Electric Lamps,* ANSI-approved January 17, 2020; IBR approved for § 430.2.

* * * * *

(9) ANSI C78.375A–2014 (R2020) (''ANSI C78.375A–2020'') *American National Standard for Electric Lamps—Fluorescent Lamps—Guide for Electrical Measures,* ANSI-approved January 17, 2020; IBR approved for appendix R to subpart B.

* * * * *

Note 1 to Paragraph (e): The standards referenced in paragraphs (e)(4), (5), (7), (9), (12), (16), (17), (18), (19), and (21) of this section were all published by National Electrical Manufacturers Association (NEMA) and are also available from National Electrical Manufacturers Association, 1300 North 17th Street, Suite 900, Rosslyn, Virginia 22209, *https://www.nema.org/Standards/Pages/default.aspx.*

* * * * *

(m) * * *

(3) CIE 015:2018 (''CIE 15:2018''), *Colorimetry,* 4th edition, copyright 2018; IBR approved for the appendix R to subpart B.

* * * * *

(q) *IES.* Illuminating Engineering Society (formerly Illuminating Engineering Society of North America—IESNA), 120 Wall Street, Floor 17, New

York, NY 10005–4001, 212–248–5000, or go to *www.ies.org.*

* * * * *

(4) ANSI/IES LM–9–20 (''IES LM–9–20''), *Approved Method: Electrical and Photometric Measurements of Fluorescent Lamps,* ANSI-approved February 7, 2020; IBR approved for appendix R to subpart B.

* * * * *

(7) ANSI/IES LM–20–20 (''IES LM–20–20''), *Approved Method: Photometry of Reflector Type Lamps,* ANSI-approved February 7, 2020; IBR approved for appendix R to subpart B.

* * * * *

(9) IES LM–45–20 (''IES LM–45–20''), *Approved Method: Electrical and Photometric Measurement of General Service Incandescent Filament Lamps,* ANSI-approved February 7, 2020; IBR approved for appendix R to subpart B.

(10) ANSI/IES LM–49–20 (''IES LM–49–20''), *Approved Method: Life Testing of Incandescent Filament Lamps,* ANSI-approved February 7, 2020; IBR approved for appendix R to subpart B.

* * * * *

(12) ANSI/IES LM–54–20 (''IES LM–54–20''), *Approved Method: IES Guide to Lamp Seasoning,* ANSI-approved February 7, 2020; IBR approved for appendix R to subpart B.

(13) ANSI/IES LM–58–20 (''IES LM–58–20''), *Approved Method: Spectroradiometric Measurement Methods for Light Sources;* ANSI-approved February 7, 2020; IBR approved for appendix R to subpart B.

* * * * *

(18) ANSI/IES LM–78–20 (''IES LM–78–20'') *Approved Method: Total Luminous Flux Measurement of Lamps Using an Integrating Sphere Photometer,* ANSI-approved February 7, 2020; IBR approved for appendix R to subpart B.

* * * * *

■ 12. Revise § 430.23(r) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(r) *General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps.* Measure initial lumen output, initial input power, initial lamp efficacy, color rendering index (CRI), correlated color temperature (CCT), and time to failure of GSFLs, IRLs, and GSILs, as applicable, in accordance with appendix R to this subpart.

* * * * *

■ 13. Revise appendix R to subpart B of part 430 to read as follows:

Appendix R to Subpart B of Part 430—Uniform Test Method for Measuring Electrical and Photometric Characteristics of General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps

