FEDERAL REGISTER

Vol. 87 Thursday

No. 178 September 15, 2022

Pages 56559–56860

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 87 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Contents

Federal Register

Vol. 87, No. 178

Thursday, September 15, 2022

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.

Federal Register
Vol. 87, No. 178
Thursday, September 15, 2022

Presidential Documents

Title 3—

The President

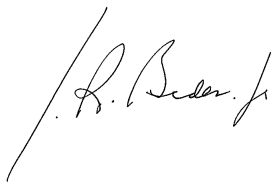
Memorandum of September 8, 2022

Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506 (a)(1) of the FAA to direct the drawdown of up to $675 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 8, 2022

[FR Doc. 2022–20112
Filed 9–14–22; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 87, No. 178
Thursday, September 15, 2022

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0391; Project Identifier MCAI–2021–00980–T; Amendment 39–22163; AD 2022–18–12]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–841 and –941 airplanes. This AD was prompted by a report of erroneous electronic centralized airplane monitoring (ECAM) warnings for low engine oil pressure, which can lead to a commanded shutdown of an engine. This AD requires installing serviceable engine electronic control (EEC) software or EEC units having the serviceable software, limiting certain parts installation configurations, and prior or concurrent modification of EEC software, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 20, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 20, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *easa.europa.eu.* You may find this IBR material on the EASA website at *ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–0391.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–0391; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0198, dated August 27, 2021 (EASA AD 2021–0198) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–841 and –941 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–841 and –941 airplanes. The NPRM published in the **Federal Register** on April 5, 2022 (87 FR 19651). The NPRM was prompted by a report of erroneous ECAM warnings for low engine oil pressure, which can lead to a commanded shutdown of an engine. The NPRM proposed to require installing serviceable EEC software or EEC units having the serviceable software, limiting certain parts installation configurations, and prior or concurrent modification of EEC software, as specified in EASA AD 2021–0198.

The FAA is issuing this AD to address erroneous ECAM engine oil pressure warnings, which could lead to dual engine in-flight shutdown and result in reduced control of the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from three commenters, including Delta Air Lines and two individuals. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request for Incorporation by Reference Paragraph

Delta Air Lines (Delta) requested adding paragraph (k), ''Material Incorporated by Reference,'' to the proposed AD that states the incorporation by reference of EASA AD 2021–0198. Delta supported the improved efficiency of FAA ADs that reference EASA ADs as a primary source of information for accomplishing the requirements of FAA ADs.

The FAA agrees to add paragraph (k) to this AD to identify the material that is incorporated by reference. In ADs, whenever there is material to be incorporated by reference, the paragraph that states which material has been approved by the Director of the Federal Register for incorporation by reference is typically added to final rules, not NPRMs.

General Statement of Disagreement

Two individuals generally disagreed with the proposed AD without any further justification.

The FAA infers that these individuals are requesting that the FAA withdraw the proposed AD. The FAA disagrees with withdrawing the proposed AD. The FAA has determined that the issuance of an airworthiness directive is the appropriate method to correct the unsafe condition described in this AD. The FAA has not changed the AD in this regard.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires

adopting this AD as proposed. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0198 specifies procedures for installing serviceable EEC software or EEC units having the serviceable software, limiting certain parts installation configurations, and prior or concurrent modification of EEC software. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 11 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
21 work-hours × $85 per hour = $1,785	$0	$1,785	$19,635

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–18–12 Airbus SAS: Amendment 39–22163; Docket No. FAA–2022–0391; Project Identifier MCAI–2021–00980–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 20, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A330–841 and –941 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 73, Engine Fuel & Control.

(e) Unsafe Condition

This AD was prompted by a report of erroneous electronic centralized airplane monitoring (ECAM) warnings for low engine oil pressure, which can lead to a commanded shutdown of an engine. The FAA is issuing this AD to address erroneous ECAM engine oil pressure warnings, which could lead to dual engine in-flight shutdown and result in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0198, dated August 27, 2021 (EASA AD 2021–0198).

(h) Exceptions to EASA AD 2021–0198

(1) Where EASA AD 2021–0198 refers to its effective date or ''10 September 2021,'' this AD requires using the effective date of this AD.

(2) Where paragraphs (5) and (6) of EASA AD 2021–0198 refers to ''From 10 September 2021 . . . until 09 September 2023,'' this AD requires using ''from the effective date of this AD up to 24 months after the effective date of this AD.''

(3) Where paragraph (7) of EASA AD 2021–0198 refers to ''10 September 2023,'' this AD requires using 24 months after the effective date of this AD.

(4) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0198.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft

Section, International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

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

(j) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0198, dated August 27, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0198, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *easa.europa.eu*. You may find this EASA AD on the EASA website at *ad.easa.europa.eu*.

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

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

Issued on August 23, 2022.

Christina Underwood,

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

[FR Doc. 2022–19808 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1168; Project Identifier AD–2021–00825–T; Amendment 39–22138; AD 2022–16–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–8 airplanes. This AD was prompted by a report that, during production, a small number of fasteners in certain locations of the center fuel tank were cap sealed on top of a black stripe of ink with a clear overcoat. This clear overcoat is not an approved surface for sealing and can potentially compromise sealant adhesion. Compromised sealant adhesion can, over time, affect the lightning-protection properties of the airplane. This AD requires preparation of the affected surface areas to ensure that there is adequate sealant adhesion, and complete encapsulation of the discrepant fastener locations with the approved production sealant. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 20, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 20, 2022.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *www.regulations.gov* by searching for and locating Docket No. FAA–2021–1168.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2021–1168; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Chris Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3552; email: *christopher.r.baker@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 737–8 airplanes. The NPRM published in the **Federal Register** on February 23, 2022 (87 FR 10110). The NPRM was prompted by a report that, during production, a small number of fasteners common to upper wing panel stringers U–S1, U–S10, U–S12, U–S20, and U–S21 and lower wing panel stringer L–S14 were cap sealed on top of a black stripe of ink with a clear overcoat. The black stripe of ink and clear overcoat were applied during airplane assembly to certain interior areas of the center fuel tank to ensure proper alignment of components, and this discrepancy was not identified by Boeing prior to the delivery of certain airplanes. The purpose of cap sealing is to provide a secondary layer of lightning protection to the metal-to-metal rivet installation bond. The clear overcoat is not an approved surface for sealing and can potentially compromise sealant adhesion.

Compromised sealant adhesion can, over time, affect the lightning protection properties of the airplane. In the NPRM, the FAA proposed to require preparation of the affected surface areas to ensure that there is adequate sealant adhesion, and complete encapsulation of the discrepant fastener locations with

the approved production sealant. This condition, if not addressed and combined with a flammable center tank ullage and an independent failure of the primary lightning protection feature, could result in ignition of the fuel vapors and subsequent explosion in the event of a lightning strike to that fastener.

Discussion of Final Airworthiness Directive

Comments

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

The FAA received additional comments from two commenters, Boeing and Southwest Airlines (SWA). The following presents the additional comments received on the NPRM and the FAA's response to each comment.

Request To Add Alternative Methods of Compliance to the Final Rule

SWA requested that the FAA provide an option to operators that would allow removal of the current application of BMS5–45 sealant in the affected areas and removal of the black stripe of ink in accordance with certain operator procedures (or other acceptable procedures), then allowing for refinishing and sealing of the affected area in accordance with certain other operator instructions. SWA reasoned that these additional methods would address the unsafe condition and would allow airworthiness limitation (AWL) inspections and standard maintenance to be accomplished as intended in the structural repair manual (SRM) and maintenance planning document (MPD).

SWA explained that it is concerned that extending BMS5–45 sealant 0.6 inches beyond the current production application area could prevent inspections performed in accordance with 737–7/8/8200/9/10 Airworthiness Limitations (AWL) D626A011–9–04 and MPD principal structural element (PSE) 57–020–00. SWA went on to explain that extending the BMS5–45 sealant up to 0.6 inches beyond the current production application area to encapsulate the discrepant area contradicts the sealant restoration procedures outlined in 737–8MAX SRM 51–80–01 which states, ''SEALANT MUST NOT EXTEND MORE THAN 0.125 INCH (3.18mm) ON TO THE SURFACE OF THE PART FOR DAMAGE TOLERANCE INSPECTION REASONS.'' SWA expressed concern that if an airplane requires repairs or maintenance actions in the affected area, or requires AWL/MPD required inspection 57–020–00, the BMS5–45 sealant will be stripped and, if the affected area is restored in accordance with 737–8MAX SRM 51–80–01, could lead to an operator inadvertently undoing the actions specified in Boeing Special Attention Requirements Bulletin 737–57–1352 RB, dated February 1, 2021.

The FAA agrees that the service bulletin instructions could conflict with future actions required by the 737–7/8/8200/9/10 Airworthiness Limitations (AWL) D626A011–9–04, in that the added sealant might impede the operator's ability to inspect the structure. The FAA also agrees that operators could use the existing sealant restoration procedures to remove the current application of BMS5–45 sealant in the discrepant areas, remove the black stripe of ink in accordance with acceptable surface preparation procedures, and reseal the fasteners in accordance with standard sealing procedures of fasteners penetrating the fuel tank. The FAA has added an optional method of removing the existing sealant and black stripe of ink prior to reapplying a fastener seal in paragraph (h) of this AD and redesignated subsequent paragraphs.

Request for Additional Detail to the Unsafe Condition Statement

Boeing requested that the unsafe condition statement found in the Background section of the preamble and paragraph (e) of the proposed AD include more detail of the conditions and failures required for a fuel tank ignition to occur. Boeing stated that in the proposed AD, the unsafe condition statement lists only compromised sealant adhesion as the condition needed for an ignition of fuel tank vapors in the event of a lightning strike. Boeing pointed out that ignition of fuel tank vapor requires an independent failure of the primary ignition prevention feature, a failed cap seal, a lightning attachment to the particular fastener, and that the fuel tank is flammable.

Boeing requested that the FAA change the fifth sentence in the Background section of the proposed AD to state, ''This condition, if not addressed and combined with a flammable center tank ullage and an independent failure of the primary lightning protection feature, could result in ignition of the fuel vapors and subsequent explosion in the event of a lightning strike to that fastener.'' Boeing requested similar changes to the second sentence of paragraph (e) of the proposed AD.

The FAA agrees with the request for the reasons provided. Boeing provided a more detailed description of the potential failure sequence. The FAA has revised the Background section of this final rule and the second sentence of paragraph (e) of this AD accordingly.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Special Attention Requirements Bulletin 737–57–1352 RB, dated February 1, 2021. This service information specifies procedures for preparing the surface and completely encapsulating the black stripe of ink, the clear overcoat, and the existing sealant with the approved production (BMS5–45) sealant at upper stringer U–S1, U–S10, U–S12, U–S20, and U–S21, and lower stringer L–S14. The affected areas are all located on the portion of the stringers just outboard of the center wing box. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 11 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Apply Sealant	106 work-hours × $85 per hour = $9,010	$500	$9,510	$104,610

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Remove Sealant and Black Stripe of Ink, and Reapply Fastener Seal.	118 work-hours × $85 per hour = $10,030	$500	$10,030

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–16–09 The Boeing Company: Amendment 39–22138; Docket No. FAA–2021–1168; Project Identifier AD–2021–00825–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 20, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–8 airplanes, certificated in any category, as identified in Boeing Special Attention Requirements Bulletin 737–57–1352 RB, dated February 1, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report that, during production, a small number of fasteners in certain locations of the center fuel tank were cap sealed on top of a black stripe of ink with a clear overcoat. This clear overcoat is not an approved surface for sealing and can potentially compromise sealant adhesion. Compromised sealant adhesion can, over time, affect the lightning protection properties of the airplane. The FAA is issuing this AD to address compromised sealant adhesion within the center fuel tank, which, if combined with a flammable center tank ullage and an independent failure of the primary lightning protection feature, could result in ignition of fuel vapors and subsequent explosion of the fuel tank in the event of a lightning strike to that fastener.

(f) Compliance

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

(g) Required Actions

Within 10 years after the date of issuance of the original airworthiness certificate or the original export certificate of airworthiness, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 737–57–1352 RB, dated February 1, 2021, except as specified by paragraph (h) of this AD.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Service Bulletin 737–57–1352, dated February 1, 2021, which is referred to in Boeing Special Attention Requirements Bulletin 737–57–1352 RB, dated February 1, 2021.

(h) Optional Method To Remove Previously Applied Sealant and Black Stripe of Ink, and Reapply Fastener Seal

As an option to the sealant application required by paragraph (g) of this AD, it is acceptable to remove the existing sealant and the black stripe of ink prior to reapplying a fastener seal. Remove existing sealant and black stripe of ink as follows:

(1) Remove existing sealant to expose the black stripe of ink.

(2) Remove existing black stripe of ink using aluminum oxide cloth or paper, 150 to 220 grit.

Note 2 to paragraph (h)(2): Take caution not to abrade through the existing oven cured BMS10–20 coating under the black stripe of ink. The BMS10–20 was previously applied during production.

(3) Touch up exposed aluminum with Alodine 600 (Type I, II, or III) or Bonderite M–CR 600 Aero (Type I, II, or III).

(4) Apply fastener seal (cap seal) with BMS5–45.

(5) Apply BMS10–20 Type II fuel tank coating to any exposed alodine/bonderite surfaces not covered by the fastener seal; it is acceptable to extend BMS10–20 Type II coating over fastener seal.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Chris Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3552; email: *christopher.r.baker@faa.gov.*

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

(k) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Requirements Bulletin 737–57–1352 RB, dated February 1, 2021.

(ii) [Reserved]

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

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

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

Issued on July 29, 2022.

Christina Underwood,

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

[FR Doc. 2022–19902 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0591; Project Identifier MCAI–2021–01302–T; Amendment 39–22165; AD 2022–18–14]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–19–13, AD 2018–24–04, and AD 2019–23–02, which applied to certain Airbus SAS Model A330–200 series, A330–200 Freighter series, and A330–300 series airplanes. ADs 2017–19–13, 2018–24–04, and 2019–23–02 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by the FAA's determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2019–23–02, adds airplanes to the applicability, and requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 20, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 20, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of December 30, 2019 (84 FR 64725, November 25, 2019).

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find this IBR material on the EASA website at *ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–0591.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–0591; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206 231 3229; email *vladimir.ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0261, dated November 22, 2021 (EASA AD 2021–0261) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–201, –202, –203, –223, –243, –223F, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343, –841, and –941 airplanes.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after November 2, 2021, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–19–13, Amendment 39–19043 (82 FR 43837, September 20, 2017) (AD 2017–19–13); AD 2018–24–04, Amendment 39–19508 (83 FR 60756, November 27, 2018) (AD 2018–24–04); and AD 2019–23–02, Amendment 39–19795 (84 FR 64725, November 25, 2019) (AD 2019–23–02), which applied to certain Airbus SAS Model A330–200 series, A330–200 Freighter series, and A330–300 series airplanes. The NPRM published in the **Federal Register** on May 31, 2022 (87 FR 32368). The NPRM was prompted by

a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to continue requiring the actions in AD 2019–23–02, add airplanes to the applicability, and require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in EASA AD 2021–0261.

The FAA is issuing this AD to address fatigue cracking, accidental damage, and corrosion in principal structural elements; such fatigue cracking, accidental damage, and corrosion could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Air Line Pilots Association, which supported the NPRM without change.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0261 describes new or more restrictive airworthiness limitations for airplane structures, including a limit of validity (LOV) for Model A330–841 and A330–941 airplanes.

This AD also requires Airbus A330 Airworthiness Limitations Section (ALS) Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 03, dated October 15, 2018; and Airbus A330 Airworthiness Limitations Section (ALS) Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Variation 3.1, dated January 18, 2019, which the Director of the Federal Register approved for incorporation by reference as of December 30, 2019 (84 FR 64725, November 25, 2019).

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

Costs of Compliance

The FAA estimates that this AD affects 138 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–23–02 to be $7,650 (90 work-hours × $85 per work-hour).

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2017–19–13, Amendment 39–19043 (82 FR 43837, September 20, 2017); AD 2018–24–04, Amendment 39–19508 (83 FR 60756, November 27, 2018); and AD 2019–23–02, Amendment 39–19795 (84 FR 64725, November 25, 2019); and

■ b. Adding the following new AD:

2022–18–14 Airbus SAS: Amendment 39–22165; Docket No. FAA–2022–0591; Project Identifier MCAI–2021–01302–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 20, 2022.

(b) Affected ADs

This AD replaces the ADs specified in paragraphs (b)(1) through (3) of this AD.

(1) AD 2017–19–13, Amendment 39–19043 (82 FR 43837, September 20, 2017) (AD 2017–19–13).

(2) AD 2018–24–04, Amendment 39–19508 (83 FR 60756, November 27, 2018) (AD 2018–24–04).

(3) AD 2019–23–02, Amendment 39–19795 (84 FR 64725, November 25, 2019) (AD 2019–23–02).

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (5) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 2, 2021.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Model A330–223F and –243F airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–841 airplanes.

(5) Model A330–941 airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, accidental damage, and corrosion in principal structural elements; such fatigue cracking, accidental damage, and corrosion could result in reduced structural integrity of the airplane.

(f) Compliance

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

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

This paragraph restates the requirements of paragraph (g) of AD 2019–23–02, with no changes. For Model A330–201, –202, –203, –223, and –243; A330–223F and –243F; and A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before January 18, 2019: Within 90 days after December 30, 2019 (the effective date AD 2019–23–02), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 03, dated October 15, 2018 (Airbus A330 ALS Part 2, DT–ALI, Revision 03), as supplemented by Airbus A330 ALS Part 2, DT–ALI, Variation 3.1, dated January 18, 2019. The initial compliance time for doing the tasks is at the time specified in Airbus A330 ALS Part 2, DT–ALI, Revision 03, including Airbus A330 ALS Part 2, DT–ALI, Variation 3.1, dated January 18, 2019; or within 90 days after December 30, 2019; whichever occurs later. This AD does not require Section 4, ''Damage Tolerant-Airworthiness Limitations Items-Tasks Beyond MPPT,'' of Airbus A330 ALS Part 2, DT–ALI, Revision 03. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (i) of this AD terminates the requirements of this paragraph.

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

This paragraph restates the requirements of paragraph (h) of AD 2019–23–02, with a new exception. Except as required by paragraph (i) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals, may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

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

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0261, dated November 22, 2021 (EASA AD 2021–0261). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2021–0261

(1) Where EASA AD 2021–0261 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0261 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0261 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2021–0261 is at the applicable ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0261, or within 90 days after the effective date of this AD, whichever occurs later.

(5) This AD does not require incorporating Section 4, ''Damage Tolerant-Airworthiness Limitations Items-Tasks Beyond MPPT,'' of ''the ALS'' specified in EASA AD 2021–0261.

(6) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0261 do not apply to this AD.

(7) The ''Remarks'' section of EASA AD 2021–0261 does not apply to this AD.

(k) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0261.

(l) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(ii) The AMOC specified in letter AIR–676–19–120, dated March 5, 2019, approved previously for AD 2018–24–04, is approved as an AMOC for the corresponding provisions of EASA AD 2021–0261 that are required by paragraph (i) of this AD for Model A330–200 and A330–300 series airplanes modified from a passenger to freighter configuration under the provisions of FAA Supplemental Type Certificate ST04038NY.

(iii) The AMOC specified in letter AIR–731A–20–179, dated May 11, 2020, approved previously for AD 2019–23–02 is approved as an AMOC for the corresponding provisions of EASA AD 2021–0261 that are required by paragraph (i) of this AD for Model A330–200 and A330–300 series airplanes modified from a passenger to freighter configuration under the provisions of FAA Supplemental Type Certificate ST04038NY.

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

(m) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206 231 3229; email *vladimir.ulyanov@faa.gov.*

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on October 20, 2022.

(i) European Union Aviation Safety Agency (EASA) AD 2021–0261, dated November 22, 2021.

(ii) [Reserved]

(4) The following service information was approved for IBR on December 30, 2019 (84 FR 64725, November 25, 2019).

(i) Airbus A330 Airworthiness Limitations Section (ALS) Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 03, dated October 15, 2018.

(ii) Airbus A330 Airworthiness Limitations Section (ALS) Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Variation 3.1, dated January 18, 2019.

(5) For EASA AD 2021–0261, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(6) For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* internet *airbus.com.*

(7) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the

availability of this material at the FAA, call 206–231–3195.

(8) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *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. 2022–19809 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0515; Project Identifier AD–2022–00287–E; Amendment 39–22140; AD 2022–17–02]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain CFM International, S.A. (CFM) LEAP–1B model turbofan engines. This AD was prompted by multiple commanded in-flight shutdowns (IFSDs) due to inner radial drive shaft (RDS) failure. This AD requires initial and repetitive inspections of the transfer gearbox (TGB) scavenge screens and, depending on the results of the inspections, replacement or rework of the affected inner RDS. As a mandatory terminating action to the initial and repetitive inspections of the TGB scavenge screens, this AD requires replacement or rework of the affected inner RDS. This AD also prohibits the installation of an engine with an affected inner RDS onto an airplane that already has one engine with an affected inner RDS installed. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 20, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 20, 2022.

ADDRESSES: For service information identified in this final rule, contact CFM International, S.A., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432–3272; email: *fleetsupport@ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0515.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0515; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mehdi Lamnyi, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; email: *Mehdi.Lamnyi@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain CFM LEAP–1B21, LEAP–1B23, LEAP–1B25, LEAP–1B27, LEAP–1B28, LEAP–1B28B1, LEAP–1B28B2, LEAP–1B28B2C, LEAP–1B28B3, LEAP–1B28BBJ1, and LEAP–1B28BBJ2 (LEAP–1B) model turbofan engines. The NPRM published in the **Federal Register** on June 06, 2022 (87 FR 34221). The NPRM was prompted by reports of multiple IFSDs on CFM LEAP–1B model turbofan engines beginning in August 2018. The manufacturer's investigations determined that some of these IFSD events were the result of inadequate oil flow to the RDS bearing, which caused the RDS bearing and RDS bearing cage to fail. The FAA issued AD 2019–12–01, Amendment 39–19656 (84 FR 28202, June 18, 2019), which required initial and repetitive inspections of the TGB scavenge screens and, depending on the results of the inspection, possible removal of the engine from service.

After the FAA issued AD 2019–12–01, further investigation by the manufacturer identified an additional contributing factor to the RDS bearing failures. The manufacturer revised the service information to include a repetitive TGB screen inspection until the RDS accumulates 1,500 flight hours (FHs) since new and borescope inspections of the RDS bearing at 1,500 FHs since new and 6,000 FHs since new. The FAA superseded AD 2019–12–01 by issuing AD 2020–06–01, Amendment 39–21103 (85 FR 14413, March 12, 2020), which requires revision to the airworthiness limitations section (ALS) of the applicable engine shop manual to incorporate the new inspections.

Since the FAA issued AD 2020–06–01, the FAA received further reports of commanded IFSDs due to inner RDS failure. The manufacturer initiated an investigation and identified a subpopulation of inner RDS susceptible to rivet fatigue failure occurring after the inspection thresholds required by the ALS revision in AD 2020–06–01. In the NPRM, the FAA proposed to require initial and repetitive inspections of the TGB1 and TGB2 scavenge screens and, depending on the results of the inspections, replacement or rework of the affected inner RDS. As a mandatory terminating action to the initial and repetitive inspections of the TGB1 and TGB2 scavenge screens, the FAA proposed to require replacement or rework of the affected inner RDS. The FAA also proposed prohibiting the installation of an engine with an affected inner RDS onto an airplane that already has one engine with an affected inner RDS installed. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from three commenters. Commenters included The Boeing Company, Air Line Pilots Association, International, and United Airlines. All commenters supported the NPRM without change.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed CFM Service Bulletin (SB) LEAP–1B–72–00–0258–01A–930A–C, Issue 002, dated September 15, 2020. This service

information specifies procedures for replacement or rework of the inner RDS. The FAA also reviewed CFM SB LEAP–1B–72–00–0365–01A–930A–D, Issue 003–00, dated April 26, 2022. This service information identifies the affected serial numbers of the inner RDS susceptible to rivet fatigue failure and specifies procedures for performing inspections of TGB1 and TGB2 scavenge screens. This service information also specifies procedures for accomplishing applicable corrective actions if metallic particles are found. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 34 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect TGB1 and TGB 2 scavenge screens	1 work-hour × $85 per hour = $85	$0	$85	$2,890

For either replacement or rework of the inner RDS, depending on the option selected by the operator to comply with this AD, the FAA estimates the following costs:

Action	Labor cost	Parts cost	Cost per product
Replace inner RDS	600 work-hours × $85 per hour = $51,000	$60,000	$111,000
Rework inner RDS	600 work-hours × $85 per hour = $51,000	54,000	105,000

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–17–02 CFM International, S.A.: Amendment 39–22140; Docket No. FAA–2022–0515; Project Identifier AD–2022–00287–E.

(a) Effective Date

This airworthiness directive (AD) is effective October 20, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to CFM International, S.A. (CFM) LEAP–1B21, LEAP–1B23, LEAP–1B25, LEAP–1B27, LEAP–1B28, LEAP–1B28B1, LEAP–1B28B2, LEAP–1B28B2C, LEAP–1B28B3, LEAP–1B28BBJ1, and LEAP–1B28BBJ2 model turbofan engines with an installed inner radial drive shaft (RDS) with a serial number listed in Additional Information, paragraph 6.A., Table 1, of CFM Service Bulletin (SB) LEAP–1B–72–00–0365–01A–930A–D, Issue 003–00, dated April 26, 2022 (CFM SB LEAP–1B–72–00–0365–01A–930A–D).

(d) Subject

Joint Aircraft System Component (JASC) Code 7260, Turbine Engine Accessory Drive.

(e) Unsafe Condition

This AD was prompted by multiple commanded in-flight shutdowns (IFSDs) due to inner RDS failure. The FAA is issuing this AD to prevent failure of the inner RDS and subsequent IFSDs. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Before exceeding 50 flight hours (FHs) after the effective date of this AD, and thereafter at intervals not to exceed 50 FHs from the previous inspection, inspect the transfer gearbox (TGB) TGB1 and TGB2 scavenge screens in accordance with the Accomplishment Instructions, paragraph 5.A.(1), of CFM SB LEAP–1B–72–00–0365–01A–930A–D.

(2) If, during any inspection required by paragraph (g)(1) of this AD, any metallic particles are found, before further flight, perform the actions in the Accomplishment Instructions, paragraphs 5.A.(2) and (3), of CFM SB LEAP–1B–72–00–0365–01A–930A–D. Where paragraph 5.A.(3)(b) of CFM SB LEAP–1B–72–00–0365–01A–930A–D specifies to remove the engine, this AD instead requires replacement or rework of the inner RDS in accordance with the Accomplishment Instructions, paragraph 5.A., of CFM SB LEAP–1B–72–00–0258–01A–930A–C Issue 002, dated September 15, 2020 (CFM SB LEAP–1B–72–00–0258–01A–930A–C).

(h) Mandatory Terminating Action

As a mandatory terminating action to the initial and repetitive inspections of the TGB1 and TGB2 scavenge screens required by paragraph (g)(1) of this AD, at the next piece-part exposure after the effective date of this AD, replace or rework the inner RDS in accordance with the Accomplishment Instructions, paragraph 5.A., of CFM SB LEAP–1B–72–00–0258–01A–930A–C.

(i) Installation Prohibition

After the effective date of this AD, do not install an engine with an affected inner RDS onto an airplane that already has one engine with an affected inner RDS installed.

(j) Definitions

For the purpose of this AD, ''piece-part exposure'' is when the fan frame shroud is separated from the fan hub.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(l) Related Information

For more information about this AD, contact Mehdi Lamnyi, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; email: *Mehdi.Lamnyi@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) CFM International, S.A. Service Bulletin LEAP–1B–72–00–0258–01A–930A–C, Issue 002, dated September 15, 2020.

(ii) CFM International, S.A. Service Bulletin LEAP–1B–72–00–0365–01A–930A–D, Issue 003–00, dated April 26, 2022.

(3) For service information identified in this AD, contact CFM International, S.A., Aviation Operations Center, 1 Neumann Way, M/D Room 285, Cincinnati, OH 45125; phone: (877) 432–3272; email: *fleetsupport@ge.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on August 2, 2022.

Christina Underwood,

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

[FR Doc. 2022–19946 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0872; Project Identifier AD–2022–00431–R; Amendment 39–22181; AD 2022–19–12]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–19–08, which applied to certain Robinson Helicopter Company (Robinson) Model R44 and R44 II helicopters. AD 2021–19–08 required checking each tail rotor blade (blade) for any crack and removing any cracked blade from service. AD 2021–19–08 also required removing all affected blades from service and prohibited installing any affected blade on any helicopter. Since the FAA issued AD 2021–19–08, it was determined that an additional model helicopter and additional blades are affected by the unsafe condition. This AD requires the same actions as AD 2021–19–08 and adds certain Robinson Model R66 helicopters to the applicability and adds additional part-numbered and serial-numbered blades to the applicability. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 20, 2022.

ADDRESSES: *AD Docket:* You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–0872; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James Guo, Aerospace Engineer, Airframe Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5357; email *james.guo@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–19–08, Amendment 39–21726 (86 FR 49915, September 7, 2021) (AD 2021–19–08). AD 2021–19–08 applied to Robinson Model R44 and R44 II helicopters with a blade part number (P/N) C029–3 with serial number (S/N) 9410 through 9909 inclusive, installed. The NPRM published in the **Federal Register** on July 13, 2022 (87 FR 41627). The NPRM was prompted by reports of spanwise cracks found along the leading edge of P/N C029–3 blades, S/N 9410 through 9909. These affected blades were factory-installed or shipped as spares between March and December 2019. The cracks were found at different inspection intervals ranging from preflight inspections to 100-hour inspections. In one instance, a cracked blade was suspected when the pilot felt abnormal vibrations during flight; subsequent investigation determined that the blade was cracked. The cause of the cracks was determined to be a manufacturing defect in the properties of the blade skin that makes the blades prone to stress corrosion cracking. The NPRM was also prompted by a determination after AD 2021–19–08 was issued that an additional model helicopter and additional blades are affected by the unsafe condition. This condition, if not addressed, could result in reduced controllability and subsequent loss of control of the helicopter. AD 2021–19–08 required

checking each blade for any crack and removing any cracked blade from service. AD 2021–19–08 also required removing all affected blades from service and prohibited installing any affected blade on any helicopter. In the NPRM, the FAA proposed to continue to require, before further flight and thereafter before each flight, checking each affected blade for any crack along the leading edge of the blade. An owner/operator (pilot) holding at least a private pilot certificate may perform this check and would have to enter compliance with the applicable paragraph of this AD in the helicopter maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). A pilot may perform this check because it involves visually checking each blade for a crack. This action could be performed equally well by a pilot or a mechanic. This check is an exception to the FAA's standard maintenance regulations. The NPRM also proposed to continue to require, before further flight, removing from service any cracked blade and prohibit installing the affected blades on any helicopter. This NPRM also proposed to require, within three months after the effective date of AD 2021–19–08 or within six months after the effective date of this AD, as applicable, removing all affected blades from service. Finally, the NPRM revises the applicability of AD 2021–19–08 by adding blades with P/N C029–3 with S/N 9910 through 10659 inclusive to the applicability for Robinson Model R44 and R44 II helicopters and also expands the applicability of AD 2021–19–08 by adding Robinson Model R66 helicopters with blade P/N F–029–1 with S/N 2410 through 2589 inclusive installed.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adoption of the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information

The FAA reviewed Robinson R44 Service Bulletin SB–108, dated June 30, 2021. This service bulletin specifies removing P/N C029–3 blades with S/N 9410 through 9909 from service. For continued operation until the affected blades are replaced, the service bulletin specifies a preflight inspection to be performed by the pilot.

The FAA also reviewed Robinson R44 Service Bulletin SB–110, which specifies removing P/N C029–3 blades with S/N 9910 through 10659 from service and Robinson R66 Service Bulletin SB–40, which specifies removing P/N F029–1 blades with S/N 2410 through 2589 from service. Both of these service bulletins are dated January 6, 2022, and specify that a preflight inspection is to be performed by the pilot for continued operation until the affected blades are replaced.

Costs of Compliance

The FAA estimates that this AD affects 432 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD. Labor costs are estimated at $85 per work-hour.

Checking a blade for any crack takes about 0.25 work-hour for an estimated cost of up to $44 per helicopter (up to two affected blades per helicopter) and up to $19,008 for the U.S. fleet per check. Replacing a blade takes about 3.5 work-hours and parts cost about $3,320 for an estimated cost of $3,618 per blade and up to $3,125,952 for the U.S. fleet.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–19–08, Amendment 39–21726 (86 FR 49915, September 7, 2021); and

■ b. Adding the following new airworthiness directive:

2022–19–12 Robinson Helicopter Company: Amendment 39–22181; Docket No. FAA–2022–0872; Project Identifier AD–2022–00431–R.

(a) Effective Date

This airworthiness directive (AD) is effective October 20, 2022.

(b) Affected ADs

This AD replaces AD 2021–19–08, Amendment 39–21726 (86 FR 49915, September 7, 2021) (AD 2021–19–08).

(c) Applicability

This AD applies to the following Robinson Helicopter Company (Robinson) helicopters, certificated in any category:

(1) Robinson Model R44 and R44 II helicopters with a tail rotor blade (blade) part number (P/N) C029–3 with serial number (S/N) 9410 through 9909 inclusive, installed;

(2) Robinson Model R44 and R44 II helicopters with a blade P/N C029–3 with S/N 9910 through 10659 inclusive, installed; and

(3) Robinson Model R66 helicopters with a blade P/N F029–1 with S/N 2410 through 2589 inclusive, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6410, Tail Rotor Blades.

(e) Unsafe Condition

This AD was prompted by reports of cracked blades. The FAA is issuing this AD to detect and prevent cracks in the affected blades. The unsafe condition, if not addressed, could result in reduced controllability and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Before further flight after the effective date of this AD and thereafter before each flight, check each blade at the leading edge for a crack. This action may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(2) If there is any crack, before further flight, remove the blade from service.

(3) For helicopters identified in paragraph (c)(1) of this AD, within 3 months after September 22, 2021 (the effective date of AD 2021–19–08) remove from service any blade identified in paragraph (c)(1) of this AD.

(4) For helicopters identified in paragraphs (c)(2) and (3) of this AD, within 6 months after the effective date of this AD, remove from service any blade identified in paragraph (c)(2) or (3) of this AD, as applicable to your model helicopter.

(5) For helicopters identified in paragraph (c)(1) of this AD, as of September 22, 2021 (the effective date of AD 2021–19–08), do not install a blade identified in paragraph (c)(1) of this AD on any helicopter.

(6) For helicopters identified in paragraphs (c)(2) and (3) of this AD, as of the effective date of this AD, do not install a blade identified in paragraph (c)(2) or (3) of this AD, as applicable to your model helicopter, on any helicopter.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) 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 local flight standards district office/certificate holding district office.

(3) AMOCs approved previously for AD 2021–19–08 are approved as AMOCs for the corresponding requirements in paragraph (g) of this AD.

(j) Related Information

For more information about this AD, contact James Guo, Aerospace Engineer, Airframe Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5357; email *james.guo@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on September 9, 2022.

Christina Underwood,

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

[FR Doc. 2022–19936 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0520; Project Identifier AD–2021–00683–T; Amendment 39–22141; AD 2022–17–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. This AD was prompted by significant changes, including new or more restrictive requirements, made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the latest revision of the AWLs. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 20, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 20, 2022.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0520.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0520; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Samuel Dorsey, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3415; email: *samuel.j.dorsey@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. The NPRM published in the **Federal Register** on June 2, 2022 (87 FR 33451). The NPRM was prompted by significant changes, including new or more restrictive requirements, made to the AWLs related to fuel tank ignition prevention. In the NPRM, the FAA proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate the latest revision of the AWLs. The FAA is issuing this AD to address the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing 747–100/200/300/SP/SR Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, dated September 2020. This service information describes AWLs that include airworthiness limitation instructions (ALIs) and critical design configuration control limitations (CDCCLs) tasks related to fuel tank ignition prevention. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 39 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–17–03 The Boeing Company: Amendment 39–22141; Docket No. FAA–2022–0520; Project Identifier AD–2021–00683–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 20, 2022.

(b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1) through (7) of this AD.

(1) AD 2008–10–07 R1, Amendment 39–16070 (74 FR 56098, October 30, 2009) (AD 2008–10–07 R1).

(2) AD 2008–18–09, Amendment 39–15666 (73 FR 52911, September 12, 2008) (AD 2008–18–09).

(3) AD 2010–13–12, Amendment 39–16343 (75 FR 37997, July 1, 2010) (AD 2010–13–12).

(4) AD 2010–24–13, Amendment 39–16532 (75 FR 78591, December 16, 2010; corrected May 25, 2011 (76 FR 30253)) (AD 2010–24–13).

(5) AD 2011–06–03, Amendment 39–16627 (76 FR 15814, March 22, 2011) (AD 2011–06–03).

(6) AD 2014–15–14, Amendment 39–17916 (79 FR 45324, August 5, 2014) (AD 2014–15–14).

(7) AD 2016–19–03, Amendment 39–18652 (81 FR 65872, September 26, 2016) (AD 2016–19–03).

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by significant changes, including new or more restrictive requirements, made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention. The FAA is issuing this AD to address the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Boeing 747–100/200/300/SP/SR Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, dated September 2020, except as specified in paragraphs (h) and (i) of this AD. The initial compliance times for the airworthiness limitation instruction (ALI) tasks are within the applicable compliance times for each AWL number specified in paragraphs (g)(1) through (8) of this AD:

(1) For AWL No. 28–AWL–01, ''External Wires Over Center Fuel Tank'': At the applicable time specified in paragraph (g)(1)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–01 in the existing maintenance or inspection program before the effective date of this AD: Within 144 months since issuance of the original airworthiness certificate or original export certificate, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(1)(i) of this AD: Within 144 months since AWL No. 28–AWL–01 was incorporated into the existing maintenance or inspection program, or within 144 months after the most recent inspection was performed as specified in AWL No. 28–AWL–01, whichever occurs later.

(2) For 28–AWL–03, ''Fuel Quantity Indicating System (FQIS)—Out Tank Wiring Lightning Shield to Ground Termination'': At the applicable time specified in paragraph (g)(2)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–03 in the existing maintenance or inspection program before the effective date of this AD: Within 144 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(2)(i) of this AD: Within 144 months since AWL No. 28–AWL–03 was incorporated into the existing maintenance or inspection program, or within 144 months after the most recent inspection was performed as specified in AWL No. 28–AWL–03, whichever occurs later.

(3) For 28–AWL–09, ''Over-Current and Arcing Protection Electrical Design Features Operation—Fault Current Detector for Center Tank Override/Jettison (O/J) Pumps'': At the applicable time specified in paragraph (g)(3)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–09 in the existing maintenance or inspection program before the effective date of this AD: Within 18 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 90 days after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(3)(i) of this AD: Within 18 months since AWL No. 28–AWL–09 was incorporated into the existing maintenance or inspection program, or within 18 months after the most recent inspection was performed as specified in AWL No. 28–AWL–09, whichever occurs later.

(4) For AWL No. 28–AWL–13, ''Main Tank, Center Wing Tank, Body Tank (if installed), and Auxiliary Tank (if installed) Refuel Valve Installation—Fault Current Bond'': At the applicable time specified in paragraph (g)(4)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–13 in the existing maintenance or inspection program before the effective date of this AD: Within 144 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(4)(i) of this AD: Within 144 months since AWL No. 28–AWL–13 was incorporated into the existing maintenance or inspection program, or within 144 months after the most recent inspection was performed as specified in AWL No. 28–AWL–13, whichever occurs later.

(5) For AWL No. 28–AWL–22, ''Center Tank Override/Jettison Fuel Pump Inlet Protection and Power Failed On Protection System'': At the applicable time specified in paragraph (g)(5)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–22 in the existing maintenance or inspection program before the effective date of this AD: Within 12 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 90 days after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(5)(i) of this AD: Within 12 months since AWL No. 28–AWL–22 was incorporated into the existing maintenance or inspection program, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–22, whichever occurs later.

(6) For AWL No. 28–AWL–23, ''Over-Current and Arcing Protection Electrical Design Features Operation—Main Tank AC Fuel Pump and Center Tank Scavenge AC Fuel Pump Ground Fault Interrupter (GFI)'': At the applicable time specified in paragraph (g)(6)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–23 in the existing maintenance or inspection program before the effective date of this AD: Within 12 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, within 12 months since Boeing Service Bulletin 747–28A2261 was incorporated, or within 90 days after the effective date of this AD, whichever occurs latest.

(ii) For airplanes not identified in paragraph (g)(6)(i) of this AD: Within 12 months since AWL No. 28–AWL–23 was incorporated into the existing maintenance or inspection program, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–23, whichever occurs later.

(7) For AWL No. 28–AWL–25, ''Cushion Clamps and Teflon Sleeving Installed on Out-of-Tank Wire Bundles Installed on Brackets that are Mounted Directly on the Fuel Tanks'': At the applicable time specified in paragraph (g)(7)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–25 in the existing maintenance or inspection program before the effective date of this AD: Within 144 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(7)(i) of this AD: Within 144 months since AWL No. 28–AWL–25 was incorporated into the existing maintenance or inspection program, within 144 months since Boeing Special Attention Service Bulletin 747–57–2327 was incorporated, or within 144 months after the most recent inspection was performed as specified in AWL No. 28–AWL–25, whichever occurs latest.

(8) For AWL No. 28–AWL–31, ''Reserve Tank Refuel Valve Installation—Lightning Protection Electrical Bond'': At the applicable time specified in paragraph (g)(8)(i) or (ii) of this AD.

(i) For airplanes that did not have any version of AWL No. 28–AWL–31 in the existing maintenance or inspection program before the effective date of this AD: Within 72 months since issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 6 months after the effective date of this AD, whichever occurs later.

(ii) For airplanes not identified in paragraph (g)(8)(i) of this AD: Within 72 months since AWL No. 28–AWL–31 was incorporated into the existing maintenance or inspection program, or within 72 months after the most recent inspection was performed as specified in AWL No. 28–AWL–31, whichever occurs later.

(h) Differences From the Required Service Information

(1) Where the ''Applicability'' column of AWL Nos. 28–AWL–25 and 28–AWL–27 specifies ''ALL'' and ''NOTE,'' replace that text with ''Airplanes L/N 645 and on.''

(2) In the ''Description'' column of AWL Nos. 28–AWL–25 and 28–AWL–27, remove the Applicability Note.

(i) Additional Acceptable Wire Types and Sleeving

(1) Where AWL No. 28–AWL–11 identifies wire types BMS 13–48, BMS 13–58, and BMS 13–60, the following wire types are acceptable: MIL–W–22759/16, SAE AS22759/16 (M22759/16), MIL–W–22759/32, SAE AS22759/32 (M22759/32), MIL–W–22759/34, SAE AS22759/34 (M22759/34), MIL–W–22759/41, SAE AS22759/41 (M22759/41), MIL–W–22759/86, SAE AS22759/86 (M22759/86), MIL–W–22759/87, SAE AS22759/87 (M22759/87), MIL–W–22759/92, and SAE AS22759/92 (M22759/92); and MIL–C–27500 and NEMA WC 27500 cables constructed from these military or SAE specification wire types, as applicable.

(2) Where AWL No. 28–AWL–11 identifies TFE–2X Standard wall for wire sleeving, the following sleeving materials are acceptable: Roundit 2000NX and Varglas Type HO, HP, or HM.

(j) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l) of this AD.

(k) Terminating Action for Certain ADs

Accomplishment of the revision required by paragraph (g) of this AD terminates the

requirements specified in paragraphs (k)(1) through (7) of this AD for that airplane:

(1) The revision required by paragraphs (g) and (h) of AD 2008–10–07 R1.

(2) The revision required by paragraph (g)(1) of AD 2008–18–09.

(3) The revision required by paragraph (h)(2) of AD 2010–13–12.

(4) The revision required by paragraph (h) of AD 2010–24–13.

(5) The revision required by paragraph (k) of AD 2011–06–03.

(6) The revision required by paragraph (h)(2) of AD 2014–15–14.

(7) The revision required by paragraph (h) of AD 2016–19–03.

(l) Alternative Methods of Compliance (AMOCs)

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

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

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

(m) Related Information

For more information about this AD, contact Samuel Dorsey, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3415; email: *samuel.j.dorsey@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) Boeing 747–100/200/300/SP/SR Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, dated September 2020.

(ii) [Reserved]

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

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

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

Issued on August 4, 2022.

Christina Underwood,

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

[FR Doc. 2022–19900 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0689; Project Identifier MCAI–2022–00215–T; Amendment 39–22160; AD 2022–18–09]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–26–11, which applied to certain Airbus SAS Model A319–112, –115, and –132; A320–214, –216, –232, –233, –251N, and –271N; and A321–211, –231, –232, –251N, and –253N airplanes; and AD 2021–23–15, which applied to certain Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–211, –212, –214, –216, –231, –232, and –233; and A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2019–26–11 required replacing the affected bumpers with serviceable bumpers. AD 2021–23–15 required modifying the waste compartment door of each affected galley. This AD was prompted by reports that the waste compartment door opened prematurely during a test, that container/galley end stop bumpers were damaged in service, and that additional airplanes are subject to the unsafe conditions described in those ADs. This AD continues to require the actions in AD 2019–26–11 and AD 2021–23–15, and adds airplanes to the applicability; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 20, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 20, 2022.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0689.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0689; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3223; email *vladimir.ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0026, dated February 16, 2022 (EASA AD 2022–0026) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–

232, A320–233, A320–251N, A320–271N, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, A321–232, A321–251N and A321–253N airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019–26–11, Amendment 39–21022 (85 FR 6755, February 6, 2020) (AD 2019–26–11), which applied to certain Airbus SAS Model A319–112, A319–115, A319–132, A320–214, A320–216, A320–232, A320–233, A320–251N, A320–271N, A321–211, A321–231, A321–232, A321–251N, and A321–253N airplanes; and AD 2021–23–15, Amendment 39–21813 (86 FR 68894, December 6, 2021) (AD 2021–23–15), which applied to certain Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The NPRM published in the **Federal Register** on June 21, 2022 (87 FR 36778). The NPRM was prompted by a report that during re-engineering of galley G5, a 9G forward full scale qualification test was performed, and the door of the waste compartment opened before the required load was reached, and by reports of finding container/galley end stop bumpers damaged in service. The NPRM was also prompted by the determination that additional airplanes are subject to the unsafe condition. The NPRM proposed to continue to require the actions in AD 2019–26–11 and AD 2021–23–15, and to add airplanes to the applicability, as specified in EASA AD 2022–0026.

The FAA is issuing this AD to address potential failure of the galley door and release of waste bins during a rejected take-off or an emergency landing, and potential container detachment from the galley under certain forward loading conditions, possibly resulting in damage to the airplane and injury to occupants. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0026 specifies procedures for modifying the affected galleys by replacing the affected bumpers with serviceable bumpers; for modifying the waste compartment door of each affected galley by installing a door catch bracket and a new striker, and for re-identifying the affected galleys. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1,507 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2019–26–11 (274 airplanes).	Up to 54 work-hours × $85 per hour = Up to $4,590.	$0	Up to $4,590	Up to $1,257,660.
Retained actions from AD 2021–23–15 (141 airplanes).	5 work-hours × $85 per hour = $425	0	$425	$59,925.
New actions (Up to 1,092 airplanes)	Up to 59 work-hours × $85 per hour = Up to $5,105.	0	Up to $5,105	Up to $5,476,380.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive (AD) 2019–26–11, Amendment 39–21022 (85 FR 6755, February 6, 2020); and AD 2021–23–15, Amendment 39–21813 (86 FR 68894, December 6, 2021); and
■ b. Adding the following new AD:

2022–18–09 Airbus SAS: Amendment 39–22160; Docket No. FAA–2022–0689; Project Identifier MCAI–2022–00215–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 20, 2022.

(b) Affected ADs

This AD replaces AD 2019–26–11, Amendment 39–21022 (85 FR 6755, February 6, 2020) (AD 2019–26–11); and AD 2021–23–15, Amendment 39–21813 (86 FR 68894, December 6, 2021) (AD 2021–23–15).

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (3) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0026, dated February 16, 2022 (EASA AD 2022–0026).

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

(2) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N airplanes.

(3) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, and –253N airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report that during re-engineering of galley G5, a 9G forward full scale qualification test was performed, and the door of the waste compartment opened before the required load was reached, and by reports of finding container/galley end stop bumpers damaged in service. This AD was also prompted by the determination that additional airplanes are subject to the unsafe condition. The FAA is issuing this AD to address potential failure of the galley door and release of waste bins during a rejected take-off or an emergency landing, and potential container detachment from the galley under certain forward loading conditions, possibly resulting in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0026.

(h) Exceptions to EASA AD 2022–0026

(1) Where EASA AD 2022–0026 refers to December 11, 2018 (the effective date of EASA AD 2018–0255), this AD requires using January 10, 2022 (the effective date of AD 2021–23–15).

(2) Where EASA AD 2022–0026 refers to May 29, 2019 (the effective date of EASA AD 2019–0106), this AD requires using March 12, 2020 (the effective date of AD 2019–26–11).

(3) Where EASA AD 2022–0026 refers to its effective date, this AD requires using the effective date of this AD.

(4) The ''Remarks'' section of EASA AD 2022–0026 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(j) Related Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3223; email *vladimir.ulyanov@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0026, dated February 16, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0026, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

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

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

Issued on August 19, 2022.

Christina Underwood,

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

[FR Doc. 2022–19810 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0687; Project Identifier MCAI–2021–01405–T; Amendment 39–22161; AD 2022–18–10]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–2A12 airplanes. This AD was prompted by a determination that the baggage bay line fire extinguishing tube assembly might not have been installed with the correct torque. This AD requires re-torqueing the baggage bay line fire extinguishing tube assembly to the correct torque values, and applying corrosion inhibiting compound on the discharge tubes. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 20, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 20, 2022.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0687; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, 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*; website *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. It is also available at *regulations.gov* under Docket No. FAA–2022–0687.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–700–2A12 airplanes. The NPRM published in the **Federal Register** on June 21, 2022 (87 FR 36773). The NPRM was prompted by TCCA AD CF–2021–48, dated December 15, 2021, issued by Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that the baggage bay line fire extinguishing tube assembly may not have been installed in production with the correct torque. Although the baggage bay is accessible to the crew during flight with portable fire extinguishers, incorrect torqueing of the baggage bay line fire extinguishing tube assembly could lead to loss of the built-in fire extinguishing system for the baggage bay.

In the NPRM, the FAA proposed to require re-torqueing the baggage bay line fire extinguishing tube assembly to the correct torque values, and applying corrosion inhibiting compound on the discharge tubes. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0687.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

Bombardier Inc. has issued Service Bulletin 700–26–7503, dated April 22, 2021. This service information describes procedures for re-torqueing the baggage bay line fire extinguishing tube assembly to the correct torque values, and applying corrosion inhibiting compound on the discharge tubes. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 42 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$5	$90	$3,780

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–18–10 Bombardier, Inc.: Amendment 39–22161; Docket No. FAA–2022–0687; Project Identifier MCAI–2021–01405–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 20, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–2A12 airplanes, certificated in any category, serial numbers (S/Ns) 70006 through 70044 inclusive, S/Ns 70046 through 70052 inclusive, and S/Ns 70055, 70056, and 70062.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Unsafe Condition

This AD was prompted by a determination that the baggage bay line fire extinguishing tube assembly might not have been installed with the correct torque. The FAA is issuing this AD to address improper torqueing, which may lead to loss of the fire extinguishing system, which could prevent extinguishing a fire and possibly result in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Re-Torque Fire Extinguishing Tube Assembly

Within 28 months after the effective date of this AD: Re-torque the baggage bay line fire extinguishing tube assembly to the correct torque values, and apply corrosion inhibiting compound on the discharge tubes, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 700–26–7503, dated April 22, 2021.

(h) No Reporting Requirement

Although Bombardier Service Bulletin 700–26–7503, dated April 22, 2021, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(i) Other AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

(1) Refer to TCCA AD CF–2021–48, dated December 15, 2021, for related information. This TCCA AD may be found in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–0687.

(2) For more information about this AD, contact Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 700–26–7503, dated April 22, 2021.

(ii) [Reserved]

(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;* website *bombardier.com.*

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

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

Issued on August 19, 2022.

Christina Underwood,

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

[FR Doc. 2022–19807 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1162; Project Identifier MCAI–2022–01087–A; Amendment 39–22180; AD 2022–19–11]

RIN 2120–AA64

Airworthiness Directives; Costruzioni Aeronautiche Tecnam S.P.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Costruzioni Aeronautiche Tecnam S.P.A. (Tecnam) Model P2006T airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. This AD

requires performing a detailed visual inspection (DVI) of the aileron control assembly, repairing the aileron control assembly if any crack or damage (including missing paint, nicks, or scrapes) is found, measuring the length of the screws installed on the ceiling cover panel, and replacing the screws if found to be of excessive length. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 30, 2022.

The FAA must receive comments on this AD by October 31, 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.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1162; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1162; Project Identifier MCAI–2022–01087–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106. 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 European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0167, dated August 11, 2022 (referred to after this as ''the MCAI''), to correct an unsafe condition on certain Tecnam Model P2006T airplanes. The MCAI states that screws attaching the ceiling panel covering the aileron control assembly could be of excessive length and cause the aileron control rod to become blocked, cracked, or damaged. This condition, if not detected and corrected, could result in unintended jamming of the aileron control rod assembly, the inability to use the aileron control surfaces, and loss of control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1162.

Other Related Service Information

The FAA reviewed Tecnam Service Bulletin 574–CS-Edition 1, Revision 3, dated August 1, 2022. The service information specifies performing a DVI of the aileron control assembly, measuring the length of the screws installed on the ceiling cover panel, and replacing the screws if found to be of excessive length. The service information also specifies contacting Tecnam for repair instructions if any crack or damage is found on the aileron control rod.

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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between this AD, the MCAI, and the Service Information.''

Differences Between This AD, the MCAI, and the Service Information

The MCAI specifies that the DVI of the aileron control assembly and measurement of screws installed on the ceiling cover panel be performed within 10 flight hours after the effective date of EASA AD 2022–0132, dated July 4, 2022, or the effective date of the MCAI, depending on the airplane's serial number. This AD requires the inspection and measurement be performed before further flight after the effective date of this AD.

The service bulletin specifies contacting Tecnam for approved corrective action instructions, and this AD requires using a repair method approved by the FAA, EASA, or Tecnam's Design Organization Approval.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance.

Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because the pilot could lose control of the airplane due to the jamming of the aileron control rod caused by screws of excessive length installed on the ceiling cover panel. Since this condition happens rapidly and without warning, the inspections and any necessary repair or replacement must be accomplished before further flight. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 71 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect aileron control assembly	1 work-hour × $85 per hour = $85	Not Applicable	$85	$6,035
Measure ceiling cover panel attach screws	.50 work-hour × $85 per hour = $42.50	Not Applicable	42.50	3,017.50

The FAA estimates the following costs to do any necessary actions that would be required based on the results of the inspection and measurement. The agency has no way of determining the number of airplanes that might need this repair or replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair aileron control assembly	1 work-hour × $85 per hour = $85	$50	$135
Replace aileron control assembly	1 work-hour × $85 per hour = $85	500	585
Replace incorrect length ceiling cover panel screws	.50 work-hour × $85 per hour = $42.50	100	142.50

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–19–11 Costruzioni Aeronautiche Tecnam S.P.A.: Amendment 39–22180; Docket No. FAA–2022–1162; Project Identifier MCAI–2022–01087–A.

(a) Effective Date

This airworthiness directive (AD) is effective September 30, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Costruzioni Aeronautiche Tecnam S.P.A. Model P2006T airplanes, all serial numbers (S/N) up to 345 inclusive, and S/N 348, 352, 353, 355, and 357, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2710, Aileron Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information

originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The FAA is issuing this AD to detect and correct screws of excessive length installed on the ceiling panel covering the aileron control assembly, which could cause the aileron control rod to become jammed, cracked, or damaged. The unsafe condition, if not addressed, could result in unintended jamming of the aileron control assembly, the inability to use the aileron control surfaces, and loss of control of the airplane.

(f) Compliance

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

(g) Inspection/Measurement

Before further flight after the effective date of this AD, perform a detailed visual inspection of the aileron control assembly, part number 26–9–1502–000, for cracks and damage (including missing paint, nicks, or scrapes) and measure the length of the screws installed on the ceiling cover panel.

(1) If, during the inspection required by paragraph (g) of this AD, any crack or damage (including missing paint, nicks, or scrapes) is found on the aileron control rod assembly, before further flight, repair using a method approved by the FAA; the European Union Aviation Safety Agency (EASA); or Tecnam's Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(2) If, during the inspection required by paragraph (g) of this AD, any screws installed on the ceiling cover panel do not match the limits specified in paragraph (g)(2)(i) or (ii) of this AD, before further flight, replace that screw with the correct screw identified in paragraph (g)(2)(i) or (ii) of this AD, as applicable.

(i) If blind rivet nuts are installed on the ceiling panel covering the aileron control assembly, then the correct panel screw would be 12mm in length with part number UNI7689–3–12.

(ii) If blind rivet nuts are not installed on the ceiling panel covering the aileron control assembly, then the correct panel screw would be equal to or less than 10mm in length with part number UNI6594–2.9–9.5.

Note to paragraph (g): Tecnam Service Bulletin 574–CS-Edition 1, Revision 3, dated August 1, 2022, contains information related to this subject.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@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 local flight standards district office/certificate holding district office.

(j) Additional Information

(1) Refer to EASA AD 2022–0167, dated August 11, 2022, for related information. This EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1162.

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

(3) Service information identified in this AD that is not incorporated by reference is available at Costruzioni Aeronautiche Tecnam S.P.A., Airworthiness Office Via S. D'acquisto 62, 80042 Boscotrecase, Italy; phone: +39 0823 997538; email: *technical.support@tecnam.com;* website: tecnam.com. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

(k) Material Incorporated by Reference

None.

Issued on September 8, 2022.

Christina Underwood,

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

[FR Doc. 2022–19934 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 516

[Docket No. FDA–2022–N–1128]

RIN 0910–AI46

Defining Small Number of Animals for Minor Use Determination; Periodic Reassessment

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is revising the ''small number of animals'' definition for dogs and cats in our existing regulation for new animal drugs for minor use or minor species. The Minor Use and Minor Species Animal Health Act of 2004 (MUMS Act) provides incentives to encourage animal drug sponsors to develop and seek FDA approval of drugs intended for use in minor animal species or for minor uses in major animal species. Congress provided a statutory definition of ''minor use'' that relies on the phrase ''small number of animals'' to characterize such use. We are revising the definition of ''small number of animals'' based on our most recent reassessment of the small numbers, which we conducted from 2018 to 2019.

DATES: This rule is effective December 14, 2022. Either electronic or written comments on this direct final rule or its companion proposed rule must be submitted by November 14, 2022. If FDA receives no significant adverse comments within the specified comment period, the Agency intends to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the Agency will publish a document in the **Federal Register** withdrawing this direct final rule within 30 days after the comment period on this direct final rule ends.

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 November 14, 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 No. FDA–2022–N–1128 for ''Defining Small Number of Animals for Minor Use Determination; Periodic Reassessment.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' will be publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Margaret Oeller, Center for Veterinary Medicine (HVF–50), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0566, email: *margaret.oeller@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose and Coverage of the Direct Final Rule

This direct final rule amends the definition of ''small number of animals'' as it relates to dogs and cats in our regulation implementing the MUMS Act. The term ''minor use'' is the intended use of a drug in a major species for an indication that occurs infrequently and in only a small number of animals, or occurs in limited geographical areas and in only a small number of animals annually. The ''small number of animals'' definition is used for purposes of determining whether a particular intended use of a drug in one of the seven major species of animals (horses, dogs, cats, cattle, pigs, turkeys, and chickens) qualifies as a minor use. In March 2008, FDA issued a proposed rule to establish the meaning of ''small number of animals'' as that term is used in the definition of minor use included in the Federal Food, Drug, and Cosmetic Act (FD&C Act). FDA finalized the rule in August 2009. The definition for the phrase ''small number of animals'' includes a specific upper limit number (*i.e.,* small number) for each of the seven major species of animals.

In response to comments submitted to FDA regarding the 2008 proposed rule, we stated in the final rule that we would periodically reevaluate the small numbers and update the definition if necessary. This direct final rule is the result of our 2018–2019 reassessment of the ''small numbers of animals.''

B. Summary of the Major Provisions of the Direct Final Rule

Based on our 2018–2019 reassessment, we are revising the small number for dogs included in the ''small number of animals'' definition from 70,000 to 80,000 and the small number for cats from 120,000 to 150,000.

C. Legal Authority

The legal authority for this direct final rule is the MUMS Act, which amended the FD&C Act. Additional authority comes from the ''Regulations and Hearings'' section of the FD&C Act, which authorizes FDA to issue regulations for the efficient enforcement of the FD&C Act.

D. Costs and Benefits

Sponsors that apply for and receive conditional approval for a new animal drug intended for a ''minor use'' in dogs or cats as a result of the changes to the small numbers made by the direct final rule will be able to market their drug earlier, which in turn could benefit pet owners by improving the health of dogs and cats with uncommon diseases or conditions. Both FDA and those sponsors receiving conditional approval could receive cost savings from deferring costs associated with providing FDA with substantial evidence that a new animal drug is effective until later in the drug development process. ''Substantial evidence'' is the effectiveness standard that must be met before a sponsor can receive full approval for its new animal drug under the FD&C Act. Conditional approval does not require the drug sponsor to demonstrate effectiveness by ''substantial evidence.'' Instead, the sponsor has to show that there is a ''reasonable expectation'' of effectiveness. Sponsors could incur

costs to prepare and submit additional minor use determination requests and annual designation reports to FDA. In addition, FDA will bear costs to review any additional minor use determination requests and annual designation reports it receives from sponsors. FDA estimates that the annualized benefits over 20 years will range from $0 to $6.06 million at a 7 percent discount rate, with a primary estimate of $3.03 million, and from $0 to $7.43 million at a 3 percent discount rate, with a primary estimate of $3.72 million. Annualized costs will range from $3,033 to $31,741 at a 7 percent discount rate, with a primary estimate of $17,387, and from $2,244 to $30,285 at a 3 percent discount rate, with a primary estimate of $16,264.

II. Table of Abbreviations and Commonly Used Acronyms in This Document

Abbreviation/acronym	What it means
2013 reassessment	Reassessment of small numbers conducted by FDA in 2013, the results of which were published in May 2014 (79 FR 28736).
AVMA	American Veterinary Medical Association.
21 CFR	Title 21 of the Code of Federal Regulations.
Current reassessment	Reassessment of small numbers conducted by FDA in 2018–2019.
FDA	U.S. Food and Drug Administration.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
MUMS	Minor Use and Minor Species.
MUMS Act	Minor Use and Minor Species Animal Health Act of 2004.
OMB	Office of Management and Budget.
Pub. L	Public Law.

III. Background

A. Introduction

The MUMS Act (Pub. L. 108–282) amended the FD&C Act to provide incentives for the development of new animal drugs for use in minor animal species and for minor uses in major animal species. The MUMS Act defines ''minor use'' as the intended use of a drug in a major species for an indication that occurs infrequently and in only a small number of animals or in limited geographical areas and in only a small number of animals annually (see section 201(pp) of the FD&C Act (21 U.S.C. 321(pp)). Congress charged FDA to further define the term ''small number of animals'' for minor use purposes (see Senate Report 108–226 at 8, February 18, 2004). In the **Federal Register** of March 18, 2008 (73 FR 14411), we issued a proposed rule to define the term ''small number of animals'' by establishing for each major species of animal (horses, dogs, cats, cattle, pigs, turkeys, and chickens) an upper limit threshold (*i.e.,* small number) to provide a means of determining whether any particular intended use of a new animal drug in one of these species would qualify as a minor use under the MUMS Act.

The ''small numbers of animals'' definition was formally established by the final rule that was published on August 26, 2009 (74 FR 43043). In that final rule, we addressed comments from the public regarding the 2008 proposed rule, including comments suggesting that the Agency reevaluate the small numbers on a periodic basis. We agreed that periodic reassessment of the small numbers is appropriate and that such reassessments should occur approximately every 5 years.

We conducted our initial reassessment of the small numbers in 2013 and published the results of that reassessment on May 19, 2014 (79 FR 28736) (the 2013 reassessment). At that time, we did not change the small numbers for any of the major species.

From 2018 to 2019, we conducted our second reassessment (current reassessment) of the small numbers (Ref. 1). Based on the current reassessment, we are revising (*i.e.,* increasing) the small numbers for dogs and cats only. Elsewhere in this issue of the **Federal Register**, we are publishing a notice to announce that we are not revising the small numbers in the ''small number of animals'' definition for the other major species (*i.e.,* horses, cattle, pigs, turkeys, and chickens). Because we are only revising the ''small number of animals'' definition as it relates to dogs and cats, the remainder of this document will focus on those two species.

B. History of Defining Small Numbers for Dogs and Cats

The term ''small number of animals'' is defined in § 516.3(b) (21 CFR 516.3(b)) of our regulation on new animal drugs for minor use and minor species. For each of the seven major species of animals, the definition specifies the greatest number of animals of that species that could be treated annually with a new animal drug for a particular indication and still qualify as a minor use. For dogs and cats, a ''small number of animals'' is defined as equal to or less than 70,000 dogs, or equal to or less than 120,000 cats.

The process FDA used to establish the small numbers for the companion animal major species (dogs, cats and horses) is outlined in detail in the 2008 proposed rule. That process involved estimating the development cost for an animal drug intended for each of the three major companion animal species, estimating the amount that companion animal owners were willing to pay for a drug to treat each of those species, estimating the average percentage of companion animals that would likely be treated, and estimating the uncertainty associated with estimates of the rate of occurrence of various uncommon conditions in companion animals. Assessment of these various factors resulted in the formula, published in the proposed rule (73 FR 14411 at 14414), that we use to determine the small numbers for companion animals.

C. Need for the Regulatory Action

In the preamble to the 2009 final rule in which we first established the definition of ''small number of animals,'' we agreed in response to comments that we should periodically reevaluate the small numbers and update the definition as necessary. We also agreed that such a reevaluation should take into account the potential for changes in the development cost of new animal drugs, changes in the amount that animal owners are willing to pay to treat affected animals, and changes in other factors involved in establishing a ''small number,'' such as the total population of major animal species (74 FR 43043 at 43044).

In a memorandum containing the results of our current reassessment, we describe the processes that we used to reevaluate the small number of animals (Ref. 1). Based on the current reassessment, we are increasing the small numbers for dogs and cats only.

IV. Legal Authority

We are issuing this direct final rule under the same legal authorities described in the proposed and final rules we issued to establish the ''small number of animals'' definition in 21 CFR part 516 (see 73 FR 14411 at 14415 and 74 FR 43043 at 43049). These authorities include sections 571, 573, and 701 of the FD&C Act (21 U.S.C. 360ccc, 360ccc–2, and 371). Sections 571 and 573 of the FD&C Act were established by the MUMS Act. Section 701(a) authorizes the Agency to issue regulations for the efficient enforcement of the FD&C Act.

V. Description of the Direct Final Rule

A. Revisions to the ''Small Number of Animals'' Definition in § 516.3

As discussed in section III. C, when we published the final rule defining ''small number of animals'' for minor use designation in 2009, we agreed we should periodically reevaluate the small number of animals to account for changes in drug development costs, changes in the amount that animal owners are willing to pay to treat affected animals, and other relevant factors (74 FR 43043 at 43044). Based on our current reassessment (Ref. 1), we are revising the definition of ''small number of animals'' in § 516.3(b) to increase the small number for dogs from 70,000 to 80,000, and to increase the small number for cats from 120,000 to 150,000.

B. Reassessment of the Small Numbers for Dogs and Cats

For our current reassessment of the small numbers, our primary source of information regarding costs related to dogs and cats is a 2018 report prepared by Brakke Consulting Inc., (BCI) containing population estimates, disease incidence rates, and information about drug development costs and treatment costs for companion animals (Ref. 2). The 2018 report is the latest update of the BCI report. We used previous versions of the BCI report for the 2008 proposed rule and the 2013 reassessment. Our primary source of information regarding healthcare costs for dogs and cats is the 2017–2018 edition of the American Veterinary Medical Association (AVMA) U.S. Pet Ownership and Demographics Sourcebook, which contains surveys of pet ownership (Ref. 3). This is an updated version of the same source we used for our 2008 proposed rule and the 2013 reassessment.

After evaluating the relevant data from these sources and using that information to reassess the small numbers for dogs and cats, we determined that the small numbers for dogs and cats should be increased. Therefore, we are revising the definition of ''small numbers of animals'' for these two species. For a full discussion of our current reassessment of the small numbers, see our current reassessment memorandum (Ref. 1).

VI. Direct Final Rulemaking

In the document entitled ''Guidance for FDA and Industry: Direct Final Rule Procedures,'' announced in the **Federal Register** of November 21, 1997 (62 FR 62466), FDA describes its procedures on when and how the Agency will employ direct final rulemaking. The guidance may be accessed at: *https://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm.*

We have determined that the subject of this rulemaking is suitable for a direct final rule. We are revising the ''small number of animals'' definition for dogs and cats in § 516.3(b) to increase the small numbers for these two species. This rule is intended to make noncontroversial changes to an existing regulation. We do not anticipate that there will be any significant adverse comments.

Consistent with our procedures on direct final rulemaking, we are publishing elsewhere in this issue of the **Federal Register** a companion proposed rule. The companion proposed rule and this direct final rule are substantively identical. The companion proposed rule provides the procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of a significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period for the companion proposed rule. Any comments received in response to the companion proposed rule will also be considered as comments regarding this direct final rule.

We are providing a comment period for the direct final rule of 60 days after the date of publication in the **Federal Register**. If we receive a significant adverse comment, we intend to withdraw this direct final rule before its effective date by publishing a notification in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553).

Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in the direct final rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to a part of this rule and that part can be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of the significant adverse comment.

If any significant adverse comment is received during the comment period, we will publish, before the effective date of this direct final rule, a notification of significant adverse comment and withdraw the direct final rule. If we withdraw the direct final rule, any comments received will be applied to the proposed rule and will be considered in developing a final rule using the usual notice-and-comment procedure. If we do not receive any significant adverse comment in response to this direct final rule during the comment period, we will publish a document in the **Federal Register** confirming the effective date of the final rule within 30 days after the comment period ends.

VII. Economic Analysis of Impacts

We have examined the impacts of the direct final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all 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, and other advantages; distributive impacts; and equity). We believe that this direct final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because net costs of the direct final rule are less than 0.32 percent of average annual revenues for the smallest firms

in the industry, we certify that the direct final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This direct final rule would not result in an expenditure in any year that meets or exceeds this amount.

By expanding incentives for new animal drug development under the MUMS Act as a result of increasing the small numbers for dogs and cats, the direct final rule could benefit pet owners by improving the health of dogs and cats with uncommon diseases or conditions. These health improvements could result from the earlier marketing of new animal drugs by sponsors that apply for and receive conditional approval as a result of the direct final rule. The direct final rule also could result in cost savings to new animal drug sponsors and FDA. Sponsors that receive conditional approval have the ability to market their new animal drug for up to 5 years, subject to annual renewals, before providing substantial evidence that it is effective, as required for full approval. This would defer costs to sponsors and FDA associated with a demonstration of substantial evidence of effectiveness until later in the development process.

Because the direct final rule could increase the number of uncommon diseases or conditions in dogs and cats that qualify for minor use drug development incentives, including user fee waivers, exclusive marketing rights, grants, and eligibility for conditional approval, sponsors could incur costs to prepare and submit additional minor use determination requests and, for those sponsors that pursue designation for their new animal drug, annual designation reports to FDA. FDA will bear costs to review any additional minor use determination requests and annual designation reports. Potential sponsors of new animal drugs for minor uses in dogs or cats will also incur a one-time cost to read and understand the direct final rule.

We additionally estimate potential within-industry transfers from sponsors receiving user fee waivers as a result of the direct final rule to fee-paying sponsors, and transfers from government to industry in the form of grants to support safety and effectiveness testing.

We summarize the annualized benefits and costs of the rule in table 1. We estimate that the annualized benefits over 20 years will range from $0 to $6.06 million at a 7 percent discount rate, with a primary estimate of $3.03 million, and from $0 to $7.43 million at a 3 percent discount rate, with a primary estimate of $3.72 million. Annualized costs will range from $3,033 to $31,741 at a 7 percent discount rate, with a primary estimate of $17,387, and from $2,244 to $30,285 at a 3 percent discount rate, with a primary estimate of $16,264.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized ($m/year)	$3.03	$0.00	$6.06	2021	7	20	These include benefits to pet owners and cost savings to industry and FDA.
	3.72	0.00	7.43	2021	3	20	
Annualized Quantified							
Qualitative.							
Costs:							
Annualized Monetized ($m/year)	0.017	0.003	0.032	2021	7	20	
	0.016	0.002	0.030	2021	3	20	
Annualized Quantified							
Qualitative.							
Transfers: [1]							
Federal Annualized Monetized ($m/year)	0.43	0.00	0.86	2021	7	20	
	0.48	0.00	0.97	2021	3	20	
	From: Government			To: Industry			
Other Annualized Monetized ($m/year)	0.47	0.00	0.94	2021	7	20	
	0.57	0.00	1.14	2021	3	20	
	From: Industry			To: Industry			

Effects:
State, Local, or Tribal Government: None.
Small Business: Quantified effects of less than 0.32 percent of average annual revenues for the smallest firms.
Wages: None.
Growth: None.

[1] Transfers are monetary payments between persons or groups that do not affect the total resources available to society.

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the direct final rule. The full analysis of economic impacts is available in the docket for this direct final rule (Ref. 4) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This direct final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). A description of these provisions is given in the *Description* section of this document with an estimate of the annual recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Designated New Animal Drugs for Minor Use and Minor Species; OMB control number 0910–0605—Revision.

Description: The direct final rule revises the ''small number of animals'' definition for dogs and cats in our existing regulation at § 516.3(b) for new animal drugs for minor use and minor species. The small numbers for dogs and cats are increased. The MUMS Act provides incentives to encourage animal drug sponsors to develop and seek FDA approval of drugs intended for use in minor species or for minor uses in major animal species. Congress provided a statutory definition of ''minor use'' that relies on the phrase ''small number of animals'' to characterize such use. The ''small number of animals'' definition is used for purposes of determining whether a particular intended use of a drug in one of the major species of animals qualifies as a minor use.

Description of Respondents: Pharmaceutical companies that sponsor new animal drugs.

We estimate the burden of this information collection as follows:

TABLE 2—ESTIMATED ONE-TIME RECORDKEEPING BURDEN

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Reading and Understanding the Rule	474	1	474	0.683 (41 minutes)	323

Using the number of active sponsors of new animal drug applications and active sponsors of abbreviated new animal drug applications, we estimate there are 237 sponsors affected by this rule. We estimate two recordkeepers per sponsor.

We expect that new animal drug sponsors will incur a one-time burden associated with reading and understanding the rule and a nominal increase in the overall annual burden associated with reporting requirements resulting from a potential increase in submissions of minor use determination requests and annual designation reports to FDA.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection provisions of this direct final rule to OMB for review. Before the effective date of this direct final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove of the information collections of this direct final rule.