Note: After September 30, 2022 and prior to February 27, 2023 any representations with respect to energy use or efficiency of general service fluorescent lamps, incandescent reflector lamps, and general service incandescent lamps must be in accordance with the results of testing pursuant to this appendix or the test procedures as they appeared in appendix R to subpart B of part 430 revised as of January 1, 2021. On or after February 27, 2023, any representations, including certifications of compliance for lamps subject to any energy conservation standard, made with respect to the energy use or efficiency of general service fluorescent lamps, incandescent reflector lamps, and general service incandescent lamps must be made in accordance with the results of testing pursuant to this appendix.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, the entire standard for: IES LM–9–20, IES LM–20–20, IES LM–45–20, IES LM–49–20, IES LM–54–20, IES LM–58–20, IES LM–78–20, ANSI C78.375A–2020, ANSI C78.81–2010, ANSI C78.901–2005, ANSI C78.81–2016, ANSI C78.901–2016, ANSI C82.3, CIE 15:2018, and CIE 13.3; however, only enumerated provisions of IES LM–9–20, IES LM–20–20, IES LM–45–20, IES LM–49–20, IES LM–58–20, and CIE 13.3, are applicable to this appendix, as follows:

0.1 IES LM–9–20

(a) Section 3.0 ''Nomenclature and Definitions'' as referenced in section 2.1 of this appendix.

(b) Section 6.2.2 ''Pre-burning'' and Section 6.2.4 ''Lamp Circuit Switching'' as referenced in section 3.2 of this appendix.

(c) Section 4.0 ''Ambient and Physical Conditions'', Section 5.0 ''Electrical Conditions'', Section 6.1 ''Lamp Orientation'', Section 6.5 ''Electrical Settings'', and Section 6.6 ''Electrical Instrumentation'' as referenced in section 4.1.1.1 of this appendix.

(d) Section 6.1 ''Lamp Orientation'', Section 6.2 ''Lamp Stabilization'', Section 6.3 ''Use of the ''Peak Lumen'' Method'', and Section 6.4 ''Unusual Conditions'' as referenced in section 4.2.1.1 of this appendix.

(e) Section 7.0 ''Photometric Test Procedures'' as referenced in section 4.2.1.3 of this appendix.

(f) Section 7.6 ''Color Measurements'' as referenced in sections 4.2.1.5 and 4.2.1.6 of this appendix.

0.2 IES LM–20–20

(a) Section 3.0 ''Definitions'' as referenced in section 2.1 of this appendix.

(b) Section 4.0 ''Ambient and Physical Conditions'' and Section 5.0 ''Electrical and Photometric Test Conditions'' as referenced in section 4.1.3 of this appendix.

(c) Section 6.0 ''Lamp Test Procedures'' as referenced in sections 4.2.3.1 and 6.2.1 of this appendix.

(d) Section 7.0 ''Photometric Characterization by Measurement of Intensity Distribution'', Section 8.0 ''Total Flux Measurement by Integrating Sphere Method'', and Section 8.2 ''Exclusion of Undirected Light by Using a Luminaire Inside an Integrating Sphere'' as referenced in section 4.2.3.3 of this appendix.

0.3 IES LM–45–20

(a) Section 3.0 ''Nomenclature and Definitions'' as referenced in section 2.1 of this appendix.

(b) Section 4.0 ''Ambient and Physical Conditions'', Section 5.0 ''Electrical Conditions'', section 6.1 ''Lamp Position'', Section 6.3 ''Electrical Settings'', and Section 6.4 ''Electrical Instrumentation'' as referenced in section 4.1.2 of this appendix.

(c) Section 6.2 ''Lamp Stabilization'' as referenced in sections 4.2.2.1 and 6.2.1 of this appendix.

(d) Section 7.0 ''Photometric Test Procedures'' as referenced in section 4.2.2.3 of this appendix.

(e) Section 7.4 ''Color Measurements'' as referenced in sections 4.2.2.5 and 4.2.2.6 of this appendix.

0.4 IES LM–49–20

(a) Section 4.0 ''Ambient and Physical Conditions'' and Section 5.0 ''Electrical Conditions'' as referenced in section 6.1 of this appendix.

(b) Section 6.4 ''Operating Cycle'' as referenced in sections 6.2.2 and 6.3 of this appendix.

0.5 IES LM–58–20

(a) Section 3.0 ''Definitions and Nomenclature'' as referenced in section 2.1 of this appendix.

(b) [Reserved]

0.6 CIE 13.3

(a) Appendix 1 ''Terminology'' as referenced in section 2.1 of this appendix.

(b) [Reserved]

1. *Scope:* This appendix specifies the test methods required for determining the electrical and photometric performance characteristics of general service fluorescent lamps (GSFLs), incandescent reflector lamps (IRLs), and general service incandescent lamps (GSILs).

2. *Definitions*

2.1 To the extent that definitions in the referenced IES and CIE standards do not conflict with the DOE definitions, the definitions specified in Section 3.0 of IES LM–9–20, Section 3.0 of IES LM–20–20, Section 3.0 of IES LM–45–20, Section 3.0 of IES LM–58–20, and Appendix 1 of CIE 13.3 apply in this appendix.

2.2 *Initial input power* means the input power to the lamp, measured at the end of the lamp seasoning and stabilization.

2.3 *Initial lamp efficacy* means the lamp efficacy (as defined in § 430.2), measured at the end of the lamp seasoning and stabilization.

2.4 *Initial lumen output* means the lumen output of the lamp, measured at the end of the lamp seasoning and stabilization.

2.5 *Time to failure* means the time elapsed between first use and the point at which the lamp ceases to produce measurable lumen output.

3. *General Instructions*

3.1 When there is a conflict, the language of the test procedure in this appendix takes precedence over any materials incorporated by reference.

3.2 Maintain lamp operating orientation throughout seasoning and testing, except that for T5 miniature bipin standard and high output GSFLs, follow Section 6.2.2 of IES LM–9–20. For all GSFLs, maintain lamp orientation when transferring lamps from a warm-up position to the photometric equipment per Section 6.2.4 of IES LM–9–20. Maintain lamp orientation at all other times, if practical.

3.3 If a lamp breaks, becomes defective, fails to stabilize, exhibits abnormal behavior (such as swirling), or stops producing light prior to the end of the seasoning period, replace the lamp with a new unit. However, if a lamp exhibits one of the conditions listed in the previous sentence only after the seasoning period ends, include the lamp's measurements in the sample.

3.4 Operate GSILs and IRLs at the rated voltage for incandescent lamps as defined in 10 CFR 430.2.

4. *Test Method for Determining Initial Input Power, Initial Lumen Output, Initial Lamp Efficacy, CRI, and CCT*

4.1 *Test Conditions and Setup*

4.1.1 *General Service Fluorescent Lamps*

4.1.1.1 Establish ambient, physical, and electrical conditions in accordance with Sections (and corresponding subsections) 4.0, 5.0, 6.1, 6.5, and 6.6 of IES LM–9–20.

4.1.1.2 Operate each lamp at the appropriate voltage and current conditions as described in ANSI C78.375A–2020 and in either ANSI C78.81–2010 or ANSI C78.901–2005. Operate each lamp using the appropriate reference ballast at input voltage specified by the reference circuit as described in ANSI C82.3. If, for a lamp, both low-frequency and high-frequency reference ballast settings are included in ANSI C78.81–2010 or ANSI C78.901–2005, operate the lamp using the low-frequency reference ballast. When testing with low-frequency reference ballast settings, include cathode power only if the circuit application of the lamp is specified as rapid start in ANSI C78.81–2010 or ANSI C78.901–2005. When testing with high-frequency reference ballast settings, do not include cathode power in the measurement.

For any lamp not listed in ANSI C78.81–2010 or ANSI C78.901–2005, operate the lamp using the following reference ballast settings:

4.1.1.2.1 For 4-Foot medium bi-pin lamps, use the following reference ballast settings:

(a) T10 or T12 lamps: 236 volts, 0.43 amps, and 439 ohms, at low frequency (60 Hz) and with cathode power. Approximate cathode wattage (with 3.6 V on each cathode): 2.0 W. Cathode characteristics for low resistance (at 3.6V): 9.6 ohms (objective), 7.0 ohms (minimum). Cathode heat for rapid start: 3.6 V (nominal); 2.5 V min, 4.0 V max (limits during operation); 9.6 ohms +/ − 0.1 ohm (dummy load resistor); 3.4 V min, 4.5 V max (voltage across dummy load).