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.

X. Federalism

We have analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the direct final rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this direct final rule in accordance with the principles set forth in Executive Order 13175. We have determined that the direct final rule does not contain policies that would 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. Accordingly, we conclude that the direct final rule does not contain policies that have tribal implications as defined in the Executive order and, consequently, a tribal summary impact statement is not required.

XII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov*. References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

* 1. FDA Memorandum, ''2018–2019 Reassessment of Small Numbers of Animals for Minor Use Determination'', 2021.
* 2. Brakke Consulting, Inc., Update of Population Estimates, Disease Incidence Rates, Drug Development Costs and Treatment Costs for Companion Animals,'' October 22, 2018.
3. American Veterinary Medical Association, ''Pet Ownership and Demographics Sourcebook,'' 2017–2018 Edition, October 2018. Accessed November 09, 2021. *https://www.avma.org/news/press-releases/avma-releases-latest-stats-pet-ownership-and-veterinary-care* and *https://www.avma.org/sites/default/files/resources/AVMA-Pet-Demographics-Executive-Summary.pdf.*
* 4. FDA, ''Final Regulatory Impact Analysis, Final Regulatory Flexibility Analysis, Unfunded Mandates Reform Act Analysis'', 2021.

List of Subjects in 21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential

business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 516 is amended as follows:

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 1. The authority citation for part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371.

■ 2. Amend § 516.3(b) by revising the definition for ''Small number of animals'' to read as follows:

§ 516.3 Definitions.

* * * * *

(b) * * *

Small number of animals means equal to or less than 50,000 horses; 80,000 dogs; 150,000 cats; 310,000 cattle; 1,450,000 pigs; 14,000,000 turkeys; and 72,000,000 chickens.

* * * * *

Dated: August 31, 2022.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2022–19954 Filed 9–14–22; 8:45 am]

BILLING CODE 4164–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the asset allocation regulation for plans with valuation dates in the fourth quarter of 2022. These interest assumptions are used for valuing benefits under terminating single-employer plans and for other purposes.

DATES: Effective October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, 202–229–3829. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions—including interest assumptions—for valuing benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (*https://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4044 (''Interest Rates Used to Value Benefits'') to determine the present value of annuities in an involuntary or distress termination of a single-employer plan under the asset allocation regulation. The assumptions are also used to determine the value of multiemployer plan benefits and certain assets when a plan terminates by mass withdrawal in accordance with PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281).

The fourth quarter 2022 interest assumptions will be 3.90 percent for the first 20 years following the valuation date and 3.65 percent thereafter. In comparison with the interest assumptions in effect for the third quarter of 2022, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), an increase of 1.09 percent in the select rate, and an increase of 0.71 percent in the ultimate rate (the final rate).

Need for Immediate Guidance

PBGC has determined that notice of, and public comment on, this rule are impracticable, unnecessary, and contrary to the public interest. PBGC routinely updates the interest assumptions in appendix B of the asset allocation regulation each quarter so that they are available to value benefits. Accordingly, PBGC finds that the public interest is best served by issuing this rule expeditiously, without an opportunity for notice and comment, and that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication to allow the use of the proper assumptions to estimate the value of plan benefits for plans with valuation dates early in the fourth quarter of 2022.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In appendix B to part 4044, an entry for ''October–December 2022'' is added at the end of the table to read as follows:

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
October–December 2022	0.0390	1–20	0.0365	>20	N/A	N/A

Issued in Washington, DC, by.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2022–20016 Filed 9–14–22; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Determination

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of a determination.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a products determination issued pursuant to a March 11, 2022 Executive order. The determination was previously issued on OFAC's website.

DATES: The determination pursuant to section 1(a)(i) of Executive Order 14068 was issued on June 24, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On March 11, 2022, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), issued Executive Order (E.O.) 14068 (87 FR 14381, March 15, 2022). Among other prohibitions, section 1(a)(i) of E.O. 14068 prohibits the importation into the United States of the following products of Russian Federation origin: fish, seafood, and preparations thereof; alcoholic beverages; non-industrial diamonds; and any other products of Russian Federation origin as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce.

On June 24, 2022, pursuant to delegated authority, the Director of OFAC, in consultation with the Department of State and the Department of Commerce, determined that the prohibitions in section 1(a)(i) of E.O. 14068 shall apply to gold of Russian Federation origin. The determination took effect upon publication on OFAC's website (*www.treas.gov/ofac*) on June 28, 2022. The text of the determination is below.

OFFICE OF FOREIGN ASSETS CONTROL

Determination Pursuant to Section 1(a)(i) of Executive Order 14068

Prohibitions Related to Imports of Gold of Russian Federation Origin

Pursuant to sections 1(a)(i), 1(b), and 5 of Executive Order (E.O.) 14068 of March 11, 2022 (''Prohibiting Certain Imports, Exports, and New Investment With Respect to Continued Russian Federation Aggression'') and 31 CFR 587.802, the Director of the Office of Foreign Assets Control, in consultation with the Department of State and the Department of Commerce, hereby determines that the prohibitions in section 1(a)(i) of E.O. 14068 shall apply to gold of Russian Federation origin. As a result, the importation into the United States of gold of Russian Federation origin is prohibited, except to the extent provided by law, or unless licensed or otherwise authorized by the Office of Foreign Assets Control.

This determination excludes gold of Russian Federation origin that was located outside of the Russian Federation prior to the effective date of this determination.

This determination shall take effect upon publication by the Director of the Office of Foreign Assets Control on the Department of the Treasury's website.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–20030 Filed 9–14–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0787]

RIN 1625–AA87

Security Zones; Corpus Christi Ship Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary, 500-yard radius, moving security zones for certain vessels carrying Certain Dangerous Cargoes (CDC) within the Corpus Christi Ship Channel and La Quinta Channel. The temporary security zones are needed to protect the vessels, the CDC cargo, and the surrounding waterway from terrorist acts, sabotage, or other subversive acts, accidents, or other events of a similar nature. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective without actual notice from September 15, 2022 until September 22, 2022. For the purposes of enforcement, actual notice will be used from September 12, 2022, until September 15, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *Anthony.M.Garofalo@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish these security zones by September 12, 2022 to ensure security of these vessels and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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 contrary to the public interest because immediate action is needed to provide for the security of these vessels.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with the transit of the Motor Vessel (M/V) MATTERHORN EXPLORER and M/V CELSIUS CAROLINA when loaded will be a security concern within a 500-yard radius of each vessel. This rule is needed to provide for the safety and security the vessels, their cargo, and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature while they are transiting within Corpus Christi, TX, from September 12, 2022 until September 22, 2022.

IV. Discussion of the Rule

The Coast Guard is establishing four 500-yard radius temporary moving security zones around M/V MATTERHORN EXPLORER and M/V CELSIUS CAROLINA. The zones for the vessels will be enforced from September 12, 2022, until September 22, 2022. The duration of the zones are intended to protect the vessels and cargo and surrounding waterway from terrorist acts, sabotage or other subversive acts, accidents, or other events of a similar nature. No vessel or person will be permitted to enter the security zones without obtaining permission from the COTP or a designated representative.

Entry into these security zones is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Corpus Christi. Persons or vessels desiring to enter or pass through each zone must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 361–939–0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate for the enforcement times and dates for each security zone.

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, duration, and location of the security zones. This rule will impact a small designated area of 500-yards around the moving vessels in the Corpus Christi Ship Channel and La Quinta Channel as the vessels transit the channel over a two-week period. Moreover, the rule allows vessels to seek permission to enter the zones.

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 temporary security zones may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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 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 moving security zones lasting for the duration of time that the M/V MATTERHORN EXPLORER and M/V CELSIUS CAROLINA are within the Corpus Christi Ship Channel and La Quinta Channel while loaded with cargo. It will prohibit entry within a 500 yard radius of M/V MATTERHORN EXPLORER and M/V CELSIUS CAROLINA while the vessels are transiting loaded within Corpus Christi Ship Channel and La Quinta Channel. It is categorically excluded from further review under L60 in 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 contact 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.T08–0787 to read as follows:

§ 165.T08–0787 Security Zones; Corpus Christi Ship Channel. Corpus Christi, TX.

(a) *Location.* The following area are security zones: All navigable waters encompassing a 500-yard radius around the M/V MATTERHORN EXPLORER and M/V CELSIUS CAROLINA while the vessels are in the Corpus Christi Ship Channel and La Quinta Channel.

(b) *Enforcement period.* This section will be enforced from September 12, 2022 until September 22, 2022.

(c) *Regulations.* (1) The general regulations in § 165.33 of this part apply. Entry into the zones is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Corpus Christi.

(2) Persons or vessels desiring to enter or pass through the zones must request permission from the COTP Sector Corpus Christi on VHF–FM channel 16 or by telephone at 361–939–0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for these security zones.

J.B. Gunning,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2022–19962 Filed 9–14–22; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 87, No. 178
Thursday, September 15, 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–2022–1050; Project Identifier AD–2021–01257–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 supersede Airworthiness Directive (AD) 2007–10–04, which applies to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. AD 2007–10–04 requires repetitive inspections to detect cracks in the horizontal stabilizer, and related investigative and corrective actions if necessary. Since the FAA issued AD 2007–10–04, it has been determined that certain compliance times and repetitive intervals must be reduced to address the unsafe condition. This proposed AD continues to require the actions specified in AD 2007–10–04 with revised compliance times for certain actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 31, 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 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–2022–1050.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–1050; 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–2022–1050; Project Identifier AD–2021–01257–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

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

The FAA issued AD 2007–10–04, Amendment 39–15045 (72 FR 25960, May 8, 2007) (AD 2007–10–04), for all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. AD 2007–10–04 was prompted by reports of cracks found in the horizontal stabilizer in the upper and lower aft skin panels at the aft inboard corner at station XH = 8.2 and in the rear spar upper caps adjacent to the aft skin panel at station XH = 10.0. AD 2007–10–04 requires repetitive inspections to detect cracks in the horizontal stabilizer, and related investigative and corrective actions if necessary. The FAA issued AD 2007–10–04 to detect and correct cracks in the

upper and lower aft skin panels and rear spar upper caps, which, if not corrected, could lead to the loss of overall structural integrity of the horizontal stabilizer.

Actions Since AD 2007–10–04 Was Issued

Since the FAA issued AD 2007–10–04, it has been determined that certain compliance times and repetitive intervals must be reduced for the high frequency eddy current (HFEC) surface and open hole inspections of the rear spar upper caps. The FAA received a report from Boeing of a crack found along fasteners in the upper rear spar that was longer than two inches during an inspection of the horizontal rear spar upper cap on a Model DC–9–82 (MD–82) airplane with 69,799 flight hours and 38,520 flight cycles. The crack was discovered prior to the compliance time intervals for the repetitive inspections required by AD 2007–10–04; it was determined that certain compliance times do not provide at least two opportunities to reliably detect dual origin cracks before they reach critical length.

In addition, since the FAA issued AD 2007–10–04, the legal name of the manufacturer has been changed from McDonnell Douglas Corporation to The Boeing Company on the most recent type certificate data sheet for the affected airplane models.

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 Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021. This service information specifies procedures for repetitive eddy current inspections (HFEC or low frequency eddy current inspections, as applicable) of the horizontal stabilizer; and applicable corrective actions. Corrective actions include stop drilling the end of the crack, trimming out the crack and installing filler, installing a horizontal stabilizer upper and lower aft skin panel splice, replacing the horizontal stabilizer upper and lower aft skin panel, installing bushings and cold working holes, removing the crack and performing a repair, replacing the horizontal stabilizer rear spar upper cap splice, and replacing the splice repair with a new horizontal stabilizer rear spar upper cap.

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.

Proposed AD Requirements in This NPRM

Although this proposed AD does not explicitly restate the requirements of AD 2007–10–04, this proposed AD would retain all requirements of AD 2007–10–04. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (g) of this proposed AD. This proposed AD would also reduce certain compliance times. This proposed AD would also require accomplishing the actions specified in the service information described previously. Alternative methods of compliance (AMOCs) previously approved for AD 2007–10–04 are approved for the corresponding provisions of Boeing Alert Service Bulletin MD80–55A065, dated April 25, 2007, that are required by paragraph (g) of this proposed AD. However, the following AMOCs are canceled as they reference specific inspection intervals that now fall outside of the new inspections requirements:

- FAA Letter Number 120L–14–226a, dated January 29, 2015.
- FAA Letter Number 120L–15–384b, dated November 2, 2015.
- FAA Letter Number 120L–10–345, dated August 3, 2010.

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–2022–1050.

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
Inspections (retained actions from AD 2007–10–04).	8 work-hours × $85 per hour = $680, per inspection cycle.	$0	$680, per inspection cycle.	$14,960 per inspection cycle.
Inspections (new proposed action) ..	Up to 20 work-hours × $85 per hour = $1,700 per inspection cycle.	0	Up to $1,700 per inspection cycle.	Up to $37,400 per inspection cycle.

The FAA estimates the following costs to do any necessary corrective actions (*e.g.,* repairs, replacements, installation) that would be required based on the results of the proposed inspection. The FAA has no way of determining the number of aircraft that might need these corrective actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair, replacement and installation of upper or lower aft skin panel or splice.	Up to 656 work-hours × $85 per hour = $55,760 ...	Up to $128,892 ..	Up to $184,652.
Stop drill repair	4 work-hours × $85 per hour = $340	$0	$340.
Trim out	8 work-hours × $85 per hour = $680	$0	$680.
Install bushings and cold work	26 work-hours × $85 per hour = $2,210	$9,827	$12,037.
Crack removal and repair	6 work hours × $85 per hour = $510	$2,033	$2,543.
Replace rear spar upper cap	368 work-hours × $85 per hour = $31,280	$36,402	$67,682.

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 has 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 that the 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) 2007–10–04, Amendment 39–15045 (72 FR 25960, May 8, 2007), and

■ b. Adding the following new AD:

The Boeing Company: Docket No. FAA–2022–1050; Project Identifier AD–2021–01257–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by October 31, 2022.

(b) Affected ADs

This AD replaces AD 2007–10–04, Amendment 39–15045 (72 FR 25960, May 8, 2007) (AD 2007–10–04).

(c) Applicability

This AD applies to all The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracks found in the horizontal stabilizer in the upper and lower aft skin panels at the aft inboard corner at station XH = 8.2 and in the rear spar upper caps adjacent to the aft skin panel at station XH = 10.0; and by a determination that certain compliance times and inspection intervals must be reduced. The FAA is issuing this AD to detect and correct cracks in the upper and lower aft skin panels and rear spar upper caps, which, if not corrected, could lead to the loss of overall structural integrity of the horizontal stabilizer.

(f) Compliance

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

(g) Repetitive Inspections and Corrective Actions

Except as specified in paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021, do an eddy current inspection to detect any cracking in the horizontal stabilizer and do all applicable repetitive inspections and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021. Do all applicable repetitive inspections and corrective actions at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021, use the phrase ''the original issue date of this service bulletin,'' this AD requires using May 23, 2007 (the effective date of AD 2007–10–04).

(2) Where the Compliance Time columns of the tables in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD80–55A065, Revision 2, dated October 11, 2021, use the phrase ''the Revision 2 date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(i) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin MD80–55A065, dated April 25, 2007. This service information was incorporated by reference in AD 2007–10–04, Amendment 39–15045 (72 FR 25960, May 8, 2007).

(2) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin MD80–55A065, Revision 1, dated September 23, 2008. This service information is not incorporated by reference in this AD.

(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.

(4) AMOCs approved for AD 2007–10–04 are approved as AMOCs for the corresponding provisions of Boeing Alert Service Bulletin MD80–55A065, dated April 25, 2007, that are required by paragraph (g) of this AD, except the AMOCs specified in paragraphs (j)(4)(i) through (iii) of this AD are not approved as AMOCs for this AD.

(i) FAA Letter Number 120L–14–226a, dated January 29, 2015.

(ii) FAA Letter Number 120L–15–384b, dated November 2, 2015.

(iii) FAA Letter Number 120L–10–345, dated August 3, 2010.

(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 August 4, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–19901 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1051; Project Identifier AD–2022–00089–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 all The Boeing Company Model 707 and Model 727 airplanes. This proposed AD was prompted by a report indicating cracking in fastener holes at the center wing box and at certain positions of the rear spar and lower skin on a Model 737–300 airplane. A cross model review determined that similar cracking of the fastener holes in the center wing box lower skin could occur on Model 707 and Model 727 airplanes. For Model 707 airplanes this proposed AD would require repetitive detailed inspections of the center wing box lower skin for cracking and repetitive high frequency eddy current (HFEC) and ultrasonic (UT) inspections of the rear spar lower chord at a certain position for cracking, repetitive sealant application, and repair if necessary. For Model 727 airplanes this proposed AD would require repetitive detailed inspections of the center wing box, lower skin, and rear spar lower chord at a certain location for cracking, repetitive sealant application, and repair if necessary. 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 31, 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–2022–1051.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–1051; 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–2022–1051; Project Identifier AD–2022–00089–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

The FAA received a report from an operator of a Model 737–300 airplane indicating cracking in fastener holes at the center wing box, station 663.75 rear spar, lower skin located at left body buttock line (LBBL) 6.50. The lower skin cracks were hidden between the center wing box lower chord on the upper surface and the keel beam upper chord on the lower surface. The Model 737–300 airplane had a total of 72,702 flight

hours and 44,369 flight cycles at the time of the finding. A cross model review determined that similar cracking of the fastener holes in the center wing box lower skin could occur on Model 707 and Model 727 airplanes. The FAA is issuing this AD to address cracking in the center wing box lower skin or rear spar lower chord, which could result in the inability of the structure to sustain limit load and adversely affect the structural integrity of the airplane.

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.

Explanation of Applicability

Model 727–100 airplanes having line numbers 1 through 47 have a limit of validity (LOV) of 50,000 total flight cycles, and the actions proposed in this NPRM, as specified in Boeing Alert Requirements Bulletin 727–57A0190 RB, dated September 13, 2021, would be required at a compliance time occurring after that LOV. Although operation of an airplane beyond its LOV is prohibited by 14 CFR 121.1115 and 129.115, this NPRM would include those airplanes in the applicability so that these airplanes are tracked in the event the LOV is extended in the future.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing 707 Alert Requirements Bulletin A3544 RB, dated November 1, 2021. This service information specifies procedures for repetitive internal detailed inspections of the center wing box lower skin for cracking and repetitive internal surface HFEC and UT inspections of the rear spar lower chord between LBBL 40 and right body buttock line (RBBL) 40 for cracking, repetitive sealant application, and repair.

The FAA reviewed Boeing Alert Requirements Bulletin 727–57A0190 RB, dated September 13, 2021. This service information specifies procedures for repetitive internal detailed inspections for cracking of the center wing box, lower skin, and rear spar lower chord between LBBL 34.7 and RBBL 34.7, repetitive sealant application, and repair.

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, 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–2022–1051.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 48 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
Inspections and sealant application Model 707 airplanes.	34 work-hours × $85 per hour = $2,890 per inspection cycle.	$0	$2,890 per inspection cycle ...	$66,470 per inspection cycle (23 airplanes).
Inspections and sealant application Model 727 airplanes.	22 work-hours × $85 per hour = $1,870 per inspection cycle.	0	$1,870 per inspection cycle ...	$46,750 per inspection cycle (25 airplanes).

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2022–1051; Project Identifier AD–2022–00089–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 31, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes specified in paragraphs (c)(1) through (3) of this AD, certificated in any category.

(1) Model 707–100 Long Body, –200, –100B Long Body, and –100B Short Body series airplanes.

(2) Model 707–300, –300B, –300C, and –400 series airplanes.

(3) Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report indicating cracking in fastener holes at the center wing box and at certain positions of the rear spar and lower skin on a Model 737–300 airplane. A cross model review determined that similar cracking of the fastener holes in the center wing box lower skin could occur on Model 707 and Model 727 airplanes. The FAA is issuing this AD to address cracking in the center wing box lower skin or rear spar lower chord, which could result in the inability of the structure to sustain limit load and 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 for Group 1 Model 727 Airplanes

For airplanes identified as Group 1 in Boeing Alert Requirements Bulletin 727–57A0190 RB, dated September 13, 2021: Within 120 days after the effective date of this AD, inspect the airplane and do all applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Required Actions for Groups 2 and 3 Model 727 Airplanes and All Model 707 Airplanes

Except as specified by paragraph (i) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing 707 Alert Requirements Bulletin A3544 RB, dated November 1, 2021; or Boeing Alert Requirements Bulletin 727–57A0190 RB, dated September 13, 2021; as applicable, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing 707 Alert Requirements Bulletin A3544 RB, dated November 1, 2021; or Boeing Alert Requirements Bulletin 727–57A0190 RB, dated September 13, 2021, as applicable.

Note 1 to paragraph (h): Guidance for accomplishing the actions required by this AD can be found in Boeing 707 Alert Service Bulletin A3544, dated November 1, 2021, which is referred to in Boeing 707 Alert Requirements Bulletin A3544 RB, dated November 1, 2021; and Boeing Alert Service Bulletin 727–57A0190, dated September 13, 2021, which is referred to in Boeing Alert Requirements Bulletin 727–57A0190 RB, dated September 13, 2021.

(i) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing 707 Alert Requirements Bulletin A3544 RB, dated November 1, 2021, uses the phrase ''the original issue date of Requirements Bulletin 707A3544 RB'' this AD requires using ''the effective date of this AD.''

(2) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 727–57A0190 RB, dated September 13, 2021, uses the phrase ''the original issue date of Requirements Bulletin 727–57A0190 RB'' this AD requires using ''the effective date of this AD.''

(3) Where Boeing 707 Alert Requirements Bulletin A3544 RB, dated November 1, 2021, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(4) Where Boeing Alert Requirements Bulletin 727–57A0190 RB, dated September 13, 2021, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(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 August 5, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–19903 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1163; Project Identifier MCAI–2022–00571–T]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 170 airplanes. This proposed AD was prompted by reports indicating that certain flight control electrical harnesses were routed incorrectly, providing inadequate separation from other electrical harness installations. This proposed AD would require an inspection of certain flight control electrical harnesses for incorrect routing, and modifying any incorrect electrical harness installations, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 31, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br*; website *anac.gov.br/en/.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1163.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1163; 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: Hassan M. Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3221; email *Hassan.M.Ibrahim@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–2022–1163; Project Identifier MCAI–2022–00571–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 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 Hassan M. Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3221; email *Hassan.M.Ibrahim@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

ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2022–04–01, effective April 29, 2022 (ANAC AD 2022–04–01) (also referred to as the MCAI), to correct an unsafe condition for certain Embraer S.A. Model ERJ 170–100 LR, ERJ 170–100 SE, ERJ 170–100 STD, ERJ 170–100 SU, ERJ 170–200 LR, ERJ 170–200 STD, ERJ 170–200 SU, and ERJ 170–200 LL airplanes.

This proposed AD was prompted by reports indicating that flight control electrical harnesses were routed incorrectly on certain airplanes, providing inadequate separation from other electrical harness installations. These other electrical harness installations are considered critical according to the airplanes' critical design configuration control limits (CDCCLs), which identifies items that can be the source of a fuel tank ignition. The FAA is proposing this AD to address the incorrect routing of flight control electrical harnesses near critical fuel quantity indication harnesses, which could possibly result in fuel tank ignition and subsequent loss of the airplane.

Related Service Information Under 1 CFR Part 51

ANAC AD 2022–04–01 specifies procedures for inspecting the installation of flight control electrical harnesses W126 and W127 for incorrect routing and modifying any incorrect electrical harness installations.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in ANAC AD 2022–04–01 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate ANAC AD 2022–04–01 by reference in the FAA final rule. This

proposed AD would, therefore, require compliance with ANAC AD 2022–04–01 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by ANAC AD 2022–04–01 for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2022–1163 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 668 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
3 work-hours × $85 per hour = $255	$0	$255	$170,340

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

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

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:

Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.): Docket No. FAA–2022–1163; Project Identifier MCAI–2022–00571–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 31, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, –200 STD, and –200 LL airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2022–04–01, effective April 29, 2022 (ANAC AD 2022–04–01).

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by reports indicating that certain flight control electrical harnesses were routed incorrectly, providing inadequate separation from other electrical harness installations. The FAA is issuing this AD to address the incorrect routing of flight control electrical harnesses near critical fuel quantity indication harnesses, which could possibly result in fuel tank ignition and subsequent loss of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2022–04–01.

(h) Exceptions to ANAC AD 2022–04–01

(1) Where ANAC AD 2022–04–01 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Alternative methods of compliance (AMOC)'' section of ANAC AD 2022–04–01 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Related Information

(1) For ANAC AD 2022–04–01, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this ANAC AD on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1163.

(2) For more information about this AD, contact Hassan M. Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3221; email *Hassan.M.Ibrahim@faa.gov.*

Issued on September 9, 2022.

Christina Underwood,

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

[FR Doc. 2022–19908 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. FAA–2022–1203]

Draft FAA Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed policy; request for comments.

SUMMARY: This notice is directed to airport sponsors, consultants, and other stakeholders regarding a proposed update of the FAA policy and practice regarding processing land use changes on federally acquired or federally conveyed airport land. The updated policy confirms and clarifies the appropriate methods to document FAA's review and approval or consent for such changes, in light of amendments made by Section 163 of the FAA Reauthorization Act of 2018. This policy clarifies: When reviewing proposed land use changes on federally acquired or federally conveyed airport land, the FAA will review the proposal in its entirety without individually examining components of the proposal as aeronautical or non-aeronautical; a letter of approval or consent is required for a non-aeronautical use or mixed use and the approval or consent will remain in effect for the duration of the lease term; the determination of whether the non-aeronautical use is significant will be based on the primary use of the project; FAA will only release Federal obligations when the airport sponsor proposes the sale or conveyance of federally acquired or federally conveyed airport land that meets FAA release requirements; and, FAA letters of approval or consent and releases will be documented on an airport's Exhibit A in accordance with the ARP SOP 3.00—*FAA Review of Exhibit 'A' Airport Property Inventory Maps.* This policy should be used in conjunction with FAA Order 5190.6, *Airport Compliance Manual,* Chapter 22, Releases from Federal Obligations; and FAA Order 5100.38, *Airport Improvement Handbook;* and any related policy implemented in conjunction and complementary with Airports Planning and Programming (APP) guidance. Additionally, compliance specialists will consult with FAA Environmental Protection Specialists to determine what, if any, environmental obligations under relevant statutes or regulations may apply to specific land use changes at specific airports.

DATES: The FAA will accept public comments on the proposed policy statement for 30 days. Comments must be submitted on or before October 17, 2022. The FAA will consider comments on the proposed policy statement. Any necessary or appropriate revisions resulting from the comments received will be adopted as of the date of a subsequent publication in the **Federal Register**.

ADDRESSES: You may send comments [identified by Docket Number, FAA 2022–1203] using any of the following methods:

- *Government-Wide Rulemaking Website:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lorraine Herson-Jones, Manager, Office of Airport Compliance and Management Analysis, ACO–100, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–3085.

SUPPLEMENTARY INFORMATION:

Background

Airport Sponsor Obligations

Congress authorized the conveyance of federal surplus property and financial assistance for the acquisition of land where the land is needed for ''airport purposes.'' See 49 U.S.C. 47107(c)(1). Under the Airport Improvement Act, ''airport purpose'' means land that ''may be needed for an aeronautical purpose (including runway protection zone) or serves as noise buffer land.'' Id. Federally conveyed or federally acquired land must be used for airport purposes until the FAA approves or consents to a non-aeronautical use and thereby discharges the sponsor of that obligation. 49 U.S.C. 47153(a), 49 U.S.C. 47125(a), and 49 U.S.C. 47107(c)(2)(B). In addition, Congress requires the FAA to submit an annual report listing airports not in compliance with airport

land use restrictions and identifying necessary corrective action. 49 U.S.C. 47131(a)(5).

Airport sponsors that have accepted federally conveyed or federally acquired airport land have agreed to comply with certain obligations and policies included in the federal grant agreement or the federal conveyance documents regarding the use of the land. Those obligations derive from multiple statutes, deed covenants and the grant assurances.

Airport sponsors must request FAA written approval or consent to allow federally conveyed or federally acquired land to be used for non-aeronautical purposes. 49 U.S.C. 47153(a), 49 U.S.C. 47125(a), 49 U.S.C. 47107(c)(2)(B). The FAA's authority to approve or consent to a non-aeronautical land use or to release obligations depends upon the obligating documents, the current and future aeronautical need of the property, and the proposed use. For example, residential use on airport property is incompatible with the needs of civil aviation, is prohibited by FAA policy, and is also contrary to federal obligations.

Limiting the use of aeronautical facilities to aeronautical purposes ensures that airport facilities are available to meet aviation demand at the airport. Aviation tenants and aircraft owners should not be displaced by non-aviation commercial uses that could be conducted off airport property.[1] The FAA must consider both the existing and future aviation demand. Over time, the definition of aeronautical use has remained relatively unchanged, except when changes were needed to reflect necessary access for sky diving, and new entrants, such as Unmanned Aircraft System (UAS) and commercial space. Aeronautical use accommodates an aeronautical activity. Aeronautical use lands receive additional benefits. They are afforded the protection of the grant assurances and may be charged favorable below market aeronautical rates. The aeronautical use definition protects the federal investment in aviation and ensures that non-aeronautical uses cannot easily displace aeronautical uses and thereby diminish the safety, efficiency and utility of the entire airport.

Implications of FAA Reauthorization Act of 2018 (Pub. L. 115–254), Section 163

In addition, the ''*FAA Reauthorization Act of 2018*'' (Pub. L. 115–254), Section 163, changed the FAA's authority to regulate non-federally acquired or conveyed airport land. The FAA's authority over a proposed land use change may be limited when it does not impact safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations or does not adversely affect the value of prior Federal investments to a significant extent. See Public Law 115–254 § 163(b)(1)(A) and (d)(1)(B). Section 163(a) limits the FAA's authority to directly or indirectly regulate an airport owner or operator's acquisition, use, lease, encumbrance, transfer, or disposal of land, any facility upon such land, or any portion of such land or facility. However, Section 163(b) contains three exceptions and provides the limitations on when Section 163(a) do not apply:

1. Any regulation ensuring the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations; [2]

2. Any regulation imposed with respect to land or a facility acquired or modified using Federal funding; [3]

3. Any authority contained in a Surplus Property Act instrument of transfer,[4] or Section 40117 of title 49 United States Code (Passenger Facility Charge statute).[5]

In cases covered by 163(b), FAA retains land use approval authority over the project. The FAA will follow this policy guidance and FAA Order 5190.6, *Airport Compliance Manual.*

When FAA lacks approval authority over a particular change in land use or sale of land, all of the airport sponsor's federal statutory and grant assurance obligations remain in full force and effect, including over its remaining airport property. Airport sponsors remain obligated under the Grant Assurances, FAA's *Policies and Procedures Concerning the Use of Airport Revenue* (64 FR 7696, February 16, 1999) (Revenue Use Policy), and FAA's *Policy Regarding Rates and Charges* (78 FR 55330, September 10, 2013).

The sale or lease of the land must be accomplished per the FAA's *Appraisal Standards for the Sale and Disposal of Federally Obligated Airport Property* (Compliance Guidance Letter 2018–3). The land must be sold or leased at fair market value and the funds must be used in accordance with the FAA's Revenue Use Policy. See 49 U.S.C. 47107(c)(2)(B). The sponsor should retain sufficient authority over the disposed land to prevent uses that conflict with its federal obligations and related requirements or create conditions resulting in violations of the assurances. To retain this authority, sponsors should consider using subordination clauses, reservations, covenants, or other restrictions in a deed or other instrument to protect the public's right to fly over the land, prohibit obstructions to air navigation or interference with the flight of aircraft, or assure compatible land use. The deed or other instrument containing the restrictions should be recorded in local land records.

The FAA may verify compliance with these requirements through a financial compliance review, review of supporting documentation, land use inspection, the enforcement of grant assurances, or other enforcement mechanisms. The sponsor also has the responsibility to comply with all federal, state, and local environmental laws and regulations.

Explanation of Terms

Aeronautical Use—The FAA considers the aeronautical use of an airport to be any activity that involves, makes possible, is required for the safety of, or is otherwise directly related to, the operation of aircraft. Aeronautical use includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail and cargo on the airport. *FAA's Policy Regarding Rates and Charges,* 78 FR 55330 (September 10, 2013).

Examples of aeronautical use include:

1. operational uses such as aerial approaches, navaids, runways, taxiways, aprons, or other aircraft movement areas;

2. future developmental uses to reserve property interests for foreseeable aeronautical development (*e.g.,* a planned runway extension or a planned terminal building development); and

3. essential services that directly support flight operations (*e.g.,* aircraft maintenance, fueling, and servicing; mail, passenger and cargo processing facilities; communications and air traffic control; crash rescue, firefighting, and airport maintenance).

[1] See *Policy on the Non-Aeronautical Use of Airport Hangars* (81 FR 38906–38907), June 15, 2016.

[2] See Section 163(b)(1)(A).

[3] See Section 163(b)(2).

[4] The FAA may retain approval authority over proposed changes in the use of lands granted to an airport sponsor from the United States, including under the *Surplus Property Act,* 49 U.S.C. 47125, section 16 of the *Federal Airport Act of 1946* Public Law 79–377, section 23 of the *Airport and Airway Development Act of 1970,* Public Law 91–258, section 516 of the *Airport and Airway Development Act of 1982,* and former military airports conveyed to local public entities under the congressionally authorized Base Realignment and Closure program because lands granted under these statutes constitute federal investments in the airport.

[5] See Section 163(b)(3).

Airport Purpose: Uses of land that are directly related to the actual operation or the foreseeable aeronautical development of a public airport. These are situations where a primary aeronautical facility has some non-aeronautical components that support that facility's core aeronautical function within its operation. Examples of this are:

1. A terminal complex: All components of a terminal complex (including the building, terminal concessions, terminal parking, and roads) serve an airport purpose.

2. A fixed base operator (FBO) facility that includes parking and classrooms. All components serve an airport purpose.

An aeronautical facility serving an airport purpose does not include certain uses such as aircraft manufacturing plants and warehouse distribution facilities, which are considered as mixed-use as defined below.

Non-Aeronautical Use: All other uses that are not considered aeronautical. Non-aeronautical uses commonly occur on airports, but these uses do not have the priority or protection of the grant assurances. There is no federal requirement that obligated airport sponsors accommodate non-aeronautical uses. This differentiation between aeronautical and non-aeronautical is intended to protect the Federal investment in aviation and ensure that non-aeronautical uses cannot easily displace aeronautical uses and thereby diminish the safety, efficiency, and utility of the airport.[6]

Examples of these include:

1. Car rental facility (stand-alone). All components will be considered a non-aeronautical use.

2. Hotel and associated parking lot.

3. Warehouse and distribution center.

Mixed Uses—A mixed-use facility contains both aeronautical and non-aeronautical uses, but the non-aeronautical use is significant and could be located off airport property. Examples of mixed uses are:

1. Mail distribution centers that are connected to an air cargo operation.

2. Cargo operations containing non-aeronautical elements such as office building complexes, sorting facilities, long-term storage (warehousing), freight forwarders and third-party logistics providers, certain access infrastructure, or certain truck parking/trailer facilities (stalls). Most of these are related to other transportation modes or aspects of the cargo business, but not directly and substantially to its ''aeronautical activity''.

3. Aircraft manufacturing facility that includes final assembly, but also significant non-aeronautical uses such as engineering facilities, research and development facilities, parts manufacturing and storage, employee parking, or office buildings.

Federally acquired land—This is land that was acquired with Federal funds, including the Airport Improvement Program (AIP), Bipartisan Infrastructure Law (BIL), Coronavirus Aid, Relief, and Economic Security (CARES) Act, Federal Aid to Airports Program (FAAP), Airport Development Aid Program (ADAP), and as part of an AP–4 agreement.[7] It also includes sponsor-acquired land that was used for the sponsor match on a federally funded project or was swapped for land purchased with federal funds.

Federally conveyed land—This is land conveyed to the sponsor by the Federal government through a written deed of conveyance (also called a patent) that contained specific restrictions or allowances for the use of the land. It includes land transferred under:

1. Surplus Property Act, codified in 49 U.S.C. 47151–47153, including former military airports conveyed to local public entities under 10 U.S.C. 2687 of the Defense Base Closure and Realignment Act (BRAC) program or any other Federal laws; and,

2. Section 16 of the Federal Airport Act of 1946, 119 Public Law 79–377, Section 23 of the Airport and Airway Development Act of 1970, Public Law 91–258, and Section 516 of the Airport and Airway Development Act of 1982, codified in 49 U.S.C. 47125. These are sometimes referred to as non-surplus property transfers.

Release of Federal obligations—The formal, written authorization discharging and relinquishing all or part of the FAA's right to enforce an airport's contractual or deeded obligations. FAA's authority to release, waive or amend an obligation is contained in 49 U.S.C. 47153(a) and 47107(h)(2).

Letter of approval or consent—FAA's action on a proposed land use change may be documented in the form of a letter of approval or a letter of consent, depending upon the obligating deeds or documents and the land at issue.[8] The approval or consent should run concurrent with the lease term. At the end of the non-aeronautical lease term, the land reverts to the airport sponsor for aeronautical use.

Proposed Policy and Request for Comments

In accordance with the above, the FAA proposes to adopt the following policy statement on processing land use changes on federally acquired and federally conveyed land. The agency requests public comments on the proposed policy statement. Comments can be submitted as described in the **ADDRESSES** and **DATES** information in this notice. Comments received by the due date will be considered in the development of a final agency policy statement.

The FAA's Policy

The FAA confirms and clarifies its prior policy and practice regarding the implementation of its statutory responsibility to review and approve or consent to, or deny, requests for land use changes on federally acquired or federally conveyed land:[9] (1) The FAA will review the sponsor's proposal in its entirety without individually examining components of the proposal as aeronautical or non-aeronautical; (2) A letter of approval or consent is required for a non-aeronautical use or mixed use and the approval or consent will remain in effect only for duration of the lease term;[10] (3) the determination of whether the non-aeronautical use is significant will be based on the primary use of the project; (4) FAA will only release federal obligations when the airport sponsor proposes the sale or conveyance of federally acquired or federally conveyed airport land that meets FAA release requirements;[11] and (5) FAA letters of approval or consent and releases will be documented on the Exhibit A in accordance with ARP SOP 3.00—*FAA Review of Exhibit 'A' Airport*

[6] FAA has provided guidance on the temporary non-aeronautical use of a hangar in FAA's Hangar Use Policy, *Policy on the Non-Aeronautical Use of Airport Hangars,* 81 FR 38906, (June 15, 2016) (*www.govinfo.gov/content/pkg/FR-2016-06-15/pdf/2016-14133.pdf*).

[7] In some instances, an AP–4 Agreement included a Federal land purchase. The original agreement and funding should be reviewed to confirm the source of the funds.

[8] Surplus Property Act deeds often require the FAA's written consent for a non-aeronautical use, so a letter of consent would be appropriate. Grant Assurance 5, *Preserving Rights and Powers,* requires prior written approval of the Secretary for the sell or transfer of any property upon which Federal funds have been expended, which would require a letter of approval. In both cases, the letters serve the equivalent purpose of documenting the FAA's action on the sponsor's request.

[9] This will also apply in situations where a land use change impacts the safe and efficient operation of aircraft or safety of people and property on the ground related to aircraft operations.

[10] This process will supersede the existing interim and concurrent use process that was limited to 3–5 years; FAA Order 5190.6, Chapter 22 will be updated to reflect this revised process.

[11] Sponsors should follow the existing release process in 14 CFR part 155, *Release of Airport Property from Surplus Property Disposal Restrictions* and FAA Order 5190.6, Chapter 22.

Property Inventory Maps. FAA Order 5190.6, *Airport Compliance Manual,* will be updated to reflect this policy guidance.

Process for Evaluating Land Use Changes

Uses of airport land will fall into one of four categories: (1) Aeronautical use, (2) Airport Purpose, (3) Non-Aeronautical Use, or (4) Mixed-Use.

FAA must approve or consent to all non-aeronautical and mixed uses of federally acquired and federally conveyed land. If the FAA determines that the proposed use serves an aeronautical use or airport purpose as defined above, then FAA approval or consent is not required. The following explains the process when an airport sponsor requests a change in land use on federally conveyed or federally acquired land:

1. What Sponsors Must Submit

The sponsor's request needs to include the following:

a. documentation on how the land was acquired (*i.e.,* federal conveyance documents, Federal grant agreements, Exhibit A, etc.);

b. current and future aeronautical demand of the airport and the land; and

c. proposed non-aeronautical use, including the length of the lease.

2. FAA's Evaluation of the Request

FAA's determination of whether the non-aeronautical use is significant, consistent with the term ''mixed uses'' in ''Explanation of Terms'' in this document, will be made based on *the primary use of the project.* The process involves a certain level of discretion by the FAA and the airport sponsor. Major considerations in granting approval or consent include:

a. reasonableness and practicality of the sponsor's request,

b. effect of the request on needed aeronautical facilities, and

c. compatibility of the proposal with the needs of civil aviation. (*Note:* The residential use of airport property is incompatible with the needs of civil aviation, is prohibited by FAA policy, and is also contrary to Federal obligations.)

The distinctions may vary slightly depending on the circumstances of the situation, such as intermodal functionality, proponent's business model, project integrity, available airport land, project size and location, airport planning priorities, and funding requirements and restrictions. The proposal must benefit the airport and its functions in support of aeronautical uses and not adversely affect the value of the Federal investment in the airport and its facilities. 49 U.S.C. 47107(a)(16)(B), 49 U.S.C. 47125(a), and 49 U.S.C. 47152(1).

The use should be compatible with the airport's current or future aeronautical use or demand. FAA approval shall not be granted if the FAA determines that an aeronautical demand for the land is likely to exist within the period of the proposed use, or it compromises the safety and operation of the airport. FAA consent to or approval of a non-aeronautical use should only extend for duration of the lease term and must provide that the land will be returned to aeronautical use at the end of the term.

3. Documentation of FAA Decision

Upon completion of the review, the FAA will either issue a letter of approval or letter of consent for the non-aeronautical use or mixed-use, or deny the request.

The letter of approval or letter of consent must document the FAA's approval of a non-aeronautical land use on federally acquired or federally conveyed airport land. This letter will outline the conditions of the approval or consent and include a requirement that the land must be available for aeronautical use at the end of the approval or consent period. Generally, the approval or consent will remain for the duration of the lease agreement. The letter of approval or letter of consent does not affect or negate the sponsor's federal obligations.

The requirement for NEPA should be coordinated with FAA Environmental Protection Specialists.

All land use changes should be shown on the Exhibit A in accordance with ARP SOP 3.00—*FAA Review of Exhibit 'A' Airport Property Inventory Maps.* This includes depicting in a table format the type of use for a facility, (*e.g.*: aeronautical, non-aeronautical, mixed-use), and the approval and expiration dates.

Issued in Washington, DC, on September 7, 2022.

Kevin C. Willis,

Director, Office of Airport Compliance and Management Analysis.

[FR Doc. 2022–19665 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 516

[Docket No. FDA–2022–N–1128]

RIN 0910–AI46

Defining Small Number of Animals for Minor Use Determination; Periodic Reassessment

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to revise the ''small number of animals'' definition for dogs and cats in our existing regulation for new animal drugs for minor use or minor species. The Minor Use and Minor Species Animal Health Act of 2004 (MUMS Act) provides incentives to encourage animal drug sponsors to develop and seek FDA approval of drugs intended for use in minor animal species or for minor uses in major animal species. Congress provided a statutory definition of ''minor use'' that relies on the phrase ''small number of animals'' to characterize such use. We are proposing certain revisions to the definition of ''small number of animals'' based on our most recent reassessment of the small numbers, which we conducted from 2018 to 2019.

DATES: Either electronic or written comments on this proposed rule or its companion direct final rule must be submitted by November 14, 2022. Submit written comments (including recommendations) on the collection of information under the Paperwork Reduction Act of 1995 by November 14, 2022. If FDA receives any timely significant adverse comments on the direct final rule with which this proposed rule is associated, the Agency will publish a document withdrawing the direct final rule within 30 days after the comment period ends. FDA will apply any significant adverse comments received on the direct final rule to the proposed rule in developing the final rule. FDA will then proceed to respond to comments under this proposed rule using the usual notice and comment procedures.

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

November 14, 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 No. FDA–2022–N–1128 for ''Defining Small Number of Animals for Minor Use Determination; Periodic Reassessment.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' will be publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

Submit comments on information collection issues under the Paperwork Reduction Act of 1995 to the Office of Management and Budget (OMB) at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this proposed collection is ''Designated New Animal Drugs for Minor Use and Minor Species.''

FOR FURTHER INFORMATION CONTACT: Margaret Oeller, Center for Veterinary Medicine (HVF–50), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0566, email: *margaret.oeller@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose and Coverage of the Proposed Rule

The proposed rule would amend the definition of ''small number of animals'' as it relates to dogs and cats in our regulation implementing the MUMS Act. The term ''minor use'' is the intended use of a drug in a major species for an indication that occurs infrequently and in only a small number of animals, or occurs in limited geographical areas and in only a small number of animals annually. The ''small number of animals'' definition is used for purposes of determining whether a particular intended use of a drug in one of the seven major species of animals (horses, dogs, cats, cattle, pigs, turkeys, and chickens) qualifies as a minor use. In March 2008, FDA issued a proposed rule to establish the meaning of ''small number of animals'' as that term is used in the definition of minor use included in the Federal Food, Drug, and Cosmetic Act (FD&C Act). FDA finalized the rule in August 2009. The definition for the phrase ''small number of animals'' includes a specific upper limit number (*i.e.,* small number) for each of the seven major species of animals.

In response to comments submitted to FDA regarding the 2008 proposed rule, we stated in the final rule that we would periodically reevaluate the small numbers and update the definition if necessary. This proposed rule is the result of our 2018–2019 reassessment of the ''small numbers of animals.''

B. Summary of the Major Provisions of the Proposed Rule

Based on our 2018–2019 reassessment, we are proposing to revise the small number for dogs included in the ''small number of animals'' definition from 70,000 to 80,000 and the small number for cats from 120,000 to 150,000.

C. Legal Authority

The legal authority for this proposed rule is the MUMS Act, which amended the FD&C Act. Additional authority comes from the ''Regulations and Hearings'' section of the FD&C Act, which authorizes FDA to issue regulations for the efficient enforcement of the FD&C Act.

D. Costs and Benefits

Sponsors that apply for and receive conditional approval for a new animal drug intended for a ''minor use'' in dogs or cats as a result of the changes to the small numbers that would be made by the proposed rule, if finalized, would be able to market their drug earlier, which in turn could benefit pet owners by improving the health of dogs and cats with uncommon diseases or conditions. Both FDA and those sponsors receiving conditional approval could receive cost savings from deferring costs associated with providing FDA with substantial evidence that a new animal drug is effective until later in the drug development process. ''Substantial evidence'' is the effectiveness standard that must be met before a sponsor can receive full approval for its new animal drug under the FD&C Act. Conditional approval does not require the drug sponsor to demonstrate effectiveness by ''substantial evidence.'' Instead, the sponsor has to show that there is a ''reasonable expectation'' of effectiveness. Sponsors could incur costs to prepare and submit additional minor use determination requests and annual designation reports to FDA. In addition, FDA would bear costs to review any additional minor use determination requests and annual designation reports it receives from sponsors. FDA estimates that the annualized benefits over 20 years would range from $0 to $6.06 million at a 7 percent discount rate, with a primary estimate of $3.03 million, and from $0 to $7.43 million at a 3 percent discount rate, with a primary estimate of $3.72 million. Annualized costs would range from $3,033 to $31,741 at a 7 percent discount rate, with a primary estimate of $17,387, and from $2,244 to $30,285 at a 3 percent discount rate, with a primary estimate of $16,264.

II. Table of Abbreviations and Commonly Used Acronyms in This Document

Abbreviation/acronym	What it means
2013 reassessment	Reassessment of small numbers conducted by FDA in 2013, the results of which were published in May 2014 (79 FR 28736).
AVMA	American Veterinary Medical Association.
21 CFR	Title 21 of the Code of Federal Regulations.
Current reassessment	Reassessment of small numbers conducted by FDA in 2018–2019.
FDA	U.S. Food and Drug Administration.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
MUMS	Minor Use and Minor Species.
MUMS Act	Minor Use and Minor Species Animal Health Act of 2004.
OMB	Office of Management and Budget.
Pub. L	Public Law.

III. Background

A. Introduction

The MUMS Act (Pub. L. 108–282) amended the FD&C Act to provide incentives for the development of new animal drugs for use in minor animal species and for minor uses in major animal species. The MUMS Act defines ''minor use'' as the intended use of a drug in a major species for an indication that occurs infrequently and in only a small number of animals or in limited geographical areas and in only a small number of animals annually (see section 201(pp) of the FD&C Act (21 U.S.C. 321(pp)). Congress charged FDA to further define the term ''small number of animals'' for minor use purposes (see Senate Report 108–226 at 8, February 18, 2004). In the **Federal Register** of March 18, 2008 (73 FR 14411), we issued a proposed rule to define the term ''small number of animals'' by establishing for each major species of animal (horses, dogs, cats, cattle, pigs, turkeys, and chickens) an upper limit threshold (*i.e.,* small number) to provide a means of determining whether any particular intended use of a new animal drug in one of these species would qualify as a minor use under the MUMS Act.

The ''small numbers of animals'' definition was formally established by the final rule that was published on August 26, 2009 (74 FR 43043). In that final rule, we addressed comments from the public regarding the 2008 proposed rule, including comments suggesting that the Agency reevaluate the small numbers on a periodic basis. We agreed that periodic reassessment of the small numbers is appropriate, and that such reassessments should occur approximately every 5 years.

We conducted our initial reassessment of the small numbers in 2013 and published the results of that reassessment on May 19, 2014 (79 FR 28736) (the 2013 reassessment). At that time, we did not change the small numbers for any of the major species.

From 2018 to 2019, we conducted our second reassessment (current reassessment) of the small numbers (Ref. 1). Based on the current reassessment, we are proposing to revise (*i.e.,* increase) the small numbers for dogs and cats only. Elsewhere in this issue of the **Federal Register**, we are publishing a notice to announce that we are not revising the small numbers in the ''small number of animals'' definition for the other major species (*i.e.,* horses, cattle, pigs, turkeys, and chickens). Because we are only proposing to revise the ''small number of animals'' definition as it relates to dogs and cats, the remainder of this document will focus on those two species.

B. History of Defining Small Numbers for Dogs and Cats

The term ''small number of animals'' is defined in § 516.3(b) (21 CFR 516.3(b)) of our regulation on new animal drugs for minor use and minor species. For each of the seven major species of animals, the definition specifies the greatest number of animals of that species that could be treated annually with a new animal drug for a particular indication and still qualify as a minor use. For dogs and cats, a ''small number of animals'' is defined as equal

to or less than 70,000 dogs, or equal to or less than 120,000 cats.

The process FDA used to establish the small numbers for the companion animal major species (dogs, cats and horses) is outlined in detail in the 2008 proposed rule. That process involved estimating the development cost for an animal drug intended for each of the three major companion animal species, estimating the amount that companion animal owners were willing to pay for a drug to treat each of those species, estimating the average percentage of companion animals that would likely be treated, and estimating the uncertainty associated with estimates of the rate of occurrence of various uncommon conditions in companion animals. Assessment of these various factors resulted in the formula, published in the proposed rule (73 FR 14411 at 14414), that we use to determine the small numbers for companion animals.

C. Need for the Proposed Regulatory Action

In the preamble to the 2009 final rule in which we first established the definition of ''small number of animals,'' we agreed in response to comments that we should periodically reevaluate the small numbers and update the definition as necessary. We also agreed that such a reevaluation should take into account the potential for changes in the development cost of new animal drugs, changes in the amount that animal owners are willing to pay to treat affected animals, and changes in other factors involved in establishing a ''small number,'' such as the total population of major animal species (74 FR 43043 at 43044).

In a memorandum containing the results of our current reassessment, we describe the processes that we used to reevaluate the small number of animals (Ref. 1). Based on the current reassessment, we are proposing to increase the small numbers for dogs and cats only.

IV. Legal Authority

We are issuing this proposed rule under the same legal authorities described in the proposed and final rules we issued to establish the ''small number of animals'' definition in 21 CFR part 516 (see 73 FR 14411 at 14415 and 74 FR 43043 at 43049). These authorities include sections 571, 573, and 701 of the FD&C Act (21 U.S.C. 360ccc, 360ccc–2, and 371). Sections 571 and 573 of the FD&C Act were established by the MUMS Act. Section 701(a) authorizes the Agency to issue regulations for the efficient enforcement of the FD&C Act.

V. Description of Proposed Rule

A. Proposed Revisions to the ''Small Number of Animals'' Definition in § 516.3

As discussed in section III.C, when we published the final rule defining ''small number of animals'' for minor use designation in 2009, we agreed we should periodically reevaluate the small number of animals to account for changes in drug development costs, changes in the amount that animal owners are willing to pay to treat affected animals, and other relevant factors (74 FR 43043 at 43044). Based on our current reassessment (Ref. 1), we are proposing to revise the definition of ''small number of animals'' in § 516.3(b) to increase the small number for dogs from 70,000 to 80,000, and to increase the small number for cats from 120,000 to 150,000.

B. Reassessment of the Small Numbers for Dogs and Cats

For our current reassessment of the small numbers, our primary source of information regarding costs related to dogs and cats is a 2018 report prepared by Brakke Consulting Inc., (BCI) containing population estimates, disease incidence rates, and information about drug development costs and treatment costs for companion animals (Ref. 2). The 2018 report is the latest update of the BCI report. We used previous versions of the BCI report for the 2008 proposed rule and the 2013 reassessment. Our primary source of information regarding healthcare costs for dogs and cats is the 2017–2018 edition of the American Veterinary Medical Association (AVMA) U.S. Pet Ownership and Demographics Sourcebook, which contains surveys of pet ownership (Ref. 3). This is an updated version of the same source we used for our 2008 proposed rule and the 2013 reassessment.

After evaluating the relevant data from these sources and using that information to reassess the small numbers for dogs and cats, we determined that the small numbers for dogs and cats should be increased. Therefore, we are proposing revisions to the definition of ''small numbers of animals'' for these two species. For a full discussion of our current reassessment of the small numbers, see our current reassessment memorandum (Ref. 1).

VI. Companion Document to Direct Final Rulemaking

In the document entitled ''Guidance for FDA and Industry: Direct Final Rule Procedures,'' announced in the **Federal Register** of November 21, 1997 (62 FR 62466), FDA describes its procedures on when and how the Agency will employ direct final rulemaking. The guidance may be accessed at: *https://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm.*

This proposed rule is a companion to the direct final rule published elsewhere in this issue of the **Federal Register**. We propose to revise the ''small number of animals'' definition for dogs and cats in § 516.3(b). This proposed rule is intended to make noncontroversial changes to an existing regulation. We do not anticipate that there will be any significant adverse comments.

Consistent with our procedures on direct final rulemaking, we are publishing elsewhere in this issue of the **Federal Register** a companion direct final rule. The companion direct final rule and this companion proposed rule are substantively identical. This companion proposed rule provides the procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of a significant adverse comment. The comment period for this proposed rule runs concurrently with the comment period for the companion direct final rule. Any comments received in response to the companion direct final rule will also be considered as comments regarding this proposed rule.

We are providing a comment period for the proposed rule of 60 days after the date of publication in the **Federal Register**. If we receive a significant adverse comment, we intend to withdraw the direct final rule before its effective date by publishing a notice in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants withdrawing a direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553).

Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in this proposed rule would not be considered a significant adverse comment unless the comment states why the proposed

rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to a part of this proposed rule and that part can be severed from the remainder of the proposed rule, we may adopt as final those provisions of the proposed rule that are not the subject of the significant adverse comment.

If any significant adverse comment is received during the comment period, we will publish, before the effective date of the direct final rule, a notice of significant adverse comment and withdraw the direct final rule. If we withdraw the direct final rule, any comments received will be applied to this proposed rule and will be considered in developing a final rule using the usual notice-and-comment procedure. If we do not receive any significant adverse comment in response to the direct final rule during the comment period, no further action will be taken related to this proposed rule. Instead, we will publish a document in the **Federal Register** confirming the effective date of the final rule within 30 days after the comment period ends.

VII. Preliminary Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all 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, and other advantages; distributive impacts; and equity). We believe that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because net costs of the proposed rule are less than 0.32 percent of average annual revenues for the smallest firms in the industry, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

By expanding incentives for new animal drug development under the MUMS Act as a result of increasing the small numbers for dogs and cats, the proposed rule, if finalized, could benefit pet owners by improving the health of dogs and cats with uncommon diseases or conditions. These health improvements could result from the earlier marketing of new animal drugs by sponsors that apply for and receive conditional approval as a result of the proposed rule, if finalized. The proposed rule, if finalized, also could result in cost savings to new animal drug sponsors and FDA. Sponsors that receive conditional approval have the ability to market their new animal drug for up to 5 years, subject to annual renewals, before providing substantial evidence that it is effective, as required for full approval. This would defer costs to sponsors and FDA associated with a demonstration of substantial evidence of effectiveness until later in the development process.

Because the proposed rule, if finalized, could increase the number of uncommon diseases or conditions in dogs and cats that qualify for minor use drug development incentives, including user fee waivers, exclusive marketing rights, grants, and eligibility for conditional approval, sponsors could incur costs to prepare and submit additional minor use determination requests and, for those sponsors that pursue designation for their new animal drug, annual designation reports to FDA. FDA would bear costs to review any additional minor use determination requests and annual designation reports. Potential sponsors of new animal drugs for minor uses in dogs or cats would also incur a one-time cost to read and understand the rule.

We additionally estimate potential within-industry transfers from sponsors receiving user fee waivers as a result of the proposed rule, if finalized, to fee-paying sponsors, and transfers from government to industry in the form of grants to support safety and effectiveness testing.

We summarize the annualized benefits and costs of the proposed rule in table 1. We estimate that the annualized benefits over 20 years would range from $0 to $6.06 million at a 7 percent discount rate, with a primary estimate of $3.03 million, and from $0 to $7.43 million at a 3 percent discount rate, with a primary estimate of $3.72 million. Annualized costs would range from $3,033 to $31,741 at a 7 percent discount rate, with a primary estimate of $17,387, and from $2,244 to $30,285 at a 3 percent discount rate, with a primary estimate of $16,264.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE PROPOSED RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized ($m/year)	$3.03	$0.00	$6.06	2021	7	20	These include benefits to pet owners and cost savings to industry and FDA.
	3.72	0.00	7.43	2021	3	20	
Annualized Quantified	.....	.....	.....	.....	.....	.....	
	.....	.....	.....	.....	.....	.....	
Qualitative.							
Costs:							
Annualized Monetized ($m/year)	0.017	0.003	0.032	2021	7	20	
	0.016	0.002	0.030	2021	3	20	

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE PROPOSED RULE—Continued

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Annualized Quantified							
Qualitative.							
Transfers: [1]							
Federal Annualized Monetized ($m/year)	0.43 0.48	0.00 0.00	0.86 0.97	2021 2021	7 3	20 20	
	From: Government			To: Industry			
Other Annualized Monetized ($m/year)	0.47 0.57	0.00 0.00	0.94 1.14	2021 2021	7 3	20 20	
	From: Industry			To: Industry			

Effects:
State, Local, or Tribal Government: None.
Small Business: Quantified effects of less than 0.32 percent of average annual revenues for the smallest firms.
Wages: None.
Growth: None.

[1] Transfers are monetary payments between persons or groups that do not affect the total resources available to society.

We have developed a comprehensive Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full preliminary analysis of economic impacts is available in the docket for this proposed rule (Ref. 4) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). A description of these provisions is given in the *Description* section of this document with an estimate of the annual recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed 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) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Designated New Animal Drugs for Minor Use and Minor Species; OMB control number 0910–0605—Revision.

Description: The proposed rule would revise the ''small number of animals'' definition for dogs and cats in our existing regulation at § 516.3(b) for new animal drugs for minor use and minor species. The small numbers for dogs and cats would be increased. The MUMS Act provides incentives to encourage animal drug sponsors to develop and seek FDA approval of drugs intended for use in minor species or for minor uses in major animal species. Congress provided a statutory definition of ''minor use'' that relies on the phrase ''small number of animals'' to characterize such use. The ''small number of animals'' definition is used for purposes of determining whether a particular intended use of a drug in one of the major species of animals qualifies as a minor use.

Description of Respondents: Pharmaceutical companies that sponsor new animal drugs.

We estimate the burden of this information collection as follows:

TABLE 2—ESTIMATED ONE-TIME RECORDKEEPING BURDEN

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Reading and Understanding the Rule	474	1	474	0.683 (41 minutes)	323

Using the number of active sponsors of new animal drug applications and active sponsors of abbreviated new animal drug applications, we estimate there are 237 sponsors that would be affected by this rule. We estimate two recordkeepers per sponsor.

We expect that new animal drug sponsors would incur a one-time burden associated with reading and understanding the rule and a nominal increase in the overall annual burden associated with reporting requirements resulting from a potential increase in submissions of minor use determination

requests and annual designation reports to FDA.

To ensure that comments on the information collections are received, OMB recommends that written comments be submitted through *www.reginfo.gov* (see **ADDRESSES**). All comments should be identified with the title of the information collection.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection provisions of this proposed rule to OMB for review. These information collection requirements will not be effective until FDA publishes a final rule, OMB approves the information collection requirements, and the rule goes into effect. FDA will announce OMB approval of these requirements in the **Federal Register**.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the proposed rule does not contain policies that would 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. The Agency solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

*1. FDA Memorandum, ''2018–2019 Reassessment of Small Numbers of Animals for Minor Use Determination,'' 2021.

*2. Brakke Consulting, Inc., Update of Population Estimates, Disease Incidence Rates, Drug Development Costs and Treatment Costs for Companion Animals,'' October 22, 2018.

3. American Veterinary Medical Association, ''Pet Ownership and Demographics Sourcebook,'' 2017–2018 Edition, October 2018. Accessed November 09, 2021. *https://www.avma.org/news/press-releases/avma-releases-latest-stats-pet-ownership-and-veterinary-care* and *https://www.avma.org/sites/default/files/resources/AVMA-Pet-Demographics-Executive-Summary.pdf.*

*4. FDA, ''Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis, Unfunded Mandates Reform Act Analysis,'' 2021.

List of Subjects in 21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 516 be amended as follows:

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 1. The authority citation for part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371.

■ 2. Amend § 516.3(b) by revising the definition for ''*Small number of animals*'' to read as follows:

§ 516.3 Definitions.

* * * * *

(b) * * *

Small number of animals means equal to or less than 50,000 horses; 80,000 dogs; 150,000 cats; 310,000 cattle; 1,450,000 pigs; 14,000,000 turkeys; and 72,000,000 chickens.

* * * * *

Dated: August 31, 2022.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2022–19956 Filed 9–14–22; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2020–0690; FRL–9864–01–OCSPP]

RIN 2070–AB27

Modification of Significant New Uses of Certain Chemical Substances (21–1.M)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the significant new use rules (SNURs) for certain chemical substances identified herein, which were the subject of one or more premanufacture notices (PMNs) and in some cases significant new use notices (SNUNs). This action would amend the SNURs to allow certain new uses reported in the SNUNs or PMNs without additional notification requirements and modify the significant new use notification requirements based on the actions and determinations for the SNUN or PMN submissions or based on the examination of new test data or other information. EPA is proposing these amendments based on our review of new and existing data for the chemical substances.

DATES: Comments must be received on or before October 17, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0302, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001;

telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this proposed rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of the chemical substance (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This proposed rule may affect certain entities through pre-existing import certification and export notification rules under the Toxic Substances Control Act (TSCA). Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28 and must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to a SNUR must certify their compliance with the SNUR requirements. Any person who exports or intends to export the chemical substance that is the subject of a final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) and 40 CFR 721.20, and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What action is the Agency taking?

EPA is proposing amendments to the SNURs for certain chemical substances in 40 CFR part 721, subpart E. A SNUR for a chemical substance designates certain activities as a significant new use. Persons who intend to manufacture or process the chemical substance for the significant new use must notify EPA at least 90 days before commencing that activity. The required notification (*i.e.,* a SNUN) initiates EPA's evaluation of the intended use. Manufacture and processing for the significant new use may not commence until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors and may issue or modify a TSCA section 5(e) order and/or amend the SNUR promulgated under TSCA section 5(a)(2). Procedures and criteria for modifying or revoking SNUR requirements appear at 40 CFR 721.185.

III. Significant New Use Determination

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining whether and how to modify the significant new uses for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substance, likely human exposures and environmental releases associated with possible uses, and the four TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to Proposed Significant New Use Rule Amendments and Proposed Changes

In this unit, EPA provides the following information for each chemical substance subject to the proposed amendments presented in this document:

- CFR citation for the existing SNUR that EPA is proposing to amend.
- PMN and SNUN number(s), as applicable.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) number (if assigned for non-confidential chemical identities).
- Final rule citation (**Federal Register** citation for the final SNUR previously issued).
- Basis for the proposed amendment.
- *Potentially Useful Information.* This is information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substance in support of a request by the PMN submitter to modify the TSCA 5(e) order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use designated as such by the SNUR.

CFR citation: 40 CFR 721.5185.

PMN and SNUN numbers: P–95–169, S–08–7, S–14–1, S–17–10, and S–19–0006.

Chemical name: 2-Propen-1-one, 1-(4-morpholinyl)-.

CAS number: 5117–12–4.

Final rule citations: 65 FR 354, January 5, 2000 (FRL–6055–2), amended at 76 FR 27910, May 13, 2011 (FRL–8871–5), 80 FR 37161, June 30, 2015 (FRL–9928–93), and 85 FR 67996, October 27, 2020 (FRL–10013–53).

Basis for the modified significant new use rule: P–95–169 describes the intended use as a diluent for ultraviolet and electron beam curable resins for coatings, inks, and curable adhesives, S–08–7 is for use in energy production, S–14–1 is for use as a monomer in ultraviolet ink jet applications, and S–17–10 is for use as a monomer for use in stereolithography. On February 6, 2018, EPA issued an Order for S–17–10

under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a determination that the use may present an unreasonable risk of injury to human health and the environment. EPA identified concerns based on acute toxicity, neurotoxicity, eye irritation, sensitization, liver toxicity, and aquatic toxicity test data for the chemical substance. In addition to the dermal protection, hazard communication, use, and water release notification requirements under the previously published SNUR, the Order for S–17–10 required respirators to prevent inhalation exposure during the use of the chemical substance as a monomer in stereolithography. The SNUR for this chemical substance was then amended to remove the use described in SNUN S–17–10 from the scope of the significant new use, except where that use does not include the protective measures described in the Order for S–17–10.

On September 20, 2019, EPA received SNUN S–19–6 for the generic (non-confidential) significant new use as a component for 3D printing formulations. Based on available data on the chemical substance and data on analogous chemicals, EPA identified the following human health hazards: acute toxicity, skin and eye irritation, skin sensitization, genotoxicity, carcinogenicity, and specific target organ toxicity. Based on the activities described in the SNUN, EPA determined in accordance with TSCA section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk of injury to health or the environment under the conditions of use.

Pursuant to 40 CFR 721.185(a)(3), EPA determined that there is no need to require additional notice from persons who propose to engage in activities identical to those described in SNUN S–19–6. Accordingly, the proposed amendment to the SNUR would remove use as a component for 3D printing formulations from the scope of the significant new use, except where that use does not include the protective measures described in the SNUR.

Potentially Useful Information: Certain information may be potentially useful to characterize the health and environmental effects of the chemical substance in support of a request to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. The results of specific organ toxicity, carcinogenicity, and aquatic toxicity testing would help characterize the potential health and environmental effects of the chemical substance.

CFR citation: 40 CFR 721.5192.

PMN and SNUN numbers: P–87–1036, S–06–5, and S–16–6.

Chemical name: Oxirane, 2,2′-[1,6-naphthalenediylbis(oxymethylene)]bis-.

CAS number: 27610–48–6.

Final rule citation: 60 FR 45072, August 30, 1995 (FRL–4926–2).

Basis for the modified significant new use rule: P–87–1036 describes the generic intended use as a component for preparing polymer composites, S–06–5 is for use as an adhesive additive, and S–16–6 is for use as a resin. The Order for P–87–1036 was issued under sections 5(e)(1)(A)(i), (ii)(I) and (ii)(II) of TSCA based on a finding that the chemical substance may present an unreasonable risk of injury to human health and the environment and that the chemical substance will be produced in substantial quantities and that it may reasonably be anticipated to enter the environment in substantial quantities or there may be significant or substantial human exposure. EPA issued a SNUR designating significant new uses based on and consistent with the Order requirements.

On March 24, 2006, EPA received SNUN S–06–05 for the generic (non-confidential) significant new use as an adhesive additive. Based on the activities described in the SNUN, EPA took no action and allowed the significant new use. On December 9, 2015, EPA received SNUN S–16–6 for the generic (non-confidential) significant new use as a resin and to exceed the confidential aggregate production volume limit. Based on the SNUN submitter's amendment to S–16–6 confirming its intention to abide by the workplace protection, hazard communication, no domestic manufacture, disposal by incineration or landfill, and release to water restrictions in the SNUR, EPA did not determine the manufacturing, processing, use, or disposal of this substance in the manner described in S–16–6 may present an unreasonable risk to human health or the environment. The decision not to regulate the SNUN substance was based on limiting human exposure through the use of appropriate personal protective equipment by exposed workers, hazard communication warnings, import of the SNUN substance (*i.e.,* no domestic manufacture), and because the use described in the SNUN is not in consumer products. EPA continues to have concerns for toxicity to human health where workers are reasonably likely to be exposed. EPA also confirms that once the SNUN substance is completely polymerized it will have been completely reacted to form a different chemical substance and the SNUR does not apply to that chemical substance.

Pursuant to 40 CFR 721.185(a)(3), EPA determined that there is no need to require additional notice from persons who propose to engage in activities identical to those described in S–06–05 and S–16–6. Accordingly, the proposed amendment to the SNUR would remove the uses described in both SNUNs from the scope of the significant new uses and remove the aggregate production volume limit. It would also exempt SNUR requirements when the substance has been completely reacted or cured. The chemical substance which is the subject of this SNUR is now on the public TSCA Inventory. Because of that EPA is proposing to amend the SNUR to include the specific chemical name and CAS number.

Potentially Useful Information: Certain information may be potentially useful to characterize the health and environmental effects of the chemical substances if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated as such by this proposed SNUR. The results of specific target organ toxicity, carcinogenicity, and aquatic toxicity testing would help characterize the potential health and environmental effects of the chemical substance.

CFR citation: 40 CFR 721.7280.

PMN number: P–89–632.

Chemical name: 1,3-Propanediamine, N,N′-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine.

CAS number: 136504–96–6.

Final rule citation: 55 FR 33296, August 15, 1990 (FRL–3741–8).

Basis for the modified significant new use rule: P–89–632 states that the generic (non-confidential) intended use of the substance is as light stabilizer for thermoplastics. Based on submitted test data, EPA has concerns for immunotoxicity, effects on the liver, blood and gastrointestinal tract, and reproductive toxicity and aquatic toxicity. An Order was issued under TSCA sections 5(e)(1)(A)(i) and (ii)(I), based on a finding that the substance may present an unreasonable risk of injury to human health and the environment. EPA issued a SNUR designating significant new uses based on and consistent with the Order requirements.

EPA received a request from the PMN submitter to amend the Order when the substance is completely bound in the polymer matrix. EPA agreed that when

the PMN substance is completely bound in the polymer matrix, exposures and risks are adequately mitigated. On January 27, 2010, EPA modified the Order to add the exemption that the requirements of the Order do not apply to quantities of the PMN substance after they have been completely incorporated into the polymer matrix. For consistency with the modified Order, the proposed amendment to the SNUR would similarly exempt from the requirements of the SNUR quantities of the substance after they have been completely incorporated into a polymer matrix. EPA also received a request from the PMN submitter to revise the de minimus concentration for exempt mixtures from 0.1% to 1% in worker protection requirements in the SNUR to make it consistent with the Order. EPA is proposing that change to the SNUR to be consistent with the terms of the original Order. EPA is also proposing to add a de minimus concentration exemption of 1% to the hazard communication requirements in the SNUR to be consistent with the original Order.

Potentially Useful Information: Certain information may be potentially useful to characterize the health and environmental effects of the chemical substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated as such by this proposed SNUR. The results of specific target organ toxicity, reproductive toxicity, and aquatic toxicity testing would help characterize the potential health and environmental effects of the chemical substance.

CFR citation: 40 CFR 721.9502.

PMN and SNUN numbers: P–00–1132, S–03–15, and S–11–5.

Chemical name: Siloxanes and silicones, aminoalkyl, fluorooctyl, hydroxy-terminated salt (generic).

CAS number: Not Available.

Final rule citations: 68 FR 15088, March 28, 2003 (FRL–6758–7), amended at 80 FR 37165, June 30, 2015 (FRL–9924–10).

Basis for the modified significant new use rule: P–00–1132 describes the intended use of the chemical substance as use in anti-graffiti systems; S–11–5 is for use as a surface treatment and additive for coatings, adhesives, sealants, paste, insulation and textiles for porous, non- porous, ceramic, metal, glass, plastic, wood and leather surfaces; and a surface treatment agent for inorganic filler particles; and S–03–15 is for use in anti-graffiti systems, and in surface treatment of fabrics and porous mineral surfaces. The original SNUR for P–00–1132 was issued based on meeting the concern criteria at 40 CFR 721.170(b)(3)(ii). The original SNUR required notification for use other than as described in the PMN (graffiti systems) and for use involving an application method that generates a vapor, mist, or aerosol. On January 5, 2011, EPA received a SNUN, S–11–5, for the chemical substance describing uses different than those in the PMN. EPA also reviewed a 90-day inhalation study that was submitted for the substance in the SNUN. The results of the study demonstrated a Lowest Observed Adverse Effect Level (LOAEL) of 30 milligram/cubic meter (mg/m3) for lung effects. The 90-day review period for the SNUN expired with the Agency not taking action on the significant new uses described in the SNUN. Because EPA continued to find that significant worker exposure was unlikely when used as described in the PMN and SNUN, EPA did not determine that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA did determine that other uses of the substance or applications that generate a vapor, mist, or aerosol could result in exposures which may cause serious health effects. Based on this information the substance continued to meet the concern criteria at 40 CFR 721(b)(3)(ii) and EPA modified the SNUR on June 30, 2015, to remove the new uses identified in S–11–5 from the scope of the significant new use but continued to require notification for uses other than identified in P–00–1132 or S–11–5 and for applications that generate a vapor, mist, or aerosol.

On June 30, 2003, EPA received SNUN S–03–15 for the chemical substance describing uses different than those in the PMN including uses that generate a vapor, mist, or aerosol. After review of this SNUN was completed on August 30, 2017, EPA determined according to TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I) that the new uses may present an unreasonable risk to human health and that an Order was required to protect against those risks. The Order requires that the substance is used only for anti-graffiti systems and surface treatment of mineral porous systems, requires use of a NIOSH-approved respirator with an APF of 100 for workers who are exposed by inhalation, allows as an alternative to the respirators maintaining a New Chemicals Exposure Limit (NCEL) of 0.03 mg/m^3 as described in the Order, requires import only (no manufacture in the United States), limits residuals and impurities < 0.1%, does not allow consumer use, and requires hazard communication for labels and SDSs. Based on the review of S–03–15 and the provisions included in the Order, EPA is proposing a SNUR modification to remove the notification requirement for use in applications generating a vapor, mist, or aerosol, and to instead designate as significant new uses the absence of protections required in the Order for S–03–15 when use of the chemical substance may generate a vapor, mist, aerosol.