(b) T8 lamps greater than or equal to 32 W: 300 volts, 0.265 amps, and 910 ohms, at low frequency (60 Hz) and with cathode power. Approximate cathode wattage (with 3.6 V on each cathode): 1.7 W. Cathode characteristics for low resistance (at 3.6 V): 12.0 +/ − 2.0 ohms; 4.75 +/ − 0.50 (Rh/Rc ratio). Cathode heat for rapid start: 3.6 V (nominal); 2.5 V min; 4.4 V max (limits during operation); 11.0 ohms +/ − 0.1 ohms (dummy load resistor); 3.4 V min, 4.5 V max (voltage across dummy load).

(c) T8 lamps less than 32 W: 300 volts, 0.265 amps, and 910 ohms, at low frequency (60 Hz) and without cathode power.

4.1.1.2.2 For 2-Foot U-shaped lamps, use the following reference ballast settings:

(a) T12 lamps: 236 volts, 0.430 amps, and 439 ohms, at low frequency (60 Hz) and with cathode power. Approximate cathode wattage (with 3.6 V on each cathode): 2.0 W. Cathode characteristics for low resistance (at 3.6V): 9.6 ohms (objective), 7.0 ohms (minimum). Cathode heat for rapid start: 3.6 V (nominal); 2.5 V min, 4.0 V max (limits during operation); 9.6 ohms +/ − 0.1 ohm (dummy load resistor); 3.4 V min, 4.5 V max (voltage across dummy load).

(b) T8 lamps greater than or equal to 31 W: 300 volts, 0.265 amps, and 910 ohms, at low frequency (60 Hz) and with cathode power. Approximate cathode wattage (with 3.6 V on each cathode): 1.7 W. Cathode characteristics for low resistance (at 3.6 V): 11.0 ohms (objective); 8.0 ohms (minimum). Cathode heat for rapid start: 3.6 V (nominal); 2.5 V min; 4.4 V max (limits during operation); 11.0 ohms +/ − 0.1 ohms (dummy load resistor); 3.4 V min, 4.5 V max (voltage across dummy load).

(c) T8 lamps less than 31 W: 300 volts, 0.265 amps, and 910 ohms, at low frequency (60 Hz) and without cathode power.

4.1.1.2.3 For 8-foot slimline lamps, use the following reference ballast settings:

(a) *T12 lamps:* 625 volts, 0.425 amps, and 1280 ohms, at low frequency (60 Hz) and without cathode power.

(b) *T8 lamps:* 625 volts, 0.260 amps, and 1960 ohms, at low frequency (60 Hz) and without cathode power.

4.1.1.2.4 For 8-foot high output lamps, use the following reference ballast settings:

(a) *T12 lamps:* 400 volts, 0.800 amps, and 415 ohms, at low frequency (60 Hz) and with cathode power. Approximate cathode wattage (with 3.6 V on each cathode): 7.0 W. Cathode characteristics for low resistance (at 3.6 V): 3.2 ohms (objective); 2.5 ohms (minimum). Cathode heat requirements for rapid start: 3.6 V (nominal); 3.0 V min, 4.0 V max (limits during operation); 3.2 ohms +/ − 0.05 ohm (dummy load resistor); 3.4 V min, 4.5 V max (voltage across dummy load).

(b) *T8 lamps:* 450 volts, 0.395 amps, and 595 ohms, at high frequency (25 kHz) and without cathode power.

4.1.1.2.5 For 4-foot miniature bipin standard output or high output lamps, use the following reference ballast settings:

(a) *Standard Output:* 329 volts, 0.170 amps, and 950 ohms, at high frequency (25 kHz) and without cathode power.

(b) *High Output:* 235 volts, 0.460 amps, and 255 ohms, at high frequency (25 kHz) and without cathode power.