Potentially Useful Information: Certain information may be potentially useful to characterize the exposure and environmental fate of the chemical substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated as such by this proposed SNUR. The results of worker monitoring, composition analysis, and decomposition testing would help characterize the potential effects of the chemical substance.

CFR citation: 40 CFR 721.10395.

PMN numbers: P–10–458 and P–18–67.

Chemical name: Fatty acids, C14–18 and C16–18-unsatd., polymers with adipic acid and triethanolamine, di-Me sulfate-quaternized.

CAS number: 1211825–32–9.

Final rule citation: 77 FR 25236, April 27, 2012 (FRL–9343–4).

Basis for the modified significant new use rule: On July 20, 2010, EPA received P–10–458 describing the generic (non-confidential) intended use of the substance as an adjuvant agent. Based on test data on the PMN substance and EcoSAR analysis of test data on analogous polycationic polymers, EPA predicted toxicity to aquatic organisms may occur at concentrations that exceed 5 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 5 ppb. Therefore, EPA did not determine that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA determined that any use of the substance resulting in surface water concentrations exceeding 5 ppb may cause significant adverse environmental effects. Based on this information, EPA determined that the PMN substance met the concern criteria at 40 CFR 721.170(b)(4)(i) and (b)(4)(ii), and issued a SNUR requiring notification for release to water from manufacturing, processing, or use resulting in a surface water concentration exceeding 5 ppb.

On December 18, 2017, before a Notice of Commencement was submitted that would add the substance to the TSCA Inventory, EPA received

PMN P–18–67 which identified the generic (non-confidential) intended use of the substance as an adjuvant agent. Based on available data on the new chemical substance and data on analogous chemicals, EPA identified concerns for systemic and developmental effects. Based on the activities described in the PMN, EPA determined in accordance with TSCA section 5(a)(3)(C) that the PMN substance is not likely to present an unreasonable risk of injury to health or the environment under the conditions of use. The PMN submitter sent to EPA six ecotoxicity studies to address the environmental toxicity concerns identified for the SNUR. EPA evaluated the studies and determined that toxicity to aquatic organisms may occur at concentrations that exceed 575 ppb (*i.e.,* acute concentration of concern) and 67 ppb (*i.e.,* chronic concentration of concern). The proposed amendment to the SNUR would change the surface water concentration trigger for the significant new uses from 5 ppb to 67 ppb based on the new concentrations of concern determined by EPA.

Potentially Useful Information: EPA has determined that certain information about the human health and environmental effects of the SNUN substance may be potentially useful if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation, eye irritation, and specific target organ toxicity and aquatic toxicity testing may be potentially useful to characterize the human health and environmental effects of the SNUN substance.

CFR citation: 40 CFR 721.10996.

PMN numbers: P–15–310 and P–19–46.

Chemical name: 1,2,4-Benzenetricarboxylic acid, mixed decyl and octyl triesters.

CAS number: 90218–76–1.

Final rule citation: 82 FR 48637, October 19, 2017 (FRL–9964–42).

Basis for the modified significant new use rule: PMN P–15–310 describes the intended use of the chemical substance as a lubricating agent. The Order for P–15–310 was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I) based on a finding that the chemical substance may present an unreasonable risk of injury to human health and the environment. Based on test data, EPA identified concerns for blood and adrenal gland effects to unprotected workers from repeated dermal exposures. The Order requires the submitter of P–15–310 to not exceed the 2,440,000 kilograms aggregate production volume limit without performing an Extended One-Generation Reproductive Toxicity Study (OECD Test Guideline 443), worker dermal protection, hazard communication requirements, not exceed an annual production volume of 150,000 kg, and refrain from using the chemical substance other than as lubricant in chain oils for conveyor belts. EPA issued a SNUR designating significant new uses based on and consistent with the Order requirements.

On January 31, 2019, before a Notice of Commencement was submitted that would add the substance to the TSCA Inventory, EPA received PMN P–19–46 for the new chemical substance describing its intended use as a lubricating agent. Based on submitted data on the new chemical substance and data on analogous chemicals, EPA identified concerns for blood, liver, maternal, and developmental toxicity. Based on the activities described in the PMN, EPA determined in accordance with TSCA section 5(a)(3)(C) that the PMN substance is not likely to present an unreasonable risk of injury to health or the environment under the conditions of use.

The proposed amendment to the SNUR would revise and replace certain significant new uses to better tailor the SNUR to current risk concerns following EPA's review and determination for P–19–46. The proposed amendment would remove the significant new uses of annual production volume greater than 150,000 kilograms and use other than as a lubricant in chain oils for conveyor belts. EPA is proposing to remove these new uses from the SNUR as these uses are no longer expected to result in changes to human exposures or environmental releases that could result in risk. In lieu of the removed uses, the proposed amendments would add the significant new uses of release to water above 20,000 ppb and any manufacture, processing, or use resulting in inhalation exposure. EPA is proposing to designate these uses as significant new uses because these uses could result in significant changes to human exposures or environmental releases that could result in health risk.

Recommended Testing: EPA has determined that the results of certain human health toxicity testing would help characterize the effects of the PMN substance. The submitter of PMN P–15–310 has agreed not to exceed the aggregate production volume limit without performing an Extended One-Generation Reproductive Toxicity Study (OECD Test Guideline 443).

CFR citation: 40 CFR 721.11005.

PMN numbers: P–16–309 and P–16–310.

Chemical name: 12-Hydroxystearic acid, reaction products with alkylene diamine and alkanoic acid (generic).

CAS number: Not Available.

Final Rule citation: 82 FR 48637, October 19, 2017 (FRL–9964–42).

Basis for the modified significant new use rule: P–16–309 and P–16–310 state that the generic (non-confidential) intended use of the substances is as rheological or thixotropic agents used in the production of solvent based industrial coatings, high solid aromatic paints, adhesives, sealants, and other types of paints and topcoats. Based on submitted test data, EPA predicted blood and hematology effects. Further, based on SAR analysis of test data on analogous amides, EPA predicted toxicity to aquatic organisms may occur at concentrations that exceed 2 parts per billion (ppb) of the PMN substances in surface waters. An Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that the substances may present an unreasonable risk of injury to human health and the environment. The submitter of P–16–309 and P–16–310 is subject to the following Order requirements: no domestic manufacturing, no manufacture beyond the confidential annual production volume limit, use of the PMN substances only for the use specified in the Order, compliance with the release to water provisions, and submission of certain aquatic toxicity tests before exceeding a certain production volume. EPA issued a SNUR designating significant new uses based on and consistent with the Order requirements.

On September 28, 2018, the PMN submitter sent to EPA seven ecotoxicity studies pursuant to the requirements of the Order. EPA evaluated the studies and determined that toxicity to aquatic organisms may occur at concentrations that exceed 13 ppb (*i.e.,* acute concentration of concern) and 4 ppb (*i.e.,* chronic concentration of concern). The PMN submitter also submitted an OECD 422 test guideline combined repeated dose toxicity study with reproduction/developmental toxicity screening test for P–16–310. EPA evaluated that study and determined that the LOAEL of 100 mg/kg-bw/day is considered a low hazard benchmark and the updated risk assessment for the PMN substances did not demonstrate potential health risks. Based on the results of the studies, EPA modified the Order to remove the annual production volume limitation and change the water release limitation from 2 ppb to 4 ppb. Consistent with the modification to the

Order, the proposed amendment to the SNUR would modify the significant new use notification requirement to require notification for manufacturing, processing, or use resulting in releases into surface waters that exceed 4 ppb, instead of 2 ppb as provided in the original SNUR. Because the company has submitted the required aquatic toxicity studies and there will continue to be a release to water restriction (*i.e.,* water trigger), the proposed amendment to the SNUR would also remove the significant new use notification requirement for exceeding the aggregate and annual production volume limits, consistent with the modification to the Order. Finally, EPA is proposing a clerical amendment to the SNUR to remove an unnecessary cross-reference to the procedures for determining whether a specific use is subject to the SNUR; those procedures are not relevant to this SNUR because the significant new uses described in the SNUR do not involve confidential business information.

Potentially Useful Information: None.

CFR citation: 40 CFR 721.11227.

PMN numbers: P–16–271, P–16–450, and P–20–111.

Chemical name: 1,2,4-Benzenetricarboxylic acid, 1,2,4-trinonyl ester.

CAS number: 35415–27–1.

Final Rule citation: 84 FR 66599, December 5, 2019 (FRL–10002–30).

Basis for the modified significant new use rule: The intended use of the chemical substance described in P–16–271 and P–16–450 is as a plasticizer in wire and cable insulation. EPA issued Orders for P–16–271 and P–16–450 under sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I) of TSCA based on a finding that the chemical substance may present an unreasonable risk of injury to human health and the environment, and sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II) of TSCA based on a finding that the chemical substance will be produced in substantial quantities and that it may reasonably be anticipated to enter the environment in substantial quantities or there may be significant or substantial human exposure. Based on test data on other trimellitate esters, EPA identified concerns for developmental and reproductive toxicity. The Orders required the PMN submitters to submit to EPA certain toxicity testing (Tier I testing) before manufacturing (including import) a total of 1,750,000 kilograms of the PMN substance, submit to EPA additional toxicity testing which will be determined upon EPA review of the Tier I testing results, have workers wear dermal protection, implement a hazard communication program, refrain from manufacturing the PMN substance in the United States (*i.e.,* import only), and refrain from using the PMN substance other than as a plasticizer in wire and cable insulation. EPA issued a SNUR designating significant new uses based on and consistent with the Order requirements.

On June 9, 2020, before a Notice of Commencement was submitted that would add the substance to the TSCA Inventory, EPA received PMN P–20–111 describing the generic (non-confidential) intended use as a component in flexible automotive interior parts. Based on available data on the new chemical substance and data on analogous chemicals, EPA identified concerns for systemic and developmental effects. Based on the activities described in PMN P–20–111, EPA determined in accordance with TSCA section 5(a)(3)(C) that the PMN substance is not likely to present an unreasonable risk of injury to health or the environment under the conditions of use.

Based on EPA's review and determination for PMN P–20–111, the proposed amendment would remove use as a component in flexible automotive interior parts from the scope of the significant new use. Based on the PMN submitter for P–20–111 identifying use of a NIOSH certified respirator with an assigned protection factor of 10 and hazard communication that includes hazards for eye irritation and specific target organ toxicity, the proposed amendment would add significant new uses for use without worker personal protective equipment of a NIOSH certified respirator with an assigned protection factor of 10 and hazard communication that does not include eye irritation and specific target organ toxicity. The proposed significant new use for specific target organ toxicity hazard communication would replace the existing significant new use for internal organ effects hazard communication to better harmonize the hazard communication language with the Globally Harmonized System and OSHA Hazard Communication Standard. EPA also proposes to remove the significant new use requirement specified in 40 CFR 721.63(a)(2) as that was a typographical error in the original SNUR.

Potentially Useful Information: Certain information may be potentially useful to characterize the health effects of the chemical substances if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated as such by this proposed SNUR. The results of reproductive effects and specific target organ toxicity testing would help characterize the potential health effects of the chemical substance.

V. Rationale for the Proposed Rule

In those instances where EPA expanded the scope of the significant new use, the Agency identified concerns, as discussed in Unit IV., associated with certain potential new uses. In addition to considering the factors discussed in Unit IV., EPA determined that those uses could result in changes in the type or form of exposure to the chemical substance, increased exposures to the chemical substance, and/or changes in the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of the chemical substance.

In those instances where EPA narrowed the scope of a significant new use, EPA has (1) received significant new use or premanufacture notices for some of the activities designated as significant new uses of the substance and, after reviewing such notices, concluded that there is no need to require additional notice from persons who propose to engage in identical or similar activities; or (2) received test data or other information that led the Agency to conclude that certain activities designated as significant new uses are not likely to present an unreasonable risk of injury to health or the environment. For the SNUR for P–89–632 EPA is proposing changes to be consistent with the Order (as modified) for that chemical substance.

VI. Applicability of the Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. EPA solicits comments on whether any of the uses that are not currently a significant new use under the SNURs addressed in this proposed rule, but which would be regulated as a ''significant new use'' if this proposed rule is finalized, are ongoing. These specific new uses are the additional requirements if a vapor, mist, or aerosol is generated for the SNUR at 40 CFR 721.9502, use without worker personal protective equipment of a NIOSH certified respirator with an assigned protection factor of 10 and hazard communication that does not include eye irritation and specific target organ toxicity for the SNUR at 40 CFR 721.11227, and any manufacture, processing, or use that results in inhalation exposure or water release

exceeding the surface water concentration limit for the SNUR at 40 CFR 721.10996.

EPA designates September 15, 2022, as the cutoff date for determining whether the use is ongoing. EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of public release of the proposed SNUR rather than as of the effective date of the final rule. If uses begun after public release were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements, because a person could defeat the SNUR by initiating the proposed significant new use before the rule became effective, and then argue that the use was ongoing as of the effective date of the final rule.

Thus, any persons who begin commercial manufacture or processing activities with the chemical substance that are not currently a significant new use under the current rule but which would be regulated as a ''significant new use'' if this proposed rule is finalized, must cease any such activity as of the effective date of the rule if and when finalized. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VII. Development and Submission of Information

TSCA section 5 generally does not require developing any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, order, or consent agreement under TSCA section 4 (15 U.S.C. 2603), then TSCA section 5(b)(1)(A) (15 U.S.C. 2604(b)(1)(A)) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known or reasonably ascertainable (40 CFR 720.50). Unit IV. of this document lists potentially useful information for all SNURs addressed in this proposed rule. Descriptions of this information are provided for informational purposes. The potentially useful information identified in Unit IV. will be useful to EPA's evaluation of a chemical substance in the event that someone submits a SNUN for a significant new use pursuant to the SNURs address in this proposed rule. Companies who are considering submitting a SNUN are encouraged, but are not required, to develop the potentially useful information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing on vertebrate animals, EPA encourages dialogue with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialogue with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

The potentially useful information listed in Unit IV. may not be the only means of providing information to evaluate the chemical substance. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following: human exposure and environmental release that may result from the significant new use of the chemical substances; and information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN under 40 CFR part 720, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 721.25 and 40 CFR 720.40. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/filing-pre-manufacture-notice-epa.*

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket for this rulemaking.

X. Statutory and Executive Order Reviews

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

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

This action proposes to modify SNURs for chemical substances that were the subject of PMNs and SNUNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA (44 U.S.C. 3501 *et seq.*). Burden is defined in 5 CFR 1320.3(b). OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2070–0012 (EPA ICR No. 0574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

According to the PRA, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

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 (5 U.S.C. 601 *et seq.*). The small entities subject to the requirements of this action are small entities that would engage in the potential manufacture and/or processing of the chemical substances for the

designated significant new uses covered by the proposed rule. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN.

EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 10 in FY2016, 14 in FY2017, and 18 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $19,020 to $3,330. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $11,164 for qualifying small firms. Therefore, the potential economic impacts of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments. Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rulemaking.

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). 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 Tribe Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action is not expected to have substantial direct effects on Indian Tribes, significantly nor uniquely affect the communities of Indian Tribal governments and does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 do not apply to this proposed rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), 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 does not concern an environmental health risk or safety risk.

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 this action is not expected to affect energy supply, distribution, or use and because this action has not otherwise been designated as a significant energy action by the Administrator of the Office of Information and Regulatory Affairs.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14008: Tackling the Climate Crisis at Home and Abroad

EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14008 (86 FR 7619, January 27, 2021) because it does not establish an environmental health or safety standard.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 29, 2022.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 721 as follows:

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Amend § 721.5185 by revising paragraphs (a)(1) and (a)(2)(i)(B) and (iii) to read as follows:

§ 721.5185 2-Propen-1-one, 1-(4-morpholinyl)-.

(a) * * * (1) The chemical substance identified as 2-propen-1-one, 1-(4-morpholinyl)- (PMN P–95–169; SNUN S–08–7; SNUN S–14–1; SNUN S–17–10; and SNUN S–19–6; CAS No. 5117–12–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the chemical substance after it has been completely reacted (cured) because 2-propen-1-one, 1-(4-morpholinyl)- will no longer exist.

(2) * * *

(i) * * *

(A) * * *

(B) Additional requirements for use as a monomer for stereolithography and 3D printing: Requirements as specified in § 721.63(a)(4) and (5), (a)(6)(v), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes

of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 50.

* * * * *

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1). It is a significant new use to use the chemical substance for any use other than as a monomer for use in ultraviolet ink jet applications, stereolithography, or 3D printing, unless the chemical substance is processed and used in an enclosed process.

* * * * *

■ 3. Amend § 721.5192 by revising the section heading and paragraphs (a)(1) and (a)(2)(iii) to read as follows:

§ 721.5192 Oxirane, 2,2′-[1,6-naphthalenediylbis(oxymethylene)]bis-.

(a) * * * (1) The chemical substance identified as oxirane, 2,2′-[1,6-naphthalenediylbis(oxymethylene)]bis- (PMN P–87–1036, SNUN S–06–5, and SNUN S–16–6; CAS No. 27610–48–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the chemical substance after it has been completely reacted (cured).

* * * * *

(2) * * *

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the chemical substance other than for the confidential uses allowed in the TSCA section 5(e) consent order for PMN P–87–1036 or the confidential uses described in SNUNs S–06–5 and S–16–6.

* * * * *

■ 4. Amend § 721.7280 by revising paragraphs (a)(1) and (a)(2)(i) and (ii) to read as follows:

§ 721.7280 1,3-Propanediamine, N,N′-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine.

(a) * * * (1) The chemical substance identified as 1,3-propanediamine, N,N′-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine (PMN P–89–632; CAS No. 136504–96–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely incorporated into a polymer matrix.

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (a)(6)(ii), (b), and (c). For purposes of § 721.63(b) the concentration is set at 1.0%.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a) through (f), (g)(1)(iv), (g)(1)(viii), (g)(2)(i) through (v), and (g)(5). For purposes of § 721.72(e) the concentration is set at 1.0%.

* * * * *

■ 5. Amend § 721.9502 by revising paragraphs (a)(1). (a)(2)(i) and (ii), and (b)(1) to read as follows:

§ 721.9502 Siloxanes and silicones, aminoalkyl, fluorooctyl, hydroxy-terminated salt (generic).

(a) * * * (1) The chemical substance identified generically as siloxanes and silicones, aminoalkyl, fluorooctyl, hydroxy-terminated salt (PMN P–00–1132, SNUN S–03–15, and SNUN S–11–5) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) * * *

(i) *Industrial, commercial, and consumer activities.* A significant new use is any use of the chemical substance other than in graffiti systems, as surface treatment and additive for coatings, adhesives, sealants, paste, insulation and textiles for porous, non-porous, ceramic, metal, glass, plastic, wood and leather surfaces, surface treatment of fabrics and porous mineral surfaces, or a surface treatment agent for inorganic filler particles.

(ii) *Requirements if a vapor, mist or aerosol is generated.* (A) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4) through (6), (b) and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general, and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 1000. For purposes of § 721.63(a)(6), the form is particulate. As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the New Chemical Exposure Limit (NCEL) provisions listed in the TSCA section 5(e) Order for these substances. The NCEL is 0.03 mg/m3 as an 8-hour time weighted average verified by actual monitoring data. Persons who wish to pursue NCELs as an alternative to § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will be required to follow NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) Order.

(B) *Hazard communication program.* Requirements as specified in § 721.72(a) through (f), (g)(1)(ii), (g)(2)(ii), and (g)(5). For purposes of § 721.72(e) concentration is set at 1 percent. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(C) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (o). It is a significant new use to manufacture the chemical substance if residuals or impurities are greater than 0.1%.

(b) * * *

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (d) and (f) through (i) are applicable to manufacturers, importers, and processors of this substance.

* * * * *

■ 6. Amend § 721.10395 by revising paragraphs (a)(1) and (a)(2)(i) to read as follows:

§ 721.10395 Fatty acids, C14–18 and C16–18-unsatd., polymers with adipic acid and triethanolamine, di-Me sulfate-quaternized.

(a) * * * (1) The chemical substance identified as fatty acids, C14–18 and C16–18-unsatd., polymers with adipic acid and triethanolamine, di-Me sulfate-quaternized (PMNs P–10–458 and P–18–67; CAS No. 1211825–32–9) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) * * *

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=67.

* * * * *

■ 7. Amend § 721.10996 by revising paragraphs (a)(1), (a)(2)(ii), and (b)(1), and adding paragraph (a)(2)(iv) to read as follows:

§ 721.10996 1,2,4-Benzenetricarboxylic acid, mixed decyl and octyl triesters.

(a) * * * (1) The chemical substance identified as 1,2,4-Benzenetricarboxylic acid, mixed decyl and octyl triesters (PMNs P–15–310 and P–19–46; CAS No. 90218–76–1) is subject to reporting under this section for the significant

new uses described in paragraph (a)(2) of this section.

(2) * * *

(ii) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80(p) (2,440,000 kilograms). It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

* * * * *

(iv) *Releases to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 20,000 ppb.

(b) * * *

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (f), (i), and (k) are applicable to manufacturers and processors of this substance.

* * * * *

■ 8. Amend § 721.11005 by revising paragraphs (a)(2)(i) and (ii) and removing paragraph (b)(3) to read as follows:

§ 721.11005 12-Hydroxystearic acid, reaction products with alkylene diamine and alkanoic acid (generic).

(a) * * * (1) The chemical substances identified as 12-Hydroxystearic acid, reaction products with alkylene diamine and alkanoic acid (generic) (PMNs P–16–309 and P–16–310) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) * * *

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the PMN substance other than as a rheological or thixotropic agent used in the production of solvent based industrial coatings, high solid aromatic paints, adhesives, sealants, and other types of paints and topcoats.

(ii) *Releases to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 4 ppb.

* * * * *

■ 9. Amend § 721.11227 by revising paragraphs (a)(1) and (2)(i) through (iii) to read as follows:

§ 721.11227 1,2,4-Benzenetricarboxylic acid, 1,2,4-trinonyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,2,4-Benzenetricarboxylic acid, 1,2,4-trinonyl ester (PMNs P–16–271, P–16–450, and P–20–111; CAS No. 35415–27–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been incorporated into a polymer matrix.

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3) through (6), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposures, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 10. For purposes of § 721.63(a)(6) the form is particulate. For purposes of § 721.63(b) the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1)(i), (vi) and (ix), (2)(i) and (v), and (4)(i) through (iii) and (v). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used. For purposes of § 721.72(e) the concentration is set at 1.0%. For purposes of § 721.72(g)(1) this substance may cause eye irritation and specific target organ toxicity.

(iii) *Industrial commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (p) (1,750,000 kilograms). It is a significant new use to use the substance other than as a plasticizer in wire and cable insulation and as a component in flexible automotive interior parts.

* * * * *

[FR Doc. 2022–19023 Filed 9–14–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 87, No. 178
Thursday, September 15, 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

Office of the Secretary

Determination of Total Amount of Fiscal Year 2023 WTO Tariff-Rate Quota for Certain Sugars, Syrups and Molasses

AGENCY: Office of the Secretary, U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: The Office of the Secretary of the Department of Agriculture announces the establishment of the Fiscal Year (FY) 2023 (October 1, 2022—September 30, 2023) in-quota aggregate quantity of certain sugars, syrups, and molasses (also referred to as refined sugar) at 222,000 metric tons raw value (MTRV).

DATES: This notice is applicable on September 15, 2022.

FOR FURTHER INFORMATION CONTACT: Souleymane Diaby, Multilateral Affairs Division, Trade Policy and Geographic Affairs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1070, 1400 Independence Avenue SW, Washington, DC 20250–1070; by telephone (202) 720–2916; or by email *Souleymane.Diaby@usda.gov.*

SUPPLEMENTARY INFORMATION: The provisions of paragraph (a)(i) of Additional U.S. Note 5, chapter 17 in the Harmonized Tariff Schedule of the United States (HTS) authorize the Secretary to establish the in-quota tariff-rate quota (TRQ) amounts (expressed in terms of raw value) for imports of raw cane sugar and certain sugars, syrups, and molasses that may be entered under the subheadings of the HTS subject to the lower tier of duties during each fiscal year. The Office of the U.S. Trade Representative (USTR) is responsible for the allocation of these quantities among supplying countries and areas.

Section 359(k) of the Agricultural Adjustment Act of 1938, as amended, requires that at the beginning of the quota year the Secretary of Agriculture establish the TRQs for raw cane sugar and refined sugars at the minimum levels necessary to comply with obligations under international trade agreements, with the exception of specialty sugar.

The Secretary's authority under paragraph (a)(i) of Additional U.S. Note 5, chapter 17 in the HTS and section 359(k) of the Agricultural Adjustment Act of 1938, as amended, has been delegated to the Under Secretary for Trade and Foreign Agricultural Affairs (TFAA) (7 CFR 2.15). That authority, in turn, has been delegated to the Deputy Under Secretary for TFAA under certain circumstances (7 CFR 2.600).

Notice is hereby given that I have determined, in accordance with paragraph (a)(i) of Additional U.S. Note 5, chapter 17 in the HTS and section 359(k) of the 1938 Act, that an aggregate quantity of 222,000 MTRV of sugars, syrups, and molasses (refined sugar) may be entered or withdrawn from warehouse for consumption during FY 2023. This quantity includes the minimum amount to which the United States is committed under the WTO Uruguay Round Agreements, 22,000 MTRV, of which 20,344 MTRV is established for any sugars, syrups and molasses, and 1,656 MTRV is reserved for specialty sugar. An additional amount of 200,000 MTRV is added to the specialty sugar TRQ for a total of 201,656 MTRV. The conversion factor is 1 metric ton raw value equals 1.10231125 short tons raw value.

Because the specialty sugar TRQ is first-come, first-served, tranches are needed to allow for orderly marketing throughout the year. The FY 2023 specialty sugar TRQ will be opened in five tranches. The first tranche, totaling 1,656 MTRV, will open October 3, 2022. All specialty sugars are eligible for entry under this tranche. The second tranche of 60,000 MTRV will open on October 10, 2022. The third tranche of 60,000 MTRV will open on January 20, 2023. The fourth tranche of 40,000 MTRV will open on April 14, 2023. The fifth tranche of 40,000 MTRV will open on July 14, 2023. The second, third, fourth, and fifth tranches will be reserved for organic sugar and other specialty sugars not currently produced commercially in the United States or reasonably available from domestic sources.

Jason Hafemeister,
Acting Deputy Under Secretary, Trade and Foreign Agricultural Affairs.

[FR Doc. 2022–19951 Filed 9–14–22; 8:45 am]
BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 17, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: Foreign Market Development Cooperator Program (FMD) and Market Access Program (MAP).

OMB Control Number: 0551–0026.

Summary of Collection: The authority for the Foreign Market Development Cooperator Program (FMD) and the Market Access Program (MAP) is contained in Title VII and section 203 of the Agricultural Trade Act of 1978, 7 U.S.C. 5623, as amended, which took effect October 21, 1978. The programs were reauthorized by the Agriculture Improvement Act of 2018 (section 3201), which became effective December 20, 2018. The primary objective of the FMD and MAP programs is to encourage and aid in the creation, maintenance and expansion of commercial export markets for United States agricultural commodities and products through cost–share assistance to eligible trade organizations. Financial assistance for both programs is made available on a competitive basis. The programs are administered by personnel of the Foreign Agricultural Service (FAS).

Need and Use of the Information: The collected information will be used by FAS to manage, plan, evaluate, and account for government resources. Specifically, data is used to assess the extent to which: applicant organizations represent U.S. commodity interests; benefits derived from market development effort will translate back to the broadest possible range of beneficiaries; the market development efforts will lead to increases in consumption and imports of U.S. agricultural commodities; the applicant is able and willing to commit personnel and financial resources to assure adequate development, supervision and execution of project activities; and private organizations are able and willing to support the promotional program with aggressive marketing of the commodity in question. Without the collected information the program could not be implemented.

Description of Respondents: Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 67.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 88,922.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–20022 Filed 9–14–22; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2021–0001]

Eligibility of Lithuania To Export Egg Products to the United States

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice and response to comments.

SUMMARY: FSIS is announcing that Lithuania is eligible to export egg products to the United States. FSIS has reviewed Lithuania's laws, regulations, and inspection system, as implemented, and has determined that Lithuania's egg products inspection system is equivalent to the food safety inspection system for egg products that the United States has established under the Egg Products Inspection Act (EPIA) and its implementing regulations. Therefore, egg products produced in certified Lithuanian establishments are eligible for export to the United States. All such products will be subject to reinspection at U.S. points-of-entry by FSIS inspectors.

DATES: *Applicable:* Lithuania's egg products eligible for import to the United States will be added to the FSIS Import Library (*https://www.fsis.usda.gov/inspection/import-export/import-export-library*) on September 15, 2022. Lithuania will be eligible to export to the United States egg products produced in the country on or after September 15, 2022.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, telephone (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2021, FSIS published a notice in the **Federal Register** (86 FR 73721) that announced that FSIS intended to add Lithuania to the list of countries eligible to export egg products to the United States. As explained in the notice, the EPIA prohibits the importation of egg products capable of use as human food into the United States unless they were processed under an approved inspection system of the government of the foreign country of origin and are labeled and packaged in accordance with, and otherwise comply with, the standards of the EPIA and regulations issued thereunder applicable to such articles within the United States (21 U.S.C. 1046(a)(2)). The regulatory requirements for foreign countries to become eligible to export egg products to the United States are provided in 9 CFR 590.910(a).

Section 590.910(a) requires a foreign country's inspection system to be authorized by a legal authority that imposes requirements equivalent to those of the United States, specifically with respect to labeling, packaging, sanitation, processing, facility requirements, and Government inspection. The foreign country's inspection system must ensure that establishments preparing egg products for export to the United States comply with requirements equivalent to those of the EPIA and the regulations promulgated by FSIS under the authority of that statute. The foreign country is required to certify establishments as having met the required standards and to notify FSIS of those establishments that are either certified as eligible to export to the United States or removed from eligibility.

As part of the FSIS initial equivalence review process, FSIS evaluated the country's food safety inspection system for egg products to determine whether it is equivalent to FSIS', and therefore, eligible to export egg products to the United States. This evaluation consisted of two processes: A document review and an onsite review. The document review is an evaluation of the laws, regulations, and other written materials used by the country to affect its inspection program (9 CFR 327.2(a)(2)(iii), 381.196(a)(2)(iii), and 590.910(a)). The onsite review is an FSIS audit to verify the implementation of the country's food safety inspection system. These comprehensive processes are described more fully on the FSIS website at *https://www.fsis.usda.gov/inspection/import-export/equivalence.*

FSIS regulations (9 CFR 590.910(b)) provide that a list of countries eligible to export egg products to the United States be maintained at *https://www.fsis.usda.gov/inspection/import-export/import-export-library.* To verify that products imported into the United States are not adulterated or misbranded, FSIS reinspects all product imported under FSIS jurisdiction and samples a subset of those products for pathogens and residues at points-of-entry before they enter U.S. commerce.

Evaluation of the Lithuanian Egg Products Inspection System

FSIS explained in the December 28, 2021, **Federal Register** notice that FSIS conducted an onsite audit from October 24 to November 2, 2016, to verify that Lithuania's State Food and Veterinary

Service (SFVS), the central competent authority (CCA) in charge of food inspection, effectively implemented an egg products inspection system equivalent to that of the United States (86 FR 73721). Details regarding that audit and subsequent actions resulting from it, including a follow-up audit conducted from July 15 to July 24, 2019, can be found in the December 28, 2021, notice. In the follow-up audit, FSIS evaluated the corrective action plans and Lithuania's inspection verification activities, based on the information Lithuania submitted, and determined that Lithuania had satisfactorily addressed all the audit findings and was able to meet FSIS requirements and equivalence criteria related to all six components (86 FR 73721).

FSIS' Equivalence Determination

After considering the comments received on the notice, discussed below, FSIS has concluded that Lithuania's egg products inspection system is equivalent to the United States' inspection system for egg products. FSIS has added Lithuania to its list of eligible countries to export egg products to the United States on its website at: *https://www.fsis.usda.gov/inspection/import-export/import-export-library.*

Lithuania is eligible to export to the United States egg products produced in certified Lithuanian establishments produced on or after September 15, 2022. FSIS maintains a country specific web page [1] on FSIS' website with a link to the country's certified establishments and a list of the process categories, product categories, and the product groups Lithuania is eligible to export to the United States. Although a foreign country may be listed on FSIS' website as eligible to export egg products to the United States, the exporting country's products must also comply with all other applicable requirements of the United States, including those of USDA's Animal and Plant Health Inspection Service (APHIS). These requirements include restrictions under 9 CFR part 94 of the APHIS regulations, which regulate the importation of egg products from foreign countries into the United States to control the spread of specific animal diseases. All egg products exported to the United States from Lithuania will be subject to reinspection by FSIS at United States points-of-entry for, but not limited to, transportation damage, product and container defects, labeling, proper certification, general condition, and accurate count. FSIS also will conduct other types of reinspection activities, such as physical inspection of products to ensure product safety and taking product samples for laboratory analysis to detect any drug or chemical residues or pathogens that may render the product unsafe or other violations that would render the product economically adulterated. Products that pass reinspection will be stamped with the official mark of inspection and allowed to enter United States commerce. If a product does not meet United States requirements, it will be refused entry and within 45 days will have to be returned to the country of origin, destroyed, or converted to animal food (subject to approval of the Food and Drug Administration (FDA)), depending on the violation. The import reinspection activities can be found on the FSIS website at: *https://www.fsis.usda.gov/inspection/import-export/import-guidance.* Finally, within one year of the publication date of this **Federal Register** notice, FSIS intends to conduct an onsite audit of Lithuania's egg products inspection system to verify ongoing equivalence. During the audit, FSIS auditors will verify that Lithuania's CCA has implemented its food safety inspection system as described in the Self-Reporting Tool [2] and supporting documentation. FSIS will audit government offices, establishments, and laboratories to verify that the CCA has implemented its inspection system as documented and verify that the country's system of controls remains equivalent to the U.S. inspection system.

Summary of Comments and Responses

FSIS received three comments in response to the notice, one from a trade association representing U.S. egg farmers, one from a trade association representing U.S. egg products producers, and one from an individual. The two trade associations opposed the declaration of equivalence for Lithuania for the reasons discussed below. The individual asked about the importation of shell eggs from Lithuania. Because this notice does not deal with the importation of shell eggs from Lithuania, the comment is outside the scope of this notice and is not addressed. The following is a brief summary of the relevant issues raised in the comments and FSIS' responses.

Continuous Inspection

Comments: The trade association representing U.S. egg farmers and the trade association representing U.S. egg products producers questioned how FSIS will verify that continuous inspection, including the inspection of shell eggs prior to breaking, will be provided in a foreign egg products processing plant, as required by the EPIA. The trade association representing U.S. egg products producers noted that under the final rule ''Egg Products Inspection Regulations'' (85 FR 68640), ''continuous inspection'' was interpreted to provide for the presence of inspectors at official plants at the same frequency that meat and poultry processing establishments have inspectors, *i.e.,* at least once per production shift (daily inspection).

Response: FSIS will verify through Lithuania's (and other countries') documented foreign inspection procedures submitted to FSIS through the SRT and FSIS audits of the inspection systems that ''continuous inspection'' in foreign egg products establishments, including the inspection of shell eggs prior to breaking, is conducted by government inspectors who are present at the establishment at least once per production shift.

Hazard Analysis and Critical Control Point (HACCP) Implementation

Comments: The trade association representing U.S. egg products producers asked if equivalence procedures would be implemented in Lithuania when the HACCP system requirements are implemented on October 31, 2022.

Response: FSIS has verified through Lithuania's SRT responses and documentation reviews that Lithuania has a documented inspection system, including requirements for Sanitation Performance Standards, Sanitation Standard Operating Procedures and HACCP, equivalent to FSIS' egg products inspection system under the new requirements of the final egg rule (see 85 FR 68640). Implementation of these requirements will be verified during the next audit.

Failure To Provide Government Oversight

Comments: The trade association representing U.S. egg producers argued that Lithuania is unable to demonstrate adequate government oversight of its egg products inspection system. According to the trade association, the country may have shown that its laws, regulations,

[1] See: *https://www.fsis.usda.gov/inspection/import-export/import-export-library/lithuania.*

[2] The Self-Reporting Tool (SRT) is a standardized questionnaire that FSIS provides to foreign governments to gather information that characterizes foreign inspection systems. Through the SRT, FSIS collects information on practices and procedures in six areas, known as equivalence components. The SRT template can be found on the FSIS website at *https://www.fsis.usda.gov/guidelines/2022-0003.*

control programs, and procedures were equivalent to those of the United States in 2014, but Lithuania was unable to demonstrate adequate government oversight over its egg products inspection system in 2016 and 2019, considering the documentation reviews and onsite audits conducted by FSIS. The commenter noted that in 2016, FSIS concluded that the Lithuanian government was unable to demonstrate adequate government oversight regarding implementation and verification of its sanitation requirements. The commenter noted that in 2019, FSIS conducted a second onsite audit and found that actions to correct the 2016 deficiencies in the egg products plant were implemented and effective; however, the commenter further noted that in 2019, the Agency found that Lithuania could not demonstrate adequate government oversight regarding implementation and verification of its egg products requirements.

Response: FSIS' equivalence review process for Lithuania was not unique. Many countries submit multiple series of corrective actions to FSIS and undergo more than one onsite audit before they are found eligible to export meat, poultry, or egg products to the United States. As FSIS explained in the December 28, 2021, notice, the Lithuanian government addressed past concerns both with the egg products inspection system and with other products that they are eligible to export to the United States. The corrective actions provided indicated that the country has addressed FSIS concerns (86 FR 73721). As is stated above, FSIS will follow up with an audit of Lithuania's egg products inspection system within one year of granting equivalence, which is standard policy for all countries granted new equivalence.

Economic Impact Analysis

As explained above, FSIS is listing Lithuania as a country eligible to export egg products to the United States. Given the limited market in the United States for Lithuania's egg products and Lithuania's projected low export volume, there is likely to be little, if any, impact on the United States economy.

In comparison to the United States, Lithuania is a small egg and egg products producer with limited capacity to export egg products. Between 2015 and 2019, Lithuania had an annual average of 3.2 million egg laying hens that produced 55,300 tons of eggs and imported 14,300 tons of eggs. During this same period, Lithuania consumed approximately 50,800 tons of eggs annually. The remaining eggs were exported as eggs or egg products, mainly to the European Union, of which Lithuania is a member. Of these exports, approximately 17.2 percent were in the form of egg products.[3] According to the United Nations Comtrade Database, Lithuania, on average, exported 3,200 tons of egg products during 2017–2021. Assuming that the European Union will continue to be Lithuania's largest trading partner, the amount of egg products to be exported to the U.S. is likely to be less than 3,200 tons.[4]

From 2017 to 2021, the U.S. had an annual average of 387 million egg laying hens [5] that produced 6.9 million tons of eggs, of which approximately 5.9 million tons were consumed domestically.[6] While the U.S., on average, imported around 7,000 tons of egg products annually in this period, it was a net exporter of egg products.[7]

With only one establishment intending to export egg products to the U.S., Lithuanian egg products exports to the U.S. are likely to be small in comparison to the total U.S. egg products market, and are expected to have little or no effect on U.S. egg products supplies or their prices. U.S. consumers, however, are expected to enjoy more choices when purchasing egg products.

[3] Lithuania's production, trade, and consumptions data are based on the Food and Agricultural Organization of the United Nations (FAO, 2021) Food Balance Sheet (FBS): available at *http://www.fao.org/faostat/en/#data/FBS*. FSIS calculated 17.2 percent as a five-year average based on 2015–19 FAO data (production plus imports minus consumption and assuming zero ending stock). The latest available FBS data for Lithuania is 2019.

[4] United Nations Statistical Division, UN Comtrade Database, 2017–2021: available at *https://comtrade.un.org/data/*.

[5] U.S. Chicken Layers Inventory are based on USDA National Agricultural Statistics Service (NASS) data for July 1st each year from 2015–19. The data were accessed from the USDA/NASS Quick Stats at: *https://quickstats.nass.usda.gov/results/B6EC799A-D857-338C-82DC-73C74B27755B*.

[6] U.S. Production and Consumption Data accessed from USDA/World Agricultural Supply and Demand Estimates (WASDE): *https://usda.library.cornell.edu/concern/publications/3t945q76s?locale=en*. WASDE's egg data are published in dozen; FSIS converted these data into tons using Grade A Large Egg Weight based on USDA/Agricultural Marketing Service conversion rate: accessed from *https://www.ams.usda.gov/sites/default/files/media/Shell_Egg_Standard%5B1%5D.pdf*.

[7] U.S. Import and Export Data accessed from USDA Foreign Agricultural Service: Global Agricultural Trade System: *https://apps.fas.usda.gov/GATS/default.aspx*. Egg products are based on Harmonized System (HS) codes 040811, 040819, 040891, 040899, 350211, and 350219.

Effect on Small Businesses

The FSIS Administrator has made a determination that this notice will not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The trade volume is expected to have little or no effect on all U.S. establishments, regardless of size.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS website located at: *https://www.fsis.usda.gov/policy/federal-register-rulemaking.* FSIS will also announce and provide a link to it through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

Congressional Review Act

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

USDA Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and 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.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter 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: (202) 690–7442; or (3) email: *program.intake@usda.gov*.

USDA is an equal opportunity provider, employer, and lender.

Paul Kiecker,

Administrator.

[FR Doc. 2022–19894 Filed 9–14–22; 8:45 am]

BILLING CODE 3410–DM–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Arizona Advisory Committee (Committee) to the Commission will hold a virtual business meeting via Zoom platform on Friday, October 7, 2022, from 11 a.m. to 12:30 p.m. Arizona time, for the purpose of discussing revisions to the project proposal draft.

DATES: The meeting will take place on:

• Friday, October 7, 2022, from 11 a.m.–12:30 p.m. Arizona time.

Access Information

Link to Join (Audio/Visual) *https://tinyurl.com/mr2cycdf*.

Telephone (Audio Only) Dial +1–551–285–1373; Meeting ID: 160 809 7593#.

FOR FURTHER INFORMATION CONTACT:

Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012 or email Kayla Fajota (DFO) at *kfajota@usccr.gov*.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/0FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl2AAA*.

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Announcements and Updates
III. Approval of September 2, 2022, Meeting Minutes
IV. Discussion: Project Proposal Draft
V. Next Steps
VI. Public Comment
VII. Adjournment.

Dated: September 12, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–19961 Filed 9–14–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the New York Advisory Committee (Committee) will hold a virtual business meeting via Zoom at 1 p.m. ET on Friday, October 21, 2022, for the purpose of discussing their project on the child welfare system in New York.

DATES: The meeting will take place from 1 p.m.–2:30 p.m. ET on Friday, October 21, 2022.

Link to Join (Audio/Video): https://tinyurl.com/tep964rz.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 161 982 8516

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or (202) 809–9618.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email Liliana Schiller *lschiller@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the

Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, New York Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Project Discussion
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: September 9, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–19911 Filed 9–14–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Delaware Advisory Committee to the Commission will hold virtual meetings on the first Wednesdays of each month beginning at 1:00 p.m. and ending at approximately 2 p.m. ET (may end sooner than 2 p.m. if business concludes) as follows: October 5, November 2, and December 7, 2022. The purpose of the meetings is to continue discussing report progression on the topic of COVID 19 and health disparities.

DATES: 10/5/22, 11/2/22, and 12/7/22; 1 p.m. ET.

The access information for all meetings is as follows:

- *To join by web conference: https://tinyurl.com/2sstbf6v.*
- To join by phone only, dial 1–551–285–1373; Access code: 160 832 3278#.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: These meetings are available to the public through the Zoom link or phone number above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges.

Individuals who are deaf, deafblind and hard of hearing. may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided for each meeting.

Members of the public are entitled to make comments during the open period at the end of each meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Ivy David at *ero@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618.

Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov*. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesdays at 1 p.m. (ET): 10/5, 11/2, and 12/7/22

I. Welcome and Roll Call
II. Project Planning and Report Discussion
III. Other Business
IV. Next Planning Meeting
V. Public Comments
VI. Adjourn

Dated: September 12, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–19963 Filed 9–14–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Connecticut Advisory Committee to the U.S. Commission on Civil Rights will hold a second briefing on the impact of algorithms on civil rights in Connecticut on Thursday, September 29, 2022, at 12:00 p.m. The briefing will convene virtually. The purpose of the briefing is to hear from experts on the topic of algorithms and civil rights in Connecticut.

DATE AND TIME: Thursday, September 29, 2022; 12:00 p.m. ET.

Zoom Link (audio/video): https://tinyurl.com/35v8d9jh; passcode, if needed: USCCR–CT.

If Joining by Phone Only: 1–551–285–1373; Meeting ID: 161 505 0374#.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez at *ero@usccr.gov* or by phone at 202–539–8246.

SUPPLEMENTARY INFORMATION: If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Time will be set aside at the end of the meeting so that members of the public may address the Committee after the briefing during the open comment session. This meeting is available to the public by attendance in person.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Barbara de La Viez at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 539–8246. Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Thursday, September 29, 2022; 12:00 p.m. (ET)

I. Welcome and Roll Call
II. Briefing Panel II: The Impact of Algorithms on Civil Rights in Connecticut
III. Question and Answer Between Panelists and Committee Members
IV. Public Comment
V. Adjournment

Dated: September 12, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–20000 Filed 9–14–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the California Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the California Advisory Committee (Committee) will hold a meeting via a Webex platform on Wednesday, October 12, 2022, from 1:30 p.m. to 3 p.m., for the purpose of discussing their current project on the civil rights implications of AB5.

DATES: The meeting will take place on:

- Wednesday, October 12, 2022, from 1:30 p.m.–3 p.m. Pacific time.

Webex Registration Link: https://tinyurl.com/3mwxm7m9.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Adjournment

Dated: September 12, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–19959 Filed 9–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–42–2022]

Foreign-Trade Zone (FTZ) 153—San Diego, California, Notification of Proposed Production Activity, Ajinomoto Bio-Pharma Services (Pharmaceutical Products), San Diego, California

The City of San Diego, grantee of FTZ 153, submitted a notification of proposed production activity to the FTZ Board (the Board) on behalf of Ajinomoto Bio-Pharma Services, located in San Diego, California under FTZ 153. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on September 7, 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 is yusimry—(active pharmaceutical ingredient (API) substance and packaging into measured doses in vials and/or syringes) (duty-free).

The proposed foreign-status material and component is yusimry API substance (duty-free).

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 25, 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 Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: September 9, 2022.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2022–19897 Filed 9–14–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–042, C–570–043]

Stainless Steel Sheet and Strip From the People's Republic of China: Preliminary Scope Ruling and Preliminary Affirmative Determination of Circumvention for Exports From the Socialist Republic of Vietnam

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain stainless steel sheet and strip (SSSS) of Chinese-origin that has undergone further processing in the Socialist Republic of Vietnam (Vietnam) is merchandise covered by the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on SSSS from the People's Republic of China (China). Additionally, Commerce preliminarily determines that SSSS that is completed in Vietnam using certain non-subject stainless steel flat-rolled inputs sourced from China, is circumventing the AD/CVD orders on SSSS from China. As a result, SSSS of Chinese-origin that has undergone further processing or completion in Vietnam will be subject to suspension of liquidation effective May 15, 2020. We invite interested parties to comment on these preliminary determinations.

DATES: Applicable September 15, 2022.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse, Office of the Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6345.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 2020, Commerce published in the **Federal Register** its self-initiation of country-wide circumvention and scope inquiries of the AD and CVD orders on SSSS from China [1] to determine if imports of SSSS

[1] *See Stainless Steel Sheet and Strip from the People's Republic of China: Antidumping Duty Order,* 82 FR 16160 (April 3, 2017) (*AD Order*); *see also Stainless Steel Sheet and Strip from the*

completed in Vietnam using certain non-subject stainless steel flat-rolled inputs [2] manufactured in China are circumventing the *Orders,* and to determine whether SSSS that is produced in China and undergoes further processing in Vietnam before being exported to the United States is subject to the *Orders,* respectively.[3] In the *Initiation Notice,* Commerce self-initiated the circumvention inquiry based on available information and an analysis pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h). Additionally, Commerce self-initiated the scope inquiry in accordance with its authority as outlined in 19 CFR 351.225(b).

For a complete description of the events that followed the initiation of these inquiries, *see* the Preliminary Decision Memorandum.[4] A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Orders

The product covered by the *Orders* is stainless steel sheet and strip. For a complete description of the scope of the *Orders, see* the Preliminary Decision Memorandum.

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers SSSS completed in Vietnam using certain non-subject stainless steel flat-rolled inputs of Chinese-origin that is subsequently exported from Vietnam to the United States.

Merchandise Subject to the Scope Inquiry

This scope inquiry covers SSSS of Chinese-origin that has undergone further processing in Vietnam (including but not limited to cold-rolling, annealing, tempering, polishing, aluminizing, coating, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders*) that is subsequently exported to the United States.

Methodology

Commerce is conducting these scope and circumvention inquiries in accordance with section 781(b) of the Act. Because Vietnam and China [5] are non-market economy countries, within the meaning of section 771(18) of the Act, Commerce has calculated the value of certain processing and merchandise using factors of production and market economy values, as discussed in section 773(c) of the Act. For a full description of the methodology underlying Commerce's preliminary determinations, *see* the Preliminary Decision Memorandum.

Preliminary Findings

As detailed in the Preliminary Decision Memorandum, we preliminarily determine, pursuant to 19 CFR 351.225(k)(1), that SSSS of Chinese-origin that has undergone further processing in Vietnam is covered by the scope of the *Orders.* Additionally, pursuant to section 781(b) of the Act, we preliminarily determine that SSSS completed in Vietnam using certain non-subject stainless steel flat-rolled inputs of Chinese-origin is circumventing the *Orders.* In reaching these preliminary determinations, we relied on information placed on the record by a petitioner in the original investigation, Outokumpu Stainless USA LLC, and information placed on the record by POSCO VST Co., Ltd. (POSCO VST), POSCO Vietnam Processing Center Company Limited, and Silverwood (Hong Kong) Ltd.

Further, because Hoangvu Co., Ltd. and SK Networks Co., Ltd. did not cooperate to the best of their ability in responding to Commerce's requests for information, we have based parts of our preliminary determinations on the facts available, with adverse inferences, pursuant to sections 776(a) and (b) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Suspension of Liquidation

As stated above, Commerce has made preliminary affirmative findings that SSSS of Chinese-origin that has undergone further processing in Vietnam is merchandise covered by the scope of the *Orders* and that SSSS completed in Vietnam using certain non-subject stainless steel flat-rolled inputs of Chinese-origin is merchandise circumventing the *Orders.* These affirmative in-scope and circumvention findings apply to SSSS that is subject to these determinations and produced and/or exported by any Vietnamese company. Therefore, in accordance with 19 CFR 351.225(l)(2), Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of SSSS produced in Vietnam from Chinese-sourced stainless steel flat-rolled inputs that were entered, or withdrawn from warehouse, for consumption on or after May 15, 2020, the date of publication of initiation of these circumvention and scope inquiries in the **Federal Register**.[6]

Where a Vietnamese company subject to these inquiries reports that the finished SSSS products that it has exported to the United States were produced by a specific Chinese supplier that has its own company-specific rate under the *Orders,* the cash deposit rate

---

People's Republic of China: Countervailing Duty Order, 82 FR 16166 (April 3, 2017) (*CVD Order*) (collectively, *Orders*).

[2] The term ''certain non-subject stainless steel flat-rolled inputs'' refers to stainless steel flat-rolled products that are not further worked than hot-rolled and/or of a thickness greater than 4.75 millimeters.

[3] *See Stainless Steel Sheet and Strip from the People's Republic of China: Initiation of Anti-Circumvention and Scope Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 85 FR 29401 (May 15, 2020) (*Initiation Notice*). On September 20, 2021, Commerce significantly revised its regulations pertaining to circumvention and scope inquiries, with an effective date of November 4, 2021. *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021). The newly promulgated 19 CFR 351.226 applies to circumvention inquiries for which a circumvention request is filed, as well as any circumvention inquiry self-initiated by Commerce, on or after November 4, 2021. The amendments to 19 CFR 351.225 apply to scope inquiries for which a scope ruling application is filed, as well as any scope inquiry self-initiated by Commerce, on or after November 4, 2021. We note that these circumvention and scope inquiries were initiated prior to the effective date of the new regulations, and, thus, any reference to the regulations is to the prior version of the regulations.

[4] *See* Memorandum, ''Antidumping Duty and Countervailing Duty Orders on Stainless Steel Sheet and Strip from the People's Republic of China: Preliminary Decision Memorandum for Scope and Circumvention Inquiries Covering Exports from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum, ''China's Status as a Non-Market Economy,'' dated October 26, 2017); *see also Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review,* 81 FR 24797 (October 14, 2016), unchanged in *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 18611 (April 20, 2017).

[6] *See Initiation Notice.*

will be the Chinese supplier's company-specific rate. Otherwise, Commerce will instruct CBP to require AD cash deposits equal to the current China-wide rate (*i.e.,* 58.04 percent) and CVD cash deposits equal to the current all-others rate (*i.e.,* 75.60 percent).[7] The suspension of liquidation instructions will remain in effect until further notice.

SSSS that is further processed or completed in Vietnam from stainless steel flat-rolled inputs that are not of Chinese-origin is not subject to these inquiries. Therefore, cash deposits are not required for such merchandise subject to the following certification requirements.[8]

If an importer of SSSS from Vietnam claims that the SSSS was not produced using any stainless steel flat-rolled inputs of Chinese-origin, in order not to be subject to cash deposit requirements, the importer and exporter must meet the certification and documentation requirements described in Appendix II. An exporter of SSSS produced in Vietnam claiming that its SSSS was not produced using any stainless steel flat-rolled inputs of Chinese-origin must prepare and maintain an Exporter Certification and documentation supporting the Exporter Certification (*see* Appendix IV). In addition, importers of such SSSS must prepare and maintain an Importer Certification (*see* Appendix III) as well as documentation supporting the Importer Certification. In addition to the Importer Certification, the importer must also maintain a copy of the Exporter Certification (*see* Appendix IV) and relevant supporting documentation from its exporter of SSSS produced from stainless steel flat-rolled inputs that are not of Chinese-origin.

Verification

As provided in 19 CFR 351.307, Commerce intends to verify information relied upon in making its final determination.

Public Comment

Interested parties may submit case briefs to the Assistant Secretary for Enforcement and Compliance. Commerce will notify interested parties of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the deadline for case briefs.[9] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each brief: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10] Executive summaries should be limited to five pages total, including footnotes.[11] All submissions, with limited exceptions, must be filed electronically using ACCESS.[12] Electronically filed comments must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically and received successfully in its entirety via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[14] Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held.[15] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

Consistent with section 781(e) of the Act, Commerce is notifying the U.S. International Trade Commission (ITC) of this affirmative preliminary determination to include the merchandise subject to this circumvention inquiry within the *Orders.* Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the subject merchandise. These consultations must be concluded within 15 days after the date of the request. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days to provide written advice to Commerce.

Notification to Interested Parties

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.225(h).

Dated: September 9, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

Appendix II

Certification Requirements

If a company imports stainless steel sheet and strip (SSSS) from Vietnam and claims that the entry was not produced from Chinese-sourced stainless steel flat-rolled inputs and, thus, is not subject to the antidumping duty (AD) and countervailing duty (CVD) *Orders*[16] on SSSS from China, then the importer is required to complete and maintain the Importer Certification attached hereto as Appendix III and retain all supporting documentation. The importer is further required to maintain a copy of the Exporter Certification, attached as Appendix IV, and retain all supporting documentation. The Importer Certification must be completed, signed, and dated by the time of filing of the entry summary for the relevant importation. Where the importer uses a broker to facilitate the entry process, it should obtain the entry number from the broker. Agents of the importer, such as

[7] *See AD Order,* 82 FR at 16162; and *CVD Order,* 82 FR at 16176.

[8] *See* Appendix II for the certification requirements, and Appendixes III and IV for the Importer and Exporter Certifications, respectively.

[9] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (collectively, *Temporary Rules*).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *Id.*

[12] *See* 19 CFR 351.303.

[13] *See Temporary Rules.*

[14] *See* 19 CFR 351.310(c).

[15] *Id.*

[16] *See Stainless Steel Sheet and Strip from the People's Republic of China: Antidumping Duty Order,* 82 FR 16160 (April 3, 2017); *see also Stainless Steel Sheet and Strip from the People's Republic of China: Countervailing Duty Order,* 82 FR 16166 (April 3, 2017) (collectively, *Orders*).

brokers, however, are not permitted to make this certification on behalf of the importer.

All importers of SSSS from Vietnam are eligible for the certification process detailed below, with the exception that entries of SSSS produced and/or exported by Hoangvu Co., Ltd. and SK Networks Co., Ltd. are ineligible for certification.

The exporter is required to complete and maintain the Exporter Certification, attached as Appendix IV, and is further required to provide the importer a copy of that certification and all supporting documentation (*e.g.,* invoice, purchase order, production records, *etc.*). The Exporter Certification must be completed, signed, and dated by the time of shipment of the relevant entries (except as noted below). The Exporter Certification should be completed by the party selling the subject merchandise manufactured in Vietnam to the United States.

The importer will not be required to submit the certifications or supporting documentation to U.S. Customs and Border Protection (CBP) as part of the entry process. However, the importer and exporter will be required to present the certifications, and supporting documentation, to the U.S. Department of Commerce (Commerce) and/or CBP, as applicable, upon request by the respective agency. Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. The importer and exporter are required to maintain the certifications and supporting documentation for the later of: (1) a period of five years from the date of entry; or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.

For SSSS exported from Vietnam that was produced using Chinese-sourced stainless steel flat-rolled inputs subject to this inquiry that has been found to be circumventing the AD/CVD *Orders* on SSSS from China, Commerce has established the following third-country case numbers in the Automated Commercial Environment (ACE): A–552–042 and C–552–043. For SSSS exported from Vietnam that is merchandise covered by the scope of the AD/CVD *Orders* on SSSS from China, where the country of origin does not change for CBP's reporting purposes, importers should report such entries under the case numbers for the *Orders* on SSSS from China: A–570–042 and C–570–043. For SSSS exported from Vietnam that is merchandise covered by the scope of the AD/CVD *Orders* on SSSS from China, where the country-of-origin changes for CBP's reporting purposes, importers should report such entries under the following third-country case numbers: A–552–042 and C–552–043.

If it is determined that the certification and/or documentation requirements in a certification have not been met, Commerce intends to instruct CBP to suspend, under the appropriate case numbers, either those established for the AD/CVD *Orders* on SSSS from China, A–570–042/C–570–043, or the third country case numbers, A–552–042/C–552–043, all unliquidated entries for which these requirements were not met and require the importer to post applicable AD and CVD cash deposits equal to the rates as determined by Commerce. Entries suspended under A–570–042/C–570–043/A–552–042/C–552–043 will be liquidated pursuant to applicable administrative reviews of the *Orders* or through the automatic liquidation process.

For shipments and/or entries suspended pursuant to the preliminary determinations of these scope and circumvention inquiries that were shipped and/or entered, or withdrawn from warehouse, for consumption during the period on or after May 15, 2020 (the date of initiation of these scope and circumvention inquiries) through the date of publication of the preliminary determination in the **Federal Register**, for which certifications are required, importers and exporters should complete the required certification, as soon as practicable but not later than 45 days after the publication of the preliminary determinations in the **Federal Register**. Accordingly, where appropriate, the relevant bullet in the certification should be edited to reflect that the certification was completed within this time frame. Specifically, exporters should complete the language in Paragraph G in the Exporter Certification that reads: ''The shipments/products referenced herein shipped before mm/dd/yyyy, the date on which Commerce published notice of its preliminary scope and circumvention findings in the **Federal Register**. This certification was completed on mm/dd/yyyy, within 45 days of the **Federal Register** notice publication.'' For such entries/shipments, importers and exporters each have the option to complete a blanket certification covering multiple entries/shipments, individual certifications for each entry/shipment, or a combination thereof. The Exporter Certifications should be maintained by both the importer and exporter and provided to CBP or Commerce only upon request by the respective agency. The exporter must provide the importer a copy of the Exporter Certification within 45 days of the publication of the preliminary determination in the **Federal Register**.

For shipments and/or entries suspended pursuant to the preliminary determinations of these scope and circumvention inquiries that were shipped and/or entered, or withdrawn from warehouse, for consumption within 30 days of the date of publication of the preliminary determination in the **Federal Register**, for which certifications are required, importers and exporters should complete the required certification, as soon as practicable but not later than 45 days after the publication of the preliminary determinations in the **Federal Register**. Accordingly, where appropriate, the relevant bullet in the certification should be edited to reflect that the certification was completed within this time frame. Specifically, exporters should complete the language in Paragraph G in the Exporter Certification that reads: ''The shipments/products referenced herein shipped on mm/dd/yyyy. This certification was completed on mm/dd/yyyy, within 45 days of the date on which Commerce published its preliminary scope and circumvention findings in the **Federal Register**.'' For such entries/shipments, importers and exporters each have the option to complete a blanket certification covering multiple entries/shipments, individual certifications for each entry/shipment, or a combination thereof. The Exporter Certifications should be maintained by both the importer and exporter and provided to CBP or Commerce only upon request by the respective agency. The exporter must provide the importer a copy of the Exporter Certification within 45 days of the publication of the preliminary determination in the **Federal Register**.

For shipments and/or entries after 30 days from the date of publication of the preliminary determination in the **Federal Register**, for which certifications are required, importers and exporters should complete the required certification at or prior to the date of entry summary and exporters should complete the required certification and provide it to the importer at or prior to the date of shipment. Specifically, exporters should complete the language in Paragraph G in the Exporter Certification that reads: ''I understand that {EXPORTING COMPANY} must provide this Exporter Certification to the U.S. importer by the time of shipment.''

For unliquidated entries (and entries for which liquidation has not become final) of merchandise entered as non-AD/CVD type entries (*e.g.,* type 01) that were shipped and/or entered, or withdrawn from warehouse, for consumption in the United States during the period, May 15, 2020 (the date of initiation of these scope and circumvention inquiries) through the date of publication of the preliminary determination in the **Federal Register**, that is merchandise covered by the scope of the AD/CVD *Orders* or was produced using Chinese-sourced stainless steel flat-rolled inputs subject to this inquiry that have been found to be circumventing the AD/CVD *Orders,* importers should file a Post Summary Correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-AD/CVD type entries to AD/CVD type entries (*e.g.,* type 01 to type 03). For such shipments, the Exporter Certifications should be completed as soon as practicable, but not later than 45 days after publication of the preliminary determination in the **Federal Register**. Importers should report those AD/CVD type entries of merchandise that is covered by the scope of the AD/CVD *Orders,* under the case numbers for the *Orders* on SSSS from China, A–570–042/C–570–043, or A–552–042/C–552–043, as appropriate. Importers should report those AD/CVD type entries that were produced using Chinese-sourced stainless steel flat-rolled inputs subject to this inquiry that have been found to be circumventing the AD/CVD *Orders,* using the third-country case numbers, A–552–042/C–552–043. Similarly, the importer should pay cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties.

Appendix III

Importer Certification

I hereby certify that:

A. My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY};

B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the stainless steel sheet and strip (SSSS) produced in Vietnam that entered under entry summary number(s), identified below, and are covered by this certification. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own records. For example, the importer should have ''direct personal knowledge'' of the importation of the product (*e.g.,* the name of the exporter) in its records;

C. I have personal knowledge of the facts regarding the production of the imported products covered by this certification. ''Personal knowledge'' includes facts obtained from another party, (*e.g.,* correspondence received by the importer (or exporter) from the producer regarding the source of the SSSS inputs used to produce the imported products);

D. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:

Entry Summary Line Item #:

Foreign Seller:

Foreign Seller's Address:

Foreign Seller's Invoice #:

Foreign Seller's Invoice Line Item #:

Country of Origin of Stainless Steel Flat-Rolled Inputs:

If the importer is acting on behalf of the first U.S. customer, complete this paragraph:

E. The SSSS covered by this certification was imported by {IMPORTING COMPANY} on behalf of {U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER};

F. The SSSS covered by this certification does not contain stainless steel flat-rolled inputs produced in the People's Republic of China (China);

G. I understand that {IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, certificates of origin, product data sheets, mill test reports, productions records, invoices, *etc.*) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;

H. I understand that {IMPORTING COMPANY}is required to provide this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce);

I. I understand that {IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to the production and/or export of the imported merchandise identified above), and any supporting documentation provided by the exporter to the importer, for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries;

J. I understand that {IMPORTING COMPANY}is required to maintain and provide a copy of the exporter's certification and supporting documentation provided by the exporter to the importer, upon request, to CBP and/or Commerce;

K. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

L. I understand that failure to maintain the required certification and supporting documentation and/or failure to substantiate the claims made herein and/or failure to allow CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on SSSS from China. I understand that such finding will result in:

○ suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

○ the requirement that the importer post applicable AD and/or CVD cash deposits (as appropriate) equal to the rates determined by Commerce; and

○ the revocation of {IMPORTING COMPANY}'s privilege to certify that future imports of SSSS were not produced using stainless steel flat-rolled inputs sourced from China subject to these certifications.

M. I understand that agents of the importer, such as brokers, are not permitted to make this certification;

N. This certification was completed by the time of filing the entry summary or within 45 days of the date on which Commerce published notice of its preliminary scope and circumvention findings in the **Federal Register**; and

O. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}
{TITLE}
{DATE}

Appendix IV

Exporter Certification

I hereby certify that:

A. My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF EXPORTING COMPANY}, located at {ADDRESS OF EXPORTING COMPANY};

B. I have direct personal knowledge of the facts regarding the production and exportation in the Customs territory of the United States of the stainless steel sheet and strip (SSSS) identified below. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own books and records. For example, an exporter should have ''direct personal knowledge'' of the producer's identity and location;

C. The SSSS covered by this certification does not contain stainless steel flat-rolled inputs produced in the People's Republic of China (China);

D. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:

Foreign Seller's Invoice to U.S. Customer Line item #:

Producer's Invoice # to Foreign Seller: (*If the foreign seller and the producer are the same party, put NA here.*)

Producer's Invoice # Foreign Seller: (*If the foreign seller and the producer are the same party, put NA here.*)

Producer of Stainless Steel Flat-Rolled Inputs' Name:

Location (Country) of Producer of Stainless Steel Flat-Rolled Inputs:

E. The SSSS products covered by this certification were shipped to {NAME OF U.S. PARTY TO WHOM MERCHANDISE WAS SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED};

F. I understand that {EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product data sheets, mill test reports, productions records, invoices, *etc.*) for the later of: (1) a period of five years from the date of entry; or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;

G. The shipments/products referenced herein shipped before mm/dd/yyyy, the date on which Commerce published notice of its preliminary scope and circumvention findings in the **Federal Register**. This certification was completed on mm/dd/yyyy, within 45 days of the **Federal Register** notice publication.

{Or}

The shipments/products referenced herein shipped on mm/dd/yyyy. This certification was completed on mm/dd/yyyy, within 45 days of the date on which Commerce published its preliminary scope and circumvention findings in the **Federal Register**.

{Or}

I understand that {EXPORTING COMPANY} must provide this Exporter Certification to the U.S. importer by the time of shipment;

H. I understand that failure to maintain the required certification and supporting documentation, failure to substantiate the claims made herein, and/or failure to allow U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on SSSS from China. I understand that such a finding will result in:

○ suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

○ the requirement that the importer post applicable AD and/or CVD cash deposits (as appropriate) equal to the rates as determined by Commerce; and

○ the revocation of {EXPORTING COMPANY}'s privilege to certify that future imports of SSSS were not produced using stainless steel flat-rolled inputs sourced from China subject to these certifications.

I. This certification was completed at time of shipment or within 45 days of the date on which Commerce published notice of its preliminary scope and anti-circumvention findings in the **Federal Register**; and

J. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}
{TITLE}
{DATE}

[FR Doc. 2022–19966 Filed 9–14–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–827]

Certain Lemon Juice From the Republic of South Africa: Postponement of Final Determination and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is postponing the deadline for issuing the final determination in the less-than-fair-value (LTFV) investigation of certain lemon juice (lemon juice) from the Republic of South Africa (South Africa) until December 19, 2022, and is extending the provisional measures from a four-month period to a period of not more than six months.

DATES: Applicable September 15, 2022.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bremer or Zachary Shaykin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987 or (202) 482–2638, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce initiated this investigation on January 19, 2022.[1] The period of investigation is October 1, 2020, through September 30, 2021. On August 4, 2022, Commerce published its *Preliminary Determination*.[2]

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.210(b)(2) provide that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters or producers who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Further, 19 CFR 351.210(e)(2) requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months, in accordance with section 733(d) of the Act.

On September 1, 2022, pursuant to 19 CFR 351.210(e), mandatory respondents Cape Fruit Processors (Pty) Ltd. (Cape Fruit) and Granor Passi (Pty). Ltd. (Granor Passi) requested that Commerce postpone the deadline for the final determination until no later than 135 days from the publication of the *Preliminary Determination,* and that provisional measures be extended to a period not to exceed six months.[3] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the *Preliminary Determination* is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination until no later than 135 days after the date of the publication of the *Preliminary Determination,* and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will issue its final determination no later than December 19, 2022.[4]

Notification to Interested Parties

This notice is issued and published in accordance with section 735(a)(2) of the Act and 19 CFR 351.210(g).

Dated: September 9, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–19967 Filed 9–14–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC304]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Elkhorn Slough Tidal Marsh Restoration Project, Phase III in Monterey County, California

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the California Department of Fish and Wildlife (CDFW) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of Pacific harbor seals (*Phoca vitulina*), by Level B harassment only, incidental to the Elkhorn Slough Restoration Project, Phase III, at the Seal Bend Restoration Area in Monterey Country, CA. The project has been delayed and none of the work covered in the initial IHA has been conducted. The initial IHA was effective from September 16, 2021, through September 15, 2022. CDFW has requested re-issuance with new effective dates of September 16, 2022, through September 15, 2023. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing a second identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from September 16, 2022, through September 15, 2023.

---

[1] *See Lemon Juice from Brazil and South Africa: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 3768 (January 25, 2022).

[2] *See Certain Lemon Juice From the Republic of South Africa: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 87 FR 47707 (August 4, 2022).

[3] *See* Cape Fruit and Granor Passi's Letter, ''Request for Postponement of the Final Antidumping Determination—Case Ref A–791–827,'' dated September 1, 2022.

[4] The actual deadline falls on December 17, 2022, which is a Saturday. Commerce's practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to Tariff Act of 1930, as Amended,* 70 FR 24533 (May 10, 2005).

ADDRESSES: An electronic copy of the final 2021 IHA previously issued to CDFW, CDFW's application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting *https://www.fisheries.noaa.gov/action/incidental-take-authorization-tidal-marsh-restoration-project-elkhorn-slough-phase-iii-2021.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On September 22, 2021, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Elkhorn Slough Tidal Marsh Restoration Project, Phase III (86 FR 52644). The effective dates of that IHA were September 16, 2021, through September 15, 2022. On July 12, 2022, CDFW informed NMFS that the project was delayed. None of the work identified in the initial IHA (*i.e.,* restoration work at the Seal Bend Restoration Area) has occurred. CDFW submitted a request that we reissue an identical IHA that would be effective from September 16, 2022, through September 15, 2023, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. Therefore, re-issuance of the IHA is appropriate.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

Phase III of the Elkhorn Slough Tidal Marsh Restoration Project will restore 28.6 acres (11.57 hectares) at the Seal Bend Restoration Area by relocating soil from an upland area called ''the borrow'' through use of heavy earth moving equipment, within a 12 month period. A detailed description of the planned restoration activities is found in the **Federal Register** notice for the proposed initial IHA (86 FR 43204, August 6, 2021). The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Construction activities are expected to produce airborne noise and visual disturbance that have the potential to result in behavioral harassment of Pacific harbor seals. A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial 2021 IHA for Phase III of the Elkhorn Slough Tidal Marsh Restoration Project (86 FR 52644, September 22, 2021), CDFW's application, the **Federal Register** notice of the proposed IHA (86 FR 43204, August 6, 2021), and all associated references and documents.

Determinations

CDFW will conduct activities as analyzed in the initial 2021 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The reissued 2022 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) CDFW's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or

cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

However, no incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to CDFW for restoration activities at the Seal Bend Restoration Area in Elkhorn Slough (Monterey County, CA) from September 16, 2022, through September 15, 2023. All previously described mitigation, monitoring, and reporting requirements from the initial 2021 IHA are incorporated.

Dated: September 9, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–19945 Filed 9–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Request for Public Comment on Report on Microfiber Pollution

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of request for comments.

SUMMARY: NOAA's Marine Debris Program and Environmental Protection Agency's (EPA) Trash Free Waters Program, on behalf of the Interagency Marine Debris Coordinating Committee (IMDCC), is soliciting public comments regarding the draft *Report on Microfiber Pollution.* The Save Our Seas 2.0 Act of 2020 requires the IMDCC to complete a report on microfiber pollution. This Report will provide Congress with an overview of the microfiber pollution issue, while also outlining a path forward for Federal agencies, in partnership with other stakeholders, to address this problem.

DATES: Comments must be received on or before October 17, 2022, 11:59 p.m. Eastern Time (ET).

ADDRESSES: Comments may be submitted by the following method: *Federal eRulemaking Portal: https://www.regulations.gov.* Submit electronic comments via the Federal eRulemaking Portal and search for Docket Number NOAA–NOS–2022–0061.

Instructions: All comments received are a part of the public record. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Ya'el Seid-Green, Executive Secretariat, IMDCC, Marine Debris Program; Phone 240–533–0399; Email *yael.seid-green@noaa.gov* or visit the IMDCC website at *https://marinedebris.noaa.gov/IMDCC.*

SUPPLEMENTARY INFORMATION:

Background

The IMDCC is a multi-agency body responsible for coordinating a comprehensive program of marine debris research and activities among Federal agencies, in cooperation and coordination with non-governmental organizations, industry, academia, States, Tribes, and other nations, as appropriate. Representatives meet to share information, assess and promote best management practices, and coordinate the Federal Government's efforts to address marine debris. The IMDCC was established in 2006 by the Marine Debris Act (33 U.S.C. 1954). The NOAA representative serves as the Chairperson of the Committee.

Why develop the report on microfiber pollution?

Section 132 of the Save Our Seas 2.0 Act of 2020 (Pub. L. 116–224) requires the IMDCC to complete a report on microfiber pollution that includes: (1) a definition of microfiber; (2) an assessment of the sources, prevalence, and causes of microfiber pollution; (3) a recommendation for a standardized methodology to measure and estimate the prevalence of microfiber pollution; (4) recommendations for reducing microfiber pollution; and (5) a plan for how Federal agencies, in partnership with other stakeholders, can lead on opportunities to reduce microfiber pollution during the 5-year period beginning on the date of the Act's enactment. This Report will provide Congress with an overview of the microfiber pollution issue, while also outlining a path forward for Federal agencies, in partnership with other stakeholders, to address this problem.

Microfibers have been found almost everywhere that scientists look, including in surface waters and throughout the water column, sea ice, deep-sea and coastal sediments, terrestrial soils, and indoor and outdoor air and dust. These fibers are released from clothing, carpets, cigarette butts, and other fiber-based products and are one of the most pervasive types of microplastics found in many environmental compartments. However, additional research is needed to improve our understanding of microfiber sources, pathways, fates, and impacts so that effective mitigation strategies and prevention measures can be developed. Microfibers are a highly complex and diverse type of contaminant and research on the subject is particularly challenging due to a lack of standard definitions and research methods, which make comparisons across studies difficult. In the course of addressing the five requirements specified in Section 132 of the Save Our Seas 2.0 Act, this report also provides an in-depth review of these topics, recommendations for addressing research data gaps, and solutions to mitigate this source of pollution.

Summary of the Report on Microfiber Pollution

NOAA's Marine Debris Program and the EPA's Trash Free Waters Program co-led the development of this report on behalf of the IMDCC, with support from the consulting firm, Materevolve. The draft report is approximately 90 pages in length. Section 1 of the report provides an introduction to the report and microfiber pollution issue. Section 2 focuses on establishing a proposed definition of 'microfiber'. This section summarizes existing definitions from the environmental science, textile industry, and government sectors, and explains the issues that complicate efforts to define the term 'microfiber'. It proposes an initial definition of microfiber that can serve as a starting point for building consensus around a standard definition that could be adopted by the United States Government. Section 3 of the report

covers an assessment of the sources, pathways, and prevalence of microfiber pollution in the environment. Environmental and human health impacts from microfiber pollution are also discussed. Section 4 covers the challenges and data gaps associated with creating standardized methodologies to measure and estimate the prevalence of microfiber pollution and recommendations for overcoming these challenges and data gaps. Section 5 provides an overview of current solutions for addressing the issue of microfiber pollution. Section 6 covers key research needs and recommendations. Section 7 contains a plan for how Federal agencies, in partnership with other stakeholders, can lead on opportunities to reduce microfiber pollution over a 5-year period. This plan was developed in collaboration with representatives from twelve Federal agencies.

How Comments Will Be Addressed

NOAA's Marine Debris Program and EPA's Trash Free Waters Program, on behalf of the IMDCC, invite comments, feedback, and recommendations on the *Report on Microfiber Pollution,* including Section 7, which contains a plan that outlines opportunities to reduce microfiber pollution. Following the comment period, the feedback provided will be reviewed and the report will be updated as necessary. An appendix will be added to the report describing how comments from the public comment period were incorporated into the report. The final report will be posted to *https://marinedebris.noaa.gov/our-work/IMDCC.*

Scott Lundgren,

Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–19939 Filed 9–14–22; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC094

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the CVOW–C Wind Energy Facility Offshore of Virginia

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

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Virginia Electric and Power Company, also known as Dominion Energy Virginia (Dominion Energy), for authorization to take small numbers of marine mammals incidental to the development of the Coastal Virginia Offshore Wind Commercial Project (CVOW–C) in Lease Area Outer Continental Shelf (OCS)–A–0483 off of Virginia over the course of 5 years beginning on March 4, 2024. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Dominion Energy's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on Dominion Energy's application and request.

DATES: Comments and information must be received no later than October 17, 2022.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Potlock@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of Dominion Energy's application may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On February 16, 2022, NMFS received application from Dominion Energy, requesting authorization to take marine mammals incidental to the development of CVOW–C in the BOEM Lease Area (OCS)-A–0483 Commercial Lease of Submerged Lands for Renewable Energy Development off of Virginia. In response to our comments, and following

extensive information exchanges with NMFS, Dominion Energy submitted a revised application on August 9, 2022 that we determined was adequate and complete on August 12, 2022. Dominion Energy requested the regulations and subsequent 5-year Letter of Authorization (LOA) be valid from March 4, 2024 through March 3, 2029.

Dominion Energy plans to conduct the following activities associated with the wind farm construction: vibratory and impact installation of wind turbine generators (WTG) monopiles foundations and offshore substation (OSS) jacket foundations; temporary use of goal posts to guide installation activities during the trenchless installation by impact pile driving; vibratory installation and removal of temporary cofferdams using sheet piles at the sea-to-shore transitions; site characterization surveys using a range of frequencies; placement of scour protection; and export cable trenching, laying, and burial. Vessels will be used to transport crew, supplies, and materials to the project area and to support pile installation. A subset of these activities (*i.e.,* installing piles using impact and vibratory pile driving; site characterization surveys) may result in the take, by Level A harassment and Level B harassment, of marine mammals. Therefore, Dominion Energy requests authorization to incidentally take marine mammals.

Specified Activities

In Executive Order 14008, President Biden stated that it is the policy of the United States 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 its economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, water, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure. Furthermore, this project would directly support the goals of the Virginia Clean Economy Act passed by the Virginia General Assembly in 2020, which supports the development of clean and reliable offshore wind energy to be developed by 2028 and consist of approximately 2,500 to 3,000 MW of energy.

Through a competitive leasing process under 30 CFR 585.211, Dominion Energy was awarded Commercial Lease OCS–A 0483 offshore of Virginia and the exclusive right to submit a construction and operations plan (COP) for activities within the lease area. Dominion Energy submitted a COP to BOEM proposing the construction, operation, maintenance, and conceptual decommissioning of the CVOW–C project, a 2,500 to 3,000 megawatt (MW) commercial-scale offshore wind energy facility with a Lease Area covering approximately 112,799 acres (456.48 km^2) and located 27 nautical miles (50 km) off of the coastline of Virginia Beach. Per the ITA application, CVOW–C would consist of up to 205 WTGs with associated monopile foundations, up to three OSSs with associated jacket foundations, and one transmission cable-to-shore.

Dominion Energy anticipates that activities potentially resulting in the take of marine mammals could occur for the life of the requested 5-year Incidental Take Regulation (ITR) and associated Letter of Authorization (LOA). This includes:

- Several construction-related high-resolution site assessment geophysical surveys using acoustic sources <180 kilohertz (kHz) for up to 1,108 days during all 5 years (with varying effort based on survey year);
- The installation of up to 205 WTGs monopile foundations; each foundation would be a tapered (*i.e.,* one end has a larger diameter than the other end) 7.5/9.5-meter (m) pile by vibratory and impact pile driving;
- The installation of up to three OSSs jacket foundations using four pin piles (2.8-m) each by vibratory and impact pile driving;
- The installation and removal of up to nine temporary cofferdams using steel sheet piles by vibratory pile driving at the offshore nearshore trenchless installation punch-out for the burial of the direct pipe west of the firing range at the State Military Reservation in Virginia Beach; and,
- The installation of temporary goal posts (*i.e.,* a steel support structure to support the direct pipe installation).

We note that Dominion Energy is not requesting take incidental to the detonation of munitions and explosives of concern or unexploded ordnances (MEC/UXOs) during the effective period of the regulation.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Dominion Energy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Dominion Energy, if appropriate.

Dated: September 12, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–19964 Filed 9–14–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Paperwork Submissions Under the Coastal Zone Management Act Federal Consistency Requirements

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 November 14, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0411 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 David Kaiser, Senior Policy Analyst, Office for Coastal Management, National Ocean Service, 246 Gregg Hall, 35 Colovos Road, Durham, NH 03824–3534, 603–862–2719 or *David.Kaiser@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice and request for public comment is for a request to extend a

currently approved information collection made by the Office for Coastal Management within the National Ocean Service of the National Oceanic and Atmospheric Administration pursuant to the requirements of Section 307 of the Coastal Zone Management Act (16 U.S.C. 1456) and its implementing regulations at 15 CFR part 930. Information collected pursuant to these requirements is used by states to determine the consistency of proposed federal actions with the enforceable policies of State coastal management programs (CMPs), and by NOAA when deciding appeals to State objections in the exercise of the review authority that the CZMA provides.

The Coastal Zone Management Act (CZMA) creates a State-federal partnership to improve the management of the nation's coastal zone through the development of federally approved State CMPs. The CZMA provides two incentives for States to develop federally approved CMPs: (1) the National Oceanic and Atmospheric Administration (NOAA) has appropriated monies to grant to States to develop and implement State CMPs that meet statutory and regulatory criteria; and (2) the CZMA requires federal agencies, non-federal licensees, and State and local government recipients of federal assistance to conduct their activities in a manner ''consistent'' with the enforceable policies of NOAA-approved CMPs. The latter incentive, referred to as the ''federal consistency'' provision, is found at 16 U.S.C. 1456. NOAA's regulations at 15 CFR part 930 implement NOAA's responsibilities to provide procedures for the consistency provision, the procedures available for an appeal of a State's objection to a consistency certification as provided for in 16 U.S.C. 1456(c)(3)(A) and (B) and 1456(d), and changes in the appeal process created by Congressional amendments in 1990, 1996 and 2005, and found at 16 U.S.C. 1465.

Paperwork and information collection routinely occurs by State CMPs pursuant to the CZMA federal consistency review requirements. Federal agencies proposing an action that may have reasonably foreseeable effects to coastal uses or resources must provide a consistency determination to affected states. The information requirements for consistency determinations are specified at 15 CFR 930.39. Non-federal applicants for federal licenses, permits and other forms of authorization that are listed by state CMPs as subject to review, must submit a statement certifying the consistency of the proposed activity to state CMPs pursuant to 15 CFR 930.57 accompanied by the necessary data and information specified at 15 CFR 930.58. Necessary data and information includes a copy of the application for the Federal license or permit; all material relevant to the State CMP provided to the Federal agency in support of the license or permit request; a detailed description of the proposed activity, its associated facilities and coastal effects; information specifically identified in the State CMP; and an evaluation that includes findings relating to the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the State CMP. For State and local agency applicants for federal financial assistance, the application shall be forwarded to the State CMP through the intergovernmental review process established pursuant to E.O. 12372, or submitted directly to the State CMP if the federal financial assistance is listed in the State CMP as subject to review. See 15 CFR 930.94.

Information is provided to NOAA only when there is a State objection to a proposed federal license or permit, or federal financial assistance; when informal mediation is sought by a Federal agency or State; or when an applicant for a federal license or permit, or federal financial assistance appeals to the Secretary of Commerce for an override to a State CMP objection to the issuance of the authorization, or award of assistance. Last, in 1990, Congress required State CMPs to provide for public participation in their permitting processes, consistency determinations and similar decisions. See 16 U.S.C. 1455(d)(14). How the public participation requirement is met is determined by each state with NOAA approval of the participation process.

These submissions are intended to provide a reasonable, efficient, and predictable means of complying with CZMA requirements. The information will be used by coastal states with federally-approved Coastal Zone Management Programs to determine if Federal agency activities, Federal license or permit activities, and Federal assistance activities that affect a state's coastal zone are consistent with the state's coastal management program.

Information developed for and during state reviews will also be collected and considered by NOAA for appeals filed by non-federal applicants seeking an override of state CZMA objections to federal license or permit activities or Federal assistance activities.

There have been no changes to the information collection requirements, their applicability or the methods of collection since the previous Paperwork Reduction Act extension.

II. Method of Collection

Information is submitted pursuant to the procedural requirements of the CZMA and its implementing federal consistency regulations. Required information is case-specific and not submitted by form. Methods of submittal include email and mail.

III. Data

OMB Control Number: 0648–0411.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: State, Local, or tribal government; Federal government; business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 2,334.

Estimated Time per Response: Applications, certifications, and state objection or concurrence letters, 8 hours each; state requests for review of unlisted activities, 4 hours; public notices, 1 hour; interstate listing notices, 30 hours; mediation, 2 hours; appeals to the Secretary of Commerce, 210 hours.

Estimated Total Annual Burden Hours: 35,799.

Estimated Total Annual Cost to Public: $37 in recordkeeping and reporting costs.

Respondent's Obligation: Required for the issuance of a federal license or permit, and award of federal financial assistance.

Legal Authority: 16 U.S.C. 1456.

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. 2022–19998 Filed 9–14–22; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Closed to the public Wednesday, September 14, 2022 from 8 a.m. to 5 p.m. Closed to the public Thursday, September 15, 2022 from 8 a.m. to 4 p.m. Closed to the public Friday, September 16, 2022 from 10 a.m. to 4:15 p.m.

ADDRESSES: The address of the closed meeting is the Executive Conference Center, 4075 Wilson Blvd., Floor 3, Arlington, VA 22203 on September 14–15, 2022 and 3140 Defense Pentagon, Room 2A528 on September 16, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Doxey, (703) 571–0081 (Voice), (703) 697–1860 (Facsimile), *kevin.a.doxey.civ@mail.mil* (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Room 2A528, Washington, DC 20301–3140. Website: *http://www.acq.osd.mil/dsb/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This 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 (title 5 U.S.C., section 552b), and title 41 Code of Federal Regulations (CFR), sections 102–3.140 and 102–3.150.

Due to circumstances beyond the control of the Designated Federal Officer, the Defense Science Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its September 14–16, 2022 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. DSB membership will meet to discuss the 2022 DSB Summer Study on Technology Superiority (''the Summer Study'').

Agenda: The DSB meeting on the Summer Study will begin on September 14, 2022 at 8 a.m. with administrative opening remarks from Mr. Kevin Doxey, the Executive Director and Designated Federal Officer, and a classified overview of the objectives of the Summer Study from Dr. Eric Evans, the DSB Chair. Next, the DSB members will meet in a plenary session to discuss classified concepts, capabilities, and strategies that may enhance the military technological advantage of the United States. Following a break, the DSB members will continue to meet to discuss classified concepts, capabilities, and strategies that may enhance the military technological advantage of the United States. Following a break, the DSB members will continue their discussion in breakout groups. The meeting will adjourn at 5 p.m. On September 15, 2022, beginning at 8 a.m., the DSB members will again meet to discuss classified concepts, capabilities, and strategies that may enhance the military technological advantage of the United States. Following a break, the DSB members will meet in a plenary session to discuss classified concepts, capabilities, and strategies that may enhance the military technological advantage of the United States. Following a break, the DSB members will continue to meet in a plenary session to discuss classified concepts, capabilities, and strategies that may enhance the military technological advantage of the United States, will continue this discussion in breakout groups, and finally will meet in plenary to continue to discuss classified concepts, capabilities, and strategies that may enhance the military technological advantage of the United States. The meeting will adjourn at 4 p.m. On September 16, 2022, beginning at 10 a.m., the DSB members will meet to discuss classified concepts, capabilities, and strategies that may enhance the military technological advantage of the United States. Following a break, the DSB members will meet with the Deputy Secretary of Defense, the Honorable Kathleen Hicks, to conduct a tabletop exercise in which members deliberate on and respond to various simulated and interactive scenarios. DSB members will provide findings and recommendations related to options for strategic, operational, and budgetary decisions that can be made to protect and strengthen DoD interests. The meeting will adjourn at 4:15 p.m.

Meeting Accessibility: In accordance with section 10(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense for Research and Engineering, in consultation with the DoD Office of the General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense for Research and Engineering.

Written Statements: In accordance with section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO provided in the **FOR FURTHER INFORMATION CONTACT** section at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: September 9, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–19909 Filed 9–14–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2800–000]

VESI 24 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 VESI 24 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 28, 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: September 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19926 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12514–090]

Northern Indiana Public Service Company, LLC; Notice of Application for Amendment of License, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Application for non-capacity amendment of license.

b. *Project No.:* 12514–090.

c. *Date Filed:* August 26, 2022.

d. *Licensee:* Northern Indiana Public Service Company, LLC.

e. *Name of Project:* Norway-Oakdale Hydroelectric Project.

f. *Location:* The Norway-Oakdale Project is located on the Tippecanoe River near the town of Monticello, in Carroll and White counties, Indiana. The project consists of the upper Norway development and the lower Oakdale development each of which has a dam and powerhouse.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Licensee Contact:* M. Bryan Little Assistant General Counsel, NiSource Corporate Services, 150 West Market Street, Ste. 600, Indianapolis, IN 46204, (317) 694–4903, *blittle@nisource.com.*

i. *FERC Contact:* Rebecca Martin, (202) 502–6012, *Rebecca.martin@ferc.gov.*

j. *Deadline for filing comments, interventions, and protests:* October 10, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–12514–090. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The Licensee proposes to amend Article 403 of the license to better define Abnormal Low Flow (ALF) conditions at Lake Freeman, revise the approved Project Operation and Compliance Plan to reflect the changes to the ALF, and void the Reasonable and Prudent Measures (RPM) and the Technical Assistance Letter (TAL) from the U.S. Fish and Wildlife Service's (FWS) July 2017 Biological Opinion. The RPM and TAL would be replaced by a new Biological Opinion from the FWS. These measures would better protect federally threatened mussels in the Tippecanoe River while also considering

socioeconomic impacts to land-owners and other stakeholders by minimizing decreasing reservoir levels at Lake Freeman.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: September 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19927 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP19–502–000; CP19–502–001]

Commonwealth LNG, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Commonwealth LNG Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Commonwealth LNG Project, proposed by Commonwealth LNG, LLC (Commonwealth) in the above-referenced docket. Commonwealth requests authorization to site, construct, and operate a natural gas liquefaction and export terminal and an integrated Natural Gas Act Section 3 natural gas pipeline, in Cameron Parish, Louisiana.

The final EIS assesses the potential environmental effects of the construction and operation of the Commonwealth LNG 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. Most of these impacts on the environment would be reduced to less than significant levels; however, FERC staff conclude there would be significant impacts on visual resources and impacts on environmental justice communities would be disproportionately high and adverse. Regarding climate change impacts, this EIS is not characterizing the proposed 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. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of Energy, U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and National Oceanic and Atmospheric Administration's National Marine Fisheries Service participated as cooperating agencies in the preparation of the final 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 cooperating agencies provided input to the conclusions and recommendations presented in the final EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the project.

The final EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- six liquefaction trains;
- six gas pre-treatment trains;
- two flare systems (containing a total of four flares);
- six liquefied natural gas (LNG) storage tanks;
- one marine facility consisting of an LNG carrier berth and barge dock;
- utilities (*e.g.,* electricity generation, water, plant air, nitrogen, hot oil system);
- operation and safety systems (*e.g.,* access and haul roads, storm protection structures, stormwater drainage systems, spill containment system, fire suppression facilities, facility lighting and security, emergency shutdown systems);
- appurtenant facilities (*e.g.,* administrative facilities, maintenance and warehouse buildings, marine facility operator buildings, equipment enclosures and electrical rooms);
- 3.0 miles of 42-inch-diameter pipeline;
- two interconnection facilities with existing pipelines; and
- one metering station.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The 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://*

[1] Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews, 178 FERC ¶ 61,108 (2022); 178 FERC ¶ 61,197 (2022).

elibrary.ferc.gov/eLibrary/search) select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP19–502). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The final EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding.

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: September 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19983 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2373–016]

Midwest Hydro, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2373–016.

c. *Date filed:* August 30, 2022.

d. *Applicant:* Midwest Hydro, LLC (Midwest Hydro).

e. *Name of Project:* Rockton Hydroelectric Project (Rockton Project).

f. *Location:* The project is located on the Rock River in the town of Rockton in Winnebago County, Illinois. The project does not include any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. David Fox, Senior Director of Regulatory Affairs, Eagle Creek RE Management, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, Maryland 20814, (240) 724–8765, *david.fox@eaglecreekre.com.*

i. *FERC Contact:* Laura Washington (202) 502–6072, *Laura.Washington@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* October 29, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2373–016.

m. This application is not ready for environmental analysis at this time.

n. The Rockton Project consists of the following existing facilities: (1) a 40.67-acre reservoir; (2) a 1000-foot-long the concrete overflow dam; (3) a 1600-foot-long earthen dike; (4) power canal headworks; (5) transmission equipment consisting of the generators connected through two oil filled, three phase, 400 Ampere-rated, 7.5-kilovolt (kV) circuit breakers to the 4.1-kV bus and three 4.1-kV/12.4-kV, 500-kilovolt amperes single phase transformers connected to the non-project 12.4-kV distribution system; (6) a tailrace; and (7) a powerhouse containing two generating units with a total installed capacity of 1.1 megawatts.

The Rockton Project is currently operated in a run-of-river mode and generates an annual average of approximately 5,076 megawatt hours. Midwest Hydro proposes to continue operating the project as a run-of-river facility and does not propose any new construction to the project.

o. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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 on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary).	December 2022.
Request Additional Information.	December 2022.
Issue Scoping Document 1 for comments.	June 2023.

Milestone	Target date
Issue Scoping Document 2 (if necessary).	October 2023.
Issue Notice of Ready for Environmental Analysis.	October 2023.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19980 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2490–030]

Green Mountain Power Corporation; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2490–030.

c. *Date filed:* August 30, 2022.

d. *Applicant:* Green Mountain Power Corporation.

e. *Name of Project:* Taftsville Hydroelectric Project.

f. *Location:* On the Ottauquechee River in the Village of Taftsville, in Windsor County, Vermont. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* John Greenan, Green Mountain Power Corporation, 2152 Post Road, Rutland, VT 05701; (802) 770–2195; email at *John.Greenan@greenmountainpower.com*.

i. *FERC Contact:* Monte TerHaar at (202) 502–6035; or email at *monte.terhaar@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* October 31, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. All filings must clearly identify the project name and docket number on the first page: Taftsville Project (P–2490–030).

m. The application is not ready for environmental analysis at this time.

n. *The Taftsville Project consists of:* (1) an existing 220-foot-long by 16-foot-high concrete gravity dam; (2) a 194-foot-long spillway section with a crest elevation of 637.12 feet National Geodetic Vertical Datum of 1929 (NGVD 29), topped with 18-inch wooden flashboards; (3) an existing 4,600-foot-long, 20.5-acre reservoir at normal water surface elevation 638.6 feet NGVD 29; (4) a powerhouse containing one 0.5-megawatt vertical Kaplan generating unit, with a minimum hydraulic capacity of 95 cubic feet per second (cfs) and maximum hydraulic capacity of 370 cfs; (5) a 200-foot-long tailrace section; (6) three 75-foot-long transmission lines connecting the powerhouse to the Distribution Substation, Transmission West Substation, and Transmission East Substation; and (7) appurtenant facilities. Approximately 290 feet of the Ottauquechee River, between the dam and tailrace channel, are bypassed during normal operations. The project generates 1,038 megawatt-hours annually. No changes in the project are proposed.

o. A copy of the application may be viewed on the Commission's website, using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document (P–2490). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. Procedural schedule and final amendments: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Additional Study Requests due—October 31, 2022

Issue Deficiency Letter (if necessary)—October 2022

Request Additional Information—October 2022

Issue Scoping Document 1 for comments—January 2023

Comments on Scoping Document 1—February 2023

Issue Acceptance Notice and Letter—March 2023

Issue Scoping Document 2 (if necessary)—March 2023

Issue Notice of Ready for Environmental Analysis March 2023

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19987 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2801–000]

VESI 25 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 VESI 25 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 28, 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: September 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19929 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2816–000]

PGR 2021 Lessee 17, 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 PGR 2021 Lessee 17, 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 29, 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: September 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–19968 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–8–000]

Transmission Planning and Cost Management; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in this proceeding on April 21, 2022, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference regarding transmission planning and cost management for transmission facilities developed through local or regional transmission planning processes in the above-captioned proceeding on October 6, 2022, from approximately 9:00 a.m. to 5:00 p.m. Eastern Time.

The purpose of this conference is to explore measures to ensure sufficient

transparency into and cost effectiveness of local and regional transmission planning decisions, including: (1) the role of cost management measures in ensuring the cost-effective identification of local transmission needs (*e.g.,* planning criteria) and solutions to address identified local transmission and regional reliability-related transmission needs; and (2) cost considerations and the processes through which transmission developers recover their costs to ensure just and reasonable transmission rates. Additionally, this conference will also discuss potential approaches to providing enhanced cost management measures and greater transparency and oversight if needed to ensure just and reasonable transmission rates.

Attached to this Supplemental Notice is an agenda for the technical conference, which includes the conference program and expected panelists.

Panelists are asked to submit advance materials to provide any information related to their respective panel (*e.g.,* summary statements, reports, whitepapers, studies, or testimonies) that panelists believe should be included in the record of this proceeding by September 16, 2022. Panelists should file all advance materials in the AD22–8–000 docket.

An additional supplemental notice will be issued following the technical conference with the opportunity for interested parties to submit post-technical conference comments.

The technical conference will be open to the public and there is no fee for attendance. Information will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The workshop will be held at the Commission on 888 First Street NE, Washington, DC 20002. It will be transcribed and webcast. Transcripts will be available for a fee from Ace Reporting (202–347–3700). A link to the webcast of this event will be available in the Commission Calendar of Events at *www.ferc.gov.* The Capitol Connection provides technical support for the webcasts and offers the option of listening to the workshop via phone-bridge for a fee. For additional information, visit *www.CapitolConnection.org* or call (703) 993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact John Riehl at *john.riehl@ferc.gov* or (202) 502–6026. For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: September 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19922 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP19–351–006.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Compliance filing: 2022 Settlement Rates Docket No. RP19–351–006 to be effective 11/1/2022.
Filed Date: 9/9/22.
Accession Number: 20220909–5034.
Comment Date: 5 p.m. ET 9/21/22.

Docket Numbers: RP22–1065–001.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Compliance filing: 9.9.22 Compliance Filing Implementing Approved 2022 Rate Settlement to be effective 10/1/2022.
Filed Date: 9/9/22.
Accession Number: 20220909–5008.
Comment Date: 5 p.m. ET 9/21/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

Filings Instituting Proceedings

Docket Numbers: PR22–62–000.
Applicants: The East Ohio Gas Company.
Description: § 284.123 Rate Filing: Operating Statement of The East Ohio Gas Company 9/1/22 to be effective 9/1/2022.
Filed Date: 9/8/22.
Accession Number: 20220908–5068.
Comment Date: 5 p.m. ET 9/29/22.

Docket Numbers: RP22–1207–000.
Applicants: Eastern Gas Transmission and Storage, Inc.
Description: § 4(d) Rate Filing: EGTS—September 9, 2022 Negotiated Rate and Nonconforming Service Agreement to be effective 10/11/2022.
Filed Date: 9/9/22.
Accession Number: 20220909–5013.
Comment Date: 5 p.m. ET 9/21/22.

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: September 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–19969 Filed 9–14–22; 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: ER11–3987–017; ER11–4055–012; ER12–1566–016; ER12–2051–003; ER12–2499–022; ER13–764–022; ER14–1548–015; ER14–1775–010; ER14–1927–010; ER12–2498–022; ER16–1325–005; ER16–1326–005; ER16–1327–005; ER17–382–007; ER17–383–007; ER17–384–007; ER17–2141–005; ER17–2142–005; ER17–2385–003; ER18–855–006; ER18–1416–006.

Applicants: CED Wistaria Solar, LLC, Panoche Valley Solar, LLC, Great Valley Solar 3, LLC, Great Valley Solar 2, LLC, Great Valley Solar 1, LLC, CED Ducor Solar 3, LLC, CED Ducor Solar 2, LLC, CED Ducor Solar 1, LLC, Copper Mountain Solar 4, LLC , Mesquite Solar 3, LLC, Mesquite Solar 2, LLC, Alpaugh 50, LLC, CED White River Solar 2, LLC, SEP II, LLC, Copper Mountain Solar 3, LLC, CED White River Solar, LLC, Alpaugh North, LLC, SPS Alpaugh 50, LLC, Copper Mountain Solar 2, LLC,

Copper Mountain Solar 1, LLC, Mesquite Solar 1, LLC.

Description: Triennial Market Power Analysis for Southwest Region of Mesquite Solar 1, LLC, et al.

Filed Date: 9/8/22.

Accession Number: 20220908–5156.

Comment Date: 5 p.m. ET 11/7/22.

Docket Numbers: ER21–2816–003.

Applicants: Gratiot County Wind LLC.

Description: Compliance filing: Compliance Filing of Reactive Power Rate Schedule to be effective 11/1/2021.

Filed Date: 9/9/22.

Accession Number: 20220909–5104.

Comment Date: 5 p.m. ET 9/30/22.

Docket Numbers: ER22–1014–002; EL22–15–001.

Applicants: New York Power Authority, Power Authority of the State of New York, New York Independent System Operator, Inc.

Description: New York Power Authority Compliance Filing as required by FERC's March 11 and July 5, 2022 Orders.

Filed Date: 9/8/22.

Accession Number: 20220908–5154.

Comment Date: 5 p.m. ET 9/29/22.

Docket Numbers: ER22–2158–001.

Applicants: Public Service Company of New Mexico.

Description: Tariff Amendment: PNM Response to August 12, 2022. Deficiency Letter to be effective 6/22/2022.

Filed Date: 9/9/22.

Accession Number: 20220909–5049.

Comment Date: 5 p.m. ET 9/30/22.

Docket Numbers: ER22–2818–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ISA, SA No. 6594; Queue No. AE2–334 & AG1–103 to be effective 9/9/2022.

Filed Date: 9/8/22.

Accession Number: 20220908–5103.

Comment Date: 5 p.m. ET 9/29/22.

Docket Numbers: ER22–2819–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, SA No. 6593; Queue No. AC1–053 to be effective 8/9/2022.

Filed Date: 9/8/22.

Accession Number: 20220908–5105.

Comment Date: 5 p.m. ET 9/29/22.

Docket Numbers: ER22–2821–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 6365; Queue No. AE2–309 to be effective 1/17/2022.

Filed Date: 9/9/22.

Accession Number: 20220909–5033.

Comment Date: 5 p.m. ET 9/30/22.

Docket Numbers: ER22–2822–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, SA No. 6599; Queue No. AG1–045 to be effective 8/26/2022.

Filed Date: 9/9/22.

Accession Number: 20220909–5058.

Comment Date: 5 p.m. ET 9/30/22.

Docket Numbers: ER22–2823–000.

Applicants: Southern California Edison Company.

Description: Tariff Amendment: Second Amend LGIA, Antelope 2 Solar-Terminate eTariff Record (TOT762—SA195) to be effective 9/10/2022.

Filed Date: 9/9/22.

Accession Number: 20220909–5064.

Comment Date: 5 p.m. ET 9/30/22.

Docket Numbers: ER22–2824–000.

Applicants: Yellow Pine Solar, LLC.

Description: Baseline eTariff Filing: Yellow Pine Solar, LLC Application for Market-Based Rate Authorization to be effective 11/9/2022.

Filed Date: 9/9/22.

Accession Number: 20220909–5078.

Comment Date: 5 p.m. ET 9/30/22.

Docket Numbers: ER22–2825–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 6608; Queue No. AH1–109 to be effective 8/10/2022.

Filed Date: 9/9/22.

Accession Number: 20220909–5087.

Comment Date: 5 p.m. ET 9/30/22.

Docket Numbers: ER22–2826–000.

Applicants: Avista Corporation.

Description: § 205(d) Rate Filing: Avista Corp LTF PTP Agreement T–1197 to be effective 11/1/2022.

Filed Date: 9/9/22.

Accession Number: 20220909–5099.

Comment Date: 5 p.m. ET 9/30/22.

Docket Numbers: ER22–2827–000.

Applicants: Bluegrass Solar, LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 9/12/2022.

Filed Date: 9/9/22.

Accession Number: 20220909–5142.

Comment Date: 5 p.m. ET 9/30/22.

Docket Numbers: ER22–2828–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF-Bartow NITSA to be effective 9/1/2022.

Filed Date: 9/9/22.

Accession Number: 20220909–5143.

Comment Date: 5 p.m. ET 9/30/22.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF22–914–000.

Applicants: Bloom Energy Corporation.

Description: Form 556 of Bloom Energy Corporation [Kaiser Santa Rosa].

Filed Date: 9/8/22.

Accession Number: 20220908–5130.

Comment Date: 5 p.m. ET 9/29/22.

Docket Numbers: QF22–915–000.

Applicants: Bloom Energy Corporation.

Description: Form 556 of Bloom Energy Corporation [Yale-New Haven].

Filed Date: 9/8/22.

Accession Number: 20220908–5149.

Comment Date: 5 p.m. ET 9/29/22.

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: September 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–19970 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2955–011]

City of Watervliet; Notice of Settlement Agreement and Soliciting

Comments

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* 2955–011.

c. *Date filed:* September 2, 2022.

d. *Applicant:* City of Watervliet, New York.

e. *Name of Project:* Normanskill Hydroelectric Project.

f. *Location:* The existing project is located on the Normans Kill in the Town of Guilderland in Albany County, New York and approximately 22.4 river miles upstream of the mouth of the

Hudson River. The project does not affect federal land.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Michele E. Stottler, Gomez and Sullivan Engineers, DPC, 399 Albany Shaker Road, Suite 203, Loudonville, NY 12211; (518) 407–0050; email—*mstottler@gomezandsullivan.com* or Joseph LaCivita, General Manager, The City of Watervliet, 2 Fifteenth Street, Watervliet, NY 12189; (518) 270–3800; email—*jlacivita@watervliet.com.*

i. *FERC Contact:* Woohee Choi, (202) 502–6336, *woohee.choi@ferc.gov.*

j. *Deadline for Filing Comments:* September 28, 2022. Reply comments due October 11, 2022.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2955–011.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The City of Watervliet filed the Settlement Agreement on behalf of itself, the U.S. Fish and Wildlife Service, the New York State Department of Environmental Conservation, and the Town of Guilderland. The purpose of the Settlement Agreement is to resolve, among the signatories, issues related to operational, fisheries, wildlife, water quality, and recreation resources associated with issuance of a subsequent license and water quality certification for the project. Specifically, the Settlement Agreement includes proposed protection, mitigation, and enhancements measures to address eel passage, streamflow and water level monitoring, water quality management, bat and eagle protection, invasive species management, and recreation. The City of Watervliet states that the terms of the Settlement Agreement are an integrated and individual set of measures intended to address and balance non-power and power values relating to the project and requests that the Commission approve the Settlement Agreement and incorporate the proposed measures set forth in section 3 into any subsequent license issued.

l. A copy of the settlement agreement may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document (*i.e.,* P–2955). At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: September 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19931 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2817–000]

Eastover Solar 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 Eastover Solar 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 29, 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: September 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–19971 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2799–000]

VESI 21 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 VESI 21 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 28, 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: September 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19930 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14797–001]

California Department of Water Resources; Notice of Intent To Prepare an Environmental Assessment

On November 20, 2019, the California Department of Water Resources (California DWR) filed an application for a new major license for the existing 279.7-megawatt Devil Canyon Project (FERC No. 14797).[1] The Devil Canyon Project is part of a larger water storage and delivery system, the State Water Project (SWP). The Devil Canyon Project is located along the East Branch of the SWP Aqueduct, in San Bernardino County, California. The project occupies 220.98 acres of federal lands administered by the U.S. Forest Service, as part of the San Bernardino National Forest.

In accordance with the Commission's regulations, on June 15, 2021, Commission staff issued a notice that the project was ready for environmental analysis (REA Notice). Based on the information in the record, including comments filed on the REA Notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare a draft and final Environmental Assessment (EA) on the application to license the Devil Canyon Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target Date
Commission issues draft EA	April 2023.
Comments on draft EA	May 2023.
Commission issues final EA	July 2023.[2]

Any questions regarding this notice may be directed to Quinn Emmering, the Commission's project coordinator for licensing the Devil Canyon Project, at (202) 502–6382 or at *quinn.emmering@ferc.gov.*

Dated: September 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19985 Filed 9–14–22; 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 exempt wholesale generator filings:

Docket Numbers: EG22–215–000.

Applicants: Eastover Solar LLC.

Description: Eastover Solar LLC submits notice of Self-Certification of Exempt Wholesale Generator.

Filed Date: 9/8/22.

Accession Number: 20220908–5070.

Comment Date: 5 p.m. ET 9/29/22.

Docket Numbers: EG22–216–000.

Applicants: PGR 2021 Lessee 17, LLC.

Description: PGR 2021 Lessee 17, LLC submits notice of Self-Certification of Exempt Wholesale Generator.

Filed Date: 9/8/22.

Accession Number: 20220908–5074.

Comment Date: 5 p.m. ET 9/29/22.

Take notice that the Commission received the following electric rate filings:

[1] The proposed Devil Canyon Project is currently licensed as part of the South SWP Hydropower Project (FERC No. 2426). California DWR proposes to relicense the Devil Canyon Project separately.

[2] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare a draft and final EA for the Devil Canyon Project. Therefore, in accordance with CEQ's regulations, the final EA must be issued within 1 year of the issuance date of this notice.

Docket Numbers: ER10–2211–008.
Applicants: Vandolah Power Company, L.L.C.
Description: Notice of Non-Material Change in Status of Vandolah Power Company, L.L.C.
Filed Date: 9/8/22.
Accession Number: 20220908–5078.
Comment Date: 5 p.m. ET 9/29/22.
Docket Numbers: ER21–291–002.
Applicants: Public Service Company of Colorado.
Description: Compliance filing: 2022–09–08_PSCo Transmission Formula Rate-Compliance to be effective 1/1/2021.
Filed Date: 9/8/22.
Accession Number: 20220908–5064.
Comment Date: 5 p.m. ET 9/29/22.
Docket Numbers: ER22–2148–001.
Applicants: Blooming Grove Wind Energy Center LLC.
Description: Tariff Amendment: Reactive Power Compensation to be effective 6/18/2022.
Filed Date: 9/8/22.
Accession Number: 20220908–5075.
Comment Date: 5 p.m. ET 9/29/22.
Docket Numbers: ER22–2811–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF-Bartow FMPP FMPA Dynamic Transfer Agreement RS No. 378 to be effective 11/7/2022.
Filed Date: 9/7/22.
Accession Number: 20220907–5100.
Comment Date: 5 p.m. ET 9/28/22.
Docket Numbers: ER22–2812–000.
Applicants: New England States Committee on Electricity.
Description: New England States Committee on Electricity submits for information a Five-Year Pro Forma Budget for years 2023–2027.
Filed Date: 9/6/22.
Accession Number: 20220906–5221.
Comment Date: 5 p.m. ET 9/27/22.
Docket Numbers: ER22–2813–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to the Membership Agreement to Revise Sections 1.0 and 4.2 to be effective 11/8/2022.
Filed Date: 9/8/22.
Accession Number: 20220908–5035.
Comment Date: 5 p.m. ET 9/29/22.
Docket Numbers: ER22–2814–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Bylaws to Clarify Membership on the Regional State Committee to be effective 11/8/2022.
Filed Date: 9/8/22.
Accession Number: 20220908–5046.
Comment Date: 5 p.m. ET 9/29/22.
Docket Numbers: ER22–2816–000.
Applicants: PGR 2021 Lessee 17, LLC.
Description: Baseline eTariff Filing: PGR 2021 Lessee 17, LLC MBR Tariff to be effective 10/31/2022.
Filed Date: 9/8/22.
Accession Number: 20220908–5082.
Comment Date: 5 p.m. ET 9/29/22.
Docket Numbers: ER22–2817–000.
Applicants: Eastover Solar LLC.
Description: Baseline eTariff Filing: Eastover Solar LLC MBR Tariff to be effective 10/31/2022.
Filed Date: 9/8/22.
Accession Number: 20220908–5084.
Comment Date: 5 p.m. ET 9/29/22.

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: September 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19923 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21–15–000]

Joint Federal-State Task Force on Electric Transmission; Notice Announcing Meeting and Inviting Agenda Topics

On June 17, 2021, the Commission established a Joint Federal-State Task Force on Electric Transmission (Task Force) to formally explore transmission-related topics outlined in the Commission's order.[1] The Commission stated that the Task Force will convene for multiple formal meetings annually, which will be open to the public for listening and observing and on the record.[2] The next public meeting of the Task Force will be held on November 15, 2022, at the New Orleans Marriott in New Orleans, LA, from approximately 8:00 a.m. to 10:30 a.m. Central Time. Commissioners may attend and participate in this meeting.

The meeting will be open to the public for listening and observing and on the record. There is no fee for attendance and registration is not required. The public may attend in person or via Webcast.[3] This conference will be transcribed. Transcripts will be available for a fee from Ace Reporting, 202–347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

As explained in the Establishing Order, the Commission will issue agendas for each meeting of the Task Force, after consulting with all Task Force members and considering suggestions from state commissions.[4] The Establishing Order set forth a broad array of transmission-related topics that the Task Force has the authority to examine with a focus on topics related to planning and paying for transmission, including transmission to facilitate generator interconnection, that provides benefits from a federal and state perspective.[5] All interested persons, including all state commissioners, are hereby invited to file comments in this docket suggesting agenda items relating to this topic by October 7, 2022. The Task Force members will consider the suggested agenda items in developing the agenda for the November 15, 2022 public meeting. The agenda will be issued in the above-captioned docket no later than November 1, 2022, for the meeting to be held on November 15, 2022.

Comments may be filed electronically via the internet.[6] Instructions are available on the Commission's website, *https://www.ferc.gov/ferc-online/overview.* For assistance, please contact FERC Online Support at

[1] *Joint Fed.-State Task Force on Elec. Transmission,* 175 FERC ¶ 61,224 (2021) (Establishing Order).

[2] *Id.* P 4.

[3] A link to the Webcast will be available on the day of the event at *https://www.ferc.gov/TFSOET.*

[4] Establishing Order, 175 FERC ¶ 61,224 at PP 4, 7.

[5] *Id.* P 6.

[6] *See* 18 CFR 385.2001(a)(1)(iii) (2021).

FERCOnlineSupport@ferc.gov or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

More information about the Task Force, including frequently asked questions, is available here: *https://www.ferc.gov/TFSOET.* For more information about this meeting, please contact: Gretchen Kershaw, 202–502–8213, *gretchen.kershaw@ferc.gov;* or Jennifer Murphy, 202–898–1350, *jmurphy@naruc.org.* For information related to logistics, please contact Benjamin Williams, 202–502–8506, *benjamin.williams@ferc.gov;* or Rob Thormeyer, 202–502–8694, *robert.thormeyer@ferc.gov.*

Dated: September 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19924 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF22–7–000]

East Tennessee Natural Gas, LLC; Notice of Public Scoping Sessions for the Planned Ridgeline Expansion Project

On July 22, 2022, the staff of the Federal Energy Regulatory Commission (FERC or Commission) issued a *Notice of Scoping Period Requesting Comments On Environmental Issues for the Planned Ridgeline Expansion Project.* With that notice, the Commission requested public comments on the scope of issues to address in the environmental document that the FERC staff will prepare to discuss the environmental impacts of the Ridgeline Expansion Project (Project). The Project involves construction and operation of facilities by East Tennessee Natural Gas, LLC (East Tennessee) in Trousdale, Smith, Jackson, Putnam, Overton, Fentress, Morgan, and Roane Counties, Tennessee. The Commission will use this environmental document in its decision-making process to determine whether the Project is in the public convenience and necessity.

The July 22, 2022 notice [1] announced the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the Project. This notice announces the scoping session dates, locations, and times (see *Public Participation* section of this notice). As part of the National Environmental Policy Act (NEPA) review process, the Commission considers concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on October 20, 2022. Comments may be submitted in written or oral form. In lieu of or in addition to sending written comments, the Commission invites you to attend public scoping sessions to provide verbal and/or written comments on the Project. Appendix 1 describes the session format. Further details on how to submit comments, including attending the public scoping sessions, are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written or oral comments during the preparation of the environmental document.

If you submitted comments on this Project to the Commission before the opening of this docket on May 20, 2022, you will need to file those comments in Docket No. PF22–7–000 to ensure they are considered.

[1] The map provided as appendix 1 in the July 22, 2022 notice had the incorrect location of the *New Meter and Regulation Station at the TVA Kingston Plant.* Appendix 2 in this notice provides the accurate location. It would be on the west end, and not the east end, of the Project.

This notice was sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this planned Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

A fact sheet prepared by FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the links to Natural Gas Questions or Landowner Topics.

Public Participation

There are four methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With

eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Project docket number (PF22–7–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

(4) In lieu of sending written comments, the Commission invites you to attend one of the public scoping sessions its staff will conduct in the project area, scheduled as follows:

Date and time	Location
Monday, October 3, 2022, 6:30 to 8:30 p.m. EDT	Kingston Community Center, 201 Patton Ferry Road, Kingston, TN 37763, (865) 376–1356.
Tuesday, October 4, 2022, 6:00 to 8:00 p.m. CDT	Trousdale Community Center, 301 E Main Street, Hartsville, TN 37074, (615) 374–9574.
Wednesday, October 5, 2022, 6:00 to 8:00 p.m. CDT	Cookeville High School, 1 Cavalier Drive, Cookeville, TN 38501, (931) 520–2287.

The primary goal of these scoping sessions is to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Individual oral comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum amount of oral comments in a convenient way during the timeframe allotted.

You may arrive at any time after the start times listed above. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Comments will be taken until the end times listed above. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session up to an hour before the end times listed above. Please see appendix 1 for additional information on the session format and conduct.[2]

Your scoping comments will be recorded by a court reporter (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary). If a significant number of people are interested in providing oral comments in the one-on-one settings, a time limit of 5 minutes may be implemented for each commentor.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a scoping session. Although there will not be a formal presentation, Commission staff will be available throughout the scoping session to answer your questions about the environmental review process. Representatives from East Tennessee will also be present to answer project-specific questions.

Additionally, the Commission offers a free service called eSubscription, which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned Project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number PF22–7–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. *This email address is unable to accept comments.*

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 3).

Becoming an Intervenor

Once East Tennessee files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/resources/guides/how-to.asp*. Please note that the Commission will not accept requests for intervenor status at

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

this time. You must wait until the Commission receives a formal application for the Project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: September 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19984 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP22–502–000; PF22–4–000; CP22–503–000; PF22–3–000]

Transcontinental Gas Pipe Line Company, LLC, Columbia Gas Transmission, LLC; Notice of Applications and Establishing Intervention Deadline

Take notice that on August 24, 2022, Transcontinental Gas Pipe Line Company, LLC (Transco), P. O. Box 1396, Houston, Texas 77251, filed in Docket No. CP22–502–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for authorization to construct, operate, and maintain its Commonwealth Energy Connector Project (CEC Project) located in various counties in Virginia. The CEC Project is designed to provide an additional 105,000 Dekatherms per day (Dth/d) of firm transportation service for Virginia Natural Gas, Inc. (VNG), from Transco's existing Station 165 Zone 5 Pooling Point in Pittsylvania County, Virginia to the existing interconnection between Transco and Columbia Gas Transmission, LLC (Columbia) in Greensville County, Virginia (Emporia I/C), where VNG has contracted with Columbia for further firm transportation service.

In addition, on August 24, 2022, Columbia, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, filed in Docket No. CP22–503–000, an application under sections 7(b) and 7(c) of the NGA and Part 157 of the Commission's regulations, for authorization to construct and operate its Virginia Reliability Project (VR Project) located in various counties in Virginia. The VR Project is designed to provide an additional 100,000 Dth/d of firm transportation service for VNG, from Emporia I/C to VNG's existing delivery point in Chesapeake County, Virginia.

Specifically, Transco proposes to: (1) install an additional 33,000 horsepower (HP) at existing Compressor Station (CS) 168 in Mecklenburg County, Virginia; (2) install a 6.35-mile-long, 24-inch-diameter extension of South Virginia Lateral B-Line in Brunswick and Greensville Counties, Virginia; and (3) modify the existing Emporia M&R Station at Emporia I/C. Transco estimates the cost of the CEC Project to be $117,709,858. Transco proposes a new incremental recourse rate designed to recover the cost of the proposed service, all as more fully set forth in the request which is on file with the Commission and open to public inspection with the Commission and open for public inspection.

Additionally, Columbia proposes to: (1) replace 49 miles of 12-inch-diameter pipeline with 24-inch-diameter pipeline in Virginia; (2) add a 5,500 HP hybrid compressor unit at the existing Emporia CS in Greensville County, Virginia; (3) modify the existing compressor units and increase power by 2,700 HP at the Petersburg CS in Prince George County, Virginia; and (4) modify other appurtenant facilities. Columbia will receive 105,000 Dth/d from Transco as proposed in Docket No. CP22–502–000 for re-delivery to VNG for VNG's markets. Columbia estimates the cost of the VR Project to be $917,925,527. Columbia proposes a new incremental reservation rate, FTS–VRP, to apply to the VR Project capacity, all as more fully set forth in the request which is on file with the Commission and open to public inspection with the Commission and open for 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 regarding Transco's application should be directed to Nick Baumann, Regulatory Analyst, Transcontinental Gas Pipe Line Company, LLC, P.O. Box 1396, Houston, Texas 77251, by telephone at (713) 215–3383, or by email at *nick.baumann@williams.com.*

Any questions regarding Columbia's application should be directed to David A. Alonzo, Manager of Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, by telephone at (832) 320–5477, or by email at *david_alonzo@tcenergy.com.*

On December 20, 2021, the Commission granted Columbia's request to utilize the National Environmental Policy Act Pre-Filing Process and assigned Docket No. PF22–3–000 to staff activities involved in the VR Project. Now, as of the filing of the August 24, 2022 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP22–503–000 as noted in the caption of this Notice.

Additionally, on December 20, 2021, the Commission granted Transco's request to utilize the National Environmental Policy Act Pre-Filing Process and assigned Docket No. PF22–4–000 to staff activities involved in the CEC Project. Now, as of the filing of the August 24, 2022 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP22–502–000 as noted in the caption of this Notice.

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

[1] 18 CFR (Code of Federal Regulations) 157.9.

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 two ways to become involved in the Commission's review of this project: you can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on September 29, 2022.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before September 29, 2022.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP22–502–000 and/or CP22–503–000 in your submission.

(1) 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;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You may file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP22–502–000 and/or CP22–503–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, 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. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] 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[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is September 29, 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*.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP22–502–000 and/or CP22–503–000 in your submission.

(1) You may file your motion to intervene 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 ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf*; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP22–502–000 and/or CP22–503–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov*.

Motions to intervene must be served on Transco either by mail or email at: Nick Baumann, Regulatory Analyst, Transcontinental Gas Pipe Line Company, LLC, P.O. Box 1396, Houston, Texas 77251 or *nick.baumann@williams.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. Service can be via email with a link to the document.

Motions to intervene must be served on Columbia either by mail or email at: David A. Alonzo, Manager of Project Authorizations, Columbia Gas

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Transmission, LLC, 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. Service can be via email with a link to the document.

All timely, unopposed [7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] 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.[9] 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.

Tracking the Proceeding

Throughout the proceeding, additional information about the projects 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*.

Intervention Deadline: 5:00 p.m. Eastern Time on September 29, 2022.

Dated: September 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19925 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–505–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on August 30, 2022, Transcontinental Gas Pipe Line Company, LLC (Transco), P.O. Box 1396, Houston, Texas 77251–1396, filed in the above referenced docket a prior notice pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA) and Transco's blanket certificate issued in Docket No. CP82–426–000, requesting authorization to abandon its Compressor Station 61 (CS 61) and appurtenant facilities located in East Feliciana Parish, Louisiana. Specifically, Transco proposes to abandon by removal: (1) one 2,000 horsepower (hp) compressor unit; (2) one 1,050 hp compressor unit; (3) appurtenant facilities including compressor buildings and one meter and regulator station; and (4) the piping connecting CS 61 to Transco's mainlines at milepost 591.80. Transco states that CS 61 has not provided service to any customers during the previous 12 months. The estimated cost for the project is approximately $2.98 million, all as more fully set forth in the request 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 Antauis Byrd, Regulatory Analyst, Transcontinental Gas Pipe Line Company, LLC, P.O. Box 1396, Houston, Texas 77251–1396, phone: 713–215–3741, email: *Antauis.Byrd@Williams.com*.

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 November 7, 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,[1] any person [2] 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,[3] and must be submitted by the protest deadline, which is November 7, 2022. A protest may also serve as a motion to intervene so long as the 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 [4] and the regulations under

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

the NGA [5] by the intervention deadline for the project, which is November 7, 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 November 7, 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.

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 CP22–505–000 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 [6]

(2) You can file a paper copy of your submission by mailing it to the address below.[7] Your submission must reference the Project docket number CP22–505–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

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: P.O. Box 1396, Houston, Texas 77251–1396 or *Antauis.Byrd@Williams.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.*

Dated: September 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19928 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

[5] 18 CFR 157.10.

[6] 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.

[7] Hand-delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2347–064]

Midwest Hydro, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2347–064.

c. *Date filed:* August 30, 2022.

d. *Applicant:* Midwest Hydro, LLC (Midwest Hydro).

e. *Name of Project:* Janesville Hydroelectric Project (Janesville Project).

f. *Location:* The project is located on the Rock River near the towns of Janesville and Fulton in Rock County, Wisconsin. The project does not include any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. David Fox, Senior Director of Regulatory Affairs, Eagle Creek RE Management, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, Maryland 20814, (240) 724–8765, *david.fox@eaglecreekre.com.*

i. *FERC Contact:* Laura Washington (202) 502–6072, *Laura.Washington@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and

serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* October 29, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2347–064.

m. This application is not ready for environmental analysis at this time.

n. *The Janesville Project consists of the following existing facilities:* (1) a 141-acre reservoir; (2) a 255.3-foot-long concrete dam; (3) transmission equipment that consists of unit 1's generator connected through one, three phase, 400-Ampere, 7.5-kilovolt (kV) dry type vacuum contactor and unit 2's generator connected through one, oil-filled, three phase, 400-Ampere, 7.5-kV circuit breaker to the 4.1-kV bus and a 4.1-kV/12.4-kV, 500 kilovolt amperes three phase transformer connected to a non-project 12.4-kV distribution system; (4) a tailrace: and (5) a powerhouse containing two generating units with a total installed capacity of 0.5 megawatts.

The Janesville Project is currently operated in a run-of-river mode and generates an annual average of approximately 2.285 megawatt hours. Midwest Hydro proposes to continue operating the project as a run-of-river facility and does not propose any new construction to the project.

o. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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 on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary).	December 2022
Request Additional Information.	December 2022
Issue Scoping Document 1 for comments.	June 2023
Issue Scoping Document 2 (if necessary).	October 2023
Issue Notice of Ready for Environmental Analysis.	October 2023

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19982 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2446–052]

STS Hydropower, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2446–052.

c. *Date filed:* August 30, 2022.

d. *Applicant:* STS Hydropower, LLC (STS Hydropower).

e. *Name of Project:* Dixon Hydroelectric Project (Dixon Project).

f. *Location:* The project is located on the Rock River in the towns of Dixon and Grand Tour and the city of Dixon in Lee and Ogle Counties, Illinois. The project does not include any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David Fox, Senior Director of Regulatory Affairs, Eagle Creek RE Management, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, Maryland 20814, (240) 724–8765, *david.fox@eaglecreekre.com.*

i. *FERC Contact:* Laura Washington (202) 502–6072, *Laura.Washington@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* October 29, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2446–052.

m. This application is not ready for environmental analysis at this time.

n. The Dixon Project consists of the following existing facilities: (1) a 305.92-acre reservoir; (2) a 610-foot-long the concrete overflow dam; (3) a forebay; (4) transmission equipment is composed of generators connected to a 2.3-kilovolt bus; (5) a tailrace; and (6) a powerhouse containing five generating units with a total installed capacity of 3 megawatts.

The Dixon Project is currently operated in a run-of-river mode and generates an annual average of approximately 14,995 megawatt hours. STS Hydropower proposes to continue operating the project as a run-of-river facility and does not propose any new construction to the project.

o. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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 on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary).	December 2022.
Request Additional Information ...	December 2022.
Issue Scoping Document 1 for comments.	June 2023.
Issue Scoping Document 2 (if necessary).	October 2023.
Issue Notice of Ready for Environmental Analysis.	October 2023.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19979 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2348–050]

Midwest Hydro, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2348–050.

c. *Date filed:* August 30, 2022.

d. *Applicant:* Midwest Hydro, LLC (Midwest Hydro).

e. *Name of Project:* Beloit Hydroelectric Project (Beloit Project).

f. *Location:* The project is located on the Rock River in the city of Beloit in Rock County, Wisconsin. The project does not include any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David Fox, Senior Director of Regulatory Affairs, Eagle Creek RE Management, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, Maryland 20814, (240) 724–8765, *david.fox@eaglecreekre.com.*

i. *FERC Contact:* Laura Washington (202) 502–6072, *Laura.Washington@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* October 29, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2348–050.

m. This application is not ready for environmental analysis at this time.

n. The Beloit Project consists of the following existing facilities: (1) a 686-acre reservoir; (2) a 315.9-foot-long concrete dam; (3) transmission equipment composed of a generator connected through one oil-filled, three phase, 400 Ampere-rated,7.5-kilovolt (kV) circuit breaker to the 4.1-kV bus and a 4.1-kV/12.4-kV, 500-kilovolt amperes three phase transformer connected to the non-project 12.4-kV distribution system; (4) a tailrace; and (5) a powerhouse containing one generating unit with a total installed capacity of 0.48 megawatts.

The Beloit Project is currently operated in a run-of-river mode and generates an annual average of approximately 3,035 megawatt hours. Midwest Hydro proposes to continue operating the project as a run-of-river facility and does not propose any new construction to the project.

o. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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 on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary).	December 2022.
Request Additional Information ...	December 2022.
Issue Scoping Document 1 for comments.	June 2023.
Issue Scoping Document 2 (if necessary).	October 2023.
Issue Notice of Ready for Environmental Analysis.	October 2023.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19981 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2955–011]

City of Watervliet; Notice of Waiver Period for Water Quality Certification Application

On September 6, 2022, the City of Watervliet submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with New York State Department of Environmental Conservation (New York DEC), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 4.34(b)(5) of the Commission's regulations,[1] we hereby notify the New York DEC of the following:

Date of Receipt of the Certification Request: September 2, 2022.

Reasonable Period of Time to Act on the Certification Request: One year (September 2, 2023).

If New York DEC fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: September 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19986 Filed 9–14–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 4.34(b)(5).

ENVIRONMENTAL PROTECTION AGENCY

[FRL 10178–01–OAR]

Fuels Biointermediate Compliance; Notification of Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of workshop.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a virtual public workshop on the new biointermediates provisions of the Renewable Fuel Standard program. Additional information regarding the workshop appears below under **SUPPLEMENTARY INFORMATION**.

DATES: The virtual workshop will be held on September 29th, 2022 from 1 p.m. to 4 p.m. eastern daylight time. Please monitor *https://www.epa.gov/renewable-fuel-standard-program/workshop-biointermediates-compliance-2022* for any changes to meeting logistics.

ADDRESSES: All attendees must preregister for the workshop by emailing *FuelsProgramsReporting@epa.gov* no later than September 27, 2022.

FOR FURTHER INFORMATION CONTACT: Mark Goldman, Office of Transportation and Air Quality, Compliance Division; telephone number: (202) 564–0604; email address: *FuelsProgramsReporting@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is hosting a virtual public workshop to discuss the implementation of the new biointermediate provisions promulgated as a part of Renewable Fuel Standard (RFS) final rule for years 2020, 2021, and 2022 (see 87 FR 39600, July 1, 2022).

These new provisions allow for the use of certain biointermediates to produce qualifying renewable fuels and specify requirements that apply when renewable fuel is produced through sequential operations at more than one facility. Additionally, the new provisions cover the production, transfer, and use of biointermediates and new regulatory requirements related to registration, recordkeeping, and reporting for facilities producing or using a biointermediate for renewable fuel production.

The virtual public workshop will provide the opportunity for EPA to update stakeholders on how to register and comply with requirements for producing, transferring and using biointermediates. There will also be a question and answer period for stakeholders to ask additional questions related to biointermediates.

An agenda will be posted approximately one week before the workshop at: *https://www.epa.gov/renewable-fuel-standard-program/workshop-biointermediates-compliance-2022.* Interested parties should check this website for any updated information.

For individuals with disabilities: For information on access or services for individuals with disabilities or to request accommodation of a disability, please email *FuelsProgramsReporting@epa.gov,* preferably at least 10 business days prior to the meeting, to give EPA as much time as possible to process your request.

Byron Bunker,

Director, Compliance Division, Office of Transportation & Air Quality.

[FR Doc. 2022–19958 Filed 9–14–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–EPA–HQ–ORD–2021–0601; FRL–9066–01–ORD]

Proposed Information Collection Request; Comment Request; Information Collection Request for Underground Storage Tank Finder Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Underground Storage Tank Finder Application'' (EPA ICR No. 2696.01–NEW, OMB Control No. 2050–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 14, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–ORD–2021–0601, online using *https://www.regulations.gov* (our preferred method), by email to *Docket_ORD@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Alexander Hall Office of Research and Development, Center for Environmental Solutions and Emergency Response, Environmental Protection Agency, 26 West Martin Luther King Drive., Cincinnati, OH 45268; 513–569–7374, *hall.alexander@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The EPA recently developed the Underground Storage Tank (UST) Finder application (hereafter ''UST Finder''). UST Finder is a publicly available web map application containing a comprehensive, state-sourced national map of UST and leaking underground storage tank (LUST) data. UST Finder is available via EPA's GeoPlatform at *https://gispub.epa.gov/ustfinder.* UST Finder provides users access to information on the attributes and locations of active and closed USTs, UST facilities, and LUSTs in states in a geographic information system (GIS) environment. The application provides users with geospatial information about UST facilities and LUST sites, resulting in better understanding and assessment of vulnerability to human health and the environment. UST Finder also contains information about proximity of UST facilities and LUST sites to surface and groundwater public drinking water protection areas; the estimated number of private domestic wells and number of people living nearby; and areas prone to floods, wildfires, earthquakes, and other hazards. UST Finder may be used to import additional geospatial data layers of interest or to export UST facility and LUST site information for use by other software programs. The underlying data accessible in UST Finder are publicly available and free to use.

This information collection relates to information that state and territorial agencies already collect from UST and LUST owners and operators as part of their customary business practice to manage their compliance and enforcement programs. To successfully implement, maintain, and improve the data quality and usability of UST Finder, the Agency seeks to gather, on a voluntary basis, information from state and territorial agencies that oversee UST/LUST programs. Specifically, EPA will request that these agencies provide location and other relevant data about USTs and LUSTs that is already being collected and managed by states and territories. The UST Finder application may be used for many purposes, such as helping regulators, owners, and operators in decision-making; prioritizing site cleanups or inspections; triaging risk; and identifying sites that may be more likely to have a release based on UST age and substance stored. The application may also be used by emergency response personnel to protect UST facilities from extreme weather events. After disasters, the UST Finder can be used to rapidly identify LUST site cleanups impacted by natural disasters and assist in restarting cleanups after these events.

In order to have a dynamic database that provides more detailed and current data, the EPA intends to request UST/LUST data from state and territorial agencies that oversee UST/LUST programs. This information collection is voluntary and does not require the agencies to collect additional data on USTs/LUSTs beyond the data elements that are already being collected through their previously implemented programs. States and territories will decide the extent of information to be provided. The EPA intends to implement four options for collecting the UST/LUST data from states and territories: (1) by developing an Exchange server or other automated service through which states can ''push'' their data to the EPA, (2) by developing a link to the agencies' pre-existing electronic service used to maintain public websites such that the EPA can ''pull'' the data, (3) by allowing states and territories to submit existing databases or spreadsheets through an approved file sharing method, or (4) by EPA obtaining publicly available data from state and territory public agency websites (an option that will be exercised if states and territories do not voluntarily submit their data). For all data transfer options, the EPA will standardize, curate, and enter records into the UST Finder application. The EPA does not intend to collect any data that would be considered confidential business information.

Form Numbers: None.

Respondents/affected entities: States and territories with delegated authority to operate UST and LUST programs under 40 CFR parts 280, 281, 282, and 40 CFR 302.4.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 56 (total).

Frequency of response: Semiannually.

Total estimated burden: 3,470 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $175,000 (per year), includes $0 annualized capital or operation and maintenance costs.

Changes in Estimates: This is a new information collection, therefore, there are no previous burden estimates. The estimated burden reflects assumptions based on Agency experience from the development of the UST Finder application, consultation with affected entities, and any comments received. Should the EPA request to extend this

information collection 3 years from now, changes in burden will be evaluated at that time.

Charlotte Coleman,

Deputy Director, Center for Environmental Solutions and Emergency Response (CESER), Office of Research and Development.

[FR Doc. 2022–19895 Filed 9–14–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1779]

Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed policy statement with request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is inviting comment on a proposed policy statement for prudent commercial real estate loan accommodations and workouts (proposed statement), which would be relevant to all financial institutions supervised by the Board. The proposed statement was developed jointly by the Board, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) in consultation with state bank and credit union regulators and is identical in content to the proposal issued by the OCC, FDIC, and NCUA on August 2, 2022. The proposed statement would build on existing guidance on the need for financial institutions to work prudently and constructively with creditworthy borrowers during times of financial stress, update existing interagency guidance on commercial real estate loan workouts, and add a new section on short-term loan accommodations. The proposed statement would also address recent accounting changes on estimating loan losses and provide updated examples of how to classify and account for loans subject to loan accommodations or loan workout activity. The proposed statement is timely in the post-pandemic era, as trends such as increased remote working may shift historic patterns of demand for commercial real estate in ways that adversely affect the financial condition and repayment capacity of CRE borrowers.

DATES: Comments must be received by November 14, 2022.

ADDRESSES: Interested parties are encouraged to submit written comments.

Comments should be directed to:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments *https://www.federalreserve.gov/foia/about_foia.htm,* choose ''Proposals for Comment''.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

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

FOR FURTHER INFORMATION CONTACT: Juan Climent, Assistant Director, (202) 872–7526; Kathryn Ballintine, Manager, (202) 452–2555; Carmen Holly, Lead Financial Institution Policy Analyst, (202) 973–6122; Ryan Engler, Senior Financial Institution Policy Analyst I, (202) 452–2050; Kevin Chiu, Senior Accounting Policy Analyst, (202) 912–4608, the Division of Supervision and Regulation; Jay Schwarz, Assistant General Counsel, (202) 452–2970; Gillian Burgess, Senior Counsel, (202) 736–5564, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 2009, the Board, along with the OCC, FDIC, NCUA, Federal Financial Institutions Examination Council (FFIEC) State Liaison Committee, and the former Office of Thrift Supervision, adopted the Policy Statement on Prudent Commercial Real Estate Loan Workouts, which was issued by the FFIEC (2009 statement).[1] The Board views the 2009 statement as being useful for both agency staff and financial institutions in understanding risk management and accounting practices for commercial real estate (CRE) loan workouts.

The Board is proposing to update and expand the 2009 statement by incorporating recent policy guidance on loan accommodations and accounting developments for estimating loan losses. The Board developed the proposed statement with the OCC, FDIC, and NCUA and consulted with state bank and credit union regulators. If finalized, the proposed statement would supersede the 2009 statement for all supervised financial institutions.[2]

II. Overview of the Proposed Statement

The proposed statement discusses the importance of working constructively with CRE borrowers who are experiencing financial difficulty and would be appropriate for all supervised financial institutions engaged in CRE lending that apply U.S. generally accepted accounting principles (GAAP). The proposed statement addresses supervisory expectations with respect to a financial institution's handling of loan accommodations and loan workouts on matters including (1) risk management elements, (2) classification of loans, (3) regulatory reporting, and (4) accounting considerations. While focused on CRE loans, the proposed statement includes general principles that are relevant to a financial institution's commercial loans that are collateralized by either real property or other business assets (*e.g.,* furniture, fixtures, or equipment) of a borrower. Additionally, the proposed statement would include updated references to supervisory guidance [3] and

[1] *See FFIEC Press Release, October 30, 2009, available at: https://www.ffiec.gov/press/pr103009.htm*; *See* Federal Reserve Supervision and Regulation (SR) letter 09–7 (October 30, 2009).

[2] For purposes of this guidance, financial institutions are those supervised by the Board.

[3] Supervisory guidance outlines the Board's supervisory practices or priorities and articulates the Board's general views regarding appropriate practices for a given subject area. The Board has adopted regulation setting forth Statements Clarifying the Role of Supervisory Guidance. *See* 12 CFR 262, appendix A.

would revise language to incorporate current industry terminology.

Prudent CRE loan accommodations and workouts are often in the best interest of both the financial institution and the borrower. As such, and consistent with safety and soundness standards, the proposed statement reaffirms two key principles from the 2009 statement: (1) financial institutions that implement prudent CRE loan accommodation and workout arrangements after performing a comprehensive review of a borrower's financial condition will not be subject to criticism for engaging in these efforts, even if these arrangements result in modified loans that have weaknesses that result in adverse credit classification; and (2) modified loans to borrowers who have the ability to repay their debts according to reasonable terms will not be subject to adverse classification solely because the value of the underlying collateral has declined to an amount that is less than the loan balance.

The proposed statement includes the following changes: (1) a new section on short-term loan accommodations; (2) information about recent changes in accounting principles; and (3) revisions and additions to examples of CRE loan workouts.

Short-Term Loan Accommodations

The Board recognizes that financial institutions may benefit from the proposed statement's inclusion of a discussion on the use of short-term and less complex CRE loan accommodations before a loan requires a longer term or more complex workout scenario. The proposed statement would identify short-term loan accommodations as a tool that can be used to mitigate adverse effects on borrowers and would encourage financial institutions to work prudently with borrowers who are or may be unable to meet their contractual payment obligations during periods of financial stress. This section of the proposed statement would incorporate principles consistent with existing interagency guidance on accommodations.[4]

Accounting Changes

The proposed statement also would reflect changes in GAAP since 2009, including those in relation to current expected credit losses (CECL).[5] The discussion would align with existing regulatory reporting guidance and instructions that have also been updated to reflect current accounting requirements under GAAP.[6] In particular, the section for Regulatory Reporting and Accounting Considerations would be modified to include CECL references. Appendices 5 and 6 of the proposed statement would address the relevant accounting and regulatory guidance on estimating loan losses for financial institutions that use the CECL methodology, or incurred loss methodology, respectively.

The Board also notes that the Financial Accounting Standards Board (FASB) has issued ASU 2022–02, ''Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures,'' which amended ASC Topic 326, Financial Instruments—Credit Losses. Once adopted, ASU 2022–02 will eliminate the need for financial institutions to identify and account for loan modifications as troubled debt restructuring (TDR) and will enhance disclosure requirements for certain modifications by creditors when a borrower is experiencing financial difficulty.[7] The Board plans to remove the TDR determination from the examples once all financial institutions are required to report in accordance with ASU 2022–02 and ASC Topic 326 by year-end 2023. In the interim, the Board has modified sections of the proposed statement to reflect recent updates that have occurred pertaining to TDR accounting for financial institutions that are still required to report TDRs.

CRE Workout Examples

The proposed statement would include updated information about current industry loan workout practices and revisions to examples of CRE loan workouts. The examples in the proposed statement are intended to illustrate the application of existing guidance on (1) credit classification, (2) determination of nonaccrual status, and (3) determination of TDR status. The proposed statement also would revise the 2009 statement to provide Appendix 2, which contains an updated summary of selected references to relevant supervisory guidance and accounting standards for real estate lending, appraisals, restructured loans, fair value measurement, and regulatory reporting matters such as a loan's nonaccrual status.

The proposed statement would retain information in Appendix 3 about valuation concepts for income-producing real property included in the 2009 statement. Further, Appendix 4 of the proposed statement restates the Board's long-standing special mention and classification definitions that are referenced and applied in the examples in Appendix 1.

The proposed statement would be consistent with the *Interagency Guidelines Establishing Standards for Safety and Soundness* issued by the Board,[8] which articulates safety and soundness standards for insured depository institutions to establish and maintain prudent credit underwriting practices and to establish and maintain systems to identify problem assets and manage deterioration in those assets commensurate with a financial institution's size and the nature and scope of its operations.

III. Request for Comment

The Board requests comments on all aspects of the proposed statement and responses to the questions set forth below:

Question 1: To what extent does the proposed statement reflect safe and sound practices currently incorporated in a financial institution's CRE loan accommodation and workout activities? Should the Board add, modify, or remove any elements, and, if so, which and why?

Question 2: What additional information, if any, should be included to optimize the guidance for managing CRE loan portfolios during all business cycles and why?

Question 3: Some of the principles discussed in the proposed statement are appropriate for Commercial & Industrial (C&I) lending secured by personal property or other business assets. Should the Board further address C&I lending more explicitly, and if so, how?

Question 4: What additional loan workout examples or scenarios should

[4] *See Joint Statement on Additional Loan Accommodations Related to COVID–19.* SR Letter 20–18. *See also Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working With Customers Affected by the Coronavirus (Revised)*; Joint Press Release April 7, 2020.

[5] The Financial Accounting Standards Board's (FASB's) Accounting Standards Update 2016–13, Financial *Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* and subsequent amendments issued since June 2016 are codified in Accounting Standards Codification (ASC) Topic 326, *Financial Instruments—Credit Losses* (FASB ASC Topic 326). FASB ASC Topic 326 revises the accounting for the allowances for credit losses (ACLs) and introduces CECL.

[6] For FDIC-insured depository institutions, the FFIEC Consolidated Reports of Condition and Income (FFIEC Call Report).

[7] Financial institutions may only early adopt ASU 2022–02 if ASC Topic 326 is adopted. Financial institutions that have not adopted ASC Topic 326 will continue to report TDRs and will only report in accordance with ASU 2022–02 concurrently with the adoption of ASC Topic 326.

[8] 12 CFR part 208 appendix D–1.

the Board include or discuss? Are there examples in Appendix 1 of the proposed statement that are not needed, and if so, why not? Should any of the examples in the proposed statement be revised to better reflect current practices, and if so, how?

Question 5: To what extent do the TDR examples continue to be relevant in 2023 given that ASU 2022–02 eliminates the need for a financial institution to identify and account for a new loan modification as a TDR?

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board has determined that this proposed policy statement does not create any new, or revise any existing, collections of information pursuant to the Paperwork Reduction Act. Consequently, no information collection request will be submitted to the OMB for review.

V. Proposed Guidance

The text of the proposed Statement is as follows:

Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts

The Board of Governors of the Federal Reserve System (Board) recognizes that financial institutions [1] face significant challenges when working with commercial real estate (CRE) [2] borrowers who are experiencing diminished operating cash flows, depreciated collateral values, prolonged sales and rental absorption periods, or other issues that may hinder repayment. While borrowers may experience deterioration in their financial condition, many continue to be creditworthy and have the willingness and capacity to repay their debts. In such cases, financial institutions may find it beneficial to work constructively with borrowers. Such constructive efforts may involve loan accommodations [3] or more extensive loan workout arrangements.[4]

This statement provides a broad set of principles relevant to CRE loan accommodations and workouts in all business cycles, particularly in challenging economic environments. A variety of factors can drive challenging economic environments, including economic downturns, natural disasters, and local, national, and international events. This statement also describes how examiners will review CRE loan accommodation and workout arrangements and provides examples of CRE workout arrangements as well as useful references in the appendices.

The Board has found that prudent CRE loan accommodations and workouts are often in the best interest of the financial institution and the borrower. Examiners are expected to take a balanced approach in assessing the adequacy of a financial institution's risk management practices for loan accommodation and workout activities. Consistent with the *Interagency Guidelines Establishing Standards for Safety and Soundness,*[5] (safety and soundness standards), financial institutions that implement prudent CRE loan accommodation and workout arrangements after performing a comprehensive review of a borrower's financial condition will not be subject to criticism for engaging in these efforts, even if these arrangements result in modified loans that have weaknesses that result in adverse classification. In addition, modified loans to borrowers who have the ability to repay their debts according to reasonable terms will not be subject to adverse classification solely because the value of the underlying collateral has declined to an amount that is less than the outstanding loan balance.