4.1.2 *General Service Incandescent Lamps:* Establish ambient, physical, and electrical conditions in accordance with Sections (and corresponding subsections) 4.0, 5.0, 6.1, 6.3 and 6.4 in IES LM–45–20.

4.1.3 *Incandescent Reflector Lamps:* Establish ambient, physical, and electrical conditions in accordance with Sections (and corresponding subsections) 4.0 and 5.0 in IES LM–20–20.

4.2 *Test Methods, Measurements, and Calculations*

Multiply all lumen measurements made with instruments calibrated to the devalued NIST lumen after January 1, 1996, by 1.011.

4.2.1 *General Service Fluorescent Lamps*

4.2.1.1 Season and stabilize lamps in accordance with Sections (and corresponding subsections) 6.1, 6.2, 6.3, and 6.4 of IES LM–9–20 and with IES LM–54–20.

4.2.1.2 Measure the initial input power (in watts).

4.2.1.3 Measure initial lumen output in accordance with Section 7.0 (and corresponding subsections) of IES LM–9–20 and with IES LM–78–20.

4.2.1.4 Calculate initial lamp efficacy by dividing the measured initial lumen output by the measured initial input power.

4.2.1.5 Calculate CRI as specified in Section 7.6 of IES LM–9–20 and CIE 13.3. Conduct the required spectroradiometric measurement and characterization in accordance with the methods set forth in IES LM–58–20.

4.2.1.6 Calculate CCT as specified in Section 7.6 of IES LM–9–20 and CIE 15:2018. Conduct the required spectroradiometric measurement and characterization in accordance with the methods set forth in IES LM–58–20.

4.2.2 *General Service Incandescent Lamps*

4.2.2.1 Season and stabilize lamps in accordance with Section (and corresponding subsections) 6.2 of IES LM–45–20 and with IES LM–54–20.

4.2.2.2 Measure the initial input power (in watts).

4.2.2.3 Measure initial lumen output in accordance with Section (and corresponding subsections) 7.0 of IES LM–45–20 and with IES LM–78–20.

4.2.2.4 Calculate initial lamp efficacy by dividing the measured initial lumen output by the measured initial input power.

4.2.2.5 Calculate CRI as specified in Section 7.4 of IES LM–45–20 and CIE 13.3. Conduct the required spectroradiometric measurement and characterization in accordance with the methods set forth in IES LM–58–20.

4.2.2.6 Calculate CCT as specified in Section 7.4 of IES LM–45–20 and CIE 15:2018. Conduct the required spectroradiometric measurement and characterization in accordance with the methods set forth in IES LM–58–20.

4.2.3 *Incandescent Reflector Lamps*

4.2.3.1 Season and stabilize lamps in accordance with Section (and corresponding subsections) 6.0 of IES LM–20–20 and with IES LM–54–20.

4.2.3.2 Measure the initial input power (in watts).

4.2.3.3 Measure initial lumen output in accordance with Sections (and corresponding subsections) 7.0 or 8.0 of IES LM–20–20 and with IES LM–78–20. When measuring in accordance with section 8.0, exclude undirected light using the method specified in section 8.2.

4.2.3.4 Calculate initial lamp efficacy by dividing the measured initial lumen output by the measured initial input power.

4.2.3.5 Calculate CRI as specified in CIE 13.3. Conduct the required spectroradiometric measurement and characterization in accordance with the methods set forth in IES LM–58–20.

4.2.3.6 Calculate CCT as specified in CIE 15:2018. Conduct the required spectroradiometric measurement and characterization in accordance with the methods set forth in IES LM–58–20.

5. *Test Method for Voluntary Representations for General Service Fluorescent Lamps*

Follow sections 1.0 through 4.0 of this appendix to make voluntary representations only for GSFLs that have high frequency reference ballast settings in ANSI C78.81–2016 or ANSI C78.901–2016. Where ANSI C78.81–2010 and ANSI C78.901–2005 are referenced in the preceding sections, use ANSI C78.81–2016 and ANSI C78.901–2016 instead. Operate lamps using high frequency reference ballast settings and without cathode power. Voluntary representations must be in addition to, not instead of, a representation in accordance with sections 1.0 to 4.0 of this appendix for GSFLs. As a best practice, an indication of high frequency operation should be provided with the voluntary representations.