I. Purpose

Consistent with the safety and soundness standards, this statement updates and supersedes existing supervisory guidance to assist financial institutions' efforts to modify CRE loans to borrowers who are, or may be, unable to meet a loan's current contractual payment obligations or fully repay the debt.[6] This statement is intended to promote supervisory consistency among examiners, enhance the transparency of CRE loan accommodation and workout arrangements, and ensure that supervisory policies and actions do not inadvertently curtail the availability of credit to sound borrowers.

This statement addresses prudent risk management practices regarding short-term accommodations, risk management elements for loan workout programs, long-term loan workout arrangements, classification of loans, and regulatory reporting and accounting requirements and considerations. The statement also includes selected references and materials related to regulatory reporting.[7] The statement does not, however, affect existing regulatory reporting requirements or guidance provided in relevant interagency statements issued by the Board or accounting requirements under U.S. generally accepted accounting principles (GAAP). Certain principles in this statement are also generally applicable to commercial loans that are secured by either real property or other business assets of a commercial borrower.

Six appendices are incorporated into this statement:

- Appendix 1 contains examples of CRE loan workout arrangements illustrating the application of this statement to classification of loans, and determination of accrual treatment.
- Appendix 2 lists selected relevant rules as well as supervisory and accounting guidance for real estate lending, appraisals, allowance methodologies,[8] restructured loans, fair value measurement, and regulatory reporting matters such as nonaccrual status. This statement is intended to be used in conjunction with materials identified in Appendix 2 to reach appropriate conclusions regarding loan classification and regulatory reporting.
- Appendix 3 discusses valuation concepts for income-producing real property.[9]

[1] For the purposes of this statement, financial institutions are those supervised by the Board.

[2] Consistent with the Board, FDIC and OCC joint guidance on *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices* (December 2006), CRE loans include loans secured by multifamily property, and nonfarm nonresidential property where the primary source of repayment is derived from rental income associated with the property (that is, loans for which 50 percent or more of the source of repayment comes from third party, nonaffiliated, rental income) or the proceeds of the sale, refinancing, or permanent financing of the property. CRE loans also include land development and construction loans (including 1- to 4-family residential and commercial construction loans), other land loans, loans to real estate investment trusts (REITs), and unsecured loans to developers.

[3] For the purposes of this statement, an accommodation includes any agreement to defer one or more payments, make a partial payment, forbear any delinquent amounts, modify a loan or contract or provide other assistance or relief to a borrower who is experiencing a financial challenge.

[4] Workouts can take many forms, including a renewal or extension of loan terms, extension of additional credit, or a restructuring with or without concessions.

[5] *See* 12 CFR part 208 appendix D–1.

[6] This statement replaces the interagency *Policy Statement on Prudent Commercial Real Estate Loan Workouts* (October 2009).

[7] For banks, the FFIEC Consolidated Reports of Condition and Income (FFIEC Call Report).

[8] The allowance methodology refers to the allowance for credit losses (ACL) under Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 326, *Financial Instruments—Credit Losses;* or allowance for loan and lease losses (ALLL) under ASC 310, *Receivables* and ASC Subtopic 450–20, *Contingencies—Loss Contingencies,* as applicable.

[9] Valuation concepts applied to regulatory reporting processes also should be consistent with ASC Topic 820, *Fair Value Measurement.*

• Appendix 4 provides the classification definitions used by the Board.

• Appendices 5 and 6 address the relevant accounting and supervisory guidance on estimating loan losses for financial institutions that use the current expected credit losses (CECL) methodology, or incurred loss methodology, respectively.

II. Short-Term Loan Accommodations

The Board encourages financial institutions to work prudently with borrowers who are, or may be, unable to meet their contractual payment obligations during periods of financial stress. Such actions may entail loan accommodations that are generally short-term or temporary in nature but occur before a loan reaches a workout scenario. These actions can mitigate long-term adverse effects on borrowers by allowing them to address the issues affecting repayment capacity and are often in the best interest of financial institutions and their borrowers.

When entering into an accommodation with a borrower, it is prudent for the financial institution to provide clear, accurate, and timely information about the arrangement to the borrower and any guarantor. Any such accommodation must be consistent with applicable laws and regulations. Further, a financial institution should employ prudent risk management practices and appropriate internal controls over such accommodations. Failed or imprudent risk management practices and internal controls can adversely affect borrowers, and expose a financial institution to increases in credit, compliance, operational, or other risks. Imprudent practices that are widespread at a financial institution may also pose risk to its capital adequacy.

Prudent risk management practices and internal controls will enable financial institutions to identify, measure, monitor, and manage the credit risk of accommodated loans. Prudent risk management practices include developing appropriate policies and procedures, updating and assessing financial and collateral information, maintaining appropriate risk grading, and ensuring proper tracking and accounting for loan accommodations. Prudent internal controls related to loan accommodations include comprehensive policies and practices, proper management approvals, and timely and accurate reporting and communication.

III. Loan Workout Programs

When short-term accommodation measures are not sufficient or have not been successful to address credit problems, the financial institutions could proceed into longer-term or more complex loan arrangements with borrowers under a formal workout program. Loan workout arrangements can take many forms, including, but not limited to:

• Renewing or extending loan terms;

• Granting additional credit to improve prospects for overall repayment; or

• Restructuring [10] with or without concessions.

A financial institution's risk management practices for implementing workout arrangements should be appropriate for the scope, complexity, and nature of the financial institution's lending activity. Further, these practices should be consistent with safe-and-sound lending policies and guidance, real estate lending standards,[11] and relevant regulatory reporting requirements. Examiners will evaluate the effectiveness of practices, which typically address:

• A prudent workout policy that establishes appropriate loan terms and amortization schedules and that permits the financial institution to reasonably adjust the workout plan if sustained repayment performance is not demonstrated or if collateral values do not stabilize;

• Management infrastructure to identify, measure, and monitor the volume and complexity of workout activity;

• Documentation standards to verify a borrower's creditworthiness, including financial condition, repayment capacity, and collateral values;

• Management information systems and internal controls to identify and track loan performance and risk, including impact on concentration risk and the allowance;

• Processes designed to ensure that the financial institution's regulatory reports are consistent with regulatory reporting requirements;

• Loan collection procedures;

• Adherence to statutory, regulatory, and internal lending limits;

• Collateral administration to ensure proper lien perfection of the financial institution's collateral interests for both real and personal property; and

• An ongoing credit risk review function.

[10] A restructuring involves a formal, legally enforceable modification in the loan's terms.

[11] *See* 12 CFR 208.51 and part 208, appendix C.

IV. Long-Term Loan Workout Arrangements

An effective loan workout arrangement should improve the lender's prospects for repayment of principal and interest, be consistent with sound banking and accounting practices, and comply with applicable laws and regulations. Typically, financial institutions consider loan workout arrangements after analyzing a borrower's repayment capacity, evaluating the support provided by guarantors, and assessing the value of any collateral pledged.

Consistent with safety and soundness standards, while loans in workout arrangements may be adversely classified, a financial institution will not be criticized for engaging in loan workout arrangements so long as management has:

• For each loan, developed a well-conceived and prudent workout plan that supports the ultimate collection of principal and interest and that is based on key elements such as:

➢ Updated and comprehensive financial information on the borrower, real estate project, and all guarantors and sponsors;

➢ Current valuations of the collateral supporting the loan and the workout plan;

➢ Appropriate loan structure (*e.g.,* term and amortization schedule), covenants, and requirements for curtailment or re-margining; and

➢ Appropriate legal analyses and agreements, including those for changes to loan terms;

• Analyzed the borrower's global debt [12] service coverage that reflects a realistic projection of the borrower's available cash flow;

• Analyzed the available cash flow of guarantors;

• Demonstrated the willingness and ability to monitor the ongoing performance of the borrower and guarantor under the terms of the workout arrangement;

• Maintained an internal risk rating or loan grading system that accurately and consistently reflects the risk in the workout arrangement; and

• Maintained an allowance methodology that calculates (or measures) an allowance in accordance with GAAP for loans that have undergone a workout arrangement and recognizes loan losses in a timely

[12] Global debt represents the aggregate of a borrower's or guarantor's financial obligations, including contingent obligations.

manner through provision expense and enacting appropriate charge-offs.[13]

A. Supervisory Assessment of Repayment Capacity of Commercial Borrowers

The primary focus of an examiner's review of a CRE loan, including binding commitments, is an assessment of the borrower's ability to repay the loan. The major factors that influence this analysis are the borrower's willingness and capacity to repay the loan under reasonable terms and the cash flow potential of the underlying collateral or business. When analyzing a commercial borrower's repayment ability, examiners should consider the following factors:

- The borrower's character, overall financial condition, resources, and payment history;
- The nature and degree of protection provided by the cash flow from business operations or the collateral on a global basis that considers the borrower's total debt obligations;
- Market conditions that may influence repayment prospects and the cash flow potential of the business operations or underlying collateral; and
- The prospects for repayment support from guarantors.

B. Supervisory Assessment of Guarantees and Sponsorships

Examiners should review the financial attributes of guarantees and sponsorships in considering the loan classification. The presence of a legally enforceable guarantee from a financially responsible guarantor may improve the prospects for repayment of the debt obligation and may be sufficient to preclude classification or reduce the severity of classification. A financially responsible guarantor possesses the financial capacity, the demonstrated willingness, and the incentive to provide support for the loan through ongoing payments, curtailments, or re-margining.

Examiners also review the financial attributes and economic incentives of sponsors that support a loan. Even if not legally obligated, financially responsible sponsors are similar to guarantors in that they may also possess the financial capacity, the demonstrated willingness, and may have an incentive to provide support for the loan through ongoing payments, curtailments, or re-margining.

Financial institutions that have sufficient information on the guarantor's global financial condition, income, liquidity, cash flow, contingent liabilities, and other relevant factors (including credit ratings, when available) are better able to determine the guarantor's financial capacity to fulfill the obligation. An effective assessment includes consideration of whether the guarantor has the financial capacity to fulfill the total number and amount of guarantees currently extended by the guarantor. A similar analysis should be made for any material sponsors that support the loan.

Examiners should consider whether a guarantor has demonstrated the willingness to fulfill all current and previous obligations, has sufficient economic incentive, and has a significant investment in the project. An important consideration is whether any previous performance under its guarantee(s) was voluntary or the result of legal or other actions by the lender to enforce the guarantee(s).

C. Supervisory Assessment of Collateral Values

As the primary sources of loan repayment decline, the importance of collateral value as another repayment source increases when analyzing credit risk and developing an appropriate workout plan. Examiners will analyze real estate collateral values based on the financial institution's original appraisal or evaluation, any subsequent updates, additional pertinent information (*e.g.,* recent inspection results), and relevant market conditions. An examiner will assess the major facts, assumptions, and valuation approaches in the collateral valuation and their influence in the financial institution's credit and allowance analyses.

The Board's appraisal regulations require financial institutions to review appraisals for compliance with the Uniform Standards of Professional Appraisal Practice.[14] As part of that process, and when reviewing evaluations, financial institutions should ensure that assumptions and conclusions used are reasonable. Further, financial institutions typically have policies [15] and procedures that dictate when collateral valuations should be updated as part of their ongoing credit monitoring processes, as market conditions change, or as a borrower's financial condition deteriorates.[16]

CRE loans in workout arrangements consider current project plans and market conditions in a new or updated appraisal or evaluation, as appropriate. In determining whether to obtain a new appraisal or evaluation, a prudent financial institution considers whether there has been material deterioration in the following factors: the performance of the project; conditions for the geographic market and property type; variances between actual conditions and original appraisal assumptions; changes in project specifications (*e.g.,* changing a planned condominium project to an apartment building); loss of a significant lease or a take-out commitment; or increases in pre-sale fallout. A new appraisal may not be necessary when an evaluation prepared by the financial institution appropriately updates the original appraisal assumptions to reflect current market conditions and provides a reasonable estimate of the collateral's fair value.[17] If new money is advanced, financial institutions should refer to the Federal financial institution supervisory agencies' appraisal regulations to determine whether a new appraisal is required.[18]

The market value provided by an appraisal and the fair value for accounting purposes are based on similar valuation concepts.[19] The analysis of the collateral's market value reflects the financial institution's understanding of the property's current ''as is'' condition (considering the property's highest and best use) and other relevant risk factors affecting value. Valuations of commercial properties may contain more than one

[13] Additionally, if applicable, financial institutions should recognize in other liabilities an allowance for estimated credit losses on off-balance sheet credit exposures related to restructured loans (*e.g.,* loan commitments) and should reverse interest accruals on loans that are deemed uncollectible.

[14] *See* 12 CFR part 208, subpart E, and 12 CFR part 225, subpart G.

[15] *See* 12 CFR part 208.51(a).

[16] For further reference, see *Interagency Appraisal and Evaluation Guidelines,* 75 FR 77450 (December 10, 2010).

[17] According to the FASB ASC Master Glossary, ''fair value'' is ''the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.''

[18] *See* footnote 18.

[19] The term ''market value'' as used in an appraisal is based on similar valuation concepts as ''fair value'' for accounting purposes under GAAP. For both terms, these valuation concepts about the real property and the real estate transaction contemplate that the property has been exposed to the market before the valuation date, the buyer and seller are well informed and acting in their own best interest (that is, the transaction is not a forced liquidation or distressed sale), and marketing activities are usual and customary (that is, the value of the property is unaffected by special financing or sales concessions). The market value in an appraisal may differ from the collateral's fair value if the values are determined as of different dates or the fair value estimate reflects different assumptions from those in the appraisal. This may occur as a result of changes in market conditions and property use since the ''as of'' date of the appraisal.

value conclusion and could include an ''as is'' market value, a prospective ''as complete'' market value, and a prospective ''as stabilized'' market value.

Financial institutions typically use the market value conclusion (and not the fair value) that corresponds to the workout plan objective and the loan commitment. For example, if the financial institution intends to work with the borrower so that a project will achieve stabilized occupancy, then the financial institution can consider the ''as stabilized'' market value in its collateral assessment for credit risk grading after confirming that the appraisal's assumptions and conclusions are reasonable. Conversely, if the financial institution intends to foreclose, then it is more appropriate for the financial institution to use the fair value (less costs to sell) [20] of the property in its current ''as is'' condition in its collateral assessment.

If weaknesses are noted in the financial institution's supporting documentation or appraisal or evaluation review process, examiners should direct the financial institution to address the weaknesses, which may require the financial institution to obtain a new collateral valuation. However, if the financial institution is unable or unwilling to address deficiencies in a timely manner, examiners will have to assess the degree of protection that the collateral affords when analyzing and classifying the loan. In performing this assessment of collateral support, examiners may adjust the collateral's value to reflect current market conditions and events. When reviewing the reasonableness of the facts and assumptions associated with the value of an income-producing property, examiners evaluate:

- Current and projected vacancy and absorption rates;
- Lease renewal trends and anticipated rents;
- Effective rental rates or sale prices, considering sales and financing concessions;
- Time frame for achieving stabilized occupancy or sellout;
- Volume and trends in past due leases;
- Net operating income of the property as compared with budget projections, reflecting reasonable operating and maintenance costs; and
- Discount rates and direct capitalization rates (refer to Appendix 3 for more information).

[20] Costs to sell are used when the loan is dependent on the sale of the collateral. Costs to sell are not used when the collateral-dependent loan is dependent on the operation of the collateral.

Assumptions, when recently made by qualified appraisers (and, as appropriate, by the financial institution) and when consistent with the discussion above, should be given reasonable deference by examiners. Examiners should also use the appropriate market value conclusion in their collateral assessments. For example, when the financial institution plans to provide the resources to complete a project, examiners can consider the project's prospective market value and the committed loan amount in their analysis.

Examiners generally are not expected to challenge the underlying assumptions, including discount rates and capitalization rates, used in appraisals or evaluations when these assumptions differ only marginally from norms generally associated with the collateral under review. The estimated value of the collateral may be adjusted for credit analysis purposes when the examiner can establish that any underlying facts or assumptions are inappropriate and when the examiner can support alternative assumptions.

Many CRE borrowers may have their commercial loans secured by owner occupied real estate or other business assets, such as inventory and accounts receivable, or may have CRE loans also secured by furniture, fixtures, and equipment. For these loans, the financial institution should have appropriate policies and practices for quantifying the value of such collateral, determining the acceptability of the assets as collateral, and perfecting its security interests. The financial institution also should have appropriate procedures for ongoing monitoring of this type of collateral and the financial institution's interests and security protection.

V. Classification of Loans

Loans that are adequately protected by the current sound worth and debt service capacity of the borrower, guarantor, or the underlying collateral generally are not adversely classified. Similarly, loans to sound borrowers that are modified in accordance with prudent underwriting standards should not be adversely classified unless well-defined weaknesses exist that jeopardize repayment. However, such loans could be flagged for management's attention or other designated ''watch lists'' of loans that management is more closely monitoring.

Further, examiners should not adversely classify loans solely because the borrower is associated with a particular industry that is experiencing financial difficulties. When a financial institution's loan modifications are not supported by adequate analysis and documentation, examiners are expected to exercise reasonable judgment in reviewing and determining loan classifications until such time as the financial institution is able to provide information to support management's conclusions and internal loan grades. Refer to Appendix 4 for the classification definitions.

A. Loan Performance Assessment for Classification Purposes

The loan's record of performance to date should be one of several considerations when determining whether a loan should be adversely classified. As a general principle, examiners should not adversely classify or require the recognition of a partial charge-off on a performing commercial loan solely because the value of the underlying collateral has declined to an amount that is less than the loan balance. However, it is appropriate to classify a performing loan when well-defined weaknesses exist that jeopardize repayment.

One perspective of loan performance is based upon an assessment as to whether the borrower is contractually current on principal or interest payments. For many loans, this definition is sufficient and accurately portrays the status of the loan. In other cases, being contractually current on payments can be misleading as to the credit risk embedded in the loan. This may occur when the loan's underwriting structure or the liberal use of extensions and renewals masks credit weaknesses and obscures a borrower's inability to meet reasonable repayment terms.

For example, for many acquisition, development, and construction projects, the loan is structured with an ''interest reserve'' for the construction phase of the project. At the time the loan is originated, the lender establishes the interest reserve as a portion of the initial loan commitment. During the construction phase, the lender recognizes interest income from the interest reserve and capitalizes the interest into the loan balance. After completion of the construction, the lender recognizes the proceeds from the sale of lots, homes, or buildings for the repayment of principal, including any of the capitalized interest. For a commercial construction loan where the property has achieved stabilized occupancy, the lender uses the proceeds from permanent financing for repayment of the construction loan or converts the construction loan to an amortizing loan.

However, if the development project stalls and management fails to evaluate the collectability of the loan, interest income may continue to be recognized from the interest reserve and capitalized into the loan balance, even though the project is not generating sufficient cash flows to repay the loan. In such cases, the loan will be contractually current due to the interest payments being funded from the reserve, but the repayment of principal may be in jeopardy, especially when leases or sales have not occurred as projected and property values have dropped below the market value reported in the original collateral valuation. In these situations, adverse classification of the loan may be appropriate.

A second perspective for assessing a loan's classification is to consider the borrower's expected performance and ability to meet its obligations in accordance with the modified terms over the loan's tenure. Therefore, the loan classification is meant to measure risk over the term of the loan rather than just reflecting the loan's payment history. As a borrower's expected performance is dependent upon future events, examiners' credit analyses should focus on:

- The borrower's financial strength as reflected by its historical and projected balance sheet and income statement outcomes; and
- The prospects for a CRE property in light of events and market conditions that reasonably may occur during the term of the loan.

B. Classification of Renewals or Restructurings of Maturing Loans

Loans to commercial borrowers can have short maturities, including short-term working capital loans to businesses, financing for CRE construction projects, or loans to finance recently completed CRE projects for the period to achieve stabilized occupancy. When there has been deterioration in collateral values, a borrower with a maturing loan amid an economic downturn may have difficulty obtaining short-term financing or adequate sources of long-term credit, despite their demonstrated and continued ability to service the debt. In such cases, financial institutions may determine that the most appropriate course is to restructure or renew the loans. Such actions, when done prudently, are often in the best interest of both the financial institution and the borrower.

A restructured loan typically reflects an elevated level of credit risk, as the borrower may not be, or has not been, able to perform according to the original contractual terms. The assessment of each loan should be based upon the fundamental characteristics affecting the collectability of that loan. In general, renewals or restructurings of maturing loans to commercial borrowers who have the ability to repay on reasonable terms will not automatically be subject to adverse classification by examiners. However, consistent with safety and soundness standards, such loans are identified in the financial institution's internal credit grading system and may warrant close monitoring. Adverse classification of a renewed or restructured loan would be appropriate, if, despite the renewal or restructuring, well-defined weaknesses exist that jeopardize the orderly repayment of the loan pursuant to reasonable modified terms.

C. Classification of Troubled CRE Loans Dependent on the Sale of Collateral for Repayment

As a general classification principle for a troubled CRE loan that is dependent on the sale of the collateral for repayment, any portion of the loan balance that exceeds the amount that is adequately secured by the fair value of the real estate collateral less the costs to sell should be classified ''loss.'' This principle applies to loans that are collateral dependent based on the sale of the collateral in accordance with GAAP and there are no other available reliable sources of repayment such as a financially capable guarantor.[21]

The portion of the loan balance that is adequately secured by the fair value of the real estate collateral less the costs to sell generally should be adversely classified no worse than ''substandard.'' The amount of the loan balance in excess of the fair value of the real estate collateral, or portions thereof, should be adversely classified ''doubtful'' when the potential for full loss may be mitigated by the outcomes of certain pending events, or when loss is expected but the amount of the loss cannot be reasonably determined. If warranted by the underlying circumstances, an examiner may use a ''doubtful'' classification on the entire loan balance. However, examiners should use a ''doubtful'' classification infrequently and for a limited time period to permit the pending events to be resolved.

D. Classification and Accrual Treatment of Restructured Loans With a Partial Charge-off

Based on consideration of all relevant factors, an assessment may indicate that a loan has well-defined weaknesses that jeopardize collection in full of all amounts contractually due and may result in a partial charge-off as part of a restructuring. When well-defined weaknesses exist and a partial charge-off has been taken, the remaining recorded balance for the restructured loan generally should be classified no more severely than ''substandard.'' A more severe classification than ''substandard'' for the remaining recorded balance would be appropriate if the loss exposure cannot be reasonably determined. Such situations may occur where significant remaining risk exposures are identified but are not quantified, such as bankruptcy or a loan collateralized by a property with potential environmental concerns.

A restructuring may involve a multiple note structure in which, for example, a troubled loan is restructured into two notes. Lenders may separate a portion of the current outstanding debt into a new, legally enforceable note (*i.e.,* Note A) that is reasonably assured of repayment and performance according to prudently modified terms. This note may be placed back on accrual status in certain situations. In returning the loan to accrual status, sustained historical payment performance for a reasonable time prior to the restructuring may be taken into account. Additionally, a properly structured and performing ''Note A'' generally would not be adversely classified by examiners. The portion of the debt that is not reasonably assured of repayment (*i.e.,* Note B) must be adversely classified and charged-off.

In contrast, the loan should remain on, or be placed on, nonaccrual status if the lender does not split the loan into separate notes, but internally recognizes a partial charge-off. A partial charge-off would indicate that the financial institution does not expect full repayment of the amounts contractually due. If facts change after the charge-off is taken such that the full amounts contractually due, including the amount charged off, are expected to be collected and the loan has been brought contractually current, the remaining balance of the loan may be returned to accrual status without having to first receive payment of the charged-off

[21] Under ASC Topic 310, applicable for financial institutions reporting an ALLL, a loan is collateral dependent if repayment of the loan is expected to be provided solely by sale or operation of the collateral. Under ASC Topic 326, applicable for financial institutions reporting an ACL, a loan is collateral dependent when the repayment is expected to be provided substantially through the operation or sale of the collateral when the borrower is experiencing financial difficulty based on the entity's assessment as of the reporting date.

amount.[22] In these cases, examiners should assess whether the financial institution has well-documented support for its credit assessment of the borrower's financial condition and the prospects for full repayment.

VI. Regulatory Reporting and Accounting Considerations

Financial institution management is responsible for preparing regulatory reports in accordance with GAAP and regulatory reporting requirements. Management also is responsible for establishing and maintaining an appropriate governance and internal control structure over the preparation of regulatory reports. The Board has observed this governance and control structure commonly includes policies and procedures that provide clear guidelines on accounting matters. Accurate regulatory reports are critical to the transparency of a financial institution's financial position and risk profile and imperative for effective supervision. Decisions related to loan workout arrangements may affect regulatory reporting, particularly interest accruals, and loan loss estimates. Therefore, it is important that loan workout staff appropriately communicate with the accounting and regulatory reporting staff concerning the financial institution's loan restructurings and that the reporting consequences of restructurings are presented accurately in regulatory reports.

In addition to evaluating credit risk management processes and validating the accuracy of internal loan grades, examiners are responsible for reviewing management's processes related to accounting and regulatory reporting. While similar data are used for loan risk monitoring, accounting, and reporting systems, this information does not necessarily produce identical outcomes. For example, loss classifications may not be equivalent to the associated allowance measurements.

A. Allowance for Credit Losses

Examiners need to have a clear understanding of the differences between credit risk management and accounting and regulatory reporting concepts (such as accrual status, restructurings, and the allowance) when assessing the adequacy of the financial institution's reporting practices for on- and off-balance sheet credit exposures. Refer to the appropriate Appendix that provides a summary of the allowance standards under the incurred loss methodology (Appendix 6) or the CECL methodology for institutions that have adopted ASC Topic 326, *Financial Instruments—Credit Losses* (Appendix 5). Examiners should also refer to regulatory reporting instructions in the FFIEC Call Report guidance and applicable GAAP for further information.

B. Implications for Interest Accrual

A financial institution needs to consider whether a loan that was accruing interest prior to the loan restructuring should be placed in nonaccrual status at the time of modification to ensure that income is not materially overstated. Consistent with Call Report Instructions, a loan that has been restructured so as to be reasonably assured of repayment and performance according to prudent modified terms need not be placed in nonaccrual status. Therefore, for a loan to remain on accrual status, the restructuring and any charge-off taken on the loan have to be supported by a current, well-documented credit assessment of the borrower's financial condition and prospects for repayment under the revised terms. Otherwise, in accordance with outstanding Call Report instructions, the restructured loan must be placed in nonaccrual status.

A restructured loan placed in nonaccrual status should not be returned to accrual status until the borrower demonstrates a period of sustained repayment performance for a reasonable period prior to the date on which the loan is returned to accrual status. A sustained period of repayment performance generally would be a minimum of six months and would involve payments of cash or cash equivalents. It may also include historical periods prior to the date of the loan restructuring. While an appropriately designed restructuring should improve the collectability of the loan in accordance with a reasonable repayment schedule, it does not relieve the financial institution from the responsibility to promptly charge off all identified losses. For more detailed instructions about placing a loan in nonaccrual status and returning a nonaccrual loan to accrual status, refer to the instructions for the FFIEC Call Report.

[22] The charged-off amount should not be reversed or re-booked, under any condition, to increase the recorded investment in the loan or its amortized costs, as applicable, when the loan is returned to accrual status. However, expected recoveries, prior to collection, are a component of management's estimate of the net amount expected to be collected for a loan under ASC Topic 326. Refer to relevant regulatory reporting instructions for guidance on returning a loan to accrual status.

Appendix 1

Examples of CRE Loan Workout Arrangements

The examples in this Appendix are provided for illustrative purposes only and are designed to demonstrate an examiner's analytical thought process to derive an appropriate classification and evaluate implications for interest accrual and appropriate regulatory reporting, such as whether a loan should be reported as a troubled debt restructuring (TDR).[23] Although not discussed in the examples below, examiners consider the adequacy of a lender's supporting documentation, internal analysis, and business decision to enter into a loan workout arrangement. The examples also do not address the effect of the loan workout arrangement on the allowance and subsequent reporting requirements.

Examiners should use caution when applying these examples to ''real-life'' situations, consider all facts and circumstances of the loan being evaluated, and exercise judgment before reaching conclusions related to loan classifications, accrual treatment, and TDR reporting.[24]

The TDR determination requires consideration of all of the facts and circumstances surrounding the modification. No single factor, by itself, is determinative of whether a modification is a TDR. To make this determination, the lender assesses whether (a) the borrower is *experiencing financial difficulties* and (b) the lender has granted a *concession.* For purposes of these examples, if the borrower was not *experiencing financial difficulties,* the example does not assess whether a *concession* was granted. However, in distressed situations, lenders may make *concessions* because borrowers are *experiencing financial difficulties.* Accordingly, lenders and examiners should exercise judgment in evaluating whether a restructuring is a TDR. In addition, some examples refer to disclosures of TDRs, which pertain only to the reporting in Schedules RC–C or RC–N of the Call Report and not the applicable measurement in determining an appropriate allowance pursuant to the accounting standards.

A. Income Producing Property—Office Building

Base Case: A lender originated a $15 million loan for the purchase of an office building with monthly payments based on an amortization of 20 years and a balloon payment of $13.6 million at the end of year five. At origination, the loan had a 75 percent loan-to-value (LTV) based on an appraisal reflecting a $20 million market value on an ''as stabilized'' basis, a debt service coverage (DSC) ratio of 1.30x, and a market interest rate. The lender expected to renew the loan

[23] The Board views that the accrual treatments in these examples as falling within the range of acceptable practices under regulatory reporting instructions.

[24] In addition, estimates of the fair value of collateral require the use of assumptions requiring judgment and should be consistent with measurement of fair value in ASC Topic 820, *Fair Value Measurement;* see Appendix 2.

when the balloon payment became due at the end of year five. Due to technological advancements and a workplace culture change since the inception of the loan, many businesses switched to hybrid work-from-home arrangements to reduce longer-term costs and improve employee retention. As a result, the property's cash flow declined as the borrower has had to grant rental concessions to either retain its existing tenants or attract new tenants, since the demand for office space has decreased.

Scenario 1: At maturity, the lender renewed the $13.6 million loan for one year at a market interest rate that provides for the incremental risk and payments based on amortizing the principal over the remaining 15 years. The borrower had not been delinquent on prior payments and has sufficient cash flow to service the loan at the market interest rate terms with a DSC ratio of 1.12x, based on updated financial information.

A review of the leases reflects that most tenants are stable occupants, with long-term leases and sufficient cash flow to pay their rent. The major tenants have not adopted hybrid work-from-home arrangements for their employees given the nature of the businesses. A recent appraisal reported an ''as stabilized'' market value of $13.3 million for the property for an LTV of 102 percent. This reflects current market conditions and the resulting decline in cash flow.

Classification: The lender internally graded the loan pass and is monitoring the credit. The examiner agreed, because the borrower has the ability to continue making loan payments based on reasonable terms, despite a decline in cash flow and in the market value of the collateral.

Nonaccrual Treatment: The lender maintained the loan on accrual status. The borrower has demonstrated the ability to make the regularly scheduled payments and, even with the decline in the borrower's creditworthiness, cash flow appears sufficient to make these payments, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender determined that the renewed loan should not be reported as a TDR. While the borrower is experiencing some financial deterioration, the borrower has sufficient cash flow to service the debt and has no record of payment default; therefore, the borrower is not *experiencing financial difficulties.* The examiner concurred with the lender's TDR treatment.

Scenario 2: At maturity, the lender renewed the $13.6 million loan at a market interest rate that provides for the incremental risk and payments based on amortizing the principal over the remaining 15 years. The borrower had not been delinquent on prior payments. Current projections indicate the DSC ratio will not drop below 1.12x based on leases in place and letters of intent for vacant space. However, some leases are coming up for renewal, and additional rental concessions may be necessary to either retain those existing tenants or attract new tenants. The lender estimates the property's current ''as stabilized'' market value is $14.5 million, which results in a 94 percent LTV, but a current valuation has not been ordered. In addition, the lender has not asked the borrower or guarantors to provide current financial statements to assess their ability to support any cash flow shortfall.

Classification: The lender internally graded the loan pass and is monitoring the credit. The examiner disagreed with the internal grade and listed the credit as special mention. While the borrower has the ability to continue to make payments based on leases currently in place and letters of intent for vacant space, there has been a declining trend in the property's revenue stream, and there is most likely a reduced collateral margin. In addition, there is potential for further deterioration in the cash flow as more leases will expire in the upcoming months, while absorption for office space in this market has slowed. Lastly, the examiner noted that the lender failed to request current financial information and to obtain an updated collateral valuation,[25] representing administrative weaknesses.

Nonaccrual Treatment: The lender maintained the loan on accrual status. The borrower has demonstrated the ability to make regularly scheduled payments and, even with the decline in the borrower's creditworthiness, cash flow is sufficient at this time to make payments, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender determined that the renewed loan should not be reported as a TDR. While the borrower is experiencing some financial deterioration, the borrower is not *experiencing financial difficulties* as the borrower has sufficient cash flow to service the debt, and there is no history of default. The examiner concurred with the lender's TDR treatment.

Scenario 3: At maturity, the lender restructured the $13.6 million loan on a 12-month interest-only basis at a below market interest rate. The borrower has been sporadically delinquent on prior principal and interest payments. The borrower projects a DSC ratio of 1.10x based on the restructured interest-only terms. A review of the rent roll, which was available to the lender at the time of the restructuring, reflects the majority of tenants have short-term leases, with three leases expected to expire within the next three months. According to the lender, leasing has not improved since the restructuring as market conditions remain soft. Further, the borrower does not have an update as to whether the three expiring leases will renew at maturity; two of the tenants have moved to hybrid work-from-home arrangements. A recent appraisal provided a $14.5 million ''as stabilized'' market value for the property, resulting in a 94 percent LTV.

Classification: The lender internally graded the loan pass and is monitoring the credit. The examiner disagreed with the internal grade and classified the loan substandard due to the borrower's limited ability to service a below market interest rate loan on an interest-only basis, sporadic delinquencies, and an increase in the LTV based on an updated appraisal. In addition, there is lease rollover risk because three of the leases are expiring soon, which could further limit cash flow.

Nonaccrual Treatment: The lender maintained the loan on accrual status due to the positive cash flow and collateral margin. The examiner did not concur with this treatment as the loan was not restructured with reasonable repayment terms, and the borrower has not demonstrated the ability to amortize the loan and has limited capacity to service a below market interest rate on an interest-only basis. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

TDR Treatment: The lender reported the restructured loan as a TDR because the borrower is *experiencing financial difficulties* (the project's ongoing ability to generate sufficient cash flow to service the debt is questionable as lease income is declining, loan payments have been sporadic, leases are expiring with uncertainty as to renewal or replacement, and collateral values have declined) and the lender granted a *concession* by reducing the interest rate to a below market level and deferring principal payments. The examiner concurred with the lender's TDR treatment.

B. Income Producing Property—Retail Properties

Base Case: A lender originated a 36-month, $10 million loan for the construction of a shopping mall. The construction period was 24 months with a 12-month lease-up period to allow the borrower time to achieve stabilized occupancy before obtaining permanent financing. The loan had an interest reserve to cover interest payments over the three-year term. At the end of the third year, there is $10 million outstanding on the loan, as the shopping mall has been built and the interest reserve, which has been covering interest payments, has been fully drawn.

At the time of origination, the appraisal reported an ''as stabilized'' market value of $13.5 million for the property. In addition, the borrower had a take-out commitment that would provide permanent financing at maturity. A condition of the take-out lender was that the shopping mall had to achieve a 75 percent occupancy level.

Due to weak economic conditions and a shift in consumer behavior to a greater reliance on e-commerce, the property only reached a 55 percent occupancy level at the end of the 12-month lease up period. As a result, the original takeout commitment became void. In addition, there has been a considerable tightening of credit for these types of loans, and the borrower has been unable to obtain permanent financing elsewhere since the loan matured. To date, the few interested lenders are demanding significant equity contributions and much higher pricing.

Scenario 1: The lender renewed the loan for an additional 12 months to provide the

[25] In relation to comments on valuations within these examples, refer to the appraisal regulations of the applicable Federal financial institution supervisory agency to determine whether there is a regulatory requirement for either an evaluation or appraisal. See footnote 18.

borrower time for higher lease-up and to obtain permanent financing. The extension was made at a market interest rate that provides for the incremental risk and is on an interest-only basis. While the property's historical cash flow was insufficient at a 0.92x debt service ratio, recent improvements in the occupancy level now provide adequate coverage based on the interest-only payments. Recent events include the signing of several new leases with additional leases under negotiation; however, takeout financing continues to be tight in the market.

In addition, current financial statements reflect that the builder, who personally guarantees the debt, has cash on deposit at the lender plus other unencumbered liquid assets. These assets provide sufficient cash flow to service the borrower's global debt service requirements on a principal and interest basis, if necessary, for the next 12 months. The guarantor covered the initial cash flow shortfalls from the project and provided a good faith principal curtailment of $200,000 at renewal, reducing the loan balance to $9.8 million. A recent appraisal on the shopping mall reports an ''as is'' market value of $10 million and an ''as stabilized'' market value of $11 million, resulting in LTVs of 98 percent and 89 percent, respectively.

Classification: The lender internally graded the loan as a pass and is monitoring the credit. The examiner disagreed with the lender's internal loan grade and listed it as special mention. While the project continues to lease up, cash flows cover only the interest payments. The guarantor has the ability, and has demonstrated the willingness, to cover cash flow shortfalls; however, there remains considerable uncertainty surrounding the takeout financing for this type of loan.

Nonaccrual Treatment: The lender maintained the loan on accrual status as the guarantor has sufficient funds to cover the borrower's global debt service requirements over the one-year period of the renewed loan. Full repayment of principal and interest is reasonably assured from the project's and guarantor's cash resources, despite a decline in the collateral margin. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender concluded that while the borrower has been affected by declining economic conditions and a shift to e-commerce, the deterioration has not led to financial difficulties. The borrower was not *experiencing financial difficulties* because the borrower and guarantor have the ability to service the renewed loan, which was underwritten at a market interest rate, plus the borrower's other obligations on a timely basis. In addition, the lender expects to collect the full amount of principal and interest from the borrower's or guarantor's cash sources (*i.e.,* not from interest reserves). Therefore, the lender is not treating the loan renewal as a TDR. The examiner concurred with the lender's rationale that the loan renewal is not a TDR.

Scenario 2: The lender restructured the loan on an interest-only basis at a below market interest rate for one year to provide additional time to increase the occupancy level and, thereby, enable the borrower to arrange permanent financing. The level of lease-up remains relatively unchanged at 55 percent, and the shopping mall projects a DSC ratio of 1.02x based on the preferential loan terms. At the time of the restructuring, the lender used outdated financial information, which resulted in a positive cash flow projection. However, other file documentation available at the time of the restructuring reflected that the borrower anticipates the shopping mall's revenue stream will further decline due to rent concessions, the loss of a tenant, and limited prospects for finding new tenants.

Current financial statements indicate the builder, who personally guarantees the debt, cannot cover any cash flow shortfall. The builder is highly leveraged, has limited cash or unencumbered liquid assets, and has other projects with delinquent payments. A recent appraisal on the shopping mall reports an ''as is'' market value of $9 million, which results in an LTV ratio of 111 percent.

Classification: The lender internally classified the loan as substandard. The examiner disagreed with the internal grade and classified the amount not protected by the collateral value, $1 million, as loss and required the lender to charge-off this amount. The examiner did not factor costs to sell into the loss classification analysis, as the current source of repayment is not reliant on the sale of the collateral. The examiner classified the remaining loan balance, based on the property's ''as is'' market value of $9 million, as substandard given the borrower's uncertain repayment capacity and weak financial support.

Nonaccrual Treatment: The lender determined the loan did not warrant being placed in nonaccrual status. The examiner did not concur with this treatment because the partial charge-off is indicative that full collection of principal is not anticipated, and the lender has continued exposure to additional loss due to the project's insufficient cash flow and reduced collateral margin and the guarantor's inability to provide further support. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

TDR Treatment: The lender reported the restructured loan as a TDR because (a) the borrower is *experiencing financial difficulties* as evidenced by the high leverage, delinquent payments on other projects, and inability to meet the proposed exit strategy because of the inability to lease the property in a reasonable timeframe; and (b) the lender granted a *concession* as evidenced by the reduction in the interest rate to a below market interest rate. The examiner concurred with the lender's TDR treatment.

Scenario 3: The loan has become delinquent. Recent financial statements indicate the borrower and the guarantor have minimal other resources available to support this loan. The lender chose not to restructure the $10 million loan into a new single amortizing note of $10 million at a market interest rate because the project's projected cash flow would only provide a 0.88x DSC ratio as the borrower has been unable to lease space. A recent appraisal on the shopping mall reported an ''as is'' market value of $7 million, which results in an LTV of 143 percent.

At the original loan's maturity, the lender restructured the $10 million debt into two notes. The lender placed the first note of $7 million (*i.e.,* the Note A) on monthly payments that amortize the debt over 20 years at a market interest rate that provides for the incremental risk. The project's DSC ratio equals 1.20x for the $7 million loan based on the shopping mall's projected net operating income. The lender then charged-off the $3 million note due to the project's lack of repayment capacity and to provide reasonable collateral protection for the remaining on-book loan of $7 million. The lender also reversed accrued but unpaid interest. The lender placed the second note (*i.e.,* the Note B) consisting of the charged-off principal balance of $3 million into a 2 percent interest-only loan that resets in five years into an amortizing payment. Since the restructuring, the borrower has made payments on both loans for more than six consecutive months and an updated financial analysis shows continued ability to repay under the new terms.

Classification: The lender internally graded the on-book loan of $7 million as a pass loan due to the borrower's demonstrated ability to perform under the modified terms. The examiner agreed with the lender's grade as the lender restructured the original obligation into Notes A and B, the lender charged off Note B, and the borrower has demonstrated the ability to repay Note A. Using this multiple note structure with charge-off of the Note B enables the lender to recognize interest income and limit the amount reported as a TDR in future periods.

Nonaccrual Treatment: The lender placed the on-book loan (Note A) of $7 million loan in nonaccrual status at the time of the restructure. The lender later restored the $7 million to accrual status as the borrower has the ability to repay the loan, has a record of performing at the revised terms for more than six months, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment. Interest payments received on the off-book loan have been recorded as recoveries because full recovery of principal and interest on this loan (Note B) was not reasonably assured.

TDR Treatment: The lender considered both Note A and Note B as TDRs because the borrower is *experiencing financial difficulties* and the lender granted a *concession.* The lender reported the restructured on-book loan (Note A) of $7 million as a TDR, while the second loan (Note B) was charged off. The financial difficulties are evidenced by the borrower's high leverage, delinquent payments on other projects, inability to lease the property in a reasonable timeframe, and the unlikely collectability of the charged-off loan (Note B). The concessions on Note A include extending the on-book loan beyond expected timeframes.

The lender plans to stop disclosing the on-book loan as a TDR after the regulatory reporting defined time period expires because the loan was restructured with a market interest rate and is in compliance

with its modified terms.[26] The examiner agreed with the lender's TDR treatment.

Scenario 4: Current financial statements indicate the borrower and the guarantor have minimal other resources available to support this loan. The lender restructured the $10 million loan into a new single note of $10 million at a market interest rate that provides for the incremental risk and is on an amortizing basis. The project's projected cash flow reflects a 0.88x DSC ratio as the borrower has been unable to lease space. A recent appraisal on the shopping mall reports an ''as is'' market value of $9 million, which results in an LTV of 111 percent. Based on the property's current market value of $9 million, the lender charged-off $1 million immediately after the renewal.

Classification: The lender internally graded the remaining $9 million on-book portion of the loan as a pass loan because the lender's analysis of the project's cash flow indicated a 1.05x DSC ratio when just considering the on-book balance. The examiner disagreed with the internal grade and classified the $9 million on-book balance as substandard due to the borrower's marginal financial condition, lack of guarantor support, and uncertainty over the source of repayment. The DSC ratio remains at 0.88x due to the single note restructure, and other resources are scant.

Nonaccrual Treatment: The lender maintained the remaining $9 million on-book portion of the loan on accrual, as the borrower has the ability to repay the principal and interest on this balance. The examiner did not concur with this treatment. Because the lender restructured the debt into a single note and had charged-off a portion of the restructured loan, the repayment of the principal and interest contractually due on the entire debt is not reasonably assured given the DSC ratio of 0.88x and nominal other resources. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

The loan can be returned to accrual status[27] if the lender can document that subsequent improvement in the borrower's financial condition has enabled the loan to be brought fully current with respect to principal and interest and the lender expects the contractual balance of the loan (including the partial charge-off) will be fully collected. In addition, interest income may be recognized on a cash basis for the partially charged-off portion of the loan when the remaining recorded balance is considered fully collectible. However, the partial charge-off cannot be reversed.

TDR Treatment: The lender reported the restructured loan as a TDR according to the requirements of its regulatory reports because (a) the borrower is *experiencing financial difficulties* as evidenced by the high leverage, delinquent payments on other projects, and inability to meet the original exit strategy because the borrower was unable to lease the property in a reasonable timeframe; and (b) the lender granted a *concession* as evidenced by deferring payment beyond the repayment ability of the borrower. The charge-off indicates that the lender does not expect full repayment of principal and interest, yet the borrower remains obligated for the full amount of the debt and payments, which is at a level that is not consistent with the borrower's repayment capacity. Because the borrower is not expected to be able to comply with the loan's restructured terms, the lender would likely continue to disclose the loan as a TDR. The examiner concurs with reporting the renewed loan as a TDR.

C. Income Producing Property—Hotel

Base Case: A lender originated a $7.9 million loan to provide permanent financing for the acquisition of a stabilized 3-star hotel property. The borrower is a limited liability company with underlying ownership by two families who guarantee the loan. The loan term is five years, with payments based on a 25-year amortization and with a market interest rate. The LTV was 79 percent based on the hotel's appraised value of $10 million.

At the end of the five-year term, the borrower's annualized DSC ratio was 0.95x. Due to competition from a well-known 4-star hotel that recently opened within one mile of the property, occupancy rates have declined. The borrower progressively reduced room rates to maintain occupancy rates, but continued to lose daily bookings. Both occupancy and Revenue per Available Room (RevPAR)[28] declined significantly over the past year. The borrower then began working on an initiative to make improvements to the property (*i.e.,* automated key cards, carpeting, bedding, and lobby renovations) to increase competitiveness, and a marketing campaign is planned to announce the improvements and new price structure.

The borrower had paid principal and interest as agreed throughout the first five years, and the principal balance had reduced to $7 million at the end of the five-year term.

Scenario 1: At maturity, the lender renewed the loan for 12 months on an interest-only basis at a market interest rate that provides for the incremental risk. The extension was granted to enable the borrower to complete the planned renovations, launch the marketing campaign, and achieve the borrower's updated projections for sufficient cash flow to service the debt once the improvements are completed. (If the initiative is successful, the loan officer expects the loan to either be renewed on an amortizing basis or refinanced through another lending entity.) The borrower has a verified, pledged reserve account to cover the improvement expenses. Additionally, the guarantors' updated financial statements indicate that they have sufficient unencumbered liquid assets. Further, the guarantors expressed the willingness to cover any estimated cash flow shortfall through maturity. Based on this information, the lender's analysis indicates that, after deductions for personal obligations and realistic living expenses and verification that there are no contingent liabilities, the guarantors should be able to make interest payments. To date, interest payments have been timely. The lender estimates the property's current ''as stabilized'' market value at $9 million, which results in a 78 percent LTV.

Classification: The lender internally graded the loan as a pass and is monitoring the credit. The examiner agreed with the lender's internal loan grade. The examiner concluded that the borrower and guarantors have sufficient resources to support the interest payments; additionally, the borrower's reserve account is sufficient to complete the renovations as planned.

Nonaccrual Treatment: The lender maintained the loan on accrual status as full repayment of principal and interest is reasonably assured from the hotel's and guarantors cash flows, despite a decline in the borrower's cash flow due to competition. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender concluded that while the borrower has been affected by competition, the level of deterioration does not warrant TDR treatment. The borrower was not *experiencing financial difficulties* because the combined cash flow generated by the borrower and the liquidity provided by the guarantors should be sufficient to service the debt. Further, there was no history of default by the borrower or guarantors. The examiner concurred with the lender that the loan renewal is not a TDR.

Scenario 2: At maturity of the original loan, the lender restructured the loan on an interest-only basis at a below market interest rate for 12 months to provide the borrower time to complete its renovation and marketing efforts and increase occupancy levels. At the end of the 12-month period, the hotel's renovation and marketing efforts were completed but unsuccessful. The hotel continued to experience a decline in occupancy levels, resulting in a DSC ratio of 0.60x. The borrower does not have capacity to offer additional incentives to lure customers from the competition. RevPAR has also declined. Current financial information indicates the borrower has limited ability to continue to make interest payments, and updated projections indicate that the borrower will be below break-even performance for the next 12 months. The borrower has been sporadically delinquent on prior interest payments. The guarantors are unable to support the loan as they have unencumbered limited liquid assets and are highly leveraged. The lender is in the process of renewing the loan again.

The most recent hotel appraisal, dated as of the time of the first restructuring, reports an ''as stabilized'' appraised value of $7.2 million ($6.7 million for the real estate and $500,000 for the tangible personal property of furniture, fixtures, and equipment), resulting in an LTV of 97 percent. The appraisal does not account for the diminished occupancy, and its assumptions significantly differ from current projections. A new valuation is needed to ascertain the current value of the property.

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed

[26] Refer to the guidance on ''Troubled debt restructurings'' in the FFIEC Call Report.

[27] Refer to the guidance on ''nonaccrual status'' in the FFIEC Call Report.

[28] Total guest room revenue divided by room count and number of days in the period.

with the lender's treatment due to the borrower's diminished ongoing ability to make payments, guarantors' limited ability to support the loan, and the reduced collateral position. The lender is obtaining a new valuation and will adjust the internal classification, if necessary, based on the updated value.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the borrower demonstrated an ability to make interest payments. The examiner did not concur with this treatment as the loan was not restructured on reasonable repayment terms, the borrower has insufficient cash resources to service the below market interest rate on an interest-only basis, and the collateral margin has narrowed and may be narrowed further with a new valuation, which collectively indicate that full repayment of principal and interest is in doubt. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

TDR Treatment: The lender reported the restructured loan as a TDR because the borrower is *experiencing financial difficulties:* the hotel's ability to generate sufficient cash flows to service the debt is questionable as the occupancy levels and resultant net operating income (NOI) continue to decline, the borrower has been delinquent, and collateral value has declined. The lender made a *concession* by extending the loan on an interest-only basis at a below market interest rate. The examiner concurred with the lender's TDR treatment.

Scenario 3: At maturity of the original loan, the lender restructured the debt for one year on an interest-only basis at a below market interest rate to give the borrower additional time to complete renovations and increase marketing efforts. While the combined borrower/guarantors' liquidity indicated they could cover any cash flow shortfall until maturity of the restructured note, the borrower only had 50 percent of the funds to complete its renovations in reserve. Subsequently, the borrower attracted a sponsor to obtain the remaining funds necessary to complete the renovation plan and marketing campaign. Eight months later, the hotel experienced an increase in its occupancy and achieved a DSC ratio of 1.20x on an amortizing basis. Updated projections indicated the borrower would be at or above the 1.20x DSC ratio for the next 12 months, based on market terms and rate. The borrower and the lender then agreed to restructure the loan again with monthly payments that amortize the debt over 20 years, consistent with the current market terms and rates. Since the date of the second restructuring, the borrower has made all principal and interest payments as agreed for six consecutive months.

Classification: The lender internally classified the most recent restructured loan substandard. The examiner agreed with the lender's initial substandard grade at the time of the subject restructuring, but now considers the loan as a pass as the borrower was no longer having financial difficulty and has demonstrated the ability to make payments according to the modified principal and interest terms for more than six consecutive months.

Nonaccrual Treatment: The original restructured loan was placed in nonaccrual status. The lender initially maintained the most recent restructured loan in nonaccrual status as well, but returned it to an accruing status after the borrower made six consecutive monthly principal and interest payments. The lender expects full repayment of principal and interest. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender reported the first restructuring as a TDR. With the first restructuring, the lender determined that the borrower was *experiencing financial difficulties* as indicated by depleted cash resources and deteriorating financial condition. The lender granted a *concession* on the first restructuring by providing a below market interest rate. At the time of the second restructuring, the borrower's financial condition had improved, and the borrower was no longer experiencing financial difficulty; the lender did not grant a *concession* on the second restructuring as the renewal was granted at a market interest rate and amortizing terms, thus the latest restructuring is no longer classified as a TDR. The examiner concurred with the lender.

Scenario 4: The lender extended the original amortizing loan for 12 months at a market interest rate. The borrower is now experiencing a six-month delay in completing the renovations due to a conflict with the contractor hired to complete the renovation work, and the current DSC ratio is 0.85x. A current valuation has not been ordered. The lender estimates the property's current ''as stabilized'' market value is $7.8 million, which results in an estimated 90 percent LTV. The lender did receive updated projections, but the borrower is now unlikely to achieve break-even cash flow within the 12-month extension timeframe due to the renovation delays. At the time of the extension, the borrower and guarantors had sufficient liquidity to cover the debt service during the twelve-month period. The guarantors also demonstrated a willingness to support the loan by making payments when necessary, and the loan has not gone delinquent. With the guarantors' support, there is sufficient liquidity to make payments to maturity, though such resources are declining rapidly

Classification: The lender internally graded the loan as pass and is monitoring the credit. The examiner disagreed with the lender's grading and listed the loan as special mention. While the borrower and guarantor can cover the debt service shortfall in the near-term, the duration of their support may not extend long enough to replace lost cash flow from operations due to delays in the renovation work. The primary source of repayment does not fully cover the loan as evidenced by a DSC ratio of 0.85x. It appears that competition from the new hotel will continue to adversely affect the borrower's cash flow until the renovations are complete, and if cash flow deteriorates further, the borrower and guarantors may be required to use more liquidity to support loan payments and ongoing business operations. The examiner also recommended the lender obtain a new valuation.

Nonaccrual Treatment: The lender maintained the loan on accrual status. The borrower and legally obligated guarantors have demonstrated the ability and willingness to make the regularly scheduled payments and, even with the decline in the borrower's creditworthiness, global cash resources appear sufficient to make these payments, and the ultimate full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

TDR Treatment: While the borrower is experiencing some financial deterioration, the borrower is not *experiencing financial difficulties* as the borrower and guarantors have sufficient cash resources to service the debt. The lender expects full collection of principal and interest from the borrower's operating income and global cash resources. The examiner concurred with the lender's rationale that the loan is not a TDR.

D. Acquisition, Development and Construction—Residential

Base Case: The lender originated a $4.8 million acquisition and development (A&D) loan and a $2.4 million construction revolving line of credit (revolver) for the development and construction of a 48-lot single-family project. The maturity for both loans is three years, and both are priced at a market interest rate; both loans also have an interest reserve. The LTV on the A&D loan is 75 percent based on an ''as complete'' value of $6.4 million. Up to 12 units at a time will be funded under the construction revolver at the lesser of 80 percent LTV or 100 percent of costs. The builder is allowed two speculative (''spec'') units (including one model). The remaining units must be pre-sold with an acceptable deposit and a pre-qualified mortgage. As units are settled, the construction revolver will be repaid at 100 percent (or par); the A&D loan will be repaid at 120 percent, or $120,000 ($4.8 million/48 units × 120 percent). The average sales price is projected to be $500,000, and total construction cost to build each unit is estimated to be $200,000. Assuming total cost is lower than value, the average release price will be $320,000 ($120,000 A&D release price plus $200,000 construction costs).

Estimated time for development is 12 months; the appraiser estimated absorption of two lots per month for total sell-out to occur within three years (thus, the loan would be repaid upon settlement of the 40th unit, or the 32nd month of the loan term). The borrower is required to curtail the A&D loan by six lots, or $720,000, at the 24th month, and another six lots, or $720,000, by the 30th month.

Scenario 1: Due to issues with the permitting and approval process by the county, the borrower's development was delayed by 18 months. Further delays occurred because the borrower was unable to pave the necessary roadways due to excessive snow and freezing temperatures. The lender waived both $720,000 curtailment requirements due to the delays. Demand for the housing remains unchanged.

At maturity, the lender renewed the $4.8 million outstanding A&D loan balance and the $2.4 million construction revolver for 24

months at a market interest rate that provides for the incremental risk. The interest reserve for the A&D loan has been depleted as the lender had continued to advance funds to pay the interest charges despite the delays in development. Since depletion of the interest reserve, the borrower has made the last several payments out-of-pocket.

Development is now complete, and construction has commenced on eight units (two ''spec'' units and six pre-sold units). Combined borrower and guarantor liquidity show they can cover any debt service shortfall until the units begin to settle and the project is cash flowing. The lender estimates that the property's current ''as complete'' value is $6 million, resulting in an 80 percent LTV. The curtailment schedule was re-set to eight lots, or $960,000, by month 12, and another eight lots, or $960,000, by month 18. A new appraisal has not been ordered; however, the lender noted in the file that, if the borrower does not meet the absorption projections of six lots/quarter within six months of booking the renewed loan, the lender will obtain a new appraisal.

Classification: The lender internally graded the restructured loans as pass and is monitoring the credits. The examiner agreed, as the borrower and guarantor can continue making payments on reasonable terms and the project is moving forward supported by housing demand and is consistent with the builder's development plans. However, the examiner noted weaknesses in the lender's loan administrative practices as the financial institution did not (1) suspend the interest reserve during the development delay and (2) obtain an updated collateral valuation.

Nonaccrual Treatment: The lender maintained the loans on accrual status. The project is moving forward, the borrower has demonstrated the ability to make the regularly scheduled payments after depletion of the interest reserve, global cash resources from the borrower and guarantor appears sufficient to make these payments, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The borrower is not *experiencing financial difficulties* as the borrower and guarantor have sufficient means to service the debt, and there is no history of default. With the continued supportive housing market conditions, the lender expects full collection of principal and interest from sales of the lots. The examiner concurred with the lender's rationale that the renewal is not a TDR.

Scenario 2: Due to weather and contractor issues, development was not completed until month 24, a year behind the original schedule. The borrower began pre-marketing, but sales have been slow due to deteriorating market conditions in the region. The borrower has achieved only eight pre-sales during the past six months. The borrower recently commenced construction on the pre-sold units.

At maturity, the lender renewed the $4.8 million A&D loan balance and $2.4 million construction revolver on a 12-month interest-only basis at a market interest rate, with another 12-month option predicated upon $1 million in curtailments having occurred during the first renewal term (the lender had waived the initial term curtailment requirements). The lender also renewed the construction revolver for a one-year term and reduced the number of ''spec'' units to just one, which also will serve as the model. A recent appraisal estimates that absorption has dropped to four lots per quarter for the first two years and assigns an ''as complete'' value of $5.3 million, for an LTV of 91 percent. The interest reserve is depleted, and the borrower has been paying interest out-of-pocket for the past few months. Updated borrower and guarantor financial statements indicate the continued ability to cover interest-only payments for the next 12 to 18 months.

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the deterioration and uncertainty surrounding the market (as evidenced by slower than anticipated sales on the project), the lack of principal reduction, and the reduced collateral margin.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the development is complete, the borrower has pre-sales and construction has commenced, and the borrower and guarantor have sufficient means to make interest payments at a market interest rate until the earlier of maturity or the project begins to cash flow. The examiner concurred with the lender's accrual treatment.

TDR Treatment: While the borrower is experiencing some financial deterioration, the borrower is not *experiencing financial difficulties* as the borrower and guarantor have sufficient means to service the debt. The lender expects full collection of principal and interest from the sale of the units. The examiner concurred with the lender's rationale that the renewal is not a TDR.

Scenario 3: Lot development was completed on schedule, and the borrower quickly sold and settled the first 10 units. At maturity, the lender renewed the $3.6 million A&D loan balance ($4.8 million reduced by the sale and settlement of the 10 units ($120,000 release price × 10) to arrive at $3.6 million) and $2.4 million construction revolver on a 12-month interest-only basis at a below market interest rate.

The borrower then sold an additional 10 units to an investor; the loan officer (new to the financial institution) mistakenly marked these units as pre-sold and allowed construction to commence on all 10 units. Market conditions then deteriorated quickly, and the investor defaulted under the terms of the bulk contract. The units were completed, but the builder has been unable to re-sell any of the units, recently dropping the sales price by 10 percent and engaging a new marketing firm, which is working with several potential buyers.

A recent appraisal estimates that absorption has dropped to three lots per quarter and assigns an ''as complete'' value of $2.3 million for the remaining 28 lots, resulting in an LTV of 156 percent. A bulk appraisal of the 10 units assigns an ''as-is'' value of the units of $4.0 million ($400,000/unit). The loans are cross-defaulted and cross-collateralized; the LTV on a combined basis is 95 percent ($6 million outstanding debt (A&D plus revolver) divided by $6.3 million in combined collateral value). Updated borrower and guarantor financial statements indicate a continued ability to cover interest-only payments for the next 12 months at the reduced rate; however, this may be limited in the future given other troubled projects in the borrower's portfolio that have been affected by market conditions.

The lender modified the release price for each unit to net proceeds; any additional proceeds as units are sold will go towards repayment of the A&D loan. Assuming the units sell at a 10 percent reduction, the lender calculates the average sales price would be $450,000. The financial institution's prior release price was $320,000 ($120,000 for the A&D loan and $200,000 for the construction revolver). As such (by requiring net proceeds), the financial institution will be receiving an additional $130,000 per lot, or $1.3 million for the completed units, to repay the A&D loan ($450,000 average sales price less $320,000 bank's release price equals $130,000). Assuming the borrower will have to pay $30,000 in related sales/settlement costs leaves approximately $100,000 remaining per unit to apply towards the A&D loan, or $1 million total for the remaining 10 units ($100,000 times 10).

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the borrower and guarantor's diminished ability to make interest payments (even at the reduced rate), the stalled status of the project, and the reduced collateral protection.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the borrower had previously demonstrated an ability to make interest payments. The examiner disagreed as the loan was not restructured on reasonable repayment terms. While the borrower and guarantor may be able to service the debt at a below market interest rate in the near term using other unencumbered liquid assets, other projects in their portfolio are also affected by poor market conditions and may require significant liquidity contributions, which could affect their ability to support the loan. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

TDR Treatment: The lender reported the restructured loan as a TDR because the borrower is *experiencing financial difficulties* as evidenced by the borrower's inability to re-sell the units, their diminished ability to make interest payments (even at a reduced rate), and other troubled projects in the borrower's portfolio. The lender granted a *concession* with the interest-only terms at a below market interest rate. The examiner concurred with the lender's TDR treatment.

E. Construction Loan—Single Family Residence

Base Case: The lender originated a $1.2 million construction loan on a single-family ''spec'' residence with a 15-month maturity to allow for completion and sale of the property. The loan required monthly interest-

only payments at a market interest rate and was based on an ''as completed'' LTV of 70 percent at origination. During the original loan construction phase, the borrower was able to make all interest payments from personal funds. At maturity, the home had been completed, but not sold, and the borrower was unable to find another lender willing to finance this property under similar terms.

Scenario 1: At maturity, the lender restructured the loan for one year on an interest-only basis at a below market interest rate to give the borrower more time to sell the ''spec'' home. Current financial information indicates the borrower has limited ability to continue to make interest-only payments from personal funds. If the residence does not sell by the revised maturity date, the borrower plans to rent the home. In this event, the lender will consider modifying the debt into an amortizing loan with a 20-year maturity, which would be consistent with this type of income-producing investment property. Any shortfall between the net rental income and loan payments would be paid by the borrower. Due to declining home values, the LTV at the renewal date was 90 percent.

Classification: The lender internally classified the loan substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the borrower's diminished ongoing ability to make payments and the reduced collateral position.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the borrower demonstrated an ability to make interest payments during the construction phase. The examiner did not concur with this treatment because the loan was not restructured on reasonable repayment terms. The borrower had limited capacity to continue to service the debt, even on an interest-only basis at a below market interest rate, and the deteriorating collateral margin indicated that full repayment of principal and interest was not reasonably assured. The examiner instructed the lender to place the loan in nonaccrual status.

TDR Treatment: The lender reported the restructured loan as a TDR. The borrower was *experiencing financial difficulties* as indicated by depleted cash reserves, inability to refinance this debt from other sources with similar terms, and the inability to repay the loan at maturity in a manner consistent with the original exit strategy. A *concession* was provided by renewing the loan with a deferral of principal payments, at a below market interest rate (compared to the rate charged on an investment property) for an additional year when the loan was no longer in the construction phase. The examiner concurred with the lender's TDR treatment.

Scenario 2: At maturity of the original loan, the lender restructured the debt for one year on an interest-only basis at a below market interest rate to give the borrower more time to sell the ''spec'' home. Eight months later, the borrower rented the property. At that time, the borrower and the lender agreed to restructure the loan again with monthly payments that amortize the debt over 20 years at a market interest rate for a residential investment property. Since the date of the second restructuring, the borrower had made all payments for over six consecutive months.

Classification: The lender internally classified the restructured loan substandard. The examiner agreed with the lender's initial substandard grade at the time of the restructuring, but now considered the loan as a pass due to the borrower's demonstrated ability to make payments according to the reasonably modified terms for more than six consecutive months.

Nonaccrual Treatment: The lender initially placed the restructured loan in nonaccrual status but returned it to accrual after the borrower made six consecutive monthly payments. The lender expects full repayment of principal and interest from the rental income. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender reported the first restructuring as a TDR. At the time of the first restructure, the lender determined that the borrower was *experiencing financial difficulties* as indicated by depleted cash resources and a weak financial condition. The lender granted a *concession* on the first restructuring as evidenced by the below market rate.

At the second restructuring, the lender determined that the borrower was not *experiencing financial difficulties* due to the borrower's improved financial condition. Further, the lender did not grant a *concession* on the second restructuring as that loan is at market interest rate and terms. Therefore, the lender determined that the second restructuring is no longer a TDR. The examiner concurred with the lender.

Scenario 3: The lender restructured the loan for one year on an interest-only basis at a below market interest rate to give the borrower more time to sell the ''spec'' home. The restructured loan has become more than 90 days past due, and the borrower has not been able to rent the property. Based on current financial information, the borrower does not have the capacity to service the debt. The lender considers repayment to be contingent upon the sale of the property. Current market data reflects few sales, and similar new homes in this property's neighborhood are selling within a range of $750,000 to $900,000 with selling costs equaling 10 percent, resulting in anticipated net sales proceeds between $675,000 and $810,000.

Classification: The lender graded $390,000 loss ($1.2 million loan balance less the maximum estimated net sales proceeds of $810,000), $135,000 doubtful based on the range in the anticipated net sales proceeds, and the remaining balance of $675,000 substandard. The examiner agreed, as this classification treatment results in the recognition of the credit risk in the collateral-dependent loan based on the property's value less costs to sell. The examiner instructed management to obtain information on the current valuation on the property.

Nonaccrual Treatment: The lender placed the loan in nonaccrual status when it became 60 days past due (reversing all accrued but unpaid interest) because the lender determined that full repayment of principal and interest was not reasonably assured. The examiner concurred with the lender's nonaccrual treatment.

TDR Treatment: The lender reported the loan as a TDR until foreclosure of the property and its transfer to other real estate owned. The lender determined that the borrower was continuing to *experience financial difficulties* as indicated by depleted cash reserves, inability to refinance this debt from other sources with similar terms, and the inability to repay the loan at maturity in a manner consistent with the original exit strategy. In addition, the lender granted a *concession* by reducing the interest rate to a below market level. The examiner concurred with the lender's TDR treatment.

Scenario 4: The lender committed an additional $48,000 for an interest reserve and extended the $1.2 million loan for 12 months at a below market interest rate with monthly interest-only payments. At the time of the examination, $18,000 of the interest reserve had been added to the loan balance. Current financial information obtained during the examination reflects the borrower has no other repayment sources and has not been able to sell or rent the property. An updated appraisal supports an ''as is'' value of $952,950. Selling costs are estimated at 15 percent, resulting in anticipated net sales proceeds of $810,000.

Classification: The lender internally graded the loan as pass and is monitoring the credit. The examiner disagreed with the internal grade. The examiner concluded that the loan was not restructured on reasonable repayment terms because the borrower has limited capacity to service the debt, and the reduced collateral margin indicated that full repayment of principal and interest was not assured. After discussing regulatory reporting requirements with the examiner, the lender reversed the $18,000 interest capitalized out of the loan balance and interest income. Further, the examiner classified $390,000 loss based on the adjusted $1.2 million loan balance less estimated net sales proceeds of $810,000, which was classified substandard. This classification treatment recognizes the credit risk in the collateral-dependent loan based on the property's market value less costs to sell. The examiner also provided supervisory feedback to management for the inappropriate use of interest reserves and lack of current financial information in making that decision. The remaining interest reserve of $30,000 is not subject to adverse classification because the loan should be placed in nonaccrual status.

Nonaccrual Treatment: The lender maintained the loan on accrual status. The examiner did not concur with this treatment. The loan was not restructured on reasonable repayment terms, the borrower has limited capacity to service a below market interest rate on an interest-only basis, and the reduced collateral margin indicates that full repayment of principal and interest is not assured. The lender's decision to provide a $48,000 interest reserve was not supported, given the borrower's inability to repay it. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual, and reversed the capitalized interest to be consistent with

regulatory reporting instructions. The lender also agreed to not recognize any further interest income from the interest reserve.

TDR Treatment: The lender reported the restructured loan as a TDR. The borrower is *experiencing financial difficulties* as indicated by depleted cash reserves, inability to refinance this debt from other sources with similar terms, and the inability to repay the loan at maturity in a manner consistent with the original exit strategy. A *concession* was provided by renewing the loan with a deferral of principal payments, at a below market interest rate (compared to other investment properties) for an additional year when the loan was no longer in the construction phase. The examiner concurred with the lender's TDR treatment.

F. Construction Loan—Land Acquisition, Condominium Construction and Conversion

Base Case: The lender originally extended a $50 million loan for the purchase of vacant land and the construction of a luxury condominium project. The loan was interest-only and included an interest reserve to cover the monthly payments until construction was complete. The developer bought the land and began construction after obtaining purchase commitments for ⅓ of the 120 planned units, or 40 units. Many of these pending sales were speculative with buyers committing to buy multiple units with minimal down payments. The demand for luxury condominiums in general has declined since the borrower launched the project, and sales have slowed significantly over the past year. The lack of demand is attributed to a slowdown in the economy. As a result, most of the speculative buyers failed to perform on their purchase contracts and only a limited number of the other planned units have been pre-sold.

The developer experienced cost overruns on the project and subsequently determined it was in the best interest to halt construction with the property 80 percent completed. The outstanding loan balance is $44 million with funds used to pay construction costs, including cost overruns and interest. The borrower estimates an additional $10 million is needed to complete construction. Current financial information reflects that the developer does not have sufficient cash flow to pay interest (the interest reserve has been depleted); and, while the developer does have equity in other assets, there is doubt about the borrower's ability to complete the project.

Scenario 1: The borrower agrees to grant the lender a second lien on an apartment project in its portfolio, which provides $5 million in additional collateral support. In return, the lender advanced the borrower $10 million to finish construction. The condominium project was completed shortly thereafter. The lender also agreed to extend the $54 million loan ($44 million outstanding balance plus $10 million in new money) for 12 months at a market interest rate that provides for the incremental risk, to give the borrower additional time to market the property. The borrower agreed to pay interest whenever a unit was sold, with any outstanding balance due at maturity.

The lender obtained a recent appraisal on the condominium building that reported a prospective ''as complete'' market value of $65 million, reflecting a 24-month sell-out period and projected selling costs of 15 percent of the sales price. Comparing the $54 million loan amount against the $65 million ''as complete'' market value plus the $5 million pledged in additional collateral (totaling $70 million) results in an LTV of 77 percent. The lender used the prospective ''as complete'' market value in its analysis and decision to fund the completion and sale of the units and to maximize its recovery on the loan.

Classification: The lender internally classified the $54 million loan as substandard due to the units not selling as planned and the project's limited ability to service the debt despite the 1.3x gross collateral margin. The examiner agreed with the lender's internal grade.

Nonaccrual Treatment: The lender maintained the loan on accrual status due to the protection afforded by the collateral margin. The examiner did not concur with this treatment due to the uncertainty about the borrower's ability to sell the units and service the debt, raising doubts as to the full repayment of principal and interest. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

TDR Treatment: The lender reported the restructured loan as a TDR because the borrower is *experiencing financial difficulties,* as demonstrated by the insufficient cash flow to service the debt, concerns about the project's viability, and, given current market conditions and project status, the unlikely possibility of refinance. In addition, the lender provided a *concession* by advancing additional funds to finish construction, deferring interest payments until a unit was sold, and deferring principal pay downs on any unsold units until the maturity date when any remaining accrued interest plus principal are due. The examiner concurred with the lender's TDR treatment.

Scenario 2: A recent appraisal of the property reflects that the highest and best use would be conversion to an apartment building. The appraisal reports a prospective ''as complete'' market value of $60 million upon conversion to an apartment building and a $67 million prospective ''as stabilized'' market value upon the property reaching stabilized occupancy. The borrower agrees to grant the lender a second lien on an apartment building in its portfolio, which provides $5 million in additional collateral support.

In return, the lender advanced the borrower $10 million, which is needed to finish construction and convert the project to an apartment complex. The lender also agreed to extend the $54 million loan for 12 months at a market interest rate that provides for the incremental risk, to give the borrower time to lease the apartments. Interest payments are deferred. The $60 million ''as complete'' market value plus the $5 million in other collateral results in an LTV of 83 percent. The prospective ''as complete'' market value is primarily relied on as the loan is funding the conversion of the condominium to apartment building.

Classification: The lender internally classified the $54 million loan as substandard due to the units not selling as planned and the project's limited ability to service the debt. The collateral coverage provides adequate support to the loan with a 1.2x gross collateral margin. The examiner agreed with the lender's internal grade.

Nonaccrual Treatment: The lender determined the loan should be placed in nonaccrual status due to an oversupply of units in the project's submarket, and the borrower's untested ability to lease the units and service the debt, raising concerns as to the full repayment of principal and interest. The examiner concurred with the lender's nonaccrual treatment.

TDR Treatment: The lender reported the restructured loan as a TDR as the borrower is *experiencing financial difficulties,* as demonstrated by the insufficient cash flow to service the debt, concerns about the project's viability, and, given current market conditions and project status, the unlikely possibility for the borrower to refinance at this time. In addition, the lender provided a *concession* by advancing additional funds to finish construction and deferring interest payments until the maturity date without a defined exit strategy. The examiner concurred with the lender's TDR treatment.

G. Commercial Operating Line of Credit in Connection With Owner Occupied Real Estate

Base Case: Two years ago, the lender originated a CRE loan at a market interest rate to a borrower whose business occupies the property. The loan was based on a 20-year amortization period with a balloon payment due in three years. The LTV equaled 70 percent at origination. A year ago, the lender financed a $5 million operating line of credit for seasonal business operations at market terms. The operating line of credit had a one-year maturity with monthly interest payments and was secured with a blanket lien on all business assets. Borrowings under the operating line of credit are based on accounts receivable that are reported monthly in borrowing base reports, with a 75 percent advance rate against eligible accounts receivable that are aged less than 90 days old. Collections of accounts receivable are used to pay down the operating line of credit. At maturity of the operating line of credit, the borrower's accounts receivable aging report reflected a growing trend of delinquency, causing the borrower temporary cash flow difficulties. The borrower has recently initiated more aggressive collection efforts.

Scenario 1: The lender renewed the $5 million operating line of credit for another year, requiring monthly interest payments at a market interest rate, and principal to be paid down by accounts receivable collections. The borrower's liquidity position has tightened but remains satisfactory, cash flow available to service all debt is 1.20x, and both loans have been paid according to the contractual terms. The primary repayment source for the operating line of credit is conversion of accounts receivable to cash. Although payments have slowed for some customers, most customers are paying within 90 days of invoice. The primary repayment source for the real estate loan is from business operations, which remain

satisfactory, and an updated appraisal is not considered necessary.

Classification: The lender internally graded both loans as pass and is monitoring the credits. The examiner agreed with the lender's analysis and the internal grades. The lender is monitoring the trend in the accounts receivable aging report and the borrower's ongoing collection efforts.

Nonaccrual Treatment: The lender determined that both the real estate loan and the renewed operating line of credit may remain on accrual status as the borrower has demonstrated an ongoing ability to perform, has the financial capacity to pay a market interest rate, and full repayment of principal and interest is reasonably assured. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender concluded that while the borrower has been affected by declining economic conditions, the renewal of the operating line of credit did not result in a TDR because the borrower is not *experiencing financial difficulties* and has the ability to repay both loans (which represent most of its outstanding obligations) at a market interest rate. The lender expects full collection of principal and interest from the collection of accounts receivable and the borrower's operating income. The examiner concurred with the lender's rationale that the loan renewal is not a TDR.

Scenario 2: The lender restructured the operating line of credit by reducing the line amount to $4 million, at a below market interest rate. This action is expected to alleviate the borrower's cash flow problem. The borrower is still considered to be a viable business even though its financial performance has continued to deteriorate, with sales and profitability declining. The trend in accounts receivable delinquencies is worsening, resulting in reduced liquidity for the borrower. Cash flow problems have resulted in sporadic over advances on the $4 million operating line of credit, where the loan balance exceeds eligible collateral in the borrowing base. The borrower's net operating income has declined but reflects the capacity to generate a 1.08x DSC ratio for both loans, based on the reduced rate of interest for the operating line of credit. The terms on the real estate loan remained unchanged. The lender estimated the LTV on the real estate loan to be 90 percent. The operating line of credit currently has sufficient eligible collateral to cover the outstanding line balance, but customer delinquencies have been increasing.

Classification: The lender internally classified both loans substandard due to deterioration in the borrower's business operations and insufficient cash flow to repay the debt at market terms. The examiner agreed with the lender's analysis and the internal grades. The lender will monitor the trend in the business operations, accounts receivable, profitability, and cash flow. The lender may need to order a new appraisal if the DSC ratio continues to fall and the overall collateral margin further declines.

Nonaccrual Treatment: The lender reported both the restructured operating line of credit and the real estate loan on a nonaccrual basis. The operating line of credit was not renewed on market interest rate repayment terms, the borrower has an increasingly limited capacity to service the below market interest rate debt, and there is insufficient support to demonstrate an ability to meet the new payment requirements. The borrower's ability to continue to perform on the operating line of credit and real estate loan is not assured due to deteriorating business performance caused by lower sales and profitability and higher customer delinquencies. In addition, the collateral margin indicates that full repayment of all of the borrower's indebtedness is questionable, particularly if the borrower fails to continue being a going concern. The examiner concurred with the lender's nonaccrual treatment.

TDR Treatment: The lender reported the restructured operating line of credit as a TDR because the borrower is *experiencing financial difficulties* (as evidenced by the borrower's sporadic over advances, an increasing trend in accounts receivable delinquencies, and uncertain ability to repay the loans) and the lender *granted a concession* on the line of credit through a below market interest rate. The lender concluded that the real estate loan should not be reported as TDR since that loan is performing and had not been restructured. The examiner concurred with the lender's TDR treatments.

H. Land Loan

Base Case: Three years ago, the lender originated a $3.25 million loan to a borrower for the purchase of raw land that the borrower was seeking to have zoned for residential use. The loan terms were three years interest-only at a market interest rate; the borrower had sufficient funds to pay interest from cash flow. The appraisal at origination assigned an ''as is'' market value of $5 million, which resulted in a 65 percent LTV. The zoning process took longer than anticipated, and the borrower did not obtain full approvals until close to the maturity date. Now that the borrower successfully obtained the residential zoning, the borrower has been seeking construction financing to repay the land loan. At maturity, the borrower requested a 12-month extension to provide additional time to secure construction financing which would include repayment of the subject loan.

Scenario 1: The borrower provided the lender with current financial information, demonstrating the continued ability to make monthly interest payments and principal curtailments of $150,000 per quarter. Further, the borrower made a principal payment of $250,000 in exchange for a 12-month extension of the loan. The borrower also owned an office building with an ''as stabilized'' market value of $1 million and pledged the property as additional unencumbered collateral, granting the lender a first lien. The borrower's personal financial information also demonstrates that cash flow from personal assets and the rental income generated by the newly pledged office building are sufficient to fully amortize the land loan over a reasonable period. A decline in market value since origination was due to a change in density; the project was originally intended as 60 lots but was subsequently zoned as 25 single-family lots because of a change in the county's approval process. A recent appraisal of the raw land reflects an ''as is'' market value of $3 million, which results in a 75 percent LTV when combined with the additional collateral and after the principal reduction. The lender restructured the loan into a $3 million loan with quarterly curtailments for another year at a market interest rate that provides for the incremental risk.

Classification: The lender internally graded the loan as pass due to adequate cash flow from the borrower's personal assets and rental income generated by the office building to make principal and interest payments. Also, the borrower provided a principal curtailment and additional collateral to maintain a reasonable LTV. The examiner agreed with the lender's internal grade.

Nonaccrual Treatment: The lender maintained the loan on accrual status, as the borrower has sufficient funds to cover the debt service requirements for the next year. Full repayment of principal and interest is reasonably assured from the collateral and the borrower's financial resources. The examiner concurred with the lender's accrual treatment.

TDR Treatment: The lender concluded that the borrower was not *experiencing financial difficulties* because the borrower has the ability to service the renewed loan, which was prudently underwritten and has a market interest rate. The examiner concurred with the lender's rationale that the renewed loan is not a TDR.

Scenario 2: The borrower provided the lender with current financial information that indicated the borrower is unable to continue to make interest-only payments. The borrower has been sporadically delinquent up to 60 days on payments. The borrower is still seeking a loan to finance construction of the project, and has not been able to obtain a takeout commitment; it is unlikely the borrower will be able to obtain financing, since the borrower does not have the equity contribution most lenders require as a condition of closing a construction loan. A decline in value since origination was due to a change in local zoning density; the project was originally intended as 60 lots but was subsequently zoned as 25 single-family lots. A recent appraisal of the property reflects an ''as is'' market value of $3 million, which results in a 108 percent LTV. The lender extended the $3.25 million loan at a market interest rate for one year with principal and interest due at maturity.

Classification: The lender internally graded the loan as pass because the loan is currently not past due and is at a market interest rate. Also, the borrower is trying to obtain takeout construction financing. The examiner disagreed with the internal grade and adversely classified the loan, as discussed below. The examiner concluded that the loan was not restructured on reasonable repayment terms because the borrower does not have the capacity to service the debt and full repayment of principal and interest is not assured. The examiner classified $550,000 loss ($3.25 million loan balance less $2.7

million, based on the current appraisal of $3 million less estimated cost to sell of 10 percent or $300,000). The examiner classified the remaining $2.7 million balance substandard. This classification treatment recognizes the credit risk in this collateral dependent loan based on the property's market value less costs to sell.

Nonaccrual Treatment: The lender maintained the loan on accrual status. The examiner did not concur with this treatment and instructed the lender to place the loan in nonaccrual status because the borrower does not have the capacity to service the debt, value of the collateral is permanently impaired, and full repayment of principal and interest is not assured.

TDR Treatment: The lender reported the restructured loan as a TDR. The borrower is *experiencing financial difficulties* as indicated by the inability to refinance this debt, the inability to repay the loan at maturity in a manner consistent with the original exit strategy, and the inability to make interest-only payments going forward. *A concession was provided* by renewing the loan with a deferral of principal and interest payments for an additional year when the borrower was unable to obtain takeout financing. The examiner concurred with the lender's TDR designation.

I. Multi-Family Property

Base Case: The lender originated a $6.4 million loan for the purchase of a 25-unit apartment building. The loan maturity is five years, and principal and interest payments are based on a 30-year amortization at a market interest rate. The LTV was 75 percent (based on an $8.5 million value), and the DSC ratio was 1.50x at origination (based on a 30-year principal and interest amortization).

Leases are typically 12-month terms with an additional 12-month renewal option. The property is 88 percent leased (22 of 25 units rented). Due to poor economic conditions, delinquencies have risen from two units to eight units, as tenants have struggled to make ends meet. Six of the eight units are 90 days past due, and these tenants are facing eviction.

Scenario 1: At maturity, the lender renewed the $5.9 million loan balance on principal and interest payments for 12 months at a market interest rate that provides for the incremental risk. The borrower had not been delinquent on prior payments. Current financial information indicates that the DSC ratio dropped to 0.80x because of the rent payment delinquencies. Combining borrower and guarantor liquidity shows they can cover cash flow shortfall until maturity (including reasonable capital expenditures since the building was recently renovated). Borrower projections show a return to break-even within six months since the borrower plans to decrease rents to be more competitive and attract new tenants. The lender estimates that the property's current ''as stabilized'' market value is $7 million, resulting in an 84 percent LTV. A new appraisal has not been ordered; however, the lender noted in the file that, if the borrower does not meet current projections within six months of booking the renewed loan, the lender will obtain a new appraisal.

Classification: The lender internally graded the renewed loan as pass and is monitoring the credit. The examiner disagreed with the lender's analysis and classified the loan as substandard. While the borrower and guarantor can cover the debt service shortfall in the near-term using additional guarantor liquidity, the duration of the support may be less than the lender anticipates if the leasing fails to materialize as projected. Economic conditions are poor, and the rent reduction may not be enough to improve the property's performance. Lastly, the lender failed to obtain an updated collateral valuation, which represents an administrative weakness.

Nonaccrual Treatment: The lender maintained the loan on accrual status. The borrower has demonstrated the ability to make the regularly scheduled payments and, even with the decline in the borrower's creditworthiness, the borrower and guarantor appear to have sufficient cash resources to make these payments if projections are met, and full repayment of principal and interest is expected. The examiner concurred with the lender's accrual treatment.

TDR Treatment: While the borrower is experiencing some financial deterioration, the borrower is not *experiencing financial difficulties* as the borrower and guarantor have sufficient means to service the debt, and there was no history of default. The lender expects full collection of principal and interest from the borrower's operating income if they meet projections. The examiner concurred with the lender's rationale and TDR treatment.

Scenario 2: At maturity, the lender renewed the $5.9 million loan balance on a 12-month interest-only basis at a below market interest rate. In response to an event that caused severe economic conditions, the federal and state governments enacted moratoriums on all rent payments. The borrower has been paying as agreed; however, cash flow has been severely impacted by the rent moratoriums. While the moratoriums do not forgive the rent (or unpaid fees), they do prevent evictions for unpaid rent and have been in effect for the past six months. As a result, the borrower's cash flow is severely stressed, and the borrower has asked for temporary relief of the interest payments. In addition, a review of the current rent roll indicates that five of the 25 units are now vacant. A recent appraisal values the property at $6 million (98 percent LTV). Updated borrower and guarantor financial statements indicate the continued ability to cover interest-only payments for the next 12 to 18 months at the reduced rate of interest. Updated projections that indicate below break-even performance over the next 12 months remain uncertain given that the end of the moratorium (previously extended) is a ''soft'' date and that tenant behaviors may not follow historical norms.

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's treatment due to the borrower's diminished ability to make interest payments (even at the reduced rate) and lack of principal reduction, the uncertainty surrounding the rent moratoriums, and the reduced and tight collateral position.

Nonaccrual Treatment: The lender maintained the loan on an accrual basis because the borrower demonstrated an ability to make principal and interest payments and has some capacity to make payments on the interest-only terms at a below market interest rate. The examiner did not concur with this treatment as the loan was not restructured on reasonable repayment terms, the borrower has insufficient cash flow to amortize the debt, and the slim collateral margin indicates that full repayment of principal and interest may be in doubt. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

TDR Treatment: The lender reported the restructured loan as a TDR because the borrower is *experiencing financial difficulties* as evidenced by the reported reduced, stressed cash flow that prompted the borrower's request for payment relief in the restructure. The lender granted a *concession* (interest-only at a below market interest rate) in response. The examiner concurred with the lender's TDR treatment.

Scenario 3: At maturity, the lender renewed the $5.9 million loan balance on a 12-month interest-only basis at a below market interest rate. The borrower has been sporadically delinquent on prior principal and interest payments. A review of the current rent roll indicates that 10 of the 25 units are vacant after tenant evictions. The vacated units were previously in an advanced state of disrepair, and the borrower and guarantors have exhausted their liquidity after repairing the units. The repaired units are expected to be rented at a lower rental rate. A post-renovation appraisal values the property at $5.5 million (107 percent LTV). Updated projections indicate the borrower will be below break-even performance for the next 12 months.

Classification: The lender internally classified the loan as substandard and is monitoring the credit. The examiner agreed with the lender's concerns due to the borrower's diminished ability to make principal or interest payments, the guarantor's limited ability to support the loan, and insufficient collateral protection. However, the examiner classified $900,000 loss ($5.9 million loan balance less $5 million (based on the current appraisal of $5.5 million less estimated cost to sell of 10 percent, or $500,000)). The examiner classified the remaining $5 million balance substandard. This classification treatment recognizes the collateral dependency.

Nonaccrual Treatment: The lender maintained the loan on accrual basis because the borrower demonstrated a previous ability to make principal and interest payments. The examiner did not concur with the lender's treatment as the loan was not restructured on reasonable repayment terms, the borrower has insufficient cash flow to service the debt at a below market interest rate on an interest-only basis, and the impairment of value indicates that full repayment of principal and interest is in doubt. After a discussion with the examiner on regulatory reporting requirements, the lender placed the loan on nonaccrual.

TDR Treatment: The lender reported the restructured loan as a TDR because the

borrower is *experiencing financial difficulties* as evidenced by sporadic delinquencies, fully dissipated liquidity, and reduced collateral protection. The lender granted a *concession* with the interest-only terms at a below market interest rate. The examiner concurred with the lender's TDR treatment.

Appendix 2

Selected Rules, Supervisory Guidance, and Authoritative Accounting Guidance

Rules

- Board regulations on real estate lending standards and the *Interagency Guidelines for Real Estate Lending Policies:* 12 CFR part 208, subpart E and appendix C.
- Board regulations on the *Interagency Guidelines Establishing Standards for Safety and Soundness:* 12 CFR part 208 appendix D–1.
- Board appraisal regulations: 12 CFR part 208, subpart E and 12 CFR part 225.

Supervisory Guidance

- *FFIEC Instructions for Preparation of Consolidated Reports of Condition and Income* (FFIEC 031, FFIEC 041, and FFIEC 051 Instructions).
- *Interagency Policy Statement on Allowances for Credit Losses,* issued May 2020, as applicable.
- *Interagency Guidance on Credit Risk Review Systems,* issued May 2020.
- *Interagency Supervisory Examiner Guidance for Institutions Affected by a Major Disaster,* issued December 2017.
- Board, FDIC, and OCC joint guidance entitled *Statement on Prudent Risk Management for Commercial Real Estate Lending,* issued December 2015.
- *Interagency Supervisory Guidance Addressing Certain Issues Related to Troubled Debt Restructurings,* issued October 2013.
- *Interagency Appraisal and Evaluation Guidelines,* issued October 2010.
- Board, FDIC, and OCC joint guidance on *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices,* issued December 2006.
- *Interagency Policy Statement on the Allowance for Loan and Lease Losses,* issued December 2006, as applicable.
- *Interagency FAQs on Residential Tract Development Lending,* issued September 2005.
- *Interagency Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions,* issued July 2001, as applicable.

Authoritative Accounting Standards [29]

- *ASC Topic 310, Receivables*
- *ASC Subtopic 310–40, Receivables—Troubled Debt Restructurings by Creditors*
- *ASC Topic 326, Financial Instruments—Credit losses*
- *ASC Subtopic 450–20, Contingencies—Loss Contingencies*
- *ASC Topic 820, Fair Value Measurement*
- *ASC Subtopic 825–10, Financial Instruments—Overall*

[29] ASC Topic 326, *Financial Instruments—Credit Losses,* when adopted by a financial institution, replaces the incurred loss methodology included in ASC Subtopic 310–10, *Receivables—Overall* and ASC Subtopic 450–20, *Contingencies—Loss Contingencies,* for financial assets measured at amortized cost, net investments in leases, and certain off balance-sheet credit exposures.'' ASC Topic 326 also, when adopted by a financial institution, supersedes ASC Subtopic 310–40 *Troubled Debt Restructurings by Creditors.*

Appendix 3

Valuation Concepts for Income Producing Real Estate

Several conceptual issues arise during the process of reviewing a real estate loan and in using the net present value approach of collateral valuation. The following discussion sets forth the meaning and use of those key concepts.

The Discount Rate and the Net Present Value Approach: The discount rate used in the net present value approach to convert future net cash flows of income-producing real estate into present market value terms is the rate of return that market participants require for the specific type of real estate investment. The discount rate will vary over time with changes in overall interest rates and in the risk associated with the physical and financial characteristics of the property. The riskiness of the property depends both on the type of real estate in question and on local market conditions.

The Direct Capitalization (''Cap'' Rate) Technique: Many market participants and analysts use the ''cap'' rate technique to relate the value of a property to the net operating income it generates. In many applications, a ''cap'' rate is used as a short cut for computing the discounted value of a property's income streams.

The direct income capitalization method calculates the value of a property by dividing an estimate of its ''stabilized'' annual income by a factor called a ''cap'' rate. Stabilized annual income generally is defined as the yearly net operating income produced by the property at normal occupancy and rental rates; it may be adjusted upward or downward from today's actual market conditions. The ''cap'' rate, usually defined for each property type in a market area, is viewed by some analysts as the required rate of return stated in terms of current income. The ''cap'' rate can be considered a direct observation of the required earnings-to-price ratio in current income terms. The ''cap'' rate also can be viewed as the number of cents per dollar of today's purchase price investors would require annually over the life of the property to achieve their required rate of return.

The ''cap'' rate method is an appropriate valuation technique if the net operating income to which it is applied is representative of all future income streams or if net operating income and the property's selling price are expected to increase at a fixed rate. The use of this technique assumes that either the stabilized annual income or the ''cap'' rate used accurately captures all relevant characteristics of the property relating to its risk and income potential. If the same risk factors, required rate of return, financing arrangements, and income projections are used, the net present value approach and the direct capitalization technique will yield the same results.

The direct capitalization technique is not an appropriate valuation technique for troubled real estate since income generated by the property is not at normal or stabilized levels. In evaluating troubled real estate, ordinary discounting typically is used for the period before the project reaches its full income potential. A ''terminal cap rate'' is then utilized to estimate the value of the property (its reversion or sales price) at the end of that period.

Differences Between Discount and Cap Rates: When used for estimating real estate market values, discount and ''cap'' rates should reflect the current market requirements for rates of return on properties of a given type. The discount rate is the required rate of return including the expected increases in future prices and is applied to income streams reflecting inflation. In contrast, the ''cap'' rate is used in conjunction with a stabilized net operating income figure. The fact that discount rates for real estate are typically higher than ''cap'' rates reflects the principal difference in the treatment of expected increases in net operating income and/or property values.

Other factors affecting the ''cap'' rate (but not the discount rate) include the useful life of the property and financing arrangements. The useful life of the property being evaluated affects the magnitude of the ''cap'' rate because the income generated by a property, in addition to providing the required return on investment, has to be sufficient to compensate the investor for the depreciation of the property over its useful life. The longer the useful life, the smaller is the depreciation in any one year, hence, the smaller is the annual income required by the investor, and the lower is the ''cap'' rate. Differences in terms and the extent of debt financing and the related costs are also taken into account.

Selecting Discount and Cap Rates: The choice of the appropriate values for discount and ''cap'' rates is a key aspect of income analysis. In markets marked by both a lack of transactions and highly speculative or unusually pessimistic attitudes, analysts consider historical required returns on the type of property in question. Where market information is available to determine current required yields, analysts carefully analyze sales prices for differences in financing, special rental arrangements, tenant improvements, property location, and building characteristics. In most local markets, the estimates of discount and ''cap'' rates used in an income analysis generally should fall within a fairly narrow range for comparable properties.

Holding Period Versus Marketing Period: When the net present value approach is applied to troubled properties, the chosen time frame should reflect the period over which a property is expected to achieve stabilized occupancy and rental rates (stabilized income). That time period is sometimes referred to as the ''holding period.'' The longer the period is before stabilization, the smaller the reversion value will be within the total value estimate. The marketing period is the length of time that

may be required to sell the property in an open market.

Appendix 4

Special Mention and Adverse Classification Definitions [30]

The Board uses the following definitions for assets adversely classified for supervisory purposes as well as those assets listed as special mention:

Special Mention

A Special Mention asset has potential weaknesses that deserve management's close attention. If left uncorrected, these potential weaknesses may result in deterioration of the repayment prospects for the asset or in the institution's credit position at some future date. Special Mention assets are not adversely classified and do not expose an institution to sufficient risk to warrant adverse classification.

Adverse Classifications

Substandard Assets: A substandard asset is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the institution will sustain some loss if the deficiencies are not corrected.

Doubtful Assets: An asset classified doubtful has all the weaknesses inherent in one classified substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable.

Loss Assets: Assets classified loss are considered uncollectible and of such little value that their continuance as bankable assets is not warranted. This classification does not mean that the asset has absolutely no recovery or salvage value, but rather it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may be effected in the future.

Appendix 5

Accounting—Current Expected Credit Losses Methodology (CECL)

This appendix addresses the relevant accounting and regulatory guidance for financial institutions that have adopted Accounting Standards Update (ASU) 2016–13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* and its subsequent amendments (collectively, ASC Topic 326) in determining the allowance for credit losses (ACL). Additional guidance for the financial institution's estimate of the ACL and for examiners' responsibilities to evaluate these estimates is presented in the *Interagency Policy Statement on Allowances for Credit Losses (June 2020).* Additional information related to identifying and disclosing modifications for regulatory reporting under ASC Topic 326 is located in the FFIEC Call Report.

Expected credit losses on loans under ASC Topic 326 are estimated under the same CECL methodology as all other loans in the portfolio. Loans, including loans modified in a restructuring, should be evaluated on a collective basis unless they do not share similar risk characteristics with other loans. Changes in credit risk, borrower circumstances, recognition of charge-offs, or cash collections that have been fully applied to principal, often require reevaluation to determine if the modified loan should be included in a different pool of assets with similar risks for measuring expected credit losses.

Although ASC Topic 326 allows a financial institution to use any appropriate loss estimation method to estimate the ACL, there are some circumstances when specific measurement methods are required. If a financial asset is collateral dependent,[31] the ACL is estimated using the fair value of the collateral. For a collateral-dependent loan, regulatory reporting requires that if the amortized cost of the loan exceeds the fair value [32] of the collateral (less costs to sell if the costs are expected to reduce the cash flows available to repay or otherwise satisfy the loan, as applicable), this excess is included in the amount of expected credit losses when estimating the ACL. However, some or all of this difference may represent a Loss for classification purposes that should be charged off against the ACL in a timely manner.

Financial institutions also should consider the need to recognize an allowance for expected credit losses on off-balance sheet credit exposures, such as loan commitments, in other liabilities consistent with ASC Topic 326.

Appendix 6

Accounting—Incurred Loss Methodology

This Appendix addresses the relevant accounting and regulatory guidance for financial institutions using the incurred loss methodology to estimate the allowance for loan and lease losses under ASC Subtopics 310–10, *Receivables—Overall* and 450–20, *Contingencies—Loss Contingencies* and have not adopted Accounting Standards Update (ASU) 2016–13, *Financial Instruments—Credit Losses (Topic 326).*

Restructured Loans

The restructuring of a loan or other debt instrument should be undertaken in ways that improve the likelihood that the maximum credit repayment will be achieved under the modified terms in accordance with a reasonable repayment schedule. A financial institution should evaluate each restructured loan to determine whether the loan should be reported as a TDR. For reporting purposes, a restructured loan is considered a TDR when the financial institution, for economic or legal reasons related to a borrower's financial difficulties, grants a concession to the borrower in modifying or renewing a loan that the financial institution would not otherwise consider. To make this determination, the financial institution assesses whether (a) the borrower is *experiencing financial difficulties* and (b) the financial institution has granted a *concession*.[33]

The determination of whether a restructured loan is a TDR requires consideration of all relevant facts and circumstances surrounding the modification. No single factor, by itself, is determinative of whether a restructuring is a TDR. An overall general decline in the economy or some deterioration in a borrower's financial condition does not automatically mean that the borrower is *experiencing financial difficulties.* Accordingly, financial institutions and examiners should use judgment in evaluating whether a modification is a TDR.

Allowance for Loan and Lease Losses (ALLL)

Guidance for the financial institution's estimate of loan losses and examiners' responsibilities to evaluate these estimates is presented in *Interagency Policy Statement on the Allowance for Loan and Lease Losses (December 2006)* and *Interagency Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions (July 2001).*

Financial institutions are required to estimate credit losses based on a loan-by-loan assessment for certain loans and on a group basis for the remaining loans in the held-for-investment loan portfolio. All loans that are reported as TDRs are considered impaired and are typically evaluated on an individual loan basis in accordance with ASC Subtopics 310–40, and 310–10. Generally, if an individually assessed loan [34] is impaired, but is not collateral dependent, management allocates in the ALLL for the amount of the recorded investment in the loan that exceeds the present value of expected future cash flows, discounted at the original loan's effective interest rate.

---

[30] The Board's loan classification definitions of Substandard, Doubtful, and Loss may be found in the Uniform Agreement on the Classification and Appraisal of Securities Held by Depository Institutions Attachment 1—Classification Definitions (SR Letter 13–18). The Board's definition of Special Mention may be found in the Interagency Statement on the Supervisory Definition of Special Mention Assets (June 10, 1993).

[31] The repayment of a collateral-dependent loan is expected to be provided substantially through the operation or sale of the collateral when the borrower is experiencing financial difficulty based on the entity's assessment as of the reporting date. Refer to the glossary entry in the Call Report instructions for ''Allowance for Credit Losses—Collateral-Dependent Financial Assets.''

[32] The fair value of collateral should be measured in accordance with FASB ASC Topic 820, *Fair Value Measurement.* For impairment analysis purposes, the fair value of collateral should reflect the current condition of the property, not the potential value of the collateral at some future date.

[33] Refer to ASC Subtopic 310–40, *Receivables—Troubled Debt Restructurings by Creditors.* Refer also to the FFIEC Call Report.

[34] The recorded investment in the loan for accounting purposes may differ from the loan balance as described elsewhere in this statement. The recorded investment in the loan for accounting purposes is the loan balance adjusted for any unamortized premium or discount and unamortized loan fees or costs, less any amount previously charged off, plus recorded accrued interest.

For an individually evaluated impaired collateral dependent loan,[35] regulatory reporting requires the amount of the recorded investment in the loan that exceeds the fair value of the collateral [36] (less costs to sell) [37] if the costs are expected to reduce the cash flows available to repay or otherwise satisfy the loan, as applicable), to be charged off to the ALLL in a timely manner.

Financial institutions also should consider the need to recognize an allowance for estimated credit losses on off-balance sheet credit exposures, such as loan commitments in other liabilities consistent with ASC Subtopic 825–10, *Financial Instruments—Overall.* For additional information, refer to the FFIEC Call Report instructions pertaining to regulatory reporting.

For performing CRE loans, supervisory policies do not require automatic increases in the ALLL solely because the value of the collateral has declined to an amount that is less than the recorded investment in the loan. However, declines in collateral values should be considered when applying qualitative factors to calculate loss rates for affected groups of loans when estimating loan losses under ASC Subtopic 450–20.

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

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–19940 Filed 9–14–22; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Payments Research Survey (FR 3067; OMB No. 7100–0355).

DATES: Comments must be submitted on or before November 14, 2022.

ADDRESSES: You may submit comments, identified by FR 3067, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Payments Research Survey.

Collection identifier: FR 3067.

OMB control number: 7100–0355.

Frequency: As needed.

Respondents: Private sector, individual consumers or households, and state and local government agencies.

Estimated number of respondents: Private sector, 4,300; Individual

[35] Under ASC Subtopic 310–10, a loan is collateral dependent when the loan for which repayment is expected to be provided solely by the underlying collateral. Refer to the glossary entry in the Call Report instructions for ''Allowance for Credit Losses—Collateral-Dependent Financial Assets.''

[36] The fair value of collateral should be measured in accordance with FASB ASC Topic 820, *Fair Value Measurement.* For impairment analysis purposes, the fair value of collateral should reflect the current condition of the property, not the potential value of the collateral at some future date.

[37] *See* footnote 24.

consumers or households, 5,500; State and local government agencies, 200.

Estimated average hours per response: Private sector, 1.5; Individual consumers or households, 1.5; State and local government agencies, 1.5.

Estimated annual burden hours: Private sector, 12,900; Individual consumers or households, 16,500; State and local government agencies. 600.

General description of collection: The FR 3067 is a series of surveys used to conduct research related to the Federal Reserve System's role in the payments system, including supervisory, regulatory, fiscal, or operational responsibilities. The survey topics are time-sensitive and the questions of interest vary with the focus of the survey. Because the relevant questions may change with each survey, there is no fixed reporting form. For each survey, the Board prepares questions of specific topical interest and then determines the relevant target group to contact.

Legal authorization and confidentiality: The Board uses the information obtained through the FR 3067 to discharge its statutory responsibilities, including those under the following statutes:

- Section 609 of the Expedited Funds Availability Act; [1]
- Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act; [2]
- Sections 904 and 920 of the Electronic Fund Transfer Act; [3]
- Section 7 of the Bank Service Company Act; [4]
- Section 15 of the Check Clearing for the 21st Century Act; [5] and
- Sections 2A, 11, 11A, 13, and 16 of the Federal Reserve Act.[6]

The FR 3067 surveys are voluntary. Individual respondents may request confidential treatment in accordance with the Board's Rules Regarding Availability of Information.[7] Requests for confidential treatment of information are reviewed on a case-by-case basis. To the extent information provided on the FR 3067 is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, the information may be protected from disclosure pursuant to exemption 4 of the Freedom of Information Act.[8]

Board of Governors of the Federal Reserve System, September 12, 2022.

Margaret Shanks,

Deputy Secretary of the Board.

[FR Doc. 2022–19999 Filed 9–14–22; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 4008(c) (authorizing the Board to prescribe such regulations as it may determine appropriate to carry out its responsibility to regulate the payment system).

[2] 12 U.S.C. 5461(b) (authorizing the Board to promote uniform standards for the management of risks by systemically important financial market utilities and conduct of systemically important payment, clearing, and settlement activities by financial institutions, as well as providing an enhanced role in the supervision of risk management standards for systemically important financial market utilities and systemically important payment, clearing, and settlement activities by financial institutions).

[3] 15 U.S.C. 1693b, 1693o–2 (authorizing the Board to prescribe regulations relating to interchange fees for electronic debit transactions and require any debit card issuer or payment card network to provide the Board with such information as may be necessary to carry out its responsibility to regulate interchange fees for electronic debit transactions).

[4] 12 U.S.C. 1867 (authorizing the Board to issue such regulations and orders as may be necessary to administer and carry out the purposes of the Bank Services Company Act and prevent evasions thereof).

[5] 12 U.S.C. 5014 (authorizing the Board to prescribe such regulations as it determines necessary to implement, prevent circumvention or evasion of, or facilitate compliance with the Expedited Funds Availability Act, as amended).

[6] 12 U.S.C. 225a, 248, 248a, 342, 360, and 248–1 (*inter alia,* requiring the Board to maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates).

[7] 12 CFR 261.17.

[8] 5 U.S.C. 552(b)(4).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–379, CMS–10344, CMS–10594, CMS–10415 and CMS–1957]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by November 14, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10415 Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

CMS–1957 Social Security Office (SSO) Report of State Buy-In Problem

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Financial Statement of Debtor; *Use:* CMS is authorized to collect the information requested on this form by sections 1124(a)(1), 1124A(a)(3), 1128, 1814, 1815, 1833(e), and 1842(r) of the Social Security Act [42 U.S.C. 1320a–3(a)(1), 1320a–7, 1395f, 1395g, 1395(l)(e), and 1395u(r)] and section 31001(1) of the Debt Collection Improvement Act [31 U.S.C. 7701(c)]. Section 1893(f) (1)) of the Social Security Act and 42 CFR 401.607 provides the authority for collection of this information. Section 42 CFR 405.607 requires that, CMS recover amounts of claims due from debtors including interest where appropriate by direct collections in lump sums or in installments. The physician/supplier may be unable to refund a large overpaid amount in a single payment. The MAC cannot recover the overpayment by recoupment if the physician/supplier does not accept assignment of future claims, or is not expected to file future claims because of going out of business, illness or death. In these unusual circumstances, the MAC has authority to approve or deny extended repayment schedules up to 12 months, or may recommend to the Centers for Medicare and Medicaid Services (CMS) to approve up to 60 months. Before the MAC takes these actions, the MAC will require full documentation of the physician's/supplier's financial situation. Thus, the physician/supplier must complete the CMS–379, Financial Statement of Debtor. *Form Number:* CMS–379 (OMB control number 0938–0270); *Frequency:* Annually; *Affected Public:* Private Sector (business or other for-profits, not-for-profit institutions); *Number of Respondents:* 500; *Number of Responses:* 500; *Total Annual Hours:* 1,000. (For policy questions regarding this collection contact Monica Thomas at 410–786–4292).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Elimination of Cost-Sharing for full benefit dual-eligible Individuals Receiving Home and Community-Based Services; *Use:* Section 1860 D–14 of the Social Security Act sets forth requirements for premium and cost-sharing subsidies for low-income beneficiaries enrolled in Medicare Part D. Based on this statute, 42 CFR 423.771, provides guidance concerning limitations for payments made by and on behalf of low-income Medicare beneficiaries who enroll in Part D plans. 42 CFR 423.771 (b) establishes requirements for determining a beneficiary's eligibility for full subsidy under the Part D program. Regulations set forth in 423.780 and 423.782 outline premium and cost sharing subsidies to which full subsidy eligible are entitled under the Part D program.

Each month CMS deems individuals automatically eligible for the full subsidy, based on data from State Medicaid Agencies and the Social Security Administration (SSA). The SSA sends a monthly file of Supplementary Security Income-eligible beneficiaries to CMS. Similarly, the State Medicaid agencies submit Medicare Modernization Act files to CMS that identify full subsidy beneficiaries. CMS deems the beneficiaries as having full subsidy and auto-assigns these beneficiaries to bench mark Part D plans. Part D plans receive premium amounts based on the monthly assessments. *Form Number:* CMS–10344 (OMB control number 0938–1127); *Frequency:* Monthly; *Affected Public:* Private Sector (business or other for-profits, not-for-profit institutions); *Number of Respondents:* 51; *Number of Responses:* 612; *Total Annual Hours:* 621. (For policy questions regarding this collection contact Roland Herrera at 410–786–0668).

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Provider Network Coverage Data Collection; *Use:* The Patient Protection and Affordable Care Act (Pub. L. 111–148) was signed into law on March 23, 2010. On March 30, 2010, the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was signed into law. The two laws are collectively referred to as the Affordable Care Act (ACA). The ACA established competitive private health insurance markets called Marketplaces, or Exchanges, which gave millions of Americans and small businesses access to affordable, quality insurance options that meet certain requirements. These requirements include ensuring sufficient choice of providers and providing information to enrollees and prospective enrollees on the availability of in-network and out-of-network providers.

In the final rule, the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017 (CMS–9937–P), we finalized network adequacy standards for qualified health plan (QHP) issuers, including stand-alone dental plans (SADPs) mostly focused on issuers in QHPs in the Federally-facilitated Exchanges (FFEs). This information collection notice is for two of the standards from the rule: one applying in the FFE and one applying to all QHPs. Specifically, under 45 CFR 156.230(d) and 156.230(e), we require notification requirements for enrollees in cases where a provider leaves the network and for cases where an enrollee might be seen by an out of network ancillary provider in an in-network setting. These standards will help inform consumers about his or her health plan coverage to better make cost effective choices. The Centers for Medicare and Medicaid Services (CMS) is updating an information collection request (ICR) in connection with these standards. The burden estimates for this ICR included in this package reflects the additional time and effort for QHP issuers to provide these notifications to enrollees. *Form Number:* CMS–10594 (OMB control number 0938–1302); *Frequency:* Annually; *Affected Public:* Private Sector (business or other for-profits, not-for-profit institutions); *Number of Respondents:* 374; *Number of Responses:* 374; *Total Annual Hours:* 551,276. (For policy questions regarding this collection contact Nicole Levesque at *nicole.levesque@cms.hhs.gov*).

4. *Type of Information Collection Request:* Revision of a currently approved colleciton; *Title of Information Collection:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery; *Use:* This collection of information is necessary to enable the

Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Collecting voluntary customer feedback is the least burdensome, most effective way for the Agency to determine whether or not its public websites are useful to and used by its customers. Generic clearance is needed to ensure that the Agency can continuously improve its websites through regular surveys developed from these pre-defined questions. Surveying the Agency websites on a regular, ongoing basis will help ensure that users have an effective, efficient, and satisfying experience on any of the websites, maximizing the impact of the information and resulting in optimum benefit for the public. The surveys will ensure that this communication channel meets customer and partner priorities, builds the Agency's brands, and contributes to the Agency's health and human services impact goals. *Form Number:* CMS–10415 (OMB control number 0938–1185); *Frequency:* Occasionally; *Affected Public:* Individuals and Households; *Number of Respondents:* 2,000,000; *Number of Responses:* 2,000,000; *Total Annual Hours:* 50,000. (For policy questions regarding this collection contact Aaron Lartey at 410–786–7866.)

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Social Security Office (SSO) Report of State Buy-In Problem; *Use:* The statutory authority for the State Buy-in program is Section 1843 of the Social Security Act, amended through 1989. Under section 1843, a State can enter into an agreement to provide Medicare protection to individuals who are members of a Buyin coverage group, as specified in the State's Buy-in agreement. The Code of Federal Regulations at 42 CFR 407.40 provides for States to enroll in Medicare and pay the premiums for all eligible members covered under a Buyin coverage group. Individuals enrolled in Medicare through the Buy-in program must be eligible for Medicare and be an eligible member of a Buy-in coverage group. The day to day operations of the State Buy-in program is accomplished through an automated data exchange process. The automated data exchange process is used to exchange Medicare and Buy-in entitlement information between the Social Security District Offices, State Medicaid Agencies and the Centers for Medicare & Medicaid Services (CMS). When problems arise that cannot be resolved though the normal data exchange process, clerical actions are required. The CMS–1957, ''SSO Report of State Buy-In Problem'' is used to report Buy-in problems cases. The CMS–1957 is the only standardized form available for communications between the aforementioned agencies for the resolution of beneficiary complaints and inquiries regarding State Buy-in eligibility. *Form Number:* CMS–1957 (OMB control number 0938–0035); *Frequency:* Occasionally; *Affected Public:* Individuals and Households; *Number of Respondents:* 1,400; *Number of Responses:* 1,400; *Total Annual Hours:* 467. (For policy questions regarding this collection contact Keith Johnson at 410–786–2262.)

Dated: September 12, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–20007 Filed 9–14–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2143]

Determination That Bacitracin for Injection, 10,000 Units/Vial and 50,000 Units/Vial, Was Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that bacitracin for injection, 10,000 units/vial and 50,000 units/vial, was withdrawn from sale for reasons of safety or effectiveness. The Agency will not accept or approve abbreviated new drug applications (ANDAs) for bacitracin for injection.

FOR FURTHER INFORMATION CONTACT: Sungjoon Chi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6216, Silver Spring, MD 20993–0002, 240–402–9674, *Sungjoon.Chi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

Bacitracin for injection, 10,000 units/vial and 50,000 units/vial, is the subject of ANDA 060733 (originally NDA 6–483), held by Pharmacia and Upjohn Company (a subsidiary of Pfizer Inc.), and was initially approved on July 29, 1948. Bacitracin for injection is an antibiotic for intramuscular administration, the use of which is limited to the treatment of infants with pneumonia and empyema caused by staphylococci shown to be susceptible

to the drug. However, in 1984, the Anti-Infective Drugs Advisory Committee concluded that intramuscular administration of bacitracin was not safe and effective. In addition, in April 2019, FDA's Antimicrobial Drugs Advisory Committee advised that the benefits of bacitracin for injection do not outweigh its risks for the drug's only approved indication.

Bacitracin for injection poses serious risks, including nephrotoxicity and anaphylactic reactions. Healthcare professionals generally no longer use bacitracin for injection to treat infants with pneumonia and empyema because other effective FDA-approved treatments are available that do not have these risks. Out of concern about these risks, on January 31, 2020, FDA requested that all application holders of bacitracin for injection voluntarily request withdrawal of approval of their applications under § 314.150(d) (21 CFR 314.150(d)). Two approved applications for bacitracin for injection had been withdrawn prior to January 31, 2020 (see 61 FR 40649, August 5, 1996, and 57 FR 6228, February 21, 1992) and therefore FDA did not need to request their withdrawal. In a letter dated February 7, 2020, Pfizer requested withdrawal of approval of ANDA 060733 (originally NDA 6–483) for bacitracin for injection under § 314.150(d) and waived its opportunity for a hearing. In separate letters dated February 5, 2020, Akorn Inc. and Mylan ASI LLC requested that FDA withdraw approval of ANDAs 206719 and 090211, respectively, under § 314.150(d) and waived their opportunity for a hearing. Additionally, in separate letters dated February 7, 2020, X–GEN Pharmaceuticals, Inc. and Fresenius Kabi USA, LLC requested that FDA withdraw approval of ANDAs 064153 and 065116, respectively, under § 314.150(d) and waived their opportunity for a hearing. In the **Federal Register** of March 12, 2021 (86 FR 14127), FDA announced that it was withdrawing approval of ANDAs 060733 (originally NDA 6–483), 206719, 090211, 064153, and 065116, and all amendments and supplements thereto, effective March 12, 2021.

In a letter dated June 14, 2021, the only remaining application holder, Xellia Pharmaceuticals USA, LLC, requested that FDA withdraw approval of ANDA 203177 under § 314.150(d) and waived its opportunity for a hearing. In the **Federal Register** of July 11, 2022 (87 FR 41135), FDA announced that it was withdrawing approval of ANDA 203177, and all supplements thereto, effective July 11, 2022. Accordingly, the Agency has withdrawn approval of all ANDAs for bacitracin for injection.

After reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that bacitracin for injection, 10,000 units/vial and 50,000 units/vial, was withdrawn for reasons of safety or effectiveness. We have reviewed our files for records concerning the withdrawal of bacitracin for injection from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. Based on a thorough evaluation of this information, including information presented to FDA's Antimicrobial Drugs Advisory Committee and the recommendations of that committee, and an evaluation of the latest version of the drug product's labeling, we have determined that bacitracin for injection, 10,000 units/vial and 50,000 units/vial, would not be considered safe and effective if it were introduced to the market today in the absence of new preclinical or clinical studies to address safety or effectiveness concerns identified during our review.

Accordingly, the Agency will remove bacitracin for injection, 10,000 units/vial and 50,000 units/vial, from the list of drug products published in the Orange Book. FDA will not accept or approve ANDAs that refer to this drug product.

Dated: September 9, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19995 Filed 9–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0176]

Defining Small Number of Animals for Minor Use Determination; Periodic Reassessment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of its most recent periodic reassessment of the definition of ''small number of animals'' for minor use in major species (contained in our existing regulation for new animal drugs for minor use and minor species). We also are announcing that the small number of animals upper limit thresholds (small numbers) for horses and the food-producing major species (cattle, pigs, turkeys, and chickens) will remain the same. We are separately issuing a direct final rule and a companion proposed rule to revise (*i.e.,* increase) the small numbers for dogs and cats.

DATES: Submit either electronic or written comments on the notice at any time.

ADDRESSES: You may submit comments as follows.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2008–N–0176 for ''Defining Small Numbers of Animals for Minor Use Determination; Periodic Reassessment.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential

Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Margaret Oeller, Center for Veterinary Medicine (HVF–50), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0566, email: *margaret.oeller@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Minor Use and Minor Species Animal Health Act of 2004 (Pub. L. 108–282) (the MUMS Act) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) to provide incentives for the development of new animal drugs for use in minor animal species and for minor uses in major animal species. The MUMS Act defines ''minor use'' as the intended use of a drug in a major species for an indication that occurs infrequently and in only a small number of animals or in limited geographical areas and in only a small number of animals annually (see section 201(pp) of the FD&C Act (21 U.S.C. 321(pp)).

In the **Federal Register** of August 26, 2009 (74 FR 43043), we issued a final rule to define the term ''small number of animals'' by establishing for each major species of animal (horses, dogs, cats, cattle, pigs, turkeys, and chickens) an upper limit threshold (*i.e.,* small number) to provide a means of determining whether any particular intended use of a new animal drug in one of these species would qualify as a minor use under the MUMS Act. The small numbers for the seven major species of animals as established in the ''small number of animals'' definition at 21 CFR 516.3(b) are 50,000 horses, 70,000 dogs, 120,000 cats, 310,000 cattle, 1,450,000 pigs, 14,000,000 turkeys, and 72,000,000 chickens.

In our final rule, in response to comments, we agreed that periodic reassessment of the small numbers is appropriate and that such reassessments should occur approximately every 5 years. We conducted our first reassessment in 2013 and published the results in the **Federal Register** on May 19, 2014 (79 FR 28736). We concluded, based on that reassessment, that no changes to the definition of ''small number of animals'' were needed.

II. Current Reassessment

We conducted our second reassessment of the ''small number of animals'' definition in 2018–2019 (current reassessment), and the results of that reassessment are summarized in our memorandum ''2018–2019 Reassessment of Small Numbers of Animals for Minor Use Determination'' (Ref. 1). FDA developed different processes for establishing small numbers for the major species of companion animals and the major species of food-producing animals, and we continue to use those processes for our periodic reassessments of the small numbers. Both processes are described in detail in the preamble to the proposed rule that published in the **Federal Register** on March 18, 2008 (73 FR 14411) and in our memorandum for the current reassessment (Ref. 1).

Based on our current reassessment, there is not an adequate basis to propose revisions to the currently published small numbers for horses and the food-producing major species. The small numbers for horses and the four food-producing major species as established in the current ''small number of animals'' definition in § 516.3(b) are listed in table 1.

TABLE 1—CURRENT SMALL NUMBERS FOR HORSES AND THE FOOD-PRODUCING MAJOR SPECIES

[21 CFR 516.3(b)]

Species	Small No.
Horses	50,000
Cattle	310,000
Pigs	1,450,000
Turkeys	14,000,000
Chickens	72,000,000

In separate documents published elsewhere in this issue of the **Federal Register**, we are publishing a direct final rule to revise (*i.e.,* increase) the ''small numbers'' for dogs and cats, and a proposed rule as a companion to the direct final rule under FDA's usual procedures for notice and comment.

III. Paperwork Reduction Act of 1995

While this notice of reassessment of the small numbers contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this notice. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR 516.20 have been approved under OMB control number 0910–0605.

IV. References

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *https://www.regulations.gov.*

1. FDA Memorandum, ''2018–2019 Reassessment of Small Numbers of Animals for Minor Use Determination,'' 2021.

Dated: September 9, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19955 Filed 9–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1156]

Q3D(R2)—Guideline for Elemental Impurities; International Council for Harmonisation; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Q3D(R2) Guideline for Elemental Impurities.'' The guidance was prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH), formerly the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use. The guidance revises the guidance for industry ''Q3D(R1) Elemental Impurities'' issued in March 2020 to provide Permissible Daily Exposures (PDEs) for the cutaneous and transcutaneous routes of administration. It also provides relevant risk assessment considerations to supplement previous guidance for the oral, parenteral, and inhalation routes of administration. The guidance is intended to provide recommendations for acceptable amounts of the listed elemental impurities for pharmaceutical products and for conducting risk assessments.

DATES: The announcement of the guidance is published in the **Federal Register** on September 15, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–D–1156 for ''Q3D(R2) Guideline for Elemental Impurities.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Timothy McGovern, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6426, Silver Spring, MD 20993–0002, 240–402–0477.

Regarding the ICH: Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993–0002, 301–796–5259.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Q3D(R2) Guideline for Elemental Impurities.'' The guidance was prepared under the auspices of ICH. ICH has the mission of achieving greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and

maintained in the most resource-efficient manner. By harmonizing the regulatory requirements in regions around the world, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, standardized marketing application submissions, and made many other improvements in the quality of global drug development and manufacturing and the products available to patients.

The six Founding Members of the ICH are FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. Additionally, the Membership of ICH has expanded to include other regulatory authorities and industry associations from around the world (*https://www.ich.org/*).

ICH works by involving technical experts from both regulators and industry parties in detailed technical harmonization work and the application of a science-based approach to harmonization through a consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA's guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In September 2020, the ICH Assembly endorsed the draft guideline entitled ''Q3D(R2) Guideline for Elemental Impurities'' and agreed that the guideline should be made available for public comment. The draft guideline is the product of the Q3D(R2) Working Group of the ICH. In the **Federal Register** of May 12, 2021 (85 FR 26052), FDA published a notice announcing the availability of the draft guidance. The notice gave interested persons an opportunity to submit comments by June 11, 2021. After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Assembly and endorsed by the regulatory agencies on April 26, 2022.

The guidance revises the guidance for industry ''Q3D(R1) Elemental Impurities'' issued in March 2020 to provide PDEs for the cutaneous and transcutaneous routes of administration. It also provides relevant risk assessment considerations to supplement previous guidance for the oral, parenteral, and inhalation routes of administration and corrects errors to previously identified PDEs for gold (oral, parenteral, and inhalation routes), silver (parenteral route), and nickel (inhalation route). The final guidance is intended to provide recommendations for acceptable amounts of the listed elemental impurities for pharmaceutical products and for conducting risk assessments.

This guidance represents the current thinking of FDA on ''Q3D(R2) Guideline for Elemental Impurities.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information relating to good laboratory practice have been approved under OMB control number 0910–0119. The collections of information pertaining to current good manufacturing practice have been approved under OMB control number 0910–0139. The collections of information for new drug applications and biologics license applications have been approved under OMB control numbers 0910–0001 and 0910–0338, respectively.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.regulations.gov, https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.*

Dated: September 9, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19997 Filed 9–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2110]

Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on November 1, 2022, from 9 a.m. to 6 p.m. eastern time.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings, including information regarding special accommodations due to a disability, may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–2110. The docket will close on December 1, 2022. Either electronic or written comments on this public meeting must be submitted by December 1, 2022. 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 December 1, 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.

Comments received on or before October 18, 2022, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–2110 for ''Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Akinola Awojope, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, 301–636–0512, *Akinola.Awojope@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will discuss ongoing concerns that pulse oximeters may be less accurate in individuals with darker skin pigmentations. The committee will also discuss factors that may affect pulse oximeter accuracy and performance, the available evidence about the accuracy of pulse oximeters, recommendations for patients and healthcare providers, and the amount and type of data that should be provided by manufacturers to assess pulse oximeter accuracy and to guide other regulatory actions as needed.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of or after the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before October 18, 2022, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11:30 a.m. and 1 p.m. and 2 p.m. eastern time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on

or before October 12, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 14, 2022.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Ann Marie Williams, at *AnnMarie.Williams@fda.hhs.gov* or 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 9, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19943 Filed 9–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2021–E–0379 and FDA–2021–E–0380]

Determination of Regulatory Review Period for Purposes of Patent Extension; CAPLYTA

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 CAPLYTA 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 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 November 14, 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 March 14, 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 November 14, 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–0379 and FDA–2021–E–0380 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; CAPLYTA.'' 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, CAPLYTA (lumateperone tosylate). CAPLYTA is indicated for the treatment of schizophrenia. Subsequent to this approval, the USPTO received a patent term restoration application for CAPLYTA (U.S. Patent Nos. 8,598,119 and 8,648,077) from Intra-Cellular Therapies, Inc., and the USPTO requested FDA's assistance in determining the patent's 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 CAPLYTA 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 CAPLYTA is 4,421 days. Of this time, 3,970 days occurred during the testing phase of the regulatory review period, while 451 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:* November 15, 2007. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 15, 2007.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* September 27, 2018. FDA has verified the applicant's claim that the new drug application (NDA) for CAPLYTA (NDA 209500) was initially submitted on September 27, 2018.

3. *The date the application was approved:* December 20, 2019. FDA has verified the applicant's claim that NDA 209500 was approved on December 20, 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 1,294 days or 1,329 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: September 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19898 Filed 9–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–1080]

Determination of Regulatory Review Period for Purposes of Patent Extension; TAVALISSE

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 TAVALISSE 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 may submit either electronic or written comments and ask for a redetermination by November 14, 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 March 14, 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

November 14, 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 No. FDA–2019–E–1080 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; TAVALISSE.'' 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 number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: 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 human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug 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 TAVALISSE (fostamatinib disodium hexahydrate). TAVALISSE is indicated for the treatment of thrombocytopenia in adult patients with chronic immune thrombocytopenia who have had an insufficient response to a previous treatment. Subsequent to this approval, the USPTO received a patent term restoration application for TAVALISSE (U.S. Patent No. 7,449,458) from Rigel Pharmaceuticals, Inc. and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated June 12, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of TAVALISSE 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 TAVALISSE is 4,564 days. Of this time, 4,198 days occurred during the testing phase of the regulatory review period, while 366 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:* October 20, 2005. FDA has verified the applicant's claim that the date the investigational

new drug application became effective was on October 20, 2005.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* April 17, 2017. FDA has verified the applicant's claim that the new drug application (NDA) for TAVALISSE (NDA 209299) was initially submitted on April 17, 2017.

3. *The date the application was approved:* April 17, 2018. FDA has verified the applicant's claim that NDA 209299 was approved on April 17, 2018.

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 application for patent extension, this applicant seeks 5 years 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: September 8, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19993 Filed 9–14–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Availability of Health Center Program Scope of Project and Telehealth Policy Information Notice

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Request for public comment on Draft Health Center Program Scope of Project and Telehealth Policy Information Notice.

SUMMARY: HRSA is inviting public comment on the Draft Health Center Program Scope of Project and Telehealth Policy Information Notice (Telehealth PIN). The purpose of the Telehealth PIN is to establish policy for health centers that provide services via telehealth within the HRSA-approved scope of project. The Telehealth PIN also describes considerations and criteria health centers must meet for providing services via telehealth within the Health Center Program scope of project.

The Health Center Program is authorized by section 330 of the Public Health Service Act, 42 U.S.C. 254b. HRSA provides federal award funding to health centers to deliver required primary care and additional health services to medically underserved areas and populations. HRSA also certifies entities that it has determined to meet section 330 requirements as Health Center Program look-alikes. Health centers provide required primary care and additional health services to residents of the area served by the health center.

Each health center is responsible for maintaining its operations, including developing and implementing its own operating procedures for providing health services through telehealth, in compliance with all Health Center Program requirements and all other applicable federal, state, and local laws and regulations.[1]

Health centers are increasingly using telehealth as a means of delivering required and additional services to health center patients. Providing health care via telehealth [2] can increase patient access and improve clinical outcomes, quality of care, continuity of care, and reduce the need for hospitalization. Within the context of the Health Center Program scope of project, telehealth is not a service or a service delivery method requiring specific HRSA approval; rather, telehealth is a mechanism or means for delivering a health service(s) to health center patients using telecommunications technology or equipment.

DATES: Submit comments no later than November 14, 2022.

ADDRESSES: The PIN is available at the Scope of Project and Telehealth PIN Public Comments web page. Written comments should be submitted through the HRSA Bureau of Primary Health Care Contact Form (*https://hrsa.force.com/feedback/s/policy-information-notice*), by November 14, 2022.

FOR FURTHER INFORMATION CONTACT: Jennifer Joseph, Director, Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; email: *jjoseph@hrsa.gov;* telephone: 301–594–4300; fax: 301–594–4997.

SUPPLEMENTARY INFORMATION: HRSA provides grants to eligible applicants under section 330 of the PHS Act, as amended (42 U.S.C. 254b), to support the delivery of preventive and primary care services to the nation's underserved individuals and families. HRSA also certifies eligible applicants under the Health Center Look-Alike Program (see sections 1861(aa)(4)(B) and 1905(l)(2)(B) of the Social Security Act). Look-alikes do not receive Health Center Program funding but must meet the Health Center Program statutory and regulatory requirements. Nearly 1,400 Health Center Program-funded health centers and approximately 100 Health Center Program look-alike organizations collectively operate over 14,000 service delivery sites that provide care to over 30 million patients in every U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Pacific Basin. Note that for the purposes of this document, the term ''health center'' refers to entities that receive a federal award under section 330 of the PHS Act, as amended, as well as subrecipients and organizations designated as look-alikes, unless otherwise stated.

Section A of the Telehealth PIN includes considerations for health centers delivering services via telehealth within the HRSA-approved scope of project. Each health center is responsible for maintaining its operations, including developing and implementing its own operating procedures for telehealth, in compliance with all Health Center Program

[1] 42 CFR 51c.304(d)(3)(v).

[2] HRSA defines telehealth as the use of electronic information and telecommunication technologies to support long-distance clinical health care, patient and professional health-related education, health administration, and public health.

requirements and all other applicable federal, state, and local laws and regulations. Among other considerations, health centers using telehealth to deliver in-scope services to health center patients are responsible for addressing the considerations described in the policy.

Section B of the Telehealth PIN includes criteria for health centers delivering services via telehealth within the HRSA-approved scope of project. PIN 2008–01: Defining Scope of Project and Policy for Requesting Changes provides the parameters of what may be included in a health center's scope of project and how to accurately document a health center's scope of project. Health centers may deliver in-scope services via telehealth to individuals who have previously presented for care at a health center site and to individuals who have not previously presented for care at a health center site. Services delivered via telehealth generally would be within the scope of the health center project if all of the criteria are met as described in the policy.

Diana Espinosa,

Deputy Administrator.

[FR Doc. 2022–19933 Filed 9–14–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: The Teaching Health Center Graduate Medical Education Program Eligible Resident/Fellow FTE Chart, OMB No. 0915–0367—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than October 17, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the acting HRSA Information Collection Clearance Officer at (301) 443–9094.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: The Teaching Health Center Graduate Medical Education (THCGME) Program Eligible Resident/Fellow FTE Chart OMB No. 0915–0367—Revision

Abstract: The THCGME Program, section 340H of the Public Health Service Act, was established by section 5508 of Public Law 111–148. The Consolidated Appropriations Act, 2021 (Pub. L.116–260) and the American Rescue Plan Act of 2021 (Pub. L. 117–2) provided continued funding for the THCGME Program. The THCGME Program awards payment for both direct and indirect expenses to support training for primary care residents in community-based ambulatory patient care settings. The THCGME Program Eligible Resident/Fellow FTE Chart, published in the THCGME Notice of Funding Opportunity (NOFO), is a means for determining the number of eligible resident/fellow full-time equivalents (FTEs) in an applicant's primary care residency program. The FTE Chart revisions will now collect the number of resident/fellow FTEs from previous academic years and will further clarify the number of resident/fellow FTEs positions requested with the NOFO application.

A 60-day notice published in the **Federal Register** on June 24, 2022, vol. 87, No. 121; pp. 37876. There were no public comments.

Need and Proposed Use of the Information: The THCGME Program Eligible Resident/Fellow FTE Chart requires applicants to provide: (a) data related to the size and/or growth of the residency program over previous academic years, (b) the number of residents enrolled in the program during the baseline academic year, and (c) a projection of the program's proposed expansion over the next 5 academic years. It is imperative that applicants complete this chart to quantify the total supported residents. THCGME funding is used to support expanded numbers of residents in existing residency programs, to establish new residency training programs, or to maintain filled positions at existing residency training programs. Utilization of a chart to gather this important information has decreased the number of errors in the eligibility review process resulting in a more accurate review and funding process, and this ICR comports with the regulatory requirement imposed by 45 CFR 75.206(a) ''*Standard application requirements, including forms for applying for HHS financial assistance, and state plans*''.

Likely Respondents: Teaching Health Centers applying for THCGME funding through a THCGME NOFO process, which may include new applicants and existing awardees.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
THCGME Program Eligible Resident/Fellow FTE Chart	90	1	90	1.25	112.50
Total	90	.....	90	.....	112.50

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–19965 Filed 9–14–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN U24 Review Meeting.

Date: October 13, 2022.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Evon S Ereifej, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Rockville, MD 20852, *ereifejes@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Data Archives, Integration, and Standards.

Date: October 20, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Neuroscience Center, Room 6150, Bethesda, MD 20892, 301–435–1260, *jasenka.borzan@nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Silvio O. Conte Centers for Basic Neuroscience or Translational Mental Health Research (P50).

Date: October 26, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: September 12, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20010 Filed 9–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the Reproduction, Andrology, and Gynecology Study Section.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Reproduction, Andrology, and Gynecology Study Section.

Date: October 13, 2022.

Closed: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, Room 2121C, 6710B Rockledge Drive, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Jagpreet Singh Nanda, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, MD 20892, 301–451–4454, *jagpreet.nanda@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nichd.nih.gov/about/org/der/srb,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: September 12, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19973 Filed 9–14–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2003–14610]

Exemption From Renewal of the Hazardous Materials Endorsement Security Threat Assessment for Certain Individuals

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice, temporary exemption.

SUMMARY: TSA is granting a temporary exemption from requirements regarding the expiration of TSA Security Threat Assessments (STAs) for Hazardous Materials Endorsement (HME) holders, subject to requirements set forth in this exemption. For the duration of this exemption, states may extend the expiration date of an HME that expires between July 1, 2022 and December 27, 2022, for a period of up to 180 days. TSA has determined it is in the public interest to grant the exemption at this time to ensure that the HME renewal process does not exacerbate the current difficulties with the transfer and movement of cargo nationwide and at the ports. TSA may extend this exemption depending on HME enrollment volumes and supply chain challenges.

DATES: This exemption becomes effective on September 15, 2022 and remains in effect through December 27, 2022, unless otherwise modified by TSA through a notice published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephanie Hamilton, 571–227–2851, *HME.question@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Approximately 80 percent of goods are shipped by truck in the United States today. These shipments include necessities, such as food, medicine, and protective equipment, as well as discretionary goods. Consumer purchases of discretionary goods fell dramatically during the height of the Coronavirus 2019 (COVID–19) pandemic, but spiked following the development of vaccines and as a gradual return to normal daily life progressed. Meanwhile, the pandemic exacerbated longstanding challenges in the trucking industry, such that demand for drivers with a valid state-issued commercial driver's license (CDL) with an HME has increased significantly. These supply chain issues and increasing consumer demands have increased pressure on motor carriers who require qualified, trained, and licensed drivers to transport goods. As a result, there is a significant need for commercial drivers who are authorized to transport all goods, including hazardous materials.

The USA PATRIOT Act of 2001 requires individuals who transport hazardous materials via commercial motor vehicle to undergo an STA conducted by TSA.[1] As described in the implementing regulations at 49 CFR part 1572, no state may issue or renew an HME for an individual's CDL, unless the state first receives a Determination of No Security Threat for the individual from TSA following the TSA-conducted STA. *See* 49 CFR 1572.13(a). The STA for an HME consists of checks of criminal, immigration, and security threat databases.[2] The STA and HME remain valid for up to five years.

An individual seeking renewal of an HME must initiate an STA at least 60 days before expiration of their current HME.[3] The process of initiating an STA requires the individual to submit information to either the state licensing agency or a TSA enrollment center, including fingerprints and the information required by 49 CFR 1572.9,[4] at least 60 days before the expiration of the HME.[5]

Supply chain issues, have increased the demand for drivers with a valid state-issued CDL with an HME. The pandemic exacerbated longstanding challenges in the trucking industry, including high turnover rates, an aging workforce, long hours away from home, and time spent waiting—often unpaid—to load and unload at congested ports, warehouses, and distribution centers. As a result of the increased demand, more than 50,000 CDLs and Learners Permits have been issued each month in 2021, which is 20 percent higher than the 2019 monthly average and 72 percent higher than the 2020 monthly average.[6]

Even though all shipments do not include hazardous materials, employers want to have commercial drivers with HMEs available as a matter of efficiency to ensure any driver is authorized to carry any shipment. Similar to the demand for CDLs, enrollments for HMEs have increased from approximately 15,000 per month to 20,000 per month in calendar years 2021 and 2022. Despite a nearly 30 percent decrease in HME enrollments during the pandemic, new enrollments and renewals are exceeding historical volumes to meet the demand for qualified drivers. The increased demand for HMEs, as well as other credentialling requiring STAs conducted by TSA, has increased processing times for some individuals with potential disqualifying factors. Some applications require 60 days for TSA to complete the adjudication of potential disqualifying factors and make an eligibility determination.

As noted above, current regulatory requirements prohibit states from issuing or renewing an HME until TSA makes its final eligibility determination.[7] States also may issue an HME to a driver who holds a valid Transportation Worker Identification Credential (TWIC®) which includes completion of the same STA.[8] There are approximately 250,000 drivers whose HME STA has expired or will expire in calendar year 2022. Approximately 135,000 of those HME STAs will expire in the next 180 days or 22,500 per month for the next six months.

TSA published a similar temporary exemption for HME renewals on April 8, 2020, to provide regulatory relief during the height of the COVID–19 pandemic[9] to ensure there were enough authorized drivers in the supply chain to deliver needed goods. In that exemption, TSA permitted states to extend the expiration date for HMEs for up to 180 days. TSA subsequently issued two 90-day extensions, which extended availability of the exemption to December 31, 2020.[10]

Authority and Determination

TSA may grant an exemption from a regulation if TSA determines that the exemption is in the public interest.[11] TSA has determined that it is in the

[1] Public Law 107–56 (Oct. 26, 2001; 115 Stat. 396), 1012(a)(1), *codified as amended at* 49 U.S.C. 5103a.

[2] For purposes of this Notice, the term 'security threat' includes terrorism watchlists, and intelligence and law enforcement databases.

[3] 49 CFR 1572.13(b).

[4] 49 CFR 1572.15.

[5] 49 CFR 1572.13(b).

[6] White House (2021, December 16). *Biden-Harris Trucking Action Plan.* Available at: *https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/16/fact-sheet-the-biden-%E2%81%A0harris-administration-trucking-action-plan-to-strengthen-americas-trucking-workforce/.*

[7] 49 CFR 1572.13(a).

[8] Public Law 115–254, 132 Stat. 3186 (Oct. 5, 2018) 1978, *codified at* 49 U.S.C. 5103a. In March 2020, TSA published an exemption as an interim measure to conform regulatory requirements to the statute. The exemption includes guidance for states to validate a TWIC card; however, few states have implemented this process or accept TWIC for HME issuance.

[9] 85 FR 19767.

[10] 85 FR 46152 (July 31, 2020); 85 FR 68357 (Oct. 28, 2020).

[11] 49 U.S.C. 114(q). The Administrator of TSA delegated this authority to the Executive Assistant Administrator for Operations Security, effective March 26, 2020.

public interest to grant an exemption from certain process requirements in 49 CFR part 1572 related to STAs for HMEs. TSA based this determination on the need for commercial drivers with an HME to continue to work without interruption while supply chain pressures ease and TSA is able to address increasing HME enrollment volumes, which have impacted STA processing times. Extending the HME expiration date through this exemption would not compromise the current level of transportation security because TSA conducts recurrent security threat checks on HME holders and takes action to revoke an HME if derogatory information becomes available, regardless of expiration date. TSA uses data previously submitted by these individuals to conduct recurrent security threat vetting to ensure that they do not pose a security threat.

This exemption permits states to extend the expiration date for an HME for up to 180 days for eligible individuals with an HME that expires between July 1, 2022 and December 27, 2022, even if the individual did not initiate or complete submission of required information for an STA at least 60 days before expiration of the HME.[12] Consistent with the requirements in 49 CFR 1572.13(b), if the state grants an extension to an individual, the State must, if practicable, notify the individual that the state is extending the expiration date of the HME, the date that the extension will end, and the individual's responsibility to initiate the STA renewal process at least 60 days before the new expiration date. If it is not practicable for a State to give individualized notice to drivers, the state may publish general notice, for example, on the appropriate website.

The purpose of this exemption is to allow states to provide commercial drivers with up to six months of relief from action necessary to meet TSA's STA renewal requirements during a period of increased demand for commercial drivers. It allows for the 60 days TSA needs to complete processing of the individual's application for STA renewal once it is submitted. The exemption permits, but does not require, states to extend the expiration date for HMEs.

By permitting states to extend the expiration date of HMEs within the scope of this exemption, TSA better positions states to ensure that CDL holders with HMEs will be able to continue to provide their critical services amid supply chain pressures and increased demand for STAs, licenses, and endorsements. TSA has determined that there is little risk to transportation security associated with the exemption. The exemption is subject to the following conditions:

(1) The extension applies only to individuals who currently hold an HME;

(2) The extension is for a limited time, dependent on the duration and scope of supply chain pressures and increased HME enrollment volumes for drivers, and subject to possible modification by TSA before the closure of the effective period; and

(3) TSA will continue to conduct security threat checks of these during the period of the extension and retain its full authority to immediately revoke or suspend an individual's STA (Determination of No Security Threat) and to order a state to revoke an individual's HME.[13]

Exemption

State Exemption. During the effective period of this exemption, states are exempt from the requirement in 49 CFR 1572.13(a) prohibiting renewal of an eligible individual's HME for a CDL, unless the state receives a new STA (Determination of No Security Threat) from TSA. For the duration of this exemption, a state may extend the expiration date of an eligible individual's HME for a period of no more than 180 days without a new STA. The state must notify each eligible individual that he or she is subject to an STA for renewal of the HME and that he or she must initiate the STA at least 60 days before the extended expiration date of the HME. If it is not practicable for a state to give individualized notice to drivers, the state may publish general notice, for example, on the appropriate website. TSA will continue to recurrently vet these individuals against terrorism and other governmental watch lists and databases and reserves authority under 49 CFR 1572.5(b) and 1572.13 to direct a state to revoke an individual's HME immediately and at any time.

For purposes of this exemption, an *eligible individual* is defined as an individual who held a valid, unexpired HME with an STA (Determination of No Security Threat) on or after July 1, 2022, which HME has expired or would otherwise expire between that date and the close of the effective period of this exemption.

Limits of Exemption. This exemption does not apply to new HMEs nor does it affect any other requirements applicable to obtaining a commercial driver's license under 49 CFR parts 383 and 384.

David P. Pekoske,

Acting Administrator.

[FR Doc. 2022–19864 Filed 9–14–22; 8:45 am]

BILLING CODE 9110–05–P

[12] This exemption remains in effect through December 27, 2022, unless otherwise modified by TSA through a notice published in the **Federal Register**. TSA believes that the option for further modification, as noted above, provides clearer notice to and better certainty for states administering the program.

[13] See 49 CFR 1572.5(b) and 1572.13.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2022–0110; FXIA16710900000–223–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by October 17, 2022.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2022–0110.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2022–0110.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2022–0110; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185 or via email at *DMAFR@fws.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Miami-Dade Zoological Park and Gardens, Miami, FL; Permit No. PER0047993

The applicant requests a permit to export five captive-bred male Jamaican iguanas (*Cyclura collei*) from Zoo Miami, Miami, Florida, to the Frankfurt Zoo, Hessen, Germany, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

Applicant: Dr. Marisa Tellez, Alhambra, CA; Permit No. PER0045589

The applicant requests a permit to import biological samples collected from wild American crocodiles (*Crocodylus acutus*) from Stann Creek, Belize, for the purpose of scientific research. This notification is for a single import.

Multiple Trophy Applicants

The following applicants request permits to import sport-hunted trophies of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

Applicant: Madeline Demaske, Greeley, CO; Permit No. 24619D

Applicant: Clinton Grube, Ocanto, WI; Permit No. PER0048148

Applicant: Benard Hendrick, Odessa, TX; Permit No. PER0048159

Applicant: Geoffrey Corn, Springfield, CO; Permit No. 70482C

Applicant: Michael Towbin, Kirkland, WA; Permit No. 59012C

Applicant: Mathew Bell, Midland, TX; Permit No. 03114D

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to regulations.gov and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2022–20008 Filed 9–14–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

Self-Governance PROGRESS Act Negotiated Rulemaking Committee; Notice of Meeting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of virtual public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Self-Governance PROGRESS Act Negotiated Rulemaking Committee (Committee), will hold their second virtual public meeting to negotiate and advise the Secretary of the Interior (Secretary) on a proposed rule to

implement the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019 (PROGRESS Act).

DATES:

• *Meeting:* The meeting is open to the public to be held virtually on Monday, October 3, 2022; from 1:00 to 5:00 p.m. Eastern Time. Please see **SUPPLEMENTARY INFORMATION** below for details on how to participate.

• *Comments:* Interested persons are invited to submit comments on or before November 4, 2022. Please see **ADDRESSES** below for details on how to submit written comments.

ADDRESSES: Send your comments to the Designated Federal Officer, Vickie Hanvey, by any of the following methods:

• *Preferred method:* Email to *comments@bia.gov.*

• Mail, hand-carry or use an overnight courier service to the Designated Federal Officer, Ms. Vickie Hanvey, Office of Self-Governance, Office of the Assistant Secretary—Indian Affairs, 1849 C Street NW, Mail Stop 3624, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Vickie Hanvey, Designated Federal Officer, *comments@bia.gov,* (918) 931–0745. Individuals in the United States who are deaf, blind, 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: This meeting is being held under the PROGRESS Act (Pub. L. 116–180), the Negotiated Rulemaking Act (5 U.S.C. 561 *et seq.*), and the Federal Advisory Committee Act (5 U.S.C. appendix 2). The Committee is to negotiate and reach consensus on recommendations for a proposed rule that will replace the existing regulations at 25 CFR part 1000. The Committee will be charged with developing proposed regulations for the Secretary's implementation of the PROGRESS Act's provisions regarding the Department of the Interior's (DOI) Self-Governance Program.

The PROGRESS Act amends subchapter I of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5301 *et seq.,* which addresses Indian Self-Determination, and subchapter IV of the ISDEAA which addresses DOI's Tribal Self-Governance Program. The PROGRESS Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes. The **Federal Register** (87 FR 30256) notice published on May 18, 2022, discussed the issues to be negotiated and the members of the Committee.

Meeting Agenda

This meeting is open to the public. Detailed information about the Committee, including meeting agendas can be accessed at *https://www.bia.gov/service/progress-act.* Topics for this meeting will include Committee operating protocols, negotiated rulemaking process, schedule and agenda setting for future meetings, Committee caucus, and public comment. The Committee meeting will begin at 1:00 p.m. Eastern Time on Monday, October 3, 2022. Members of the public wishing to attend the meeting should visit *https://teams.microsoft.com/l/meetup-join/19%3ameeting_YjJiZmRmOTMtYjczMS00MjBmLWI3MjgtODE3OTA2OGZjNzZh%40thread.v2/0?context=%7b%22Tid%22%3a%220693b5ba-4b18-4d7b-9341-f32f400a5494%22%2c%22Oid%22%3a%2213321130-a12b-4290-8bcf-30387057bd7b%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a* for virtual access.