6. *Test Method for Determining Time to Failure for General Service Incandescent Lamps and Incandescent Reflector Lamps*

6.1 *Test Conditions and Setup.* Establish ambient, physical, and electrical conditions as described in Sections (and corresponding subsections) 4.0 and 5.0 of IES LM–49–20.

6.2 *Test Methods, Measurements, and Calculations*

6.2.1 Season and stabilize lamps according to Section 6.2 of IES LM–45–20 for GSILs and in accordance with Section (and corresponding subsections) 6.0 of IES LM–20–20 for IRLs.

6.2.2 Measure the time to failure as specified in Section 6.4 of IES LM–49–20 and based on the lamp's operating time, expressed in hours, not including any off time.

6.3 Accelerated lifetime testing is not allowed; disregard the second paragraph of Section 6.4 of IES LM–49–20.

■ 14. Amend § 430.32 by revising paragraphs (n) and (x) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(n) *General service fluorescent lamps and incandescent reflector lamps.* (1) Each of the following general service fluorescent lamps manufactured after the effective dates specified in the table must meet or exceed the following color rendering index standards:

Lamp type	Nominal lamp watts *	Minimum color rendering index	Effective date
(i) 4-foot medium bipin	>35 W	69	Nov. 1, 1995.
	≤35 W	45	Nov. 1, 1995.
(ii) 2-foot U-shaped	>35 W	69	Nov. 1, 1995.
	≤35 W	45	Nov. 1, 1995.
(iii) 8-foot slimline	>65 W	69	May 1, 1994.
	≤65 W	45	May 1, 1994.
(iv) 8-foot high output	>100 W	69	May 1, 1994.
	≤100 W	45	May 1, 1994.

* Nominal lamp watts means the wattage at which a fluorescent lamp is designed to operate. 42 U.S.C. 6291(29)(H)

(2) The standards described in paragraph (n)(1) of this section do not apply to:

(i) Any 4-foot medium bipin lamp or 2-foot U-shaped lamp with a rated wattage less than 28 watts;

(ii) Any 8-foot high output lamp not defined in ANSI C78.81–2010 (incorporated by reference; see § 430.3) or related supplements, or not 0.800 nominal amperes; or

(iii) Any 8-foot slimline lamp not defined in ANSI C78.3 (incorporated by reference; see § 430.3).

(3) Each of the following general service fluorescent lamps manufactured on or after January 26, 2018, must meet or exceed the following lamp efficacy standards shown in the table:

Lamp type	Correlated color temperature	Minimum average lamp efficacy lm/W
(i) 4-foot medium bipin lamps (straight-shaped lamp with medium bipin base, nominal overall length of 48 inches, and rated wattage of 25 or more).	≤4,500K	92.4
	>4,500K and ≤7,000K	88.7
(ii) 2-foot U-shaped lamps (U-shaped lamp with medium bipin base, nominal overall length between 22 and 25 inches, and rated wattage of 25 or more).	≤4,500K	85.0
	>4,500K and ≤7,000K	83.3
(iii) 8-foot slimline lamps (instant start lamp with single pin base, nominal overall length of 96 inches, and rated wattage of 49 or more).	≤4,500K	97.0
	>4,500K and ≤7,000K	93.0
(iv) 8-foot high output lamps (rapid start lamp with recessed double contact base, nominal overall length of 96 inches).	≤4,500K	92.0
	>4,500K and ≤7,000K	88.0
(v) 4-foot miniature bipin standard output lamps (straight-shaped lamp with miniature bipin base, nominal overall length between 45 and 48 inches, and rated wattage of 25 or more).	≤4,500K	95.0
	>4,500K and ≤7,000K	89.3
(vi) 4-foot miniature bipin high output lamps (straight-shaped lamp with miniature bipin base, nominal overall length between 45 and 48 inches, and rated wattage of 44 or more).	≤4,500K	82.7
	>4,500K and ≤7,000K	76.9

Note 1 to paragraph (n)(3): For paragraphs (n)(3)(i) through (vi), rated wattage is defined with respect to fluorescent lamps and general service fluorescent lamps in § 430.2.