Meeting Accessibility/Special Accommodations

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Comments

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Requests to address the Committee during the meeting will be accommodated in the order the requests are received. Individuals who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written comments to the Designated Federal Officer up to 30 days following the meeting. Written comments may be sent to Vickie Hanvey listed in the **ADDRESSES** section above.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. appendix 2.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–20009 Filed 9–14–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034523; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University has amended a Notice of Inventory Completion published in the **Federal Register** on December 21, 2018. This notice amends the number of associated funerary objects in a collection removed from Williamson County, TN.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after October 17, 2022.

ADDRESSES: Patricia Capone, PMAE, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Peabody Museum of Archaeology and Ethnology, Harvard University. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this

notice, including the results of consultation, can be found in the inventory or related records held by the Peabody Museum of Archaeology and Ethnology, Harvard University.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (83 FR 65741–65743, December 21, 2018). Disposition of the items in the original Notice of Inventory Completion has not occurred. This notice amends the number of associated funerary objects which were not listed in the original notice. A total of 475 associated funerary objects from Williamson County, TN are reported here.

ASSOCIATED FUNERARY OBJECTS

Site	Original No.	Amended No.	Amended description
Gray's Farm (40WM11) in Williamson County, TN.	*Not reported*	127	12 bone pins; one sharpening stone; two ceramic bottles; one ceramic jar; three ceramic effigy bowls; three shell spoons; one strand of shell beads; 95 shell beads; three bifaces; two faunal bone fragments; one shell fragment; two shell gorgets; and one projectile point.
Arnold Site (40WM5) in Williamson County, TN.	*Not reported*	27	One ceramic disk; five ceramic bowls; two ceramic effigy bowls; one ceramic bottle; two chunkey stones; two carved shell ornaments; one shell spoon; one stone ear plug or bead; and 12 faunal bone and teeth fragments.
Glass Mounds Site (40WM3) in Williamson County, TN.	*Not reported*	10	One faunal bone fragment; three shell beads; three mica pieces; two copper panpipe casings; and one copper axe.
Unknown location in Williamson County, TN.	*Not reported*	0	No associated funerary objects are present.
Brentwood Library/Dr Jarman's Site (40WM210) (1882) in Williamson County, TN.	*Not reported*	281	One biface blade; one bone awl; one bone hairpin; two ceramic beads; one ceramic bottle; 34 ceramic bowls or bowl fragments; one ceramic effigy bottle; five ceramic effigy bowls or bowl fragments; one ceramic effigy vessel; four ceramic jar or jar fragments; one lot of ceramic jar and bag of jar sherds; two ceramic pipe stems; 86 ceramic sherds; six ceramic vessel or vessel fragments; seven miniature ceramic vessel or vessel fragments; 12 charcoal and debitage; one daub; seven debitage; one discoidal; 32 faunal bones; one ground stone fragment; one possible scraper; two projectile points; three rock fragments; 12 shell and bone fragments; 45 shell beads; one shell gorget; six shell or shell fragments; one stone axe; one stone ear plug/bead; one worked faunal bone; and one worked shell.
Brentwood Library/Dr Jarman's Site (40WM210) (1883) in Williamson County, TN.	*Not reported*	30	Two ceramic bowls; one effigy bowl; one effigy jar; four shell fragments; two stone fragments; two stone flakes; one discoidal stone; and 17 pieces of charcoal.
Brentwood in Williamson County, TN.	*Not reported*	0	No associated funerary artifacts are present.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the Peabody Museum of Archaeology and Ethnology, Harvard University has determined that:

- The human remains represent the physical remains of 215 individuals of Native American ancestry.
- The 475 objects 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.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects were removed from the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects in this notice to a requestor may occur on or after October 17, 2022. If competing requests for disposition are received, the Peabody Museum of Archaeology and Ethnology, Harvard University must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The Peabody Museum of Archaeology and Ethnology, Harvard University is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.11, and 10.13.

Dated: September 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–19976 Filed 9–14–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034524; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University has amended a Notice of Inventory Completion published in the **Federal Register** on December 21, 2018. This notice amends the number of associated funerary objects in a collection removed from Dickson County, TN.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after October 17, 2022.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Peabody Museum of Archaeology and Ethnology, Harvard University. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Peabody Museum of Archaeology and Ethnology, Harvard University.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (83 FR 65740–65741, December 21, 2018). Disposition of the items in the original Notice of Inventory Completion has not occurred. This notice amends the number of associated funerary objects, which were not listed in the original notice. Nineteen associated funerary objects from Dickson County, TN are reported here to reflect the inventory.

ASSOCIATED FUNERARY OBJECTS

Site	Original No.	Amended No.	Amended description
Anderson's Farm (40DS44) in Dickson County, TN.	*Not Reported*	19	11 ceramic vessel sherds and eight faunal bones representing deer and turtle.
Near Nashville in Dickson County, TN.	*Not reported*	0	No associated funerary objects are present.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the Peabody Museum of Archaeology and Ethnology, Harvard University has determined that:

- The human remains represent the physical remains of four individuals of Native American ancestry.
- The 19 objects 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.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects were removed from the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects in this notice to a requestor may occur on or after October 17, 2022. If competing requests for disposition are received, the Peabody Museum of Archaeology and Ethnology, Harvard University must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The Peabody Museum of Archaeology and Ethnology, Harvard University is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.11, and 10.13.

Dated: September 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–19977 Filed 9–14–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034526; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University has amended a Notice of Inventory Completion published in the **Federal Register** on December 21, 2018. This notice amends the number of associated

funerary objects in a collection removed from Marion County, TN.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after October 17, 2022.

ADDRESSES: Patricia Capone, PMAE, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Peabody Museum of Archaeology and Ethnology, Harvard University. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Peabody Museum of Archaeology and Ethnology, Harvard University.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (83 FR 65733–65734, December 21, 2018). Disposition of the items in the original Notice of Inventory Completion has not occurred. This notice amends the number of associated funerary objects which were not listed in the original notice. Ninety-two associated funerary objects from Marion County, TN, are reported here to reflect the inventory.

ASSOCIATED FUNERARY OBJECTS

Site	Original No.	Amended No.	Amended description
Cave near Jasper in Marion County, TN	*Not Reported*	33	32 faunal bone fragments and 1 ground stone.
Holloway Mounds in Marion County, TN	*Not reported*	59	One biface, 15 projectile points, one quartz discoidal, 41 shell beads, and one small plastic box containing a small projectile point tip and shell beads.
Mounds in Sequatchie Valley in Marion County, TN.	*Not reported*	0	No associated funerary objects are present.
Island in Tennessee River in Marion County, TN.	*Not reported*	0	No associated funerary objects are present.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the Peabody Museum of Archaeology and Ethnology, Harvard University has determined that:

- The human remains represent the physical remains of 23 individuals of Native American ancestry.
- The 92 objects 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.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects were removed from the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects in this notice to a requestor may occur on or after October 17, 2022. If competing requests for disposition are received, the Peabody Museum of Archaeology and Ethnology, Harvard University must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The Peabody Museum of Archaeology and Ethnology, Harvard University is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.11, and 10.13.

Dated: September 7, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–19978 Filed 9–14–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1265]

Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on September 9, 2022, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. 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: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: (1) limited exclusion orders directed to certain fitness devices, streaming components thereof, and systems containing same imported, sold for importation, and/or sold after importation by respondents iFIT Inc., FreeMotion Fitness, Inc., and NordicTrack, Inc., all of Logan, Utah; lululemon athletica inc. (''lululemon'') of Vancouver, Canada; and Curiouser Products Inc. d/b/a MIRROR and Peloton Interactive, Inc., both of New York, New York (collectively, the ''Respondents'') that infringe one or more of asserted claims 1 and 3–5 of U.S. Patent No. 9,407,564; claims 1–2 and 4–5 of U.S. Patent No. 10,757,156; claims 16–17 and 20 of U.S. Patent No. 10,469,554; and claims 10–11 and 14–15 of U.S. Patent No. 10,469,555; and (2) cease and desist orders directed to Respondents with respect to these asserted claims. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on September 9, 2022. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by the close of business on October 11, 2022.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1265'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of 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: September 12, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–19992 Filed 9–14–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1267]

Certain Power Inverters and Converters, Vehicles Containing the Same, and Components Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on August 12, 2022, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of section 337. On August 26, 2022, the ALJ also issued a Recommended Determination on Remedy, Bonding, and the Public Interest should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202)

205–2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket system (''EDIS'') at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: (1) a limited exclusion order directed to certain power inverters and converters, vehicles containing same, and components imported, sold for importation, and/or sold after importation by respondents Audi AG and Audi of America, LLC (collectively, ''Audi''); Automobili Lamborghini America, LLC and Automobili Lamborghini S.p.A (collectively, ''Lamborghini''); Bayerische Motoren Werke AG and BMW of North America, LLC (collectively, ''BMW''); Bentley Motors Ltd. and Bentley Motors, Inc. (collectively, ''Bentley''); Daimler AG and Mercedes-Benz USA, LLC (collectively, ''Mercedes''); General Motors LLC (''General Motors''); and Volkswagen AG and Volkswagen Group of America (''Volkswagen'' or ''VW''); and (2) cease and desist orders directed to respondents Audi, BMW, Mercedes, General Motors, and Volkswagen, but not to Bentley or Lamborghini. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The RD further finds that the public interest factors support a delay of six (6) months in the implementation of any remedial orders for the accused fully electric vehicles (''BEVs'') and plug-in hybrid vehicles (''PHEVs'') if the supply of BEV and PHEV vehicles continues to be impacted by the global semiconductor shortage.

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on August 26, 2022. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on October 10, 2022.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1267'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of 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: September 12, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–19991 Filed 9–14–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1330]

Certain Audio Players and Components Thereof (II); Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 9, 2022, under the Tariff Act of 1930, as amended, on behalf of Google LLC of Mountain View, California. A supplement was filed on August 24, 2022. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain audio players and components thereof by reason of the infringement of certain claims of U.S. Patent No. 11,024,311 (''the '311 patent''); U.S. Patent No. 9,812,128 (''the '128 patent''); U.S. Patent No. 9,632,748 (''the '748 patent''); and U.S. Patent No. 11,050,615 (''the '615 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and a desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. 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 at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Mullan, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 8, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–3, 8–12, 14–18, and 20 of the '311 patent; claims 1–3, 5–8, 10–13, and 15 of the '128 patent; claims 1–4, 7, 9–12, 14, and 15 of the '748 patent; and claims 1–3, 5–9, 11, 15–17, and 19 of the '615 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''audio player devices—specifically, voice controllable audio player devices and networked audio player devices'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Sonos, Inc., 614 Chapala Street, Santa Barbara, CA 93101.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Issued: September 9, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–19905 Filed 9–14–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Automated Put Walls and Automated Storage and Retrieval Systems, Associated Vehicles, Associated Control Software, and Component Parts Thereof (II), DN 3638;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by

accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of OPEX Corporation on September 9, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain automated put walls and automated storage and retrieval systems, associated vehicles, associated control software, and component parts thereof. The complainant names as respondents: HC Robotics (a.k.a. Huicang Information Technology Co., Ltd.) of China and Invata, LLC (d/b/a Invata Intralogistics) of Conshohocken, PA. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3638'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.[1]) Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 9, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–19904 Filed 9–14–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1329]

Certain Audio Players and Components Thereof (I); Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 9, 2022, under the Tariff Act of 1930, as amended, on behalf of Google LLC of Mountain View, California. A supplement was filed on August 24, 2022. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain audio players and components thereof by reason of the infringement of certain claims of U.S.

Patent No. 10,593,330 (''the '330 patent''); U.S. Patent No. 10,134,398 (''the '398 patent''); and U.S. Patent No. 7,705,565 (''the '565 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and a desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. 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 at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jessica Mullan, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 8, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–7, 9–15, 17, and 18 of the '330 patent; claims 1–5, 7–13, and 15–20 of the '398 patent; and claims 1, 3–7, 9–15, and 18 of the '565 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''audio player devices—specifically voice controllable audio player devices and battery powered audio player devices'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Google LLC, 1600 Amphitheatre Parkway, Mountain View, CA 94043.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Sonos, Inc., 614 Chapala Street, Santa Barbara, CA 93101.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2022).

Issued: September 9, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–19906 Filed 9–14–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Railpulse, LLC

Notice is hereby given that, on August 30, 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''), RailPulse, LLC (''RailPulse'') has 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, Union Pacific Railroad, Omaha, NE, has been added as a party 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 RailPulse intends to file additional written notifications disclosing all changes in membership.

On April 20, 2021, RailPulse 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 May 25, 2021 (86 FR 28151).

The last notification was filed with the Department on January 7, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 10, 2022 (87 FR 13759).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–19950 Filed 9–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Fluids for Electrified Vehicles

Notice is hereby given that, on August 26, 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''), Advanced Fluids for Electrified Vehicles (''AFEV'') has 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, GS Caltex Corporation, Seoul, South Korea, has withdrawn as a party 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 AFEV intends to file additional written notifications disclosing all changes in membership.

On June 16, 2021, AFEV 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 August 16, 2021 (86 FR 45751).

The last notification was filed with the Department on March 29, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 12, 2022 (87 FR 29182).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–19947 Filed 9–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Battery Innovation

Notice is hereby given that, on August 19, 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''), Consortium for Battery Innovation (''CBI'') has 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, Amara Raja Batteries Limited, Tirupati, INDIA, and ACE Green Recycling, Inc., Bellevue, WA, have been added 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 CBI intends to file additional written notifications disclosing all changes in membership.

On May 24, 2019, CBI 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 June 21, 2019 (84 FR 29241).

The last notification was filed with the Department on March 4, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 03, 2022 (87 FR 26226).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–19952 Filed 9–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on August 30, 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''), DVD Copy Control Association (''DVD CCA'') has 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, Continental Automotive GmbH, Wetzlar, GERMANY has been added as a party to this venture.

Also, Coresystem Technology Limited, Kowloon, Hong Kong, HONG KONG SAR; and A-Com International Co., Ltd., Hsinchu County, TAIWAN 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 DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA 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 August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on April 28, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2022 (87 FR 29381).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–19948 Filed 9–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AI Infrastructure Alliance, Inc.

Notice is hereby given that, on August 19, 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''), AI Infrastructure Alliance, Inc. (''AIIA'') has 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, Galileo Technologies, San Francisco, CA; Modulos AG, Zurich, SWITZERLAND; and AI Partnerships Corp., Toronto, CANADA, have been added 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 AIIA intends to file additional written notifications disclosing all changes in membership.

On January 5, 2022, AIIA 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 March 10, 2022 (87 FR 13759).

The last notification was filed with the Department on June 7, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 1, 2022 (87 FR 47006).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–19949 Filed 9–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 21–25]

Rayford ACP; Decision and Order

On June 15, 2021, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter, collectively OSC) to Rayford ACP [1] (hereinafter, Respondent) of Rayford, Texas. OSC, at 1 (citing 21 U.S.C. 823(f) and 824(a)(4), (d)).

A hearing was held before DEA Administrative Law Judge Teresa A. Wallbaum (hereinafter, the ALJ). On January 25, 2022, the ALJ issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (hereinafter, ''RD''), which recommended revocation of Respondent's registration. RD, at 69. Respondent filed Exceptions to the RD [2] and the Government filed a response. Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ's rulings, findings of fact, conclusions of law, and recommended sanction in the RD and summarizes and expands upon portions thereof herein.

I. Findings of Fact

Pursuant to 21 U.S.C. 823(f), 824(a)(4), the Government seeks revocation of Respondent's DEA registration because Respondent allegedly committed acts rendering its continued registration inconsistent with the public interest, including repeatedly filling prescriptions for controlled substances for seventeen patients in the face of unresolved red flags of abuse and diversion in violation of 21 CFR 1306.04(a) and 1306.06, and Tex. Health & Safety Code 481.074(a). OSC, at 2, 7.

A. Summary of the Proceeding and Relevant Facts

The Government presented its case through records and testimony from two witnesses, a DEA Diversion Investigator (hereinafter, DI), Tr. 33–63, and Dr. DiGi Graham, D.Ph., Tr. 64–573, 1494–1552, who testified as an expert witness in retail pharmacy, hospice pharmacy care, and the practice of pharmacy in the State of Texas. RD, at 15–18.

Respondent presented its case through testimony from four witnesses; including two experts, Ms. Jenna Head, RPh., BCGP (qualified as an expert in Texas pharmacy law, hospice pharmacy, and a pharmacy's corresponding obligation), Tr. 585–1029, and William C. Yarborough, III, Pharm.D, J.D. (qualified as an expert in Texas and federal law and retail pharmacy), Tr. 1406–1430; Tronown Thomas, Respondent's owner and Pharmacist-in-Chief (PIC), Tr. 1032–1402, 1485–1492; and Shawn Stevens, RN, a fact witness regarding early refills, Tr. 1480–1485. RD, at 18–25.[3]

B. Corresponding Responsibility

The Agency credits Dr. Graham's testimony that both federal and Texas law impose an independent, corresponding responsibility on pharmacists to ensure that a prescription is issued for a legitimate medical purpose and within the usual course of professional practice before dispensing.[4] RD, at 26–27; Tr. 97–98; Tex. Health & Safety Code 481.074(a). Further, the Agency finds, based on Dr. Graham's credible expert testimony and Texas law, that the independent corresponding responsibility requires a pharmacist to resolve red flags and document their resolution. RD, at 27; Tr. 98–100, 128, 317; *see* 22 Tex. Admin. Code § 291.29(f). Specifically, the Agency finds, as Dr. Graham credibly testified, a pharmacist fulfilling his or her corresponding responsibility and acting within the usual course of professional practice in Texas must review controlled substance prescriptions for red flags, such as cocktail prescriptions,[5] clinically significant therapeutic duplication,[6] [7]

[1] Respondent holds a DEA Certificate of Registration No. FL1670341 at the registered address of 440 Rayford Road, Suite 155, Rayford, Texas 77386. OSC, at 1–2.

[2] The Agency has reviewed and considered Respondent's Exceptions and finds them to be without merit as further addressed herein.

[3] The Agency adopts the ALJ's summary of each of the witnesses' testimonies and her assessment of the witnesses' credibility. RD, at 15–25. The Agency agrees with the ALJ that Dr. Graham's testimony was persuasive and consistent with Texas statutes regarding the standard of care. *Id.* at 18. It further agrees that Ms. Head and Mr. Thomas repeatedly relied on presumptions and their testimony therefore offered limited value. *Id.* at 21, 24–25. Ms. Head's testimony is illustrative: ''I know that the nurse and the physician are already monitoring for opioid-induced neurotoxicity . . . [be]cause I know that's hospice and what they have to do, then I don't see that that is a red flag, and I don't see I need to call to ask them if they're doing their job.'' Tr. 741. Respondent and its experts espouse a position that the prescriptions at issue do not raise red flags because the prescriber presumably had a legitimate reason for issuing the prescriptions. This position is not supported in the law or the record. *See infra* n.4.

[4] The Agency agrees with the RD that the record evidence supports a finding that ''there is only one standard, applicable to both retail and hospice patients, . . . [as] described by Dr. Graham.'' RD, at 30. Ms. Head testified that there were key distinctions between a hospice and a non-hospice pharmacy, *see* Resp Exceptions, at 2–5, and that due to these distinctions, most, if not all, of the red flags at issue in this case were never triggered because the prescriptions were stamped ''hospice patient'' or ''terminally ill.'' RD, at 20–21, 32; Tr. 684, 689, 888, 969, 991. Respondent's position directly conflicts with Texas law and the notion that a pharmacist has a corresponding responsibility that is separate and independent of the prescriber in 21 CFR 1306.04. *See infra* n.11 and Discussion. Further, the importance of this corresponding responsibility to ensure the legitimacy of prescriptions is exemplified in Patient J.T., who had multiple prescriptions that presented red flags and were incorrectly stamped ''terminally ill.'' RD, at 33–34. Respondent's position in this case undermines the CSA's purpose of preventing diversion and abuse of controlled substances. Therefore, I reject Respondent's argument because it conflicts with a core principle of the CSA—the establishment of a closed regulatory system devised to ''prevent the diversion of drugs from legitimate to illicit channels.'' *Gonzales* v. *Raich,* 545 U.S. 1, 13–14, 27 (2005); *see Jennifer St. Croix, M.D.,* 86 FR 19,010, 19,024 (2021). Additionally, Respondent notably does not point to any regulation or law exempting pharmacies dispensing to hospice patients from the requirements to resolve red flags, which are specifically set forth in the relevant Texas law. Dr. Graham credibly testified that, although the objective red flags listed in the law apply regardless of the situation, the red flags are often more easily resolved for hospice patients. Tr. 119–21, 175–76, 239–40, 249, 1519–20, 1527–28; RD, at 29. Respondent, however, did not maintain documentation of its resolution of red flags and continued to argue that the prescriptions did not present any red flags at all. The law and the record evidence do not support Respondent's arguments.

[5] As further explained herein, 22 Tex. Admin. Code § 291.29(f)(3) defines one relevant red flag factor as ''controlled substances commonly known to be abused drugs, including opioids, benzodiazepines, muscle relaxants . . . or any combination of these drugs,'' and the Agency credits Dr. Graham's testimony in accordance with this law that a pharmacist acting within the usual course of professional practice and exercising his or her corresponding responsibility must resolve and document this red flag without exception. *Compare* ALJX 30, at 3 (Respondent arguing that certain symptoms (pain, shortness of breath, and anxiety) are ''universal symptoms of the end-of-life process'' such that ''a reasonable hospice pharmacist following the standard of care would not consider the combination of an opioid and a benzodiazepine an automatic red flag''), *with* Tr. 109, 111–12, 136–37, 400–01, 1494–95, 1499–1503, 1523–24 (Dr. Graham opining that cocktail prescribing in hospice is still a red flag because hospice patients are often dehydrated and at a greater risk of dangerous accumulation of drugs in their systems). *See also* RD, at 28; Tex. Admin. Code § 291.29(f)(3). Texas law does not exempt hospice pharmacies from this requirement.

[6] Dr. Graham testified that therapeutic duplication is defined as medications in the same category that ''work on the same receptor site that alleviates the same symptoms.'' RD, at 28; Tr. 112–14; *see also* Tr. 255–56, 330–31, 337–38, 1516. The Agency rejects Respondent's Exceptions regarding therapeutic duplication. Resp Exceptions, at 12–21. Dr. Graham testified that anything that could harm the patient was clinically significant and explicitly testified to the potential harm that could be caused by the duplications presented in the subject prescriptions. Tr. 570; RD, at 61; *see, e.g.,* Tr. 116, 173, 205 (Dr. Graham's testimony addressing the harms of therapeutic duplication). Dr. Graham's testimony was focused on the pharmacological impact that the cited duplicative therapies would have on the body, rather than the intended use of the medication. Tr. 111–16. The Agency finds limited value in Ms. Head's speculative opinions that certain liquid morphine prescriptions were

Continued

early refills,[8] and distance; [9] and resolve those red flags prior to dispensing and document their resolution. RD, at 30; Tr. 100, 183–84, 340–41, 343, 400–01, 407–08, 1499–1502, 1523–24; *see also* Tr. 141–397. According to Dr. Graham, documentation of the resolution of red flags does not need to be complex. RD, at 27; Tr. 99, 163–64, 335, 356, 403–04. Respondent produced no documentation of its resolution of the relevant red flags for the subject prescriptions. *See* RD, at 62.

C. The Subject Prescriptions

The Agency agrees with and incorporates the findings of the RD and, based on the evidence in the record, finds that Respondent's dispensing of each of the subject controlled substance prescriptions to each of the relevant patients was outside of the usual course of professional practice of pharmacy in Texas and in violation of Respondent's corresponding responsibility. Respondent dispensed controlled substances on numerous occasions without documenting the resolution of the following red flags: cocktail prescribing for patients J.C., C.G., D.M., M.I., M.W., D.H., I.G., M.M., B.H., T.T., and M.J.; therapeutic duplication for patients D.M., M.I., M.W., D.H., I.G., J.L., M.G., B.H., T.T., M.J., K.B., and L.F.; early refills for patients D.M., and J.L.; and long distances for Patient J.G. and J.T. RD, at 34–54. For example, the Government established that Respondent dispensed at least thirty-nine prescriptions to Patient D.M. without documenting the resolution of multiple red flags, including combination prescribing, therapeutic duplication, and/or early refills. *Id.,* at 38–41. Regarding retail patients, J.C. and C.G., Respondent conceded that it ''did not appropriately exercise its corresponding responsibility,'' because it dispensed controlled substances without documenting the resolution of red flags for combination prescribing. Tr. 1087, 1091; RD, at 15. The Government also established that Respondent dispensed at least nineteen prescriptions for controlled substances to another retail patient, Patient J.T., who lived approximately sixty miles from Respondent without documenting the resolution of the traveling a long distance red flag. RD, at 37–38; Tr. 390–92.[10]

In accordance with Dr. Graham's credible expert testimony, the ALJ's analysis, and the records as a whole, the Agency finds that in dispensing the subject controlled substance prescriptions without documenting the resolution of the applicable red flag(s), Respondent's pharmacists did not fulfill their corresponding responsibility and Respondent did not dispense the subject prescriptions in the usual course of professional practice and within the applicable standard of care.

II. Discussion

Section 304(a) of the Controlled Substances Act (hereinafter, CSA) provides that ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). In the case of a practitioner, which includes a pharmacy, the CSA requires the Agency consider the following factors in determining whether Respondent's registration would be inconsistent with the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(3) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

The DEA considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37,507, 37,508 (1993).

The Government has the burden of proving that the requirements for revocation of a DEA registration in 21 U.S.C. 824(a) are satisfied. 21 CFR 1301.44(e). When the Government has

being used to treat breathing problems. *See, e.g.,* Tr. 684–87. Furthermore, Texas law specifically states that clinically significant duplicative therapies present a red flag, and further requires that red flags be resolved and documented. 22 Tex. Admin. Code § 291.33(c)(2)(A); *see* Discussion *infra*. There is no evidence that Respondent identified and resolved the red flags of clinically significant therapeutic duplication and documented their resolution as required by Texas law. Tr. at 99, 163, 335, 356, 403–04. Therefore, because the evidence does not establish that Respondent resolved the red flag in any manner, both Dr. Graham's testimony, Tr. 115, 331, and Ms. Head's testimony about how this red flag could theoretically be resolved is largely irrelevant.

[7] Mr. Thomas testified that Respondent used software that would alert the pharmacist when a prescription was potentially duplicative and the pharmacist would have to exercise his or her judgment in dismissing the alert. Tr. 1073–74. Respondent argues, without support, that the dismissal of this alert demonstrates that there was no red flag. Resp Exceptions, at 12–13. Contrary to Respondent's argument, the system appears to be alerting the pharmacist to a red flag. As already established, a pharmacist exercising his or her corresponding responsibility must resolve red flags and is required to document such resolution under Texas law. There is no such evidence of documentation in this case.

[8] Respondent presented testimony that early refills were permissible for hospice agencies at a much lower threshold than the threshold identified by Dr. Graham. *Compare* Tr. 120, 439–40, 1519–20, 1527, *with* Tr. 651–54, 1070–71, 1225; *see also* RD, at 29. Dr. Graham credibly testified that Respondent's low threshold would not fulfill the goal of identifying suspicious patterns. Tr. 1520; *see also* RD, at 29; Tr. 240, 243. Respondent further argued that a particular hospice agency set a lower refill threshold through policy, Resp. Exceptions, at 22, and Dr. Graham rationally and credibly testified that if that were the case, the early refill red flag could easily be resolved with a notation documenting that hospice agency's refill policy. RD, at 29; Tr. 1528. The Agency agrees with the RD that Dr. Graham's testimony on the issue was more compelling and more credible and has given it controlling weight. *See* RD, at 29–30. Early refills of a prescription must be identified and resolved under 22 Texas Admin. Code § 291.33(c)(2)(A)(i)(X); *see infra* Discussion. Respondent failed to document the resolution of this red flag.

[9] Texas law states that ''[r]easons to suspect that a prescription may have been authorized in the absence of a valid patient-practitioner relationship or in violation of the practitioner's standard of practice include: . . . the geographical distance between the practitioner and the patient or between the pharmacy and the patient.'' *See* 22 Tex. Admin. Code § 291.29(c)(4); RD, at 29–30; *see also* Tr. 122–23; 380–385 (Dr. Graham's testimony that travelling long distances to a pharmacy triggers the pharmacist's responsibility). The Agency rejects Respondent's arguments and Exceptions that are contrary to the plain language of Texas law, including Respondent's argument that the dispensing to Patient J.T. was proper because the prescriber's office was only 3.9 miles from Respondent. RD, at 37; Tr. 1423–27. The Agency also rejects Respondent's argument that Rayford's contract with Patient J.G.'s hospice agency, resolved any long distance concerns, because Respondent did not produce the contract on the record or otherwise demonstrate documentation of the resolution of the red flag. *See* Resp Exceptions, at 23–24 (*citing* Tr. 1350). Dr. Graham testified that a hospice agency's policy can resolve the distance concern if documented, Tr. 381, 383–84, 387, 405–06; RD, at 30, but there is no evidence that Respondent resolved the distance concern prior to dispensing and documented that resolution in this case. *See, e.g., George Pursley, M.D.,* 85 FR 80,162, (2020) (''Post hoc written or oral justifications . . . are not controlling.'') Tr. 381, 383–84, 387, 405–06.

[10] Respondent objected to the ALJ's characterization of Dr. Yarborough's testimony regarding the distance red flag. (Tr. 1426–27). Resp Exceptions, at 25 (*citing* RD, at 37). Texas law is clear that long distances travelled to a practitioner or a pharmacy indicates a potential invalid patient-practitioner relationship, therefore, the Agency fully credits Dr. Graham's testimony regarding the existence of the red flag and the requirement to resolve it and finds it unnecessary to address Respondent's Exception regarding the wording of the RD. *See supra* n. 9. RD, at 37–38; Resp Exceptions, at 25.

met its *prima facie* case, the burden then shifts to the Respondent to show that revoking its registration would not be appropriate, given the totality of the facts and circumstances on the record. *Med. Shoppe-Jonesborough,* 73 FR 364, 387 (2008). Having reviewed the record and the RD, the Agency agrees with the ALJ, adopts her analysis, and finds that the Government has proven by substantial evidence that Respondent committed acts which render its continued registration inconsistent with the public interest. RD, at 54–64.

While the Agency has considered all of the public interest factors, the Government's case invoking the public interest factors of 21 U.S.C. 823(f) seeks revocation of Respondent's registration based solely under Public Interest Factors Two and Four. *See* RD, at 55, n.53 (finding that factors 1, 3, and 5 do not weigh for or against revocation).

A. Factors Two and Four

Factors 2 and 4 are often analyzed together. *See, e.g., Fred Samimi, M.D.,* 79 FR 18,698, 18,709 (2014). Under Factor 2, the DEA analyzes a registrant's ''experience in dispensing . . . controlled substances.'' 21 U.S.C. 823(f)(2). Factor 2 analysis focuses on a registrant's acts that are inconsistent with the public interest, rather than on a registrant's neutral or positive acts and experience. *Randall L. Wolff, M.D.,* 77 FR 5106, 5121 n.25 (2012) (explaining that ''every registrant can undoubtedly point to an extensive body of legitimate prescribing over the course of [the registrant's] professional career''). Similarly, under Factor 4, the DEA analyzes a registrant's compliance with federal and state controlled substance laws. 21 U.S.C. 823(f)(4). Factor 4 analysis focuses on violations of state and federal laws and regulations. *Volkman* v. *DEA,* 567 F.3d 215, 223–24 (6th Cir. 2009).

As the Agency found above, as supported by credible, expert testimony, both federal and Texas law impose an independent, corresponding responsibility on pharmacists to ensure that a prescription is issued for a legitimate medical purpose and within the usual course of professional practice. Texas Health & Safety Code § 481.074(a); 21 CFR 1306.04; RD, at 26–27, 57; Tr. 97–98. ''The language in 21 CFR 1306.04 and caselaw could not be more explicit. A pharmacist has his own responsibility to ensure that controlled substances are not dispensed for non-medical reasons.'' *Ralph J. Bertolino, d/b/a Ralph J. Bertolino Pharmacy,* 55 FR 4729, 4730 (1990). Further, the record testimony and state law demonstrate that a pharmacist who exercises his or her corresponding responsibility in filling a controlled substance prescription is required to resolve red flags and document the resolution.[11] RD, at 27; Tr. 98–100, 128, 317; *see* 22 Tex. Admin. Code 291.29(f).

To prove a pharmacist violated his or her corresponding responsibility, the Government must show that the pharmacist acted with the requisite degree of scienter. *See* 21 CFR 1306.04(a) (''[T]he person *knowingly* filling [a prescription issued not in the usual course of professional treatment] . . . shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.'') (emphasis added). DEA has also consistently interpreted the corresponding responsibility regulation such that ''[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription.'' *Bertolino,* 55 FR at 4730 (citations omitted). Thus, when a pharmacist's suspicions are aroused by a red flag, the pharmacist must question the prescription and, if unable to resolve the red flag, refuse to fill the prescription. *Id.; Medicine Shoppe-Jonesborough,* 300 F. App'x 409, 412 (6th Cir. 2008).

Specifically, the Agency has found based on credible expert testimony and Texas law that a Texas pharmacy exercising its corresponding responsibility and acting within the standard of care must review for cocktail prescriptions, therapeutic duplication, early refills, and distance; must resolve these red flags prior to dispensing; and must document their resolution. RD, at 30; Tr. 100, 183–84, 340–41, 343, 400–01, 407–08, 1499–1502, 1523–24; *see also* Tr. 141–397.

In this matter, the Government did not allege that Respondent dispensed the subject prescriptions having actual knowledge that the prescriptions lacked a legitimate medical purpose. Instead, the Government alleged that Respondent violated the corresponding responsibility regulation for each of the patients at issue in this matter by ''repeatedly dispens[ing] controlled substances without addressing or resolving clear red flags.'' Gov Prehearing, at 16; *see also* Gov Posthearing, at 2. Agency decisions have consistently found that prescriptions with the same red flags at issue here were so suspicious as to support a finding that the pharmacists who filled them violated the Agency's corresponding responsibility rule due to actual knowledge of, or willful blindness to, the prescriptions' illegitimacy. 21 CFR 1306.04(a); *see, e.g., Morning Star Pharmacy,* 85 FR 51,045, 51,061 (2020) (relevant red flags include distance, drug cocktails, and therapeutic duplication); *Gulf Med Pharmacy,* 86 FR 72,694, 72,728 (2021) (relevant red flags include distance, drug cocktails, and therapeutic duplication); *Pharmacy 4 Less,* 86 FR 54,550, 54,573–76 (2021) (relevant red flags include distance); *East Main Street Pharmacy,* 75 FR 66,149, 66,163–65 (2010) (relevant red flags included long distances; lack of individualized therapy or dosing; drug cocktails; and early fills/refills).

Moreover, Texas law explicitly states that ''the geographical distance between the practitioner and the patient or between the pharmacy and the patient'' is a reason to suspect that a prescription may have been authorized in violation of the practitioner's standard of practice. 22 Tex. Admin. Code § 291.29(c)(4); *see also Morning Star Pharmacy,* 85 FR at 51,051 (applying 22 Tex. Admin. Code § 291.29(c)(4)); RD, at 61. It further states that early refills must be identified, resolved, and that resolution documented prior to dispensing under 22 Texas Admin. Code § 291.33(c)(2)(A)(i)(X), which requires a pharmacist to review for ''proper utilization, including overutilization or underutilization,'' *Id.; see also* Tr. 566 (Dr. Graham testifying that overutilization review includes early refills); RD, at 61. When red flags are identified, a pharmacist must resolve and document the resolution of any red flag or consultation. 22 Texas Admin. Code § 291.33(c)(2)(A)(ii) (''[u]pon identifying any clinically significant conditions [or] situations . . . the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner''); *id.* § 291.33(c)(2)(C) (a pharmacist has an obligation to document any consultation); RD, at 61. Therefore, Respondent's failure to document the resolution of a red flag violated Texas law. *Id.* at §§ 291.33(c)(2)(A)(ii), 291.33(c)(2)(C).

The Agency agrees with the RD that Respondent dispensed controlled substances on numerous occasions without documenting a resolution of red flags for cocktail prescribing, therapeutic duplication, early refills,

[11] The Agency agrees with the RD that Texas law and ''the record evidence [do] not support an assumption that hospice care is so highly-regulated and so closely-monitored that it alters a pharmacy's independent, corresponding responsibility to dispense only lawful prescriptions . . . .'' RD, at 34 (citing 21 CFR 1306.04(a) and *The Pharmacy Place,* 86 FR 21,008, 21,013 (2021)).

and long distances. RD, at 62–64; *supra,* at Findings of Fact C. For many of these patients, the prescriptions filled contained multiple unresolved red flags at once. *See, e.g.,* RD 38–40 (Patient D.M. on January 23, 2019, Respondent dispensed two short-acting opioids along with a benzodiazepine, which raised red flags for both therapeutic duplication and cocktail prescribing, and on March 20, 2020, Respondent dispensed hydrocodone six days early along with alprazolam, which raised red flags for both early refills and cocktail prescribing). Accordingly, the Agency agrees with the RD that the Government has established by substantial evidence that Respondent filled numerous prescriptions to seventeen patients outside the usual course of professional practice and without fulfilling its corresponding responsibility in violation of 21 CFR 1306.04(a) and 1306.06. Further, the Government established by substantial evidence that Respondent acted in violation of Texas law as set forth in 22 Texas Admin. Code §§ 291.29 and 291.33 and Texas Health & Safety Code § 481.074(a). *See* RD, at 64. The Government has made a *prima facie* case that the Respondent has committed acts that render its registration inconsistent with the public interest, and its misconduct supports the revocation of its registration. RD, at 64.

III. Sanction

Where, as here, the Government has established grounds to revoke Respondent's registration, the burden shifts to the respondent to show why it can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018). When a registrant has committed acts inconsistent with the public interest, it must both accept responsibility and demonstrate that it has undertaken corrective measures. *Holiday CVS LLC dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62,316, 62,339 (2012) (internal quotations omitted). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.,* 86 FR 33,738, 33,746 (2021).

Here, Respondent has failed to unequivocally accept responsibility. Respondent did admit that it violated its corresponding responsibility with respect to retail patients J.C. and C.G., Tr. 1087, 1091, but then proceeded to deny that retail patient J.T.'s prescriptions presented a red flag based on distance in spite of clear Texas law to the contrary. RD, at 66 (internal citations omitted). Respondent also consistently denied that the controlled substance prescriptions for its hospice patients presented any red flags. Tr. 1377–78; ALJ Ex. 30, at 2–5; *see also, e.g.,* Tr. 1093–94, 1097, 1120–21, 1124–28, 1130, 1132–34, 1140, 1142–46, 1148–50, 1204–23, 1273–76, 1279–80, 1290, 1293; RD, at 66. For example, PIC Thomas denied that Patient D.M.'s prescriptions presented red flags, despite his own expert testifying to the contrary. *Compare* Tr. 1105–06 (PIC Thomas), *with* Tr. 725–29, 731–32 (Ms. Head). A registrant's acceptance of responsibility for misconduct is not adequate when the registrant does not understand what the law requires. *See Zion Clinic Pharmacy,* 83 FR 10,876, 10,903 (2018).[12]

Furthermore, Respondent's misconduct was far from a one-time occurrence. Respondent filled multiple prescriptions for Schedule II controlled substances presenting numerous red flags. *See Noah David, P.A.,* 87 FR 21,165, 21,174 (2022); *see also Garrett Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (collecting cases) (''The egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction.'')

In sanction determinations, the Agency has historically considered its interest in deterring similar acts, both with respect to the respondent in a particular case and the community of registrants. *See Joseph Gaudio, M.D.,* 74 FR 10,083, 10,095 (2009); *Singh,* 81 FR at 8248. The Agency finds that considerations of both specific and general deterrence weigh in favor of revocation in this case. A sanction less than revocation would send a message to the current and prospective registrant community that compliance with core controlled-substance legal principles is not a condition precedent to receiving and maintaining a DEA registration. Further, there is simply no evidence that Respondent's behavior is not likely to recur in the future such that the Agency can entrust it with a CSA registration; in other words, the factors weigh in favor of revocation as a sanction. Accordingly, the Agency shall order the sanctions the Government requested, as contained in the Order below.

[12] When a registrant fails to make the threshold showing of acceptance of responsibility, the Agency need not address the registrant's remedial measures. *Ahuja,* 84 FR at 5498 n.33; *Daniel A. Glick, D.D.S.,* 80 FR 74,800, 74,801, 74,810 (2015); *see also Jones Total Health Care Pharmacy, LLC, SND Healthcare, LLC,* 881 F.3d 823, 833 (11th Cir. 2018) (upholding DEA's refusal to consider pharmacy's remedial measures given lack of acceptance). The Agency agrees with the ALJ that even if the Agency were to consider Respondent's remedial measures, they would not affect the ultimate decision in this matter. RD, at 67. Here, Respondent has made no showing of remedial measures as to the hospice patients, because it denies any error that requires remediation. *Id.* As to the retail patients, Respondent's PIC testified that he does in-house training, including ''ten-minute huddles'' on a daily basis to emphasize the need for documentation. Tr. 1379–80; RD, at 67. He also testified that the pharmacy has a new software system that allows pharmacists to scan and attach documents to the electronic patient file. Tr. 1074, 1253; RD, at 67. The Agency does not find such measures to be adequate in addressing the nature of the violations found here. *See* RD, at 67.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration FL1670341 issued to Rayford ACP. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I further hereby deny any pending applications for renewal or modification of this registration, as well as any other pending application of Rayford ACP for registration in Texas. This order is effective October 17, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 8, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–19988 Filed 9–14–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Reginald James Newsome, M.D.; Decision and Order

On March 16, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government)

issued an Order to Show Cause (hereinafter, OSC) to Reginald James Newsome, M.D. (hereinafter, Registrant). OSC, at 1 and 4. The OSC proposed the revocation of Registrant's Certificate of Registration No. FN0738344 at the registered address of 8865 Davis Blvd., Suite 100A, Keller, Texas 76248. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''without authority to handle controlled substances in the State of Texas, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its Request for Final Agency Action (RFAA), submitted July 18, 2022.[1]

Findings of Fact

On February 15, 2022, the Texas Medical Board issued an Order of Temporary Suspension suspending Registrant's license to practice medicine in Texas. RFAAX C (Temporary Suspension Order), at 6. According to Texas's online records, of which the Agency takes official notice, Registrant's Texas medical license is still suspended.[2] Texas Medical Board Verification, *https://profile.tmb.state.tx.us/Search.aspx?d2678354-aafa-4f28-a2a0-96b1f74b617a* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not currently licensed to engage in the practice of medicine in Texas, the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616 27617 (1978).[3]

According to Texas statute, ''dispense'' means ''the delivery of a controlled substance in the course of professional practice or research, by a practitioner or person acting under the lawful order of a practitioner, to an ultimate user or research subject. The term includes the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for delivery.'' Tex. Health & Safety Code § 481.002(12) (2022). Further, a ''practitioner'' means a ''a physician, . . . licensed, registered, or otherwise permitted to distribute, dispense, analyze, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.'' *Id.* at § 481.002(39)(A).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Texas. A person must be a licensed practitioner to dispense a controlled substance in Texas. Thus, because Registrant lacks authority to practice medicine in Texas and, therefore, is not authorized to handle controlled substances in Texas, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FN0738344 issued to Reginald James Newsome, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Reginald James Newsome, M.D., to renew or modify this registration, as well as any other pending application of Reginald James Newsome, M.D., for additional registration in Texas. This Order is effective October 17, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 8, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–19989 Filed 9–14–22; 8:45 am]

BILLING CODE 4410–09–P

[1] Based on the Declaration from a DEA Diversion Investigator that the Government submitted with its RFAA, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAA, Exhibit (hereinafter, RFAAX) B, at 2–3. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 3; *see also* 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C).

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.usdoj.gov.*

[3] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR at 27617.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 22–9]

Bernadette U. Iguh, M.D.; Decision and Order

On November 10, 2021, the Drug Enforcement Administration (hereinafter, DEA or Government),

issued an Order to Show Cause (hereinafter, OSC), seeking to revoke the DEA Certificate of Registration, Control No. FI1112084, of Bernadette U. Iguh, M.D., (hereinafter, Respondent) of Houston, Texas, pursuant to 21 U.S.C. 824(a)(5). OSC, at 1, 3. The Government alleged that Respondent has been excluded from participation in Medicare, Medicaid, and all federal health care programs pursuant to 42 U.S.C. 1320a–7(a). *Id.* at 1.

A hearing was held before an Administrative Law Judge (hereinafter, the ALJ) on March 1, 2022. On May 19, 2022, the ALJ issued his Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, Recommended Decision or RD), which recommended that the Agency revoke Respondent's registration. RD, at 19. Neither party filed exceptions.

I. Findings of Fact

A. Witness Credibility

The Government presented its case through the testimony of a single witness, a DEA Diversion Investigator (hereinafter, the DI). Tr. 13–23. The ALJ found the DI's testimony to be credible and afforded it considerable weight. RD, at 5. Respondent presented her case through the testimony of a single witness, herself. Tr. 24–41. The ALJ noted some minor inconsistencies in Respondent's testimony regarding the status of her registration, as well as in Respondent's testimony regarding the dollar amount of kickbacks that she received. RD, at 9. Nonetheless, the ALJ found Respondent's testimony to be generally consistent, genuine, and credible and afforded it significant weight. *Id.* Here, the Agency adopts the ALJ's summary of both the DI's and the Respondent's testimony and the ALJ's credibility determinations. *Id.* at 3–5, 5–9.

B. Respondent's Criminal Conviction and Exclusion

Respondent is a Texas physician who holds a DEA registration to handle controlled substances in Schedules II–V. Government Exhibit (hereinafter, GX) 1 (Respondent's COR FI1112084); *see also* RD, at 2 (Stipulations 1–2). Respondent operated a solo family medicine practice in Houston from 2009 to August 2021. Tr. 26–27. From August 2009 through July 2013, Respondent submitted fraudulent certifications to Medicare for home health services. GX 4 (HHS Appeals Board Decision), at 3. Specifically, Respondent would ''certify that beneficiaries were homebound and that home health services were medically necessary regardless of whether the patients needed home health.'' [1] GX 4, at 3. According to Respondent, she did not understand the definition of ''homebound'' at the time, and she thought that she was properly evaluating the files of these patients and certifying them as homebound based on a proper medical assessment. Tr. 27, 45, 48.[2] Respondent ''was paid for each certification by the owner of [a] home health agency'' and received ''at least $17,800 [3] in kickbacks . . . for her false certifications.'' GX 4, at 3. As a result of the false certifications, ''Medicare paid about $884,585 to the home health agency.'' *Id.*

On October 3, 2017, Respondent pled guilty to one count of conspiracy to commit healthcare fraud in violation of 18 U.S.C. 1349. GX 2 (Criminal Judgment Against Respondent), at 1; *see also* RD, at 3 (Stipulation 4). Judgment was entered on March 5, 2021 and as a result of her guilty plea, Respondent was sentenced to time served and 15 months of supervised release and was ordered to pay $884,585 in restitution.[4] GX 2, at 1–5; *see also* RD, at 3 (Stipulations 4–5). Based on Respondent's guilty plea and conviction, on May 28, 2021, the Department of Health and Human Services, Office of Inspector General (hereinafter, HHS/OIG) excluded Respondent from participation in Medicare, Medicaid, and all federal health care programs for a minimum period of 10 years pursuant to 42 U.S.C. 1320a–7(a). GX 3 (HHS Mandatory Exclusion Letter), at 1; *see also* RD, at 3 (Stipulations 6–7).[5]

C. Respondent's Rehabilitation and Controlled Substance Prescribing

Following her criminal conviction, Texas permitted Respondent to continue practicing medicine. *Id.* at 30. In August 2021, Respondent's medical license was put on a three-year probation that limited Respondent to group practice and required that she complete 12 hours of CME (four hours of billing and eight hours of ethics). *Id.* at 31–32. Respondent testified that, as of March 1, 2022, she still had two more months of probation and that she has been ''100 percent compliant'' thus far, and current in her restitution payments. *Id.* at 30, 52. Respondent also testified that she has completed 30 total hours of CME, including the 12 required hours of billing and ethics, as well as additional hours in opioid and diversion awareness screening. *Id.* at 31–33. Since her conviction, Respondent has worked in a group medical practice and has been teaching nursing school clinicals.[6] *Id.* at 33. Respondent testified that because of what she has learned, she has completed community service, has given lectures, and has talked to many doctors about what she went through ''so they won't have to go through it'' and to teach them about the risks and the potential consequences. *Id.* at 40–41. Additionally, Respondent testified that she provided records and testimony in matters related to home health agencies to the Government, and stated that, as of March 1, 2022, she has given the Government 12 interviews. *Id.* at 34–35. Respondent testified that she was helping the Government voluntarily, not as part of her criminal settlement or medical board discipline. *Id.* at 36.[7]

Regarding Respondent's controlled substance prescribing, Respondent noted that her criminal conviction did not relate at all to controlled substances and that the Texas Medical Board did not restrict her ability to prescribe controlled substances. *Id.* at 30, 33. Regarding her previous practices related to controlled substances, Respondent testified that she implemented safety measures to ensure that her prescribing was appropriate including: (1) checking a prescription monitoring system before issuing or renewing any controlled substance prescription to a patient; (2) restricting such patients to one pharmacy of their choice; and (3) referring any pain management patients to two pain specialists. *Id.* 36–39.

[1] Respondent testified that she charged for these orders and billed them to Medicare. Tr. 28. She explained that if she saw a patient in Houston, she would charge the patient $100, while if she saw a patient away from Houston, because she had to travel, she would charge the patient $150. *Id.* Respondent admitted that these charges were ''very inappropriate,'' but stated that at the time, she did not know that they were inappropriate. *Id.*

[2] Respondent testified that she now understands that ''homebound'' has a much narrower definition than she had previously thought, and pertained to patients who have a medical necessity for home care and who are ''not able to go from place to place, other than [a] medical office or the clinic for their medical needs.'' *Id.* at 45–46.

[3] Respondent testified that she only received ''up to $15,000.'' *Id.* at 52.

[4] Respondent testified that this was ''money that they said that [her] signature allowed the home health people to make'' and that she did not profit from it. Tr. 51–52.

[5] Respondent later appealed her exclusion, not challenging its imposition but its length of 10 years. *See* GX 4 (HHS Appeals Board Decision), at 1.

[6] Respondent stated that she was a nurse for 20 years before she went to medical school. *Id.* at 34.

[7] When asked why she was conducting these interviews, Respondent stated, ''I don't know if I have to go in attendance, but I worked so hard to come to where I am right now, and I felt like what happened to me should not—the hours you have to pay for, the price for what happened to me, because I have been—I have done everything. I think life is difficult for the years I've paid.'' *Id.* at 35–36.

II. Discussion

Under Section 824(a) of the Controlled Substances Act (hereinafter, CSA), a registration ''may be suspended or revoked'' upon a finding of one or more of five grounds. 21 U.S.C. 824. The ground in 21 U.S.C. 824(a)(5) requires that the registrant ''has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.'' *Id.* Here, there is no dispute in the record that Respondent is mandatorily excluded from federal health care programs under 42 U.S.C. 1320a–7(a). The Government has presented substantial evidence of Respondent's exclusion and the underlying criminal conviction that led to that exclusion and Respondent has admitted to the same. *See* GX 2–4; Respondent's Post-Hearing Brief, at 1. Accordingly, the Agency will sustain the Government's allegation that Respondent has been excluded from participation in a program pursuant to section 1320a–7(a) of Title 42 and find that the Government has established that a ground exists upon which a registration could be revoked pursuant to 21 U.S.C. 824(a)(5).[8] Where, as here, the Government has met its *prima facie* burden of showing that a ground for revocation exists, the burden shifts to the Respondent to show why she can be entrusted with a registration. *See Stein,* 84 FR 46972.

III. Sanction

The Government has established grounds to deny a registration; therefore, the Agency will review any evidence and argument the Respondent submitted to determine whether or not the Respondent has presented ''sufficient mitigating evidence to assure the Administrator that [she] can be trusted with the responsibility carried by such a registration.'' *Samuel S. Jackson, D.D.S.,* 72 FR 23,848, 23,853 (2007) (quoting *Leo R. Miller, M.D.,* 53 FR 21,931, 21,932 (1988)). '' 'Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs, Inc.* v. *Drug Enf't Admin.,* 54 F.3d 450, 452 (7th Cir. 1995), [the Agency] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [her] actions and demonstrate that [she] will not engage in future misconduct.' '' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 463 (2009) (quoting *Medicine Shoppe,* 73 FR 364, 387 (2008)); *see also Samuel S. Jackson, D.D.S.,* 72 FR 23,853; *John H. Kennedy, M.D.,* 71 FR 35,705, 35,709 (2006); *Prince George Daniels, D.D.S.,* 60 FR 62,884, 62,887 (1995). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.,* 81 FR 8247, 8248 (2016).

A. Acceptance of Responsibility

Here, Respondent stated multiple times that she takes full responsibility for her actions and said, ''I learned that you can't just sign signatures like I signed to get me in trouble, and you can't just accept money for signing signatures that I signed. And that has been a very big lesson on my part.'' Tr. 27, 40–41; *see also* Respondent's Post-Hearing Brief, at 3. Respondent testified that she now understands that what she did was ''bad,'' because it was ''unethical,'' Tr. 41; however, it is unclear how Respondent did not know prior to being caught that she ''wasn't supposed to fill medicine and at the same time take money.'' Tr. 49. It is noted that Respondent pled guilty to the criminal charges against her and self-reported her conviction to the Texas Medical Board and that she testified that she can be trusted with a DEA registration. Tr. 30–31, 41; GX 2, at 1; *see also* RD, at 3 (Stipulation 4). Nonetheless, the Agency finds Respondent's acceptance of responsibility to be insufficient due to her attempts to minimize her misconduct and failure to acknowledge its full scope. *See Stein,* 84 FR at 46972.

Early in her testimony, Respondent stated that she was convicted because she ''wasn't so sure of homeboundedness,'' but noted that she pled guilty because ''it was [her] signature.'' Tr. 27. However, Respondent also testified that she properly evaluated the files of these patients and that when she signed an order related to their ''homeboundedness,'' it was based on a proper medical assessment. *Id.* at 28. On cross-examination, Respondent clarified, ''At that point, I thought it was but I didn't know—understand the definition. There was a different definition of homeboundedness. I did not understand it. That's why I said I had to plead.'' *Id.* at 45. Ultimately, Respondent's emphasis on her ignorance as the cause of her misconduct, in tandem with Respondent's notable lack of emphasis on the damages she caused, both serve to downplay the extent to which her own actions and decisions were harmful. Further, Respondent testified that she signed the fraudulent certifications to Medicare ''not knowing that some home health agencies [were] not doing what they're supposed to do'' in an attempt to shift blame from herself to the home health agencies. *Id.* at 27–28. Finally, Respondent minimized her financial gain in direct contradiction with the record. As the ALJ noted, Respondent understated the amount that she received in kickbacks—testifying that she only received what the home health agency paid to her, which was ''up to $15,000,'' while the ALJ in the HHS Appeals Board Decision found that Respondent received $17,800. RD, at 15; *see also* Tr. 52; GX 4, at 3.[9]

[8] The Government correctly argues, Government's Post-Hearing Brief, at 5–6, and Respondent did not rebut, Respondent's Post-Hearing Brief, at 3, that the underlying conviction forming the basis for a registrant's mandatory exclusion from participation in federal health care programs need not involve controlled substances to provide the grounds for revocation or denial pursuant to section 824(a)(5). *Jeffrey Stein, M.D.,* 84 FR 46968, 46971–72 (2019); *see also Narciso Reyes, M.D.,* 83 FR 61678, 61681 (2018); *KK Pharmacy,* 64 FR 49507, 49,510 (1999) (collecting cases); *Melvin N. Seglin, M.D.,* 63 FR 70431, 70433 (1998); *Stanley Dubin, D.D.S.,* 61 FR 60727, 60728 (1996).

[9] Even if Respondent's acceptance of responsibility for her wrongdoing had been sufficient such that the Agency would reach the matter of remedial measures, Respondent has not offered adequate remedial measures to assure the Agency that she can be trusted with registration. *See Carol Hippenmeyer, M.D.,* 86 FR 33748, 33,773 (2021). Respondent has been compliant in completing her probation as well as current in her restitution payments, Tr. 30, 52, and she has completed community service, has given lectures, has talked to other doctors, and has conducted voluntary interviews with the Government regarding her experience. *Id.* at 34–36, 40–41. However, as the ALJ stated, it is difficult ''to gauge the impact, if any, of the outreach the Respondent has conducted with other medical professionals given her very limited and non-specific testimony on her efforts in this regard.'' RD, at 16. Moreover, Respondent's statement that she conducted this outreach to other medical professionals ''so they won't have to go through it'' suggests that Respondent has failed to grasp the greater harm caused by her misconduct beyond what she has personally suffered. Tr. 41. Similarly, Respondent's explanation as to why she provided interviews to the Government in which she concluded that ''life [was] difficult for the years [she has] paid,'' further suggests that she has not truly learned from her experience and continues to only understand the negative consequences of her actions as those that have impacted her own life. *Id.* at 35–36. In both instances, Respondent's focus on the harm caused to herself rather than on the harm caused to her patients and the community undermines the remedial value of her efforts. Finally, although Respondent testified to completing 30 total hours of CME, including additional hours in opioid and diversion awareness screening beyond what was required by her probation, Tr. 31–33, Respondent

Continued

B. Specific and General Deterrence

In addition to acceptance of responsibility, the Agency considers both specific and general deterrence when determining an appropriate sanction. *Daniel A. Glick, D.D.S.,* 80 FR 74800, 74810 (2015). Specific deterrence is the DEA's interest in ensuring that a registrant complies with the laws and regulations governing controlled substances in the future. *Id.* General deterrence concerns the DEA's responsibility to deter conduct similar to the proven allegations against the respondent for the protection of the public at large. *Id.* In this case, the Agency believes a sanction of revocation would deter Respondent and the general registrant community from unethical behavior involving the acceptance of money for unlawful and unethical acts. It is not difficult to imagine, as the Agency has repeatedly encountered, this situation repeating itself in the context of receiving money for controlled substance prescriptions.

C. Egregiousness

The Agency also looks to the egregiousness and the extent of the misconduct as significant factors in determining the appropriate sanction. *Garrett Howard Smith, M.D.,* 83 FR 18882, 18910 (2018) (collecting cases). In the current matter, Respondent received $17,800 in kickbacks over a period of almost four years and cost Medicare $884,585. GX 4, at 3. Moreover, Respondent's exclusion letter from HHS/OIG indicates that in Respondent's case, the minimum exclusion period of five years was increased to ten years due to three aggravating factors: (1) the financial loss to a Government program was over $50,000; (2) Respondent's acts underlying her conviction lasted for over one year; and (3) Respondent's sentence included incarceration, although Respondent was sentenced to time served and location monitoring for a period of 15 months.[10] *Id.* at 1–2; *see also Michael Jones, M.D.,* 86 FR 20728, 20732 (2021) (considering the length of the HHS exclusion in assessing egregiousness).

As discussed above, to avoid sanction when grounds for revocation exist, a respondent must convince the Administrator that she can be entrusted with a registration. The Agency finds that Respondent has not met this burden. Accordingly, the Agency shall order the sanctions the Government requested, as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FI1112084 issued to Bernadette U. Iguh, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application to renew or modify this registration, as well as any other pending application of Bernadette U. Iguh, M.D., for registration in Texas. This Order is effective October 17, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 8, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–19975 Filed 9–14–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mohammad H. Said, M.D.; Decision and Order

On July 19, 2021, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Mohammad H. Said, M.D. (hereinafter, Registrant). OSC, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. AS9144786 at the registered address of 524 East Division, P.O. Box 40, Ephrata, Washington 98823. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''without authority to handle controlled substances in the State of Washington, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its Request for Final Agency Action (RFAA), submitted August 1, 2022.[1]

Findings of Fact

On January 28, 2021, the State of Washington, Department of Health, Washington Medical Commission, issued an Order indefinitely suspending Registrant's license to practice medicine in Washington. RFAAX 4 (State of Washington, Dept. of Health Order dated January 28, 2021), at 2, 13–14. According to Washington's online records, of which the Agency takes official notice, Registrant's license is still suspended. [2] Washington State Department of Health Provider Credential Search, *https://fortress.wa.gov/doh/providercredentialsearch* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not currently licensed to engage in the practice of medicine in Washington, the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) ''upon a finding that the registrant . . . has had his State license or registration

failed to provide any documentation certifying her completion of these hours.

[10] HHS/OIG considered as a mitigating factor that Respondent cooperated with federal and state officials. GX 3, at 2.

[1] Based on a Declaration from a DEA Diversion Investigator and a Declaration from a federal government contractor assigned as a data analyst to the DEA Office of Chief Counsel, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAA Exhibit (hereinafter, RFAAX) 2, at 2; RFAAX 5, at 1. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement or corrective action plan and therefore has waived any such rights. RFAA, at 1–2; *see also* 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C).

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.usdoj.gov.*

suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978). [3]

According to Washington statute, ''A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession.'' Wash. Rev. Code § 69.50.308(j) (2022). Further, a ''prescription'' means ''an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.'' *Id.* at § 69.50.101(nn). Finally, a ''practitioner'' as defined by Washington statute includes ''[a] physician under chapter 18.71 RCW.'' *Id.* at § 69.50.101(mm)(1).[4]

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Washington. As already discussed, a physician must be a licensed practitioner to dispense or prescribe a controlled substance in Washington. Thus, because Registrant lacks authority to practice medicine in Washington and, therefore, is not authorized to handle controlled substances in Washington, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. AS9144786 issued to Mohammad H. Said, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending applications of Mohammad H. Said, M.D., to renew or modify this registration, as well as any other pending application of Mohammad H. Said, M.D., for additional registration in Washington. This Order is effective October 17, 2022.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 8, 2022, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2022–19972 Filed 9–14–22; 8:45 am]

BILLING CODE 4410–09–P

[3] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton,* 43 FR at 27,617.

[4] Chapter 18.71 regulates physicians.

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection, request for comment.

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 and/or continuing 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. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before November 14, 2022.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Expenditure (CE) Surveys collect data on consumer expenditures, demographic information, and related data needed by the Consumer Price Index (CPI) and other public and private data users. The continuing surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and to obtain data for future CPI revisions. The CE Surveys have been ongoing since 1979.

The data from the CE Surveys are used (1) for CPI revisions, (2) to provide a continuous flow of data on income and expenditure patterns for use in economic analysis and policy formulation, and (3) to provide a flexible consumer survey vehicle that is available for use by other Federal Government agencies. Public and private users of price statistics, including Congress and the economic policymaking agencies of the Executive branch, rely on data collected in the CPI in their day-to-day activities. Hence, data users and policymakers widely accept the need to improve the process used for revising the CPI. If the CE Surveys were not conducted on a

continuing basis, current information necessary for more timely, as well as more accurate, updating of the CPI would not be available. In addition, data would not be available to respond to the continuing demand from the public and private sectors for current information on consumer spending.

In the Quarterly Interview Survey, each consumer unit (CU) in the sample is interviewed every three months over four calendar quarters. The sample for each quarter is divided into three panels, with CUs being interviewed every three months in the same panel of every quarter. The Quarterly Interview Survey is designed to collect data on the types of expenditures that respondents can be expected to recall for a period of three months or longer. In general the expenses reported in the Interview Survey are either relatively large, such as property, automobiles, or major appliances, or are expenses which occur on a fairly regular basis, such as rent, utility bills, or insurance premiums.

The Diary (or recordkeeping) Survey is completed at home by the respondent family for two consecutive one-week periods. The primary objective of the Diary Survey is to obtain expenditure data on small, frequently purchased items which normally are difficult to recall over longer periods of time.

II. Current Action

Office of Management and Budget clearance is being sought to continue the Consumer Expenditure Surveys: The Quarterly Interview (CEQ) and the Diary (CED) and to make modifications to the CEQ.

The continuing CE Surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and obtain data for future CPI revisions.

In the CEQ, CE is seeking clearance to make the below changes.

The CE requests clearance to modify point of purchase questions for utilities, to remove collection of data related to residential business properties, to collect all expenditures including sales tax, update wording on motorized versus non-motorized campers, collect the name of the foreign country when the point-of-service outlet is outside of the US, and update bracket ranges to more accurately reflect distributions of reported data on assets and liabilities.

The CE is also seeking clearance to streamline the CEQ questionnaire by grouping similar items together, rewording items to make collection easier cognitively, and aggregating collection of items previously collected separately where feasible. As a result, several questions were eliminated from the survey and two additional sections were added and one section was modified as listed below:

- Adding a new section, Family Care and Education that combines questions previously asked across the interview on education, day care and camps, babysitting, school meals, adult day care and in-home care for invalids.
- Adding a new section on Transportation that combines questions on vehicle operating expenses with questions on transportation via taxis, limousines, app-based ride shares, bike, scooter or moped rental using sharing services, and public transport.
- Revising the Expense Patterns section to simplify the questions on usual weekly expenses for groceries, food or beverages consumed away from home, alcohol consumed at home, cigarettes and tobacco products.

No changes will be made in Diary (CED).

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

OMB Number: 1220–0050.

Type of Review: Revision.

Affected Public: Individuals or Households.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden
CEQ—Interview	4,900	4	19,600	65	21,233
CEQ—Reinterview	2,352	1	2,352	10	392
CED—Diary Record-keeping	6,200	2	12,400	60	12,400
CED—Diary Interview	6,200	2	12,400	19	3,927
CED Diary Reinterview	1,240	1	1,240	10	207
Totals	11,100	.....	47,992	.....	38,159

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on this 9th day of September 2022.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2022–19892 Filed 9–14–22; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: Guidelines for IMLS Grants to States Five-Year Evaluation

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB Review, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. 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. This Notice proposes the clearance of the Guidelines for IMLS Grants to States Five-Year Evaluation.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 15, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

FOR FURTHER INFORMATION CONTACT: Teresa DeVoe, Associate Deputy Director of State Programs, Office of Library Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. DeVoe can be reached by telephone at 202–653–4778, or by email at *tdevoe@imls.gov.* Persons who are deaf or hard of hearing (TTY users) may contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

Current Actions: This Notice proposes the clearance of the Guidelines for IMLS Grants to States Five-Year Evaluation. The Grants to States program is the largest source of Federal funding support for library services in the U.S. Using a population-based formula, more than $160 million is distributed among the State Library Administrative Agencies (SLAAs) every year. SLAAs are official agencies charged by the Library Services and Technology Act (20 U.S.C. 9121 and 20 U.S.C. 9141) with the extension and development of library services, and they are located in each of the 50 States of the United States, the District of Columbia, the five Territories of Guam, American Samoa, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, and the three Freely Associated States of Federated States of Micronesia, Republic of Palau, and the Republic of the Marshall Islands.

Each SLAA is required, under 20 U.S.C. 9101 *et seq.* (in particular 20 U.S.C. 9134), to submit a plan that details library services goals for a five-year period, along with associated certifications. IMLS authorizing legislation (20 U.S.C. 9134) directs SLAAs to ''independently evaluate, and report to the Director regarding, the activities assisted under this subchapter, prior to the end of the Five-Year Plan.'' This evaluation provides SLAAs an opportunity to measure progress in meeting the goals set in their approved Five-Year Plans with a framework to synthesize information across all state reports in telling a national story. This action is to renew clearance of the Guidelines for IMLS Grants to States Five-Year Evaluation for the next three years. The 60-day Notice was published in the **Federal Register** on June 10, 2022 (87 FR 35575).

The agency has taken into consideration the one comment received under this notice.

Agency: Institute of Museum and Library Services.

Title: Guidelines for IMLS Grants to States Five-Year Evaluation.

OMB Number: 3137–0090.

Agency Number: 3137.

Respondents/Affected Public: State Library Administrative Agencies.

Total Number of Annual Respondents: 12.

Frequency of Response: Once every five years.

Annual Average Hours per Response: 18 hours.

Total Estimated Number of Annual Burden Hours: 1,062 hours.

Total Annual Cost Burden (dollars): $32,773.32.

Total Annual Federal Costs: $2,057.45.

Dated: September 12, 2022.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2022–19990 Filed 9–14–22; 8:45 am]

BILLING CODE 7036–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information; Draft National Strategy on Microelectronics Research

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of Request for Information (RFI).

SUMMARY: The White House Office of Science and Technology Policy, on behalf of the Subcommittee on Microelectronics Leadership (SML) of the National Science and Technology Council (NSTC), requests comments from the public on *the Draft National Strategy on Microelectronics Research* (referred to in this document as ''*the Draft National Strategy*'') and some specific questions relevant to that strategy. The *Draft National Strategy* is posted at *https://www.whitehouse.gov/wp-content/uploads/2022/09/SML-DRAFT-Microlectronics-Strategy-For-Public-Comment.pdf.* This draft is being released at an intermediate,

development stage for the sole and limited purpose to collect public input to inform the work of the SML as it develops the final *National Strategy*.

DATES: Interested persons and organizations are invited to submit comments on or before 5:00 p.m. ET, October 17, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- *Email (preferred): microelectronics_strategy@ostp.eop.gov,* include *Response to SML RFI on Draft Report* in the subject line of the message.
- *Mail:* Attn: NSTC Subcommittee on Microelectronics Leadership, Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Ave. NW, Washington, DC 20504.

Instructions: Response to this request for public comment is voluntary. Each individual or institution is requested to submit only one response. Respondents may answer as many or as few questions as they wish. Comments of approximately 5 pages or less in length (up to 10,000 characters) are requested. Electronic responses must be provided as attachments to an email rather than a link. When referencing particular sections of the draft document, please refer to the relevant line number in responses. OSTP will not respond to individual submissions. Responses should include the name of the person(s) or organization(s) filing the response. Responses containing references, studies, research, and other empirical data that are not widely published should include copies of or electronic links to the referenced materials. Responses containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

This Request for Public Comment is not accepting applications for financial assistance or financial incentives. OSTP may post responses to this request for public comment without change, online. OSTP therefore requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this Request for Public Comment. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response. Comments submitted in response to this notice are subject to the Freedom of Information Act (FOIA).

FOR FURTHER INFORMATION CONTACT: Corey Stambaugh (Executive Secretary for the SML) at *microelectronics_strategy@ostp.eop.gov* or (202) 456–4444.

SUPPLEMENTARY INFORMATION:

Overview: Section 9906(a)(3)(A)of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283) (included in Title XCIX, ''Creating Helpful Incentives to Produce Semiconductors (CHIPS) for America''), established the Subcommittee on Microelectronics Research (SML) and charged the Subcommittee with the development of a national strategy on microelectronics research, development, manufacturing, and supply chain security. The *National Strategy on Microelectronics Research* (''*National Strategy*'') is being developed to address approaches to prioritize research and development (R&D) to advance microelectronics, to grow the workforce, to leverage and connect the broader R&D infrastructure, including the Federal laboratories, enhance public-private partnerships and international engagement, and develop activities that address future challenges to the innovation, competitiveness, and supply chain security of the United States in the field of microelectronics. The SML is seeking input from stakeholders from across the entire microelectronics ecosystem, including industry, academia, and non-profits, to guide this effort.

The final *National Strategy* will seek to ensure that advances in microelectronics R&D and their applications to agency missions and the broader national interest continue unabated in this critical field. The strategy will provide guidance for agency leaders, program managers, and the research community regarding planning and implementation of microelectronics R&D investments and activities and ensure they are synergistic with the broader CHIPS legislation and activities.

The Draft National Strategy identifies three main goals with underlining strategic objectives:

- Goal 1. Fuel Discoveries for Future Generations of Microelectronics
- Goal 2. Expand, Train, and Support the Workforce
- Goal 3. Facilitate the Rapid Transition of R&D to U.S. Industry

OSTP seeks comment from the public on *the Draft National Strategy* with a focus on the following questions:

1. Does *the Draft National Strategy* capture the key R&D areas that will support future generations of microelectronics? If not, what additional areas of R&D focus are required?

2. What additional approaches should be considered to develop and expand the microelectronics workforce at all levels, including advanced degrees?

3. Are there additional mechanisms that should be considered to ensure rapid transition of R&D to industry?

4. Do you have any additional suggestions on how the final *National Strategy* can help ensure the success of the broader CHIPS efforts and ensure continued U.S. leadership in this important area?

The Draft National Strategy is not a commitment to any strategy, policy, funding, or plan and it has not been approved for final publication by the NSTC or any part of the United States Government. The contents of this draft document and the strategy may change in its entirety or in part prior to final publication based on the feedback that we receive.

File: https://www.whitehouse.gov/wp-content/uploads/2022/09/SML-DRAFT-Microlectronics-Strategy-For-Public-Comment.pdf.

Dated: September 12, 2022.

Stacy Murphy,

Operations Manager.

[FR Doc. 2022–19935 Filed 9–14–22; 8:45 am]

BILLING CODE 3270–F2–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95716; File No. SR–NYSE–2022–11]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the NYSE Listed Company Manual To Provide a Limited Exemption From the Shareholder Approval Requirements for Closed-End Management Investment Companies With Equity Securities Listed Under Section 102.04 of the Listed Company Manual

September 9, 2022.

On February 23, 2022, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 312.03 of the NYSE Listing Company Manual to provide an exemption from certain shareholder approval requirements of that rule for listed registered closed-end

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

management investment companies and business development companies under certain circumstances. On March 8, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on March 15, 2022.[3] The Commission has received no comment letters on the proposed rule change, as modified by Amendment No. 1.

On April 26, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On June 13, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of Act[6] to determine whether to approve or disapprove the proposed rule change.[7]

Section 19(b)(2) of the Act[8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on March 15, 2022.[9] The 180th day after publication of the proposed rule change is September 11, 2022. The Commission is extending the time period for approving or disapproving the proposed rule change, as modified by Amendment No. 1, for an additional 60 days.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change, as modified by Amendment No. 1, so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates November 10, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 1 (File No. SR–NYSE–2022–11).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19920 Filed 9–14–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95722; File No. SR–PHLX–2022–34]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Port-Related Fees, at Equity 7, Section 3, and Options 7, Section 9

September 9, 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 September 1, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's port-related fees, at Equity 7, Section 3, and Options 7, Section 9, as described further below. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/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 (i) amend Equity 7, Section 3, and Options 7, Section 9, to prorate port fees for the first month of service, (ii) add language to Equity 7, Section 3, and Options 7, Section 9, to clarify that port fees for cancelled services will continue to be charged for the remainder of month, and (iii) clarify that Nasdaq Testing Facility (''NTF'') ports are provided at no cost in Options 7, Section 9.

Currently, the Exchange does not prorate port connectivity fees under either its equity or options rules. Thus, 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. 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 participants port fees only for the days in which the 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. If a participant starts and cancels service in the same month, the 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.[3]

[3] *See* Securities Exchange Act Release No. 94388 (March 9, 2022), 87 FR 14589.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94795, 87 FR 25689 (May 2, 2022). The Commission designated June 13, 2022, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 95093, 87 FR 36548 (June 17, 2022).