(4) Subject to the sales prohibition in paragraph (dd) of this section, each of the following incandescent reflector lamps manufactured after July 14, 2012, must meet or exceed the lamp efficacy standards shown in the table:

Rated wattage	Lamp spectrum	Lamp diameter inches	Rated voltage of lamp	Minimum average lamp efficacy lm/W
(i) 40–205	Standard Spectrum	>2.5	≥125 V	$6.8*P^{0.27}$
			<125 V	$5.9*P^{0.27}$
		≤2.5	≥125 V	$5.7*P^{0.27}$
			<125 V	$5.0*P^{0.27}$
(ii) 40–205	Modified Spectrum	>2.5	≥125 V	$5.8*P^{0.27}$
			<125 V	$5.0*P^{0.27}$
		≤2.5	≥125 V	$4.9*P^{0.27}$
			<125 V	$4.2*P^{0.27}$

Note 2 to paragraph (n)(4): P is equal to the rated wattage, in watts. Rated wattage is defined with respect to incandescent reflector lamps in § 430.2.

Note 3 to paragraph (n)(4): Standard Spectrum means any incandescent reflector lamp that does not meet the definition of modified spectrum in § 430.2.

(5) The standards specified in this section do not apply to the following types of incandescent reflector lamps:

(i) Lamps rated at 50 watts or less that are ER30, BR30, BR40, or ER40 lamps;

(ii) Lamps rated at 65 watts that are BR30, BR40, or ER40 lamps; or

(iii) R20 incandescent reflector lamps rated 45 watts or less.

* * * * *

(x) *General service incandescent lamps, intermediate base incandescent lamps and candelabra base incandescent lamps.* (1) Subject to the sales prohibition in paragraph (dd) of this section, the energy conservation standards in this paragraph apply to general service incandescent lamps.

(i) Intended for a general service or general illumination application (whether incandescent or not);

(ii) Has a medium screw base or any other screw base not defined in ANSI C81.61 (incorporated by reference; see § 430.3); and

(iii) Is capable of being operated at a voltage at least partially within the range of 110 to 130 volts.

(2) Subject to the sales prohibition in paragraph (dd) of this section, general service incandescent lamps manufactured after the effective dates specified in the tables below, except as described in paragraph (x)(3) of this section, must have a color rendering index greater than or equal to 80, a rated wattage no greater than, and a lifetime no less than the values shown in the table below:

GENERAL SERVICE INCANDESCENT LAMPS

Lumen ranges *	Maximum rated wattage	Minimum lifetime ** (hrs)	Effective date
(i) 1490–2600	72	1,000	1/1/2012
(ii) 1050–1489	53	1,000	1/1/2013
(iii) 750–1049	43	1,000	1/1/2014
(iv) 310–749	29	1,000	1/1/2014

* Use measured initial lumen output to determine the applicable lumen range.
** Use lifetime determined in accordance with 10 CFR 429.27 to determine compliance with this standard.

(3) Subject to the sales prohibition in paragraph (dd) of this section, modified spectrum general service incandescent lamps manufactured after the effective dates specified must have a color rendering index greater than or equal to 75, a rated wattage no greater than, and a lifetime no less than, the values shown in the table below:

MODIFIED SPECTRUM GENERAL SERVICE INCANDESCENT LAMPS

Lumen ranges *	Maximum rated wattage	Minimum lifetime ** (hrs)	Effective date
(i) 1118–1950	72	1,000	1/1/2012
(ii) 788–1117	53	1,000	1/1/2013
(iii) 563–787	43	1,000	1/1/2014
(iv) 232–562	29	1,000	1/1/2014

* Use measured initial lumen output to determine the applicable lumen range.
** Use lifetime determined in accordance with 10 CFR 429.27 to determine compliance with this standard.

(4) Subject to the sales prohibition in paragraph (dd) of this section, each candelabra base incandescent lamp must not exceed 60 rated watts.

(5) Subject to the sales prohibition in paragraph (dd) of this section, each intermediate base incandescent lamp must not exceed 40 rated watts.

* * * * *

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Federal Register

Vol. 87, No. 168

Wednesday, August 31, 2022

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–741–6000**

Laws **741–6000**

Presidential Documents

Executive orders and proclamations **741–6000**

The United States Government Manual **741–6000**

Other Services

Electronic and on-line services (voice) **741–6020**

Privacy Act Compilation **741–6050**

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FEDERAL REGISTER PAGES AND DATE, AUGUST

46883–47092 1
47093–47330 2
47331–47620 3
47621–47920 4
47921–48078 5
48079–48430 8
48431–48600 9
48601–49504 10
49505–49766 11
49767–49974 12
49975–50234 15
50235–50552 16
50553–50762 17
50763–50924 18
50925–51236 19
51237–51582 22
51583–51858 23
51859–52328 24
52329–52430 25
52431–52660 26
52661–52844 29
52845–53360 30
53361–53646 31

CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10428 48601
10429 51859
10430 52845
10431 53361

Executive Orders:
14079 49505
14080 52847

Administrative Orders:
Memorandums:
Memorandum of August 1, 2022 48599
Memorandum of August 8, 2022 51231
Memorandum of August 9, 2022 50233
Memorandum of August 12, 2022 51233
Memorandum of August 19, 2022 52659
Notices:
Notice of August 4, 2022 48077
Presidential Determinations:
No. 2022–20 of August 12, 2022 51235

6 CFR

126 48431

7 CFR

6 52851
210 ..... 47331, 52329
215 47331
220 ..... 47331, 52329
226 47331
457 52852
915 52431
932 50763
1499 53363
3555 53369

Proposed Rules:
51 48091
205 48562
981 51270
983 51006
3555 47646

8 CFR

106 53152
236 53152
274a 53152

Proposed Rules:
274a 50786

9 CFR

317 50553
381 50553
439 51861

Proposed Rules:
201 48091

10 CFR

429 ..... 50396, 53618
430 ..... 50396, 51199, 51492, 52433, 53618
707 49975

Proposed Rules:
30 47947
70 47947
429 53302
430 ..... 51734, 52282, 52861
431 ..... 49537, 53302
626 47652

12 CFR

201 48441
204 48442
338 ..... 48079, 49767
343 ..... 48079, 49767
Ch. X 50556

Proposed Rules:
1282 50794

13 CFR

115 48080
120 46883
125 50925
129 50925

14 CFR

25 ..... 47332, 48084, 52661
29 52854
39 ..... 47093, 47334, 47337, 49509, 49515, 50235, 50560, 51583, 51585, 51588, 51590, 52330, 52434, 52663
71 ..... 47097, 47098, 47342, 49519, 49767, 49768, 49769, 49979, 50237, 50239, 50563, 50565, 50566, 50928, 51237, 51238, 51239, 51241, 51242, 51243, 51245, 51246, 51248, 51592, 51867, 51868, 51870, 52332, 52333, 52437, 52438, 52439, 52441, 52442, 52665, 52667, 52668, 52669, 52671, 52672, 52673, 52674, 52676
89 49520
93 47921
95 51594
97 ..... 48086, 48087, 51871, 51873
399 52677

Proposed Rules:
25 46892
39 ..... 46903, 46906, 47141, 47144, 49554, 49556, 49773, 49776, 49779, 50005, 50009, 50588, 51271, 51617, 52705, 53419, 53421, 53424
71 ..... 47146, 47149, 47150, 49781, 49783, 50011, 50015, 50018, 50019, 50021, 50023,

49573, 49796, 51955

660.....50824

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 29, 2022

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