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For example, if a participant orders a port on September 4, 2022 and cancels the port on September 16, 2022, the participant would be charged the prorated port fee for September 5, 2022 through September 30, 2022.

Currently, the SQF Port Fee in Options 7, Section 9B(i)(2) is only assessed for SQF ports that receive inbound quotes at any time within that month. The Exchange is not proposing to change this practice. Participants would continue to be assessed the SQF Port Fee only during months where the SQF port is active.[4] During the first month of service, assuming the SQF port is active at any point during the month, the SQF Port Fee would be prorated based on the connectivity date.[5] The proposal would not impact the fee assessed for existing ports. Rather, the proposed change would only impact market participants that acquire a new port going forward.

The Exchange believes it is important for 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.[6]

The Exchange also proposes to add language to Options 7, Section 9B(iv) to clarify the Exchange's existing practice that NTF Ports are provided at no cost. The NTF provides subscribers with a virtual System test environment that closely approximates the production environment on which they may test their automated systems that integrate with the Exchange. For example, the NTF provides subscribers a virtual System environment for testing upcoming releases and product enhancements, as well as testing firm software prior to implementation. The Exchange proposes adding express language in the options Rules to provide increased clarity to market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] 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.'' [9]

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 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.[10] 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 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.

The Exchange also believes that it is just and equitable, and in the interests of market participants, for the Exchange to clarify the Exchange's existing practice to provide NTF ports at no cost to Options 7, Section 9B(iv), codifying existing practice where it is not expressly stated in the Rule. The Exchange believes that market participants will benefit from increased clarity, which will help limit any potential confusion in the future.

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.

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 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, as well as the proposed language to the options Rules that NTF ports are provided at no cost, merely codify and clarify existing practices 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,

[4] For example, if a SQF port is ordered on September 9, 2022 and is not active during the month of September, the participant would not be charged the SQF Port Fee for the month of September. However, if the port becomes active on October 15, 2022 for the first time, the full monthly fee would be charged as October would be the second month of connectivity.

[5] For example, if a SQF port is ordered on September 9, 2022 and active on September 13, 2022, the participant would be charged the prorated port fee for September 10, 2022 through September 30, 2022.

[6] *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.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[10] *Supra* note 6.

as noted above, other exchanges currently charge new ports on a prorated basis for the first month of service.[11] 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.

The proposed change to clarify that NTF ports are provided at no cost is designed to expressly state existing practice without changing its operation and, therefore, the Exchange believes that the proposed change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b–4 [13] 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–PHLX–2022–34 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–PHLX–2022–34. 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–PHLX–2022–34 and should be submitted on or before October 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19916 Filed 9–14–22; 8:45 am]

BILLING CODE 8011–01–P

[11] *Supra* note 6.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95717; File No. SR–OCC–2022–009]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 1, by The Options Clearing Corporation Concerning One Multiplier Options

September 9, 2022.

I. Introduction

On July 18, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2022–009 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder. The proposed rule change would amend provisions of OCC Rules to accommodate the issuance, clearance, and settlement of index options and flexibly-structured index options with an index multiplier of one.[3] The proposed rule change was published for public comment in the **Federal Register** on August 1, 2022.[4] On August 10, 2022, OCC filed Partial Amendment No. 1 to the proposed rule change.[5] The Commission has received no comments regarding the proposed rule change. The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons, and is approving the proposed rule change, as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, 87 FR at 47016.

[4] Securities Exchange Act Release No. 95364 (July 26, 2022), 87 FR 47016 (Aug. 1, 2022) (File No. SR–OCC–2022–009) (''Notice of Filing'').

[5] In Partial Amendment No. 1, OCC updated the description of Information Memo #50046 contained in Footnote 6 of SR–OCC–2022–009 to align with the proposed language for OCC Rule 1804 contained in Exhibit 5 to SR–OCC–2022–009 that an index or flexibly-structured index option with a multiplier of one will have an automatic exercise threshold amount of $0.01 per contract. Partial Amendment No. 1 included a similar update to Item 4 of SR–OCC–2022–009.

modified by Partial Amendment No. 1, on an accelerated basis.[6]

II. Background [7]

In 2021, the Commission approved a rule change proposed by the Cboe Exchange, Inc. (''Cboe'') providing for the listing of non-FLEX options with a multiplier of one (''micro-options'').[8] In September 2021, the Commission approved a rule change proposed by Cboe to accommodate the listing and trading of a new product, namely flexible exchange (''FLEX'') index options with an index multiplier of one (''Micro FLEX Index Options'').[9] Micro FLEX Index Options differ from other FLEX index options permitted under Cboe's rules, which have a multiplier of 100. Now, OCC proposes to amend its rules related to the automatic exercise of index options and flexibly-structured index options with an index multiplier of one (collectively ''One Multiplier Options'').

Currently, OCC's rules provide for the automatic exercise of index options and flexibly-structured index options with a settlement value of $1 or more without regard to the size of the index multiplier.[10] OCC states that, with the proliferation of options with multipliers less than 100, OCC is proposing to modify its Rules to explicitly allow for a corresponding reduction in the automatic exercise threshold used for expiration processing for these products.[11]

A. Current Rule 1804 Generally Does Not Account for Index Multipliers

OCC proposes to amend Rule 1804, which provides expiration exercise procedures for cash-settled options, to accommodate the automatic exercise of One Multiplier Options by adding a new threshold for automatic exercise. Currently, Rule 1804(b) allows for the automatic exercise of expiring cash-settled index options with standard expiration dates that are listed in a Clearing Member's Expiration Exercise Report if the option's expiration date is in-the-money by $1.00 or more per contract.[12] Under the current Rule 1804(c), with the exception of OTC index options, which have an automatic exercise threshold of one cent, the same $1.00 automatic exercise threshold exists for expiring flexibly-structured index options, quarterly index options, monthly index options, weekly index options, and short-term index options that are listed in a Clearing Member's Expiration Exercise Report.[13] Generally, Rule 1804, which is silent regarding the size of index multipliers, does not set automatic exercise thresholds below one dollar, except for OTC index options.

B. Amending Expiration Exercise Procedures for One Multiplier Options

OCC's proposed amendments to Rule 1804(b) and (c) would facilitate automatic exercise procedures for One Multiplier Options. OCC proposes to add a new threshold that would trigger automatic exercise of One Multiplier Options. Specifically, proposed Rule 1804(b) would explicitly state that for cash-settled options *with a multiplier of one,* each option contract that has an exercise settlement amount of $0.01 or more per contract would be automatically exercised. Proposed Rule 1804(c) would maintain the current treatment of all other cash-settled options *with a multiplier of other than one,* by explicitly stating that each such option contract that has an exercise settlement amount of $1.00 or more per contract would be automatically exercised. OCC's proposed amendments would apply to cash-settled index options with standard expiration dates under Rule 1804(b); and to flexibly-structured index options, quarterly index options, monthly index options, weekly index options, and short-term index options under Rule 1804(c). OCC's proposed changes would also ensure that the one-cent automatic exercise threshold for OTC index options would remain the same.

OCC believes the amendments to Rule 1804 are necessary to accommodate the decrease in product size as the result of the smaller multiplier.[14] One Multiplier Options are 1/100th the size of most index options or index flex options on the same underlying index. OCC explained that, due to the difference in product size as the result of the smaller multiplier, Cboe requested a proportionate reduction to the exercise threshold amount as established in OCC's Rule 1804(b) and (c).[15]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange 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 Exchange Act and the rules and regulations thereunder applicable to such organization.[16] After carefully considering the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act,[17] as described in detail below.

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that a clearing agency's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[18] Based on its review of the record, and for the reasons described below, the Commission believes that the proposed rule change is consistent with facilitating the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions.

The Commission believes that, in amending Rule 1804(b) and (c) to introduce a $0.01 automatic exercise threshold for One Multiplier Options, the proposed rule aligns OCC's expiration processing of One Multiplier Options with already-existing procedures applicable to options with multipliers other than one, including multipliers of 100. The introduction of an automatic exercise threshold consistent with the size of One Multiplier Options would extend the operational convenience provided for other options to One Multiplier Options without removing a Clearing Member's ability to prevent the exercise of an in-the-money option that would otherwise be deemed exercised by submitting

[6] References to the proposed rule change from this point forward refer to the proposed rule change as modified by Partial Amendment No. 1.

[7] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[8] Securities Exchange Release No. 91528 (Apr. 9, 2021), 86 FR 19933 (Apr. 15, 2021) (File No. SR–CBOE–2020–117).

[9] Securities Exchange Act Release No. 93122 (Sept. 24, 2021), 87 FR 54269 (Sept. 30, 2021) (File No. SR–CBOE–2021–041).

[10] *See* OCC Rule 1804.

[11] Notice of Filing, 87 FR at 47017.

[12] OCC states that options are exercised under Rule 1804(b) as an operational convenience for its Clearing Members, but that Clearing Members have the ability to prevent the exercise of an in-the-money option that would otherwise be deemed exercised by submitting contrary exercise instructions. Notice of Filing, 87 FR at 47017.

[13] By product design, the flexibly-structured options covered by Rule 1804(c) are automatically exercised if they are in-the-money by the exercise threshold amount, and Clearing Members are not permitted to submit instructions to prevent such exercise.

[14] Notice of Filing, 87 FR at 47017.

[15] *Id.*

[16] 15 U.S.C. 78s(b)(2)(C).

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 15 U.S.C. 78q–1(b)(3)(F).

contrary exercise instructions. The Commission believes that the introduction of such processes would reduce the likelihood that a Clearing Member would lose the value of a contract that is in-the-money due to the failure to exercise such a contract. Further, the Commission believes that the reduction of such likelihood of loss would, in turn, facilitate the prompt and accurate clearance and settlement of securities transactions.

The Commission believes, therefore, that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[19]

IV. Solicitation of Comments on Partial Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Exchange 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–OCC–2022–009 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–OCC–2022–009. 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–OCC–2022–009 and should be submitted on or before October 6, 2022.

V. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[20] to approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing of Partial Amendment No. 1 in the **Federal Register**. As discussed above, Partial Amendment No. 1 modified the original proposed rule change by updating the description of Information Memo #50046 contained in Footnote 6 of SR–OCC–2022–009 to align with the proposed language for OCC Rule 1804. Partial Amendment No. 1 does not change the purpose of or basis for the proposed changes.

For similar reasons as discussed above, the Commission finds that Partial Amendment No. 1 is consistent with the requirement that OCC's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions under Section 17A(b)(3)(F) of the Exchange Act.[21] Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act, to approve the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.[22]

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act[23] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[24] that the proposed rule change (SR–OCC–2022–009), as modified by Partial Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19919 Filed 9–14–22; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] 15 U.S.C. 78s(b)(2).

[21] 15 U.S.C. 78q– 1(b)(3)(F).

[22] 15 U.S.C. 78s(b)(2).

[23] In approving this proposed rule change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95718; File No. SR–NASDAQ–2022–050]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Credits at Equity 7, Section 118 and Clarify Its Port-related Fees at Options 7, Section 3

September 9, 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 September 1, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend: (i) the Exchange's transaction credits at Equity 7, Section 118(a), and (ii) the Exchange's port-related fees at Options 7, Section 3, as described further below. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Exchange's transaction credits at Equity 7, Section 118(a) and amend the Exchange's port-related fees at Options 7, Section 3. Specifically, the Exchange proposes to (1) modify the volume requirement to achieve an existing credit for displayed quotes/orders that provide liquidity and (2) amend the options Rules to clarify that Nasdaq Testing Facility (''NTF'') ports are provided at no cost.

Change to Credit for Displayed Quotes/Orders

Currently, the Exchange provides a $0.0029 per share executed credit for a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.625% or more of Consolidated Volume during the month, including shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.15% or more of Consolidated Volume. The Exchange proposes to amend the requirement for a member to have shares of liquidity that represent 0.625% or more of Consolidated Volume during the month by increasing this requirement from 0.625% to 0.75%. The proposed change would be applicable to Tape A, Tape B and Tape C. The Exchange hopes that this change will incentivize members to increase their liquidity providing activity on the Exchange, which will improve market quality.

NTF Port Fee Clarification

The Exchange also proposes to add language to Options 7, Section 3(iv) to clarify the Exchange's existing practice that NTF Ports are provided at no cost. The NTF provides subscribers with a virtual System test environment that closely approximates the production environment on which they may test their automated systems that integrate with the Exchange. For example, the NTF provides subscribers a virtual System environment for testing upcoming releases and product enhancements, as well as testing firm software prior to implementation. The Exchange proposes adding express language in the options Rules to provide increased clarity to market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[4] 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 fee schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [5]

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.'' [6]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that it is reasonable to require a member to provide shares of liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 0.75% (rather than 0.625%) or more of Consolidated Volume during the month, including shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.15% or more of Consolidated Volume in order to qualify for the existing $0.0029 per share executed credit. The Exchange believes that it is reasonable to create a stricter qualification for the credit to ensure that this credit remains relevant to current levels of liquidity providing activity on the Exchange and continues to incentivize liquidity adding activity. To the extent that this proposal results in an increase in liquidity adding and quoting activity on the Exchange, this will improve the quality of the Nasdaq market and increase its attractiveness to existing and prospective participants.

The Exchange believes its proposal will allocate its charges and credits fairly among its market participants. The Exchange believes that it is an equitable allocation to increase the volume threshold to qualify for an existing $0.0029 transaction credit because the proposal will encourage members to add displayed liquidity to the Exchange. To the extent that the

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4) and (5).

[5] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, then the Exchange will experience improvements in its market quality, which stands to benefit all market participants.

The Exchange believes that its proposal is not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its volume-based tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries—from co-branded credit cards to grocery stores to cellular telephone data plans—that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it enhances price discovery and improves the overall quality of the equity markets.

The Exchange believes that its proposal to increase the volume threshold to qualify for an existing $0.0029 transaction credit is not unfairly discriminatory because the credit is available to all members. Moreover, the proposal stands to improve the overall market quality of the Exchange, to the benefit of all market participants, by incentivizing members to increase their liquidity adding activity on the Exchange.

The Exchange also believes that it is just and equitable, and in the interests of market participants, for the Exchange to clarify the Exchange's existing practice to provide NTF ports at no cost in Options 7, Section 3(iv), codifying existing practice where it is not expressly stated in the Rule. The Exchange believes that market participants will benefit from increased clarity, which will help limit any potential confusion in the future.

Any Participant that is dissatisfied with the proposal is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

As noted above, the Exchange's proposal to increase the volume threshold to qualify for an existing $0.0029 transaction credit is intended to have market-improving effects, to the benefit of all members. Any member may elect to achieve the levels of liquidity required in order to qualify for the credit. In addition, the proposed language to the options Rules that NTF ports are provided at no cost merely codifies and clarifies an existing practice of the Exchange.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the credits are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed change to the qualifying criteria for an existing credit 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. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises more than 40% of industry volume in recent months.

The Exchange's proposal to modify the qualifying criteria for an existing credit is pro-competitive in that the Exchange intends for the change to increase liquidity addition activity on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants.

In addition, the proposed change to the options Rules to clarify that NTF ports are provided at no cost is designed to expressly state existing practice without changing its operation and, therefore, the Exchange believes that the proposed change will not impose a burden on competition.

If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members 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.

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 [7] and paragraph (f) of Rule 19b–4 [8] 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:

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

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–2022–050 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–2022–050. 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–2022–050 and should be submitted on or before October 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19918 Filed 9–14–22; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95723; File No. SR–NSCC–2022–012]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make a Number of Clarifications and Enhancements to NSCC's Rules & Procedures

September 9, 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 September 1, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to NSCC's Rules & Procedures (''Rules'') in order to make a number of clarifications and enhancements to the Rules. Specifically, the proposed rule change would (i) clarify the confidential treatment of non-public information provided by participants to NSCC as part of ongoing membership requirements; (ii) remove outdated rules and procedures related to the maintenance of Sponsored Accounts; (iii) update NSCC's rules concerning the acceptance and reliance upon instructions provided by its members; (iv) modify certain rules and procedures related to the DTCC Limit Monitoring Risk Management Tool; (v) remove rules, procedures, fees, and addenda related to the inactive Global Clearance Network Service; (vi) remove rules and fees related to the inactive International Link Service; (vii) clarify certain CNS Accounting Operation procedures; (viii) consolidate rules concerning the imposition of fines; (ix) clarify rules concerning admission to NSCC's premises; (x) remove reference to certain special services no longer provided by NSCC; and (xi) modify procedures concerning two-sided trade data received from service bureaus. NSCC is filing the proposed rule change for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder,[6] and as described in greater detail below.[7]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of modifications to NSCC's Rules to (i) clarify the confidential treatment of non-public information provided by participants to NSCC as part of ongoing membership requirements; (ii) remove outdated rules and procedures related to the maintenance of Sponsored Accounts; (iii) update NSCC's rules concerning the acceptance and reliance upon instructions provided by its members; (iv) modify certain rules and procedures related to the DTCC Limit Monitoring Risk Management Tool; (v) remove rules, procedures, fees, and addenda related to the inactive Global Clearance Network Service; (vi) remove rules and fees related to the inactive International Link Service; (vii) clarify certain CNS Accounting Operation procedures; (viii) consolidate rules concerning the imposition of fines; (ix) clarify rules concerning admission to NSCC's premises; (x) remove reference to certain special services no longer provided by NSCC; and (xi) modify procedures concerning two-sided trade data received from service bureaus. The proposed changes are discussed in detail below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] Capitalized terms not defined herein are defined in the Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

(i) Non-Public Information Provided to NSCC

NSCC recently adopted a proposed rule change to, among other things, revise certain provisions in the Rules relating to the confidentiality of information furnished by applicants, Members, and Limited Members (collectively, ''participants'') to NSCC.[8] Specifically, the proposed rule change amended Section 1.C. of Rule 2A (concerning membership application documents) and Section 3 of Rule 15 (concerning the examination and provision of adequate assurance of the financial responsibility and operational capability of participants) to state that ''[a]ny non-public information furnished to the Corporation pursuant to this Rule shall be held in confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records.'' The proposed rule change was intended to provide one standard that NSCC would apply uniformly to all participants, which assures participants that such information would be held in confidence with appropriate control.

In addition to the requirements above, Section 2 of Rule 2B requires that participants submit to NSCC certain reports and information as part of their ongoing membership requirements and monitoring. Some of the reporting required by Section 2 of Rule 2B includes non-public information of participants. NSCC proposes to add conforming language to Rule 2B to clarify the confidential treatment of such information consistent with the requirements of Section 1.C. of Rule 2A and Section 3 of Rule 15. Specifically, NSCC proposes to amend Section 2.A. of Rule 2B to state that ''[a]ny non-public information furnished to the Corporation pursuant to this Rule shall be held in confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records.'' Non-public information may include certain reports, opinions and tax and cybersecurity confirmations as required by the Rules and any material non-public information or other information and data that NSCC reasonably determines is not made available to the public. The proposed change would further NSCC's goal of setting forth one consistent standard that NSCC would apply uniformly to all participants, which assures participants that such information would be held in confidence with appropriate control.

(ii) Sponsored Accounts

NSCC's Rules refer to certain circumstances under which it has the discretionary authority to maintain Sponsored Accounts for its Members at The Depository Trust Company (''DTC''). NSCC Rule 29 provides that each Member shall be a participant in a Qualified Securities Depository (*i.e.,* DTC), and if at any time a Member is not a participant of a Qualified Securities Depository, NSCC may cease to act for such Member pursuant to Rule 46. Rule 29 further provides that, during the interim between the time that such Member is no longer a participant in a Qualified Securities Depository and the time that NSCC ceases to act for the Member, such Member shall be required to effect securities settlement by physical delivery or in the discretion of NSCC through a Sponsored Account. Rule 46 also provides that NSCC may require a participant to effect securities settlement through a Sponsored Account, rather than through its own depository account, as part of a suspension or prohibition/limitation on a participant's access to services.

In addition, Procedure IX.B. provides procedures for the maintenance of Sponsored Accounts, including for Members that may choose not to maintain direct membership in a Qualified Securities Depository. Pursuant to this procedure, each Member would be assigned a Qualified Securities Depository account number and use that account as if it were a direct participant of the Qualified Securities Depository; however, the account would be maintained under the jurisdiction of NSCC, which would be solely responsible for all liabilities arising from the use of the account including the payment of fees to the Qualified Securities Depository. NSCC Rule 4 also contains several footnotes concerning the treatment of Clearing Fund deposits for such Sponsored Accounts. Section 7 of Rule 4 further provides, in part, that NSCC may retain for up to two (2) years the Actual Deposits from Members who have Sponsored Accounts at DTC.

As a practical matter, NSCC does not currently maintain any Sponsored Accounts or plan to utilize Sponsored Accounts in the foreseeable future. NSCC does not believe there would be a plausible scenario in which it would continue to act for a Member and sponsor an account at DTC to settle for a Member whose participation at DTC has been terminated (whether voluntarily or through DTC ceasing to act for the participant). In the event that an NSCC Member was no longer an active participant of DTC, NSCC would cease to act for such Member pursuant to its authority under Rule 29 and implement the close-out procedures contemplated in Rule 18 and related NSCC policies and procedures (which do not currently contemplate the use of Sponsored Accounts). NSCC therefore proposes to revise the last sentence of Rule 29 to delete the reference to the discretionary use of Sponsored Accounts in a cease to act scenario and revise Rule 46 to remove references to NSCC's authority to require a participant to effect securities settlement through a Sponsored Account, rather than through its own depository account, as part of a suspension or prohibition/limitation of a participant's access to services.

NSCC also proposes to delete Procedure IX.B. concerning the procedures for maintaining Sponsored Accounts for Members that choose not to maintain direct membership in a Qualified Securities Depository. As noted above, NSCC Rule 29 provides that each Member shall be a participant in a Qualified Securities Depository, and all current NSCC Members are participants of DTC. NSCC does not currently provide Sponsored Accounts for any of its Members and does not have plans to provide any new Sponsored Accounts at this time.[9] NSCC would also make conforming changes to Rule 4 to remove certain statements and footnotes discussed above regarding the collection and maintenance of Clearing Fund deposits for Sponsored Accounts, as these Rules would no longer be applicable in the absence of any Sponsored Accounts.

NSCC believes that removing rules and procedures related to inactive services and operations would improve the accuracy and clarity of its rules. Moreover, NSCC believes that removing Rules concerning inactive Sponsored Account services would avoid potential confusion with the sponsored membership program for NSCC's Securities Financing Transaction Clearing Service.[10] If NSCC would choose to offer Sponsored Accounts or a similar arrangement at some point in the future, NSCC would reevaluate the rules, procedures and operational

[8] *See* Securities Exchange Act Release No. 93278 (October 8, 2021), 86 FR 57229 (October 14, 2021) (SR–NSCC–2021–007).

[9] NSCC believes that its last Sponsored Account may have been retired in 2011.

[10] *See* Securities Exchange Act Release No. 95011 (May 31, 2022), 87 FR 34339 (June 6, 2022) (SR–NSCC–2022–003). NSCC also filed the Securities Financing Transaction Clearing Service proposal as an advance notice. *See* Securities Exchange Act Release No. 94998 (May 27, 2022), 87 FR 33528 (June 2, 2022) (SR–NSCC–2022–801).

processes necessary to provide such a service and would file any necessary proposed rule changes to effectuate the change.

(iii) Reliance on Instructions

NSCC Rule 39 provides, in part, that NSCC may accept or rely upon any instruction given by a participant, including wire transmission, physical delivery or delivery by other means of instructions recorded on magnetic tape or other media or of facsimile copies of instructions, in form acceptable to NSCC and that NSCC will not act upon any instruction purporting to have been given by a participant which is received by wire transmission or in the form of facsimile copies or magnetic tape or media other than written instructions.

NSCC proposes to revise Rule 39 to remove specific examples of methods of transmission of instructions to NSCC and instead provide that NSCC may accept or rely upon any instruction given in any form acceptable to the Corporation and in accordance with the Procedures. The proposed rule change is intended to remove outdated methods of submitting instructions (such as magnetic tape and facsimile copies) from the Rules and provide flexibility to accommodate alternative and evolving methods of submitting instructions to NSCC. NSCC believes the proposed change would promote the ongoing accuracy and clarity of its rules regarding the transmission of instructions to NSCC.

(iv) DTCC Limit Monitoring Risk Management Tool

Background—DTCC Limit Monitoring

NSCC provides its Members with a risk management tool called DTCC Limit Monitoring, which enables Members to monitor trading activity on an intraday basis of their organizations and/or their correspondent firms through review of post-trade data.[11] DTCC Limit Monitoring was implemented in 2014 in connection with industry-wide efforts to develop tools and strategies to mitigate and address the risks associated with the increasingly complex, interconnected, and automated market technology (such risks include, but are not limited to, trade input errors, software or trading algorithm errors, and inadequate controls for automated processes). Through this tool, NSCC Members can monitor trading activity against limits that they have pre-set and can review notifications that are delivered when these pre-set limits are being approached and when they are reached. The limit monitoring tool is intended to supplement Members' existing internal risk management processes. Any actions Members determine to take in response to these alerts is their responsibility and is taken away from NSCC. DTCC Limit Monitoring is primarily discussed in NSCC Rule 54 and Procedure XVII.

DTCC Limit Monitoring is available to all NSCC Members; however, Rule 54 requires certain categories of Members to register for the DTCC Limit Monitoring tool. This requirement applies to: (1) any Member that clears trades for others; (2) any Member that submits transactions to NSCC's trade capture system either as a Qualified Special Representative (''QSR'') or Special Representative, pursuant to Procedure IV (Special Representative Service); and (3) any Member that has established a 9A/9B relationship in order to allow another Member (either a QSR or Special Representative) to submit locked in trade data on its behalf. In addition, Procedure XVII requires, among other things, that Members registered for DTCC Limit Monitoring create and establish Risk Entities,[12] designate parameters to associate with each Risk Entity from certain parameter types that are established or permitted by NSCC from time to time, review reports and alerts on an on-going basis and, as necessary, modify established parameters to reflect current trading activities within each of their Risk Entities, and identify primary and secondary contacts within their firm for DTCC Limit Monitoring.

Proposed Changes to DTCC Limit Monitoring

NSCC proposes to revise Rule 54 and Procedure XVII to eliminate the requirement that certain specified Members register for the DTCC Limit Monitoring tool (*i.e.,* those Members that clear trades for others, submit transactions to NSCC's trade capture system either as a QSR or Special Representative, or have established a 9A/9B relationship in order to allow another Member (either a QSR or Special Representative) to submit locked in trade data on its behalf). NSCC would also make conforming changes to Procedure XVII to reflect that Members *may,* but are *not required to,* create and establish Risk Entities, designate parameters to associate with each Risk Entity, review reports and alerts on an on-going basis and, as necessary, modify established parameters to reflect current trading activities within each of their Risk Entities, and identify primary and secondary contacts within their firm for DTCC Limit Monitoring. NSCC would continue to offer the DTCC Limit Monitoring tool to all Members on an optional basis but would no longer require that any particular type of Member register for the tool.

As noted above, DTCC Limit Monitoring was developed as part of a broader industry-wide effort to develop tools and strategies to mitigate and address trading risks. Since the implementation of DTCC Limit Monitoring in 2014, U.S. equity exchanges have also implemented risk controls to mitigate risks inherent with direct exchange transaction flow (such controls include, but are not limited to, credit limits, single order limits, and kill switch functionality).[13] These exchange risk controls are optional risk management tools made available to exchange members to assist them in monitoring and managing their risks. DTCC Limit Monitoring is intended to supplement, and not replace, a Member's own internal systems and procedures or other tools, such as exchange pre-trade risk controls, available to the Member for managing its risks. NSCC also notes that while certain Members are currently required to register for DTCC Limit Monitoring, NSCC does not require Members to take any particular action(s) based on the output of the limit monitoring tool and any actions Members determine to take in response to these alerts is their responsibility and is taken away from NSCC. Moreover, NSCC does not use the DTCC Limit Monitoring tool for internal risk management purposes. NSCC therefore believes that providing DTCC Limit Monitoring on an optional basis is appropriate and consistent with industry practice and would not impact NSCC's own risk management practices.

(v) Global Clearance Network Service

NSCC Rule 62 and Addendum U discuss the Global Clearance Network Service (''GCN Service''), which was a foreign clearing, settlement, and custody

[11] *See* Securities Exchange Act Release Nos. 71637 (February 28, 2014), 79 FR 12708 (March 6, 2014) (File No. SR–NSCC–2013–12) and 77990 (June 3, 2016), 81 FR 37229 (June 9, 2016) (File No. SR–NSCC–2016–001).

[12] ''Risk Entities'' are defined by each Member using filtering criteria to focus on activity it seeks to monitor through the risk management tool, including that of its correspondents, or other entities or groups for which LM Trade Date Data is processed through the Members' account, including relating to subgroups within its own business.

[13] *See, e.g.,* Securities Exchange Act Release Nos. 88599 (April 8, 2020) 85 FR 20793 (April 14, 2020) (File No. SR–CboeBZX–2020–006); 88776 (April 29, 2020), 85 FR 26768 (May 5, 2020) (File No. SR–NYSE–2020–17); 88904 (May 19, 2020) 85 FR 31560 (May 26, 2020) (File No. SR–NYSEArca–2020–43); 89225 (July 6, 2020), 85 FR 41650 (July 10, 2020) (File No. SR–NASDAQ–2020–034).

service provided by NSCC in conjunction with banks, trust companies and other entities to any Member that is qualified to be a customer of the bank, trust company or other entity. The GCN Service was previously offered by the International Securities Clearing Corporation (''ISCC''), which was a wholly owned subsidiary of NSCC. ISCC ultimately transferred its core settlement services, including the GCN Service, to NSCC and withdrew from registration as a clearing agency.[14]

The GCN Service is a dormant service that is no longer utilized by NSCC's Members. NSCC therefore proposes to delete Rule 62 and Addendum U and any related fees for the GCN Service in Addendum A. NSCC believes that removing rules, procedures, and fees for this inactive service would improve the accuracy and clarity of the Rules. In the event NSCC would choose to resume offering these services, NSCC would reevaluate the rules, procedures and operational processes necessary to provide such services and would file any necessary proposed rule changes to effectuate the change.

(vi) International Links

NSCC Rule 61 discusses the establishment of links and the provision of certain services to Foreign Financial Institutions, including the International Link Service (''ILS''). ILS, like the GCN Service, was a service provided by ISCC. ISCC previously sponsored accounts at DTC for the purpose of providing Foreign Financial Institutions with custody services for their U.S. securities. ISCC transferred the ILS service, along with the GCN Service, to NSCC when it withdrew from registration as a clearing agency.[15]

Rule 61 currently provides, in part, that to the extent NSCC provides access to a Qualified Security Depository (*i.e.,* DTC) to a Foreign Financial Institution, the Foreign Financial Institution would be required to collateralize its settlement obligations to NSCC on such terms and by such means as agreed to between NSCC and the Foreign Financial Institution. NSCC does not currently sponsor accounts or otherwise provide Foreign Financial Institutions access to DTC. Foreign Financial Institutions that are participants of NSCC and that wish to access the services of DTC maintain direct participation at DTC. NSCC therefore proposes to delete this sentence of Rule 61 to improve the accuracy and clarity of the Rules. NSCC would also remove any fees related to ILS from Addendum A of the Rules. In the event NSCC would choose to resume offering these services, NSCC would reevaluate the rules, procedures and operational processes necessary to provide such services and would file any necessary proposed rule changes to effectuate the change.

(vii) CNS Accounting Operation Procedures

CNS Delivery Exemptions

Section D of Procedure VII describes the procedures for controlling deliveries to CNS, including the process by which Members may submit instructions to NSCC to indicate which short positions they do not wish to settle and should be exempt from delivery. CNS provides for two levels of Exemption. Level 1 Exemptions allow a Member to designate that a portion of its short positions should not be automatically settled against its current Designated Depository position or against any securities which may be received into its Designated Depository account as a result of other depository activity. Level 2 Exemptions allow a Member to designate that a portion of its short positions should not be automatically settled against its current depository position, but that such a position may be satisfied by certain types of ''qualified'' activity in its Designated Depository account. Section D.2(b) of Procedure VII discusses the four types of qualified activity, which allow short positions carrying Level 2 Exemptions to be settled. The list of qualified activity currently includes, among other things, ''Receipts from Member's Sub-Account,'' which provides that, as a result of CNS sub-accounting, a Member may have a long position in a given security in one CNS account and a short position in the same security in another CNS account, and since both CNS accounts settle against a single Designated Depository Account, the Member may receive securities from itself.[16]

As noted above, Section D of Procedure VII is intended to describe certain Member rights and obligations associated with the *delivery* of securities to CNS. Section D.2. of the procedure specifically discusses the process by which Members submit instructions to indicate which short positions should be exempt from delivery and which types of qualified activity allow short positions carrying Level 2 Exemptions to be delivered and settled. Section D.2(b)(iv), however, discusses a hypothetical scenario under which a Member may *receive* securities, which is unrelated and not relevant to the delivery of securities to CNS under the exemption and qualified activity process. Accordingly, NSCC proposes to delete Section D.2(b)(iv) to remove potentially confusing procedural language and improve the clarity and accuracy of its Rules.[17]

Fully-Paid-For Accounts

NSCC's processing day is divided into two parts. It begins with a night cycle on the evening preceding the settlement day for which the work is being processed and is followed by a day cycle which ends on the settlement day for which the work is processed. Pursuant to Section E.5 of Procedure VII, if a Member with a long position and/or a position due for settlement on the next settlement day, in anticipation of receiving securities from NSCC as a result of the allocation process during the night or day cycle for that settlement day, instructs that securities within its possession or control be delivered on the next day and is subsequently not allocated the securities during the night or following day cycle, the Member may, in order to meet the ''customer segregation'' requirements of Rule 15c3–3 of the Exchange Act, during the day cycle for that settlement day instruct NSCC to transfer the position(s) which has not been allocated to a special CNS sub-account known as the ''Long Free Account.'' NSCC will then debit the Member's settlement account for the value of the position in the Long Free Account.

Section E.5 of Procedure VII contains the following note related to the use of the Long Free Account.

The SEC has stated that: ''any broker/dealer that takes advantage of proposed rule NSCC–82–25 must recall deficits from bank loan within shorter time intervals than those presently allowed under Rule 15c3–3(d)(1) of the Exchange Act. In the case of bank loan, broker/dealers will be expected to effect a

[14] *See* Securities Exchange Act Release Nos. 42273, (December 27, 1999), 65 FR 311 (January 4, 2000) (File No. SR–NSCC–99–12) and 42274 (December 27, 1999) 65 FR 311 (January 4, 2000) (File No. SR–ISCC–99–01).

[15] *See id.*

[16] *See* Section D.2(b)(iv) of Procedure VII of the Rules, *supra* note 7.

[17] CNS accounts settle against a single Designated Depository Account. It is therefore technically possible for a Member to deliver securities to NSCC's CNS account to satisfy a short position in one CNS sub-account and receive the same securities from NSCC's CNS account in connection with a long position in another CNS sub-account. However, the Member is not delivering those securities directly to, nor receiving securities directly from, itself, and the Member may also receive securities that have been delivered to NSCC's CNS account by another Member. This is another potential area of confusion in the procedure that would be addressed by the proposed deletion of this rule text.

recall within one Business Day instead of the two Business Days presently allowed.

The note refers to a no action letter issued by the Commission's Division of Trading and Markets (formerly, the Division of Market Regulation) [18] in connection with the adoption of Section E.5 of Procedure VII as part of NSCC filing SR–NSCC–82–25.[19]

NSCC proposes to delete this note from Section E.5 of Procedure VII. The note is potentially confusing to readers as it (1) refers to a ''proposed rule'' as opposed to the approved and existing procedure and (2) does not clearly identify the source of this Commission statement. Moreover, NSCC does not typically refer to Commission relief in its Rules. NSCC believes the proposed change would improve the clarity of its Rules and would conform Section E.5 of Procedure VII to more standard drafting practices for NSCC's Rules.

CNS Buy-Ins

Section J.1 of Procedure VII provides procedures for the recording of buy-ins for equities and corporate debt securities in CNS. The procedure provides, in part, that a Buy-In Retransmittal Notice shall include such information as NSCC may determine from time to time, including the identity of the entity that initiated the Buy-In against the Member.

NSCC proposes to revise this section of the procedure to clarify that Buy-In Retransmittal Notices must also be submitted within such times as determined by NSCC. NSCC believes the proposed change would improve its Rules by aligning the procedural language and requirements for Buy-In Retransmittal Notices with other submission requirements in the Rules (*e.g.,* the submission of Buy-In Intents in Section J of Procedure VII and the submission of Buy-In Executions in Procedure X) and maintaining consistency across those procedural requirements.

(viii) Payment of Fines

NSCC Rule 17 discusses NSCC's authority to impose fines on a Member or Limited Member pursuant to the Rules. Pursuant to Rule 17, fines shall be payable in the manner and at such time as determined by NSCC from time to time. NSCC Rule 48 further discusses NSCC's authority to impose disciplinary proceedings for a Member of Limited Member for, among other things, a violation of the Rules. Section 1 of Rule 48 provides that such disciplinary proceedings may result in expulsion, suspension, limitation of or restriction on activities, functions and operations, fine or censure or any other fitting sanction.

NSCC proposes to delete Rule 17 and relocate the second sentence of Rule 17, which provides that fines shall be payable in the manner and at such time as determined by the Corporation from time to time, to Section 1 of Rule 48. NSCC would also make conforming changes to Rule 15 and Rule 56 to update and remove references to Rule 17, respectively. The proposed change is intended to consolidate the rules concerning NSCC's authority to impose fines into NSCC's disciplinary proceeding rules. The proposed change is not intended to result in a substantive change to NSCC's rules.

(ix) Admission to NSCC's Premises

NSCC Rule 27 provides, in part, that no person will be permitted to enter the premises of NSCC as the representative of any participant unless he has first been approved by NSCC and has been issued such credentials as NSCC may from time to time prescribe and such credentials have not been canceled or revoked. In addition, such credentials must be shown on demand, and may limit the portions of the premises to which access is permitted thereunder.

NSCC proposes to revise Rule 27 to clarify that, to gain entry to NSCC's premises, such credentials must be prominently displayed while on NSCC's premises. NSCC does not believe the proposed change would impose any new material obligation or burden on its Members since Members are already required to obtain such credentials and display them on demand. The proposed rule change is simply intended to codify this expectation in NSCC's rules.[20]

(x) Clearing Centers

Section A of Procedure IX discusses NSCC's provision of Clearing Centers in a number of cities to serve as input/output facilities for the convenience of Members located near that office. Procedure XIII further provides definitions for the terms ''Clearing Center'' [21] and ''Primary Clearing Center.'' [22] These Clearing Centers were initially established at a time when both the trading and clearance and settlement of securities operated in a more regional manner. Given the evolution of technology since the adoption of these procedures and the evolution of the national clearance and settlement system, NSCC no longer maintains regional Clearing Centers. As a result, NSCC proposes to delete Section A of Procedure IX in its entirety and the definitions of ''Clearing Center'' and ''Primary Clearing Center'' from Procedure XIII. NSCC believes that removing these outdated procedures would improve the accuracy and clarity of its Rules.

(xi) Data From Service Bureaus

Addendum J to the Rules contains a policy statement regarding the acceptance of trade data from service bureaus. Pursuant to Section 6 of Rule 7, NSCC may accept locked-in trade data from self-regulatory organizations (''SROs'') on a Member's behalf for input into NSCC's comparison system. NSCC has also previously received requests from Members to accept two-sided trade data from service bureaus in addition to locked-in data. In response, NSCC adopted the policy statements in Addendum J setting forth certain minimum requirements for service bureaus submitting two-sided trade data to NSCC. NSCC proposes to make certain clarifying updates to the Addendum.

NSCC proposes to revise the introductory paragraph of Addendum J to clarify that NSCC may accept from SROs and/or service bureaus, initial or supplemental trade data on behalf of Members for input into the Corporation's Comparison Operation *with respect to debt securities* to conform the language in the Addendum to the requirements of Section 6 of Rule 7.[23] NSCC also proposes to delete references to specific SROs from which it accepts trade data (*i.e.,* NYSE, NYSE Alternext, and National Association of Securities Dealers) and replace them with a more general reference to ''SROs'' to reflect that NSCC has accepted, and may continue to accept, additional SROs as trade data submitters since the adoption of the Addendum. In addition, NSCC would revise the Addendum to

[18] *See* Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to Robert J. Woldow, Senior Vice President and General Counsel, NSCC (May 10, 1984).

[19] *See* Securities Exchange Act Release No. 20948 (May 10, 1984) (File No. SR–NSCC–82–25).

[20] NSCC notes that the proposed rule change would also align the requirements of NSCC Rule 27 with the requirements of Rule 17 of the DTC Rules, By-Laws and Organization Certificate (''DTC Rules''), providing greater consistency across the rules of NSCC and DTC. The DTC Rules are available on DTCC's public website, *available at https://www.dtcc.com/legal/rules-and-procedures.*

[21] Clearing Center is defined as ''[a] branch facility of the Corporation.''

[22] Primary Clearing Center is defined as ''[t]he Clearing Center designated as such by a Member.''

[23] All equity transactions submitted for processing to NSCC, other than those submitted through the Obligation Warehouse pursuant to Rule 51 and Procedure II.A, must be compared prior to submission and submitted to NSCC on a locked-in basis for trade recording. *See* Securities Exchange Act Release No. 70263 (August 27, 2013), 78 FR 54349 (September 3, 2013) (SR–NSCC–2013–09).

clarify that NSCC accepts locked-in trade data for input into its trade capture system, as opposed to its comparison system, as the transaction details for locked-in trades have already been compared.

Addendum J also currently requires that a service bureau must (a) be or become a Member of NSCC or (b) be affiliated with a Member of the Corporation. In addition, the Member (either the service bureau itself or its affiliated Member) must make a Clearing Fund deposit with NSCC. NSCC proposes to delete these requirements from Addendum J. NSCC does not believe it is necessary for a service bureau to be, or be affiliated with, a Member or to maintain a Clearing Fund deposit. The Members, on behalf of which a service bureau may submit trade data to NSCC, and not the service bureau itself, are responsible for maintaining Clearing Fund deposits to cover the risk associated with such positions. Moreover, the last paragraph of Addendum J currently provides NSCC with the authority to waive these requirements if it is in the best interests of NSCC and its Members to approve a service bureau so as to assure the prompt, accurate, and orderly processing and settlement of securities transactions or to otherwise carry out the functions of the Corporation. NSCC is proposing to eliminate these requirements as a matter of rule rather than through individual waivers, to improve the transparency and clarity of its Rules. Finally, NSCC would revise Addendum J to make certain non-substantive typographical corrections in the rule text.

(xii) Implementation Timeframe

NSCC would implement the proposed changes no earlier than thirty (30) days after the date of filing, or such shorter time as the Commission may designate. As proposed, a legend would be added to each affected Rule stating there are changes that were effective upon filing but have not yet been implemented. The legend would also state that NSCC would implement the proposed changes no earlier than thirty (30) days after the date of filing, or such shorter time as the Commission may designate. The legend would state that the legend would automatically be removed upon the implementation of the proposed changes. NSCC would announce the implementation date of the proposed changes by Important Notice posted to its website.

2. Statutory Basis

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Section 17A(b)(3)(F) of Act[24] requires, in part, that the rules of a clearing agency 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. NSCC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible for the reasons set for below.

Proposed Clarifications to Confidential Treatment of Reports and Information

The proposed addition of confidentiality requirements for participant information to NSCC Rule 2B would enable NSCC to maintain one consistent standard to apply uniformly to all participants, which assures participants that such information would be held in confidence with appropriate control. NSCC believes the proposed rule change would therefore help NSCC meet its obligations and help each participant better understand NSCC's obligations for maintaining the confidential information it shares with NSCC, which, in turn, may facilitate the sharing of such information and improve NSCC's ability to evaluate its participants' eligibility to maintain access to NSCC's clearance and settlement services. NSCC therefore believes the proposed rule change is consistent with promoting the prompt and accurate clearance and settlement of securities transactions by NSCC.

Proposed Removal of Outdated Rules, Procedures, Addenda, and Fees

The proposed rule change would remove outdated rules, footnotes, procedures, addenda, and fees related to inactive services, such as the provision of Sponsored Accounts, Clearing Centers, and the GCN Service and ILS. The proposed rule change would also remove outdated methods of submitting instructions to NSCC from the Rules and provide flexibility to accommodate both current alternative and evolving methods of submitting instructions to NSCC. These proposed changes are designed to improve the accuracy, clarity, and transparency of the NSCC Rules and thereby allow Members to conduct their business more efficiently and effectively in accordance with the Rules, which NSCC believes would promote the prompt and accurate clearance and settlement of securities transactions.

Proposed Clarifications to CNS Accounting Operation Procedures

The proposed rule change would also provide additional clarity to NSCC's CNS Accounting Operation Procedures. First, the proposed rule change would clarify NSCC's rules by deleting Section D.2(b)(iv) of Procedure VII, which discusses the possibility of a Member receiving such securities from itself through CNS. As noted above, Section D of Procedure VII is intended to describe certain Member rights and obligations associated with the *delivery* of securities to CNS; however, Section D.2(b)(iv) discusses a hypothetical scenario under which a Member may *receive* securities, which is unrelated and not relevant to the delivery of securities to CNS under the exemption and qualified activity process and may cause confusion to readers trying to understand the delivery and exemption process.

Second, the proposed rule change would remove from Section E.5 of Procedure VII a note referring to a no action letter issued by the Commission's Division of Trading and Markets (formerly, the Division of Market Regulation).[25] As discussed above, the note, as currently drafted, is potentially confusing to readers as it (1) refers to a ''proposed rule'' as opposed to the approved and existing procedure and (2) does not clearly identify the source of this Commission statement. Moreover, NSCC does not typically refer to Commission relief in its Rules. NSCC therefore proposes to remove the note to improve the clarity of its Rules and conform Section E.5 of Procedure VII to more standard drafting practices for NSCC's Rules.

Third, to the proposed rule change would revise Section J.1 of Procedure VII concerning CNS Buy-Ins to clarify that Buy-In Retransmittal Notices must also be submitted within such times as determined by NSCC. NSCC believes the proposed change would improve its Rules by aligning the procedural language and requirements for Buy-In Retransmittal Notices with other submission requirements in the Rules (*e.g.,* the submission of Buy-In Intents in Section J of Procedure VII and the submission of Buy-In Executions in Procedure X) and maintaining consistency across those procedural requirements.

[24] 15 U.S.C. 78q–1(b)(3)(F).

[25] *See supra* note 18.

Taken together, the proposed changes are designed to improve the accuracy, clarity, and transparency of NSCC's CNS Accounting Operation Procedures. NSCC believes the proposed rule change would allow Members to conduct their business more efficiently and effectively in accordance with the Rules and thereby promote the prompt and accurate clearance and settlement of securities transactions.

Proposed Changes to Limit Monitoring Rules and Procedures

NSCC proposes to revise Rule 54 and Procedure XVII to eliminate the requirement that certain Members register for the DTCC Limit Monitoring tool. NSCC would also make conforming changes to Procedure XVII to reflect that Members may, but are not required to, create and establish Risk Entities, designate parameters to associate with each Risk Entity, review reports and alerts on an on-going basis and, as necessary, modify established parameters to reflect current trading activities within each of their Risk Entities, and identify primary and secondary contacts within their firm for DTCC Limit Monitoring.

As described above, DTCC Limit Monitoring was developed as part of a broader industry-wide effort to develop tools and strategies to mitigate and address trading risks. Since the implementation of DTCC Limit Monitoring in 2014, U.S. equity exchanges have also implemented risk controls to mitigate risks inherent with direct exchange transaction flow to assist them in monitoring and managing their risks.[26] Like these exchange risk controls, DTCC Limit Monitoring is intended to supplement, and not replace, a Member's own internal systems and procedures or other tools available to the Member for managing its risks. NSCC would continue to offer the DTCC Limit Monitoring tool to all Members on an optional basis but would no longer require that any particular type of Member register for the tool.

NSCC believes that providing DTCC Limit Monitoring on an optional basis is appropriate and consistent with industry practice. NSCC also notes that while certain Members are currently required to register for DTCC Limit Monitoring, NSCC does not require Members to take any particular actions based on the output of the limit monitoring tool. Any actions Members determine to take in response to these alerts is their responsibility and is taken away from NSCC. Moreover, NSCC does not use the DTCC Limit Monitoring tool for internal risk management purposes. NSCC therefore believes the proposed rule change would continue to provide NSCC's Members with a valuable risk management tool to supplement its own internal systems and procedures or other tools available to the Member for managing its risks, would not impact any actions taken as a result of Limit Monitoring, and would not have any impact on NSCC's own internal risk management activities. For these reasons, NSCC believes the proposed rule change would continue 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.

Proposed Changes Concerning Payment of Fines and Admission to Premises

NSCC proposes non-material clarifying changes to its Rules concerning the payment of fines and admission to its premises. NSCC would eliminate Rule 17 and relocate the second sentence of Rule 17, which provides that fines shall be payable in the manner and at such time as determined by the Corporation from time to time, to Section 1 of Rule 48 and make conforming changes to Rules 15 and 56. The proposed change is intended to consolidate the rules concerning NSCC's authority to impose fines into NSCC's disciplinary proceeding rules and is not intended to result in a substantive change to NSCC's rules. NSCC also proposes to revise Rule 27 to clarify that, to gain entry to NSCC's premises, a Member representative's credentials must be prominently displayed while on NSCC's premises. NSCC does not believe the proposed change would impose any new significant obligation or burden on its Members since Members are already required to obtain such credentials and display them on demand. The proposed changes are intended to improve the accuracy, clarity, and transparency of NSCC's Rules. The proposed changes would therefore allow Members to conduct their business more efficiently and effectively in accordance with the Rules and thereby promote the prompt and accurate clearance and settlement of securities transactions.

Proposed Clarifications to Service Bureau Requirements

Finally, NSCC proposes several clarifying changes to Addendum J, which contains a policy statement regarding the acceptance of trade data from service bureaus. Specifically, NSCC proposes to revise the introductory paragraph of the Addendum to clarify that NSCC may accept from SROs and/or service bureaus, initial or supplemental trade data on behalf of Members for input into the Corporation's Comparison Operation *with respect to debt securities* in conformance to Section 6 of Rule 7. NSCC also proposes to delete references to specific SROs from which it accepts trade data and replace them with a more general reference to ''SROs'' to reflect that NSCC has accepted, and may continue to accept, additional SROs as trade data submitters since the adoption of the Addendum. Additionally, NSCC would revise the Addendum to clarify that NSCC accepts locked-in trade data for input into its trade capture system, as opposed to its comparison system, as the transaction details for locked-in trades have already been compared. These proposed changes are designed to improve the accuracy, clarity, and transparency of the NSCC Rules and thereby allow Members to conduct their business more efficiently and effectively in accordance with the Rules, which NSCC believes would promote the prompt and accurate clearance and settlement of securities transactions.

NSCC would also delete the requirements that a service bureau must (a) be or become a Member of NSCC or (b) be affiliated with a Member of the Corporation and that the Member (either the service bureau itself or its affiliated Member) must make a Clearing Fund deposit with NSCC. NSCC does not believe it is necessary for a service bureau to be, or be affiliated with, a Member or to maintain a Clearing Fund deposit. The Members, on behalf of which a service bureau may submit trade data to NSCC, and not the service bureau itself, are responsible for maintaining Clearing Fund deposits to cover the risk associated with such positions. Moreover, the last paragraph of Addendum J currently provides NSCC with the authority to waive these requirements if it is in the best interests of NSCC and its Members to approve a service bureau so as to assure the prompt, accurate, and orderly processing and settlement of securities transactions or to otherwise carry out the functions of the Corporation. NSCC is proposing to eliminate these requirements as a matter of rule rather than through individual waivers, to improve the transparency and clarity of its Rules. NSCC believes the proposed rule change would continue to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and

[26] *See supra* note 13.

funds which are in the custody or control of the clearing agency or for which it is responsible.

For the reasons set forth above, NSCC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[27]

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have any adverse impact, or impose any burden, on competition. These proposed changes are primarily designed to improve the accuracy, clarity, and transparency of the NSCC Rules. Specifically, the proposed changes to Rule 2B concerning NSCC's obligations for maintaining non-public information of its participants would only impose obligations on NSCC and would not impose any new requirements on its participants. Additionally, the proposed rule change would remove outdated rules, procedures, addenda, and fees related to inactive services or outdated methods of data transmission. The proposed rule change would also provide additional clarity to NSCC's CNS Accounting Operation Procedures, which would be equally applicable to all Members. In addition, the proposed rule change would remove certain requirements around the DTCC Limit Monitoring tool and make Limit Monitoring available to all Members on an optional basis. The proposed changes to Limit Monitoring would not impose any new requirements on Members or impact the actions Members may take in response to Limit Monitoring. In addition, the proposed rule change would consolidate the rules concerning NSCC's authority to impose fines into NSCC's disciplinary proceeding rules and clarify the requirements for admission to NSCC's premises. These proposed changes would apply equally to all Members and would not impose any new significant obligation or burden on Members. The proposed changes are simply intended to improve the accuracy, clarity, and transparency of NSCC's Rules. Finally, the proposed rule change would clarify policy statements regarding the acceptance of trade data from service bureaus. These proposed changes would not impose any new requirements on service bureaus and would in fact eliminate certain requirements for service bureaus. The proposed rule change therefore would not materially affect the rights or obligations of NSCC Members. As a result, NSCC does not believe that the proposed rule change would have any adverse impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[28] and Rule 19b–4(f)(6) thereunder.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NSCC–2022–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2022–012. 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2022–012 and should be submitted on or before October 6, 2022.

[27] 15 U.S.C. 78q–1(b)(3)(F).

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19915 Filed 9–14–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95724; File No. SR–FICC–2022–004]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Stress Testing Framework and Liquidity Risk Management Framework

September 9, 2022.

I. Introduction

On May 26, 2022, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2022–004 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on June 15, 2022,[3] and the Commission has received no comments regarding the changes proposed in the Proposed Rule Change.

On July 14, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[5] This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the Act,[6] to determine whether to approve or disapprove the Proposed Rule Change.

II. Summary of the Proposed Rule Change

As described in the Notice, FICC proposes to amend (1) the Clearing Agency Stress Testing Framework (Market Risk) (''ST Framework'') and the Clearing Agency Liquidity Risk Management Framework (''LRM Framework,'' and, together with the ST Framework, the ''Frameworks'') of FICC and its affiliates, The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC,'' and together with FICC and DTC, the ''Clearing Agencies''), and (2) the Clearing Rules of the Mortgage-Backed Securities Division of FICC (''MBSD'').[7]

First, the proposed changes would amend both the ST Framework and the LRM Framework to move descriptions of the Clearing Agencies' liquidity stress testing activities from the LRM Framework to the ST Framework. In connection with this proposed change, the Clearing Agencies propose to recategorize the stress scenarios used for liquidity risk management, such that all such stress scenarios are described as either regulatory or informational scenarios.

Second, the proposed changes would amend the ST Framework to (1) enhance stress testing for the Government Securities Division of FICC (''GSD'') to obtain certain data utilized in stress testing from external vendors and implement a back-up stress testing calculation that would be utilized in the event such data is not supplied by its vendors, and amend the ST Framework to reflect these practices for both GSD and MBSD; (2) reflect that a stress testing team is primarily responsible for the actions described in the ST Framework, and (3) make other revisions to update and clarify the statements in the ST Framework.

Third, the proposed changes would amend the LRM Framework to update and clarify certain statements in the LRM Framework.

Finally, the proposed changes would amend the Clearing Rules of MBSD (''MBSD Rules'') to remove disclosures regarding the stress testing program, which would be described in the ST Framework.

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [8] to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, providing the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Act,[9] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Act,[10] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Act,[11] which requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, 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, and to protect investors and the public interest; and
- Rule 17Ad–22(e)(4) of the Act,[12] which requires that a covered clearing agency 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 arising from its payment, clearing, and settlement processes.
- Rule 17Ad–22(e)(7) of the Act, [13] which requires a covered clearing agency to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues

[30] 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. 95079 (June 9, 2022), 87 FR 36182 (June 15, 2022) (File No. SR–FICC–2022–004).

[4] 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 95284 (July 14, 2022), 87 FR 43364 (July 20, 2022) (SR–FICC–2022–004).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] The description of the Proposed Rule Change is based on the statements prepared by FICC in the Notice. *See* Notice, *supra* note 3. Capitalized terms used herein and not otherwise defined herein are defined in the Rules, *available at https://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf; https://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *Id.*

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(4).

[13] 17 CFR 240.17Ad–22(e)(7).

identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[14] and Rules 17Ad–22(e)(4) and (e)(7) of the Act,[15] or any other provision of the Act, or the rules and regulations thereunder.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by October 6, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 20, 2022.

The Commission asks that commenters address the sufficiency of FICC's statements in support of the Proposed Rule Change, which are set forth in the Notice,[16] in addition to any other comments they may wish to submit about the Proposed Rule Change.

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–FICC–2022–004 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–FICC–2022–004. 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 FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2022–004 and should be submitted on or before October 6, 2022. Rebuttal comments should be submitted by October 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Deputy Secretary,

[FR Doc. 2022–19914 Filed 9–14–22; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 240.17Ad–22(e)(4) and (e)(7).

[16] *See* Notice, *supra* note 3.

[17] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95729; File No. SR–DTC–2022–006]

Self-Regulatory Organizations; The Depository Trust Company; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Stress Testing Framework and Liquidity Risk Management Framework

September 9, 2022.

I. Introduction

On May 26, 2022, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2022–006 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on June 15, 2022,[3] and the Commission has received comments regarding the changes proposed in the Proposed Rule Change.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 95080 (June 9, 2022), 87 FR 36191 (June 15, 2022) (File No. SR–DTC–2022–006).

[4] Comments are available at *https://www.sec.gov/comments/sr-dtc-2022-006/srdtc2022006.htm.*

On July 14, 2022, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the Act,[7] to determine whether to approve or disapprove the Proposed Rule Change.

II. Summary of the Proposed Rule Change

As described in the Notice, DTC proposes to amend the Clearing Agency Stress Testing Framework (Market Risk) (''ST Framework'') and the Clearing Agency Liquidity Risk Management Framework (''LRM Framework,'' and, together with the ST Framework, the ''Frameworks'') of DTC and its affiliates, National Securities Clearing Corporation (''NSCC'') and Fixed Income Clearing Corporation (''FICC,'' and together with NSCC and DTC, the ''Clearing Agencies'').[8]

First, the proposed changes would amend both the ST Framework and the LRM Framework to move descriptions of the Clearing Agencies' liquidity stress testing activities from the LRM Framework to the ST Framework. In connection with this proposed change, the Clearing Agencies propose to recategorize the stress scenarios used for liquidity risk management, such that all such stress scenarios are described as either regulatory or informational scenarios.

Second, the proposed changes would amend the ST Framework to (1) enhance stress testing for the Government Securities Division of FICC (''GSD'') to obtain certain data utilized in stress testing from external vendors and implement a back-up stress testing calculation that would be utilized in the event such data is not supplied by its vendors, and amend the ST Framework to reflect these practices for both GSD and the Mortgage-Backed Securities Division of FICC (''MBSD''); (2) reflect that a stress testing team is primarily responsible for the actions described in the ST Framework, and (3) make other revisions to update and clarify certain statements in the ST Framework.

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 95282 (July 14, 2022), 87 FR 43354 (July 20, 2022) (SR–DTC–2022–006).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The description of the Proposed Rule Change is based on the statements prepared by DTC in the Notice. *See* Notice, *supra* note 3. Capitalized terms used herein and not otherwise defined herein are defined in the Rules, *available at https://www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf.*

Third, the proposed changes would amend the LRM Framework to update and clarify certain statements in the LRM Framework.

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[9] to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, providing the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Act,[10] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Act,[11] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Act,[12] which requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, 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, and to protect investors and the public interest; and
- Rule 17Ad–22(e)(4) of the Act,[13] which requires that a covered clearing agency 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 arising from its payment, clearing, and settlement processes.
- Rule 17Ad–22(e)(7) of the Act,[14] which requires a covered clearing agency to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[15] and Rules 17Ad–22(e)(4) and (e)(7) of the Act,[16] or any other provision of the Act, or the rules and regulations thereunder.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by October 6, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 20, 2022.

The Commission asks that commenters address the sufficiency of DTC's statements in support of the Proposed Rule Change, which are set forth in the Notice,[17] in addition to any other comments they may wish to submit about the Proposed Rule Change.

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–DTC–2022–006 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–DTC–2022–006. 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 DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2022–006 and should be submitted on or before October 6, 2022. Rebuttal comments should be submitted by October 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19912 Filed 9–14–22; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(2)(B).

[10] *Id.*

[11] 15 U.S.C. 78q–1.

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(4).

[14] 17 CFR 240.17Ad–22(e)(7).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(4) and (e)(7).

[17] *See* Notice, *supra* note 3.

[18] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–649; OMB Control No. 3235–0701]

Submission for OMB Review; Comment Request; Extension: Rule 18a–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget

(''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 18a–1 (17 CFR 240.18a–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 18a–1 establishes net capital requirements for nonbank security-based swap dealers that are not also broker-dealers registered with the Commission (''stand-alone SBSDs''). First, under paragraphs (a)(2) and (d) of Rule 18a–1, a stand-alone SBSD may apply to the Commission to be authorized to use internal value-at-risk (''VaR) models to compute net capital and a stand-alone SBSD authorized to use internal models must review and update the models it uses to compute market and credit risk, as well as back-test the models. Second, under paragraph (f) of Rule 18a–1, a stand-alone SBSD is required to comply with certain requirements of Exchange Act Rule 15c3–4 (17 CFR 240.15c3–4). Rule 15c3–4 requires OTC derivatives dealers and firms subject to its provisions to establish, document, and maintain a system of internal risk management controls to assist the firm in managing the risks associated with business activities, including market, credit, leverage, liquidity, legal, and operational risks. Third, for purposes of calculating ''haircuts'' on credit default swaps, paragraph (c)(1)(vi)(B)(1)(*iii*) of Rule 18a–1 requires stand-alone SBSDs that are not using internal models to use an industry sector classification system that is documented and reasonable in terms of grouping types of companies with similar business activities and risk characteristics. Fourth, under paragraph (h) of Rule 18a–1, stand-alone SBSDs are required to provide the Commission with certain written notices with respect to equity withdrawals. Fifth, under paragraph (c)(5) of Appendix D to Rule 18a–1 (17 CFR 240.18a–1d), stand-alone SBSDs are required to file with the Commission two copies of any proposed subordinated loan agreement (including nonconforming subordinated loan agreements) at least 30 days prior to the proposed execution date of the agreement. Finally, under paragraph (c)(1)(ix)(C) of Rule 18a–1, a nonbank SBSD may treat collateral held by a third-party custodian to meet an initial margin requirement of a security-based swap or swap customer as being held by the nonbank SBSD for purposes of the capital in lieu of margin charge provisions of the rule if certain conditions are met. In particular, the SBSD must execute an account control agreement and must maintain written documentation of its analysis that in the event of a legal challenge the account control agreement would be held to be legal, valid, binding, and enforceable under the applicable law.

The aggregate annual burden for all respondents is estimated to be 21,024 hours. The aggregate annual cost burden for all respondents is estimated to be $ 2,598,500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by October 17, 2022 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*.

Dated: September 12, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20018 Filed 9–14–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95725; File No. SR–NSCC–2022–006]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Stress Testing Framework and Liquidity Risk Management Framework

September 9, 2022.

I. Introduction

On May 26, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2022–006 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on June 15, 2022,[3] and the Commission has received no comments regarding the changes proposed in the Proposed Rule Change.

On July 14, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[5] This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the Act,[6] to determine whether to approve or disapprove the Proposed Rule Change.

II. Summary of the Proposed Rule Change

As described in the Notice, NSCC proposes to amend the Clearing Agency Stress Testing Framework (Market Risk) (''ST Framework'') and the Clearing Agency Liquidity Risk Management Framework (''LRM Framework,'' and, together with the ST Framework, the ''Frameworks'') of NSCC and its affiliates, The Depository Trust Company (''DTC'') and Fixed Income Clearing Corporation (''FICC,'' and together with NSCC and DTC, the ''Clearing Agencies'').[7]

First, the proposed changes would amend both the ST Framework and the LRM Framework to move descriptions of the Clearing Agencies' liquidity stress testing activities from the LRM Framework to the ST Framework. In connection with this proposed change, the Clearing Agencies propose to recategorize the stress scenarios used for liquidity risk management, such that all such stress scenarios are described as either regulatory or informational scenarios.

Second, the proposed changes would amend the ST Framework to (1) enhance stress testing for the Government Securities Division of FICC (''GSD'') to obtain certain data utilized in stress testing from external vendors and implement a back-up stress testing calculation that would be utilized in the event such data is not supplied by its vendors, and amend the ST Framework to reflect these practices for both GSD

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 95078 (June 10, 2022), 87 FR 36158 (June 15, 2022) (File No. SR–NSCC–2022–006).

[4] 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 95283 (July 14, 2022), 87 FR 43354 (July 20, 2022) (SR–NSCC–2022–006).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] The description of the Proposed Rule Change is based on the statements prepared by NSCC in the Notice. *See* Notice, *supra* note 3. Capitalized terms used herein and not otherwise defined herein are defined in the Rules, *available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

and the Mortgage-Backed Securities Division of FICC (''MBSD''); (2) reflect that a stress testing team is primarily responsible for the actions described in the ST Framework, and (3) make other revisions to update and clarify certain statements in the ST Framework.

Third, the proposed changes would amend the LRM Framework to update and clarify certain statements in the LRM Framework.

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[8] to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, providing the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Act,[9] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Act,[10] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Act,[11] which requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, 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, and to protect investors and the public interest; and
- Rule 17Ad–22(e)(4) of the Act,[12] which requires that a covered clearing agency 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 arising from its payment, clearing, and settlement processes.
- Rule 17Ad–22(e)(7) of the Act,[13] which requires a covered clearing agency to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[14] and Rules 17Ad–22(e)(4) and (e)(7) of the Act,[15] or any other provision of the Act, or the rules and regulations thereunder.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by October 6, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 20, 2022.

The Commission asks that commenters address the sufficiency of NSCC's statements in support of the Proposed Rule Change, which are set forth in the Notice,[16] in addition to any other comments they may wish to submit about the Proposed Rule Change.

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–NSCC–2022–006 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–NSCC–2022–006. 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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2022–006 and should be submitted on or before October 6, 2022. Rebuttal comments should be submitted by October 20, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19913 Filed 9–14–22; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *Id.*

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(4).

[13] 17 CFR 240.17Ad–22(e)(7).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 240.17Ad–22(e)(4) and (e)(7).

[16] *See* Notice, *supra* note 3.

[17] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95721; File No. SR–BX–2022–016]

Self-Regulatory Organizations; Nasdaq BX, Inc.; 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

September 9, 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 September 1, 2022, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's port-related fees, at Equity 7, Section 115, and Options 7, Section 3, as described further below. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/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 (i) amend Equity 7, Section 115, and Options 7, Section 3, to prorate port fees for the first month of service, (ii) 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, and (iii) clarify that Nasdaq Testing Facility (''NTF'') ports are provided at no cost in Options 7, Section 3.

Currently, the Exchange does not prorate port connectivity fees under either its equity or options rules. Thus, 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. 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 participants port fees only for the days in which the 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. If a participant starts and cancels service in the same month, the 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.[3]

The Exchange believes it is important for 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.[4]

The Exchange also proposes to add language to Options 7, Section 3(iv) to clarify the Exchange's existing practice that NTF Ports are provided at no cost. The NTF provides subscribers with a virtual System test environment that closely approximates the production environment on which they may test their automated systems that integrate with the Exchange. For example, the NTF provides subscribers a virtual System environment for testing upcoming releases and product enhancements, as well as testing firm software prior to implementation. The Exchange proposes adding express language in the options Rules to provide increased clarity to market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to 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.'' [7]

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 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.[8] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For example, if a participant orders a port on September 4, 2022 and cancels the port on September 16, 2022, the participant would be charged the prorated port fee for September 5, 2022 through September 30, 2022.

[4] *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.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[8] *Supra* note 4.

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 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.

The Exchange also believes that it is just and equitable, and in the interests of market participants, for the Exchange to clarify the Exchange's existing practice to provide NTF ports at no cost in Options 7, Section 3(iv), codifying existing practice where it is not expressly stated in the Rule. The Exchange believes that market participants will benefit from increased clarity, which will help limit any potential confusion in the future.

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.

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 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, as well as the proposed language to the options Rules that NTF ports are provided at no cost, merely codify and clarify existing practices 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.[9] 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.

The proposed change to clarify that NTF ports are provided at no cost is designed to expressly state existing practice without changing its operation and, therefore, the Exchange believes that the proposed change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and paragraph (f) of Rule 19b–4 [11] 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–BX–2022–016 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–BX–2022–016. 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

[9] *Supra* note 4.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

submissions should refer to File Number SR–BX–2022–016 and should be submitted on or before October 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19917 Filed 9–14–22; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11859]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Picasso Cut Papers'' 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 ''Picasso Cut Papers'' at the Armand Hammer Museum of Art and Cultural 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), E.O. 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. 2022–19938 Filed 9–14–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11823]

Notification of Meetings of the United States-Peru Environmental Affairs Council, Environmental Cooperation Commission, and Sub-Committee on Forest Sector Governance; Withdrawal

ACTION: Notice; withdrawal.

SUMMARY: The Department of State published a document in the **Federal Register** on August 17, 2022, concerning meetings of the United States-Peru Environmental Affairs Council, Environmental Cooperation Commission, and Sub-Committee on Forest Sector Governance. The meeting has been postponed.

FOR FURTHER INFORMATION CONTACT: Elizabeth Linske, (202) 344–9852 or Sigrid Simpson, (202) 881–6592.

SUPPLEMENTARY INFORMATION: Withdrawal.

In the **Federal Register** of August 17, 2022, we withdraw FR Doc 2022–17652. The Department of State will submit an updated meeting notice when the new meeting date is determined.

Sherry Zalika Sykes,

Director, Office of Environmental Quality, Department of State.

[FR Doc. 2022–19996 Filed 9–14–22; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 11851]

60-Day Notice of Proposed Information Collection: Request for Commodity Jurisdiction Determination

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. We are requesting comments on this collection from all interested individuals and organizations in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow 60 days for public comment preceding submission of this collection to OMB.

DATES: The Department will accept comments from the public up to *November 14, 2022.*

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering the docket number, DOS–2022–0029, in the search field. Then, select ''Comment Now'' to complete the comment form.
- *Email:* The public email comments to *DDTCPublicComments@state.gov.* Include ''ATTN: OMB Approval, Request for Commodity Jurisdiction Determination'' in the subject of the email.
- *Mail:* The public may mail comments to the Directorate of Defense Trade Controls, Department of State, 2401 E St. NW, Suite H1205, Washington, DC 20522.

You must include the information collection title (Request for Commodity Jurisdiction Determination), form number (DS–4076), and the OMB control number (1405–0163) in all correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Battista, who may be reached at 202–992–0973, or *battistaal@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Request for Commodity Jurisdiction Determination.
- *OMB Control Number:* 1405–0163.
- *Type of Request:* Revision of a currently approved collection.
- *Originating Office:* Directorate of Defense Trade Controls (PM/DDTC).
- *Form Number:* DS–4076.
- *Respondents:* Any person requesting a commodity jurisdiction determination.
- *Estimated Number of Responses:* 400.
- *Average Time per Response:* 4 hours.
- *Total Estimated Burden Time:* 1,600 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for

[12] 17 CFR 200.30–3(a)(12).

this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including by the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice will be part of the public record. Before including any detailed personal information, you should be aware that your comments as submitted, including any personal information you provide, will be available for public review.

Abstract of proposed collection:

Pursuant to ITAR § 120.4, a person, as defined by ITAR § 120.14, may request a written determination from the Department of State stating whether a particular article or defense service is covered by the United States Munitions List (USML). Form DS–4076 is the means by which respondents may submit this request. Information submitted via DS–4076 will be shared with the Department of Defense, Department of Commerce, and other USG agencies, as needed, during the commodity jurisdiction process. Determinations will be made on a case-by-case basis based on the commodity's form, fit, function, and performance capability.

Methodology:

Respondents must generally submit the DS–4076 electronically through DDTC's electronic system. Respondents may access the DS–4076 on DDTC's website, *www.pmddtc.state.gov,* under ''Commodity Jurisdictions (CJs).'' Respondents who are unable to access DDTC's website may mail a signed DS–4076, along with a brief cover letter explaining their inability to file the electronic DS–4076, to the Office of Defense Trade Controls Policy, Department of State, 2401 E St. NW, Suite H1304, Washington, DC 20522.

Michael F. Miller,

Deputy Assistant Secretary, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2022–19695 Filed 9–14–22; 8:45 am]

BILLING CODE 4710–25–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36640]

Midland Railroad, LLC-Acquisition and Change in Operator Exemption-Midland Historical Railway Association

Midland Railroad LLC (MRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate as a common carrier over 11.09 miles of rail line owned by the Midland Historical Railway Association (MHRA) between milepost 14.95 near Baldwin City, Kan., and milepost 26.04 at Ottawa, Kan. (the Line).[1]

According to the verified notice, MRR and MHRA have reached an agreement pursuant to which MRR will acquire the Line and, upon consummation of the acquisition transaction, replace Leavenworth, Lawrence & Galveston Railroad d/b/a the Baldwin City & Southern Railroad Company (BC&S) as the common carrier service provider on the Line. The verified notice indicates that MHRA controls BC&S and that BC&S does not object to the proposed transaction by which it would be replaced by MRR as operator on the Line.

MRR certifies that the agreement governing the proposed transaction does not have an interchange commitment. MRR further certifies that its projected annual revenues resulting from the transaction will not exceed $5 million and will not result in MRR's becoming a Class I or Class II rail carrier. Under 49 CFR 1150.32(b), a change in operator requires that notice be given to shippers. MRR states that there are currently no customers on the Line, and accordingly, no shippers to notify of the transaction.

The earliest this transaction may be consummated is September 29, 2022. MRR states that it expects to consummate its acquisition of, and commence common carrier operations over, the Line on or after that date.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than September 22, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36640, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on MRR's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to MRR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: September 8, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2022–19893 Filed 9–14–22; 8:45 am]

BILLING CODE 4915–01–P

[1] MMR identifies a discrepancy between the owner of the Line named in the verified notice here and the owner identified in *Leavenworth, Lawrence & Galveston Railroad—Operation Exemption—Midland Railway,* FD 36300 (STB served Aug. 21, 2019). MMR states that its investigation into the matter indicates that the owner of the Line at the time of the 2019 exemption was MHRA and that it has found no record of a ''Midland Railway Company'' as an owner of the Line (or even as a distinct corporate entity).

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Energy Resource Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Energy Resource Council (RERC) will hold a meeting on October 3 and 4, 2022, regarding regional energy related issues in the Tennessee Valley.

DATES: The meeting will be held in Chattanooga, Tennessee, at TVA's Missionary Ridge Building on Monday, October 3, 2022, from 8 a.m. to 3:15 p.m. ET and Tuesday, October 4, 2022, from 8:00 a.m. to 11:30 a.m. ET. RERC members are invited to attend the meeting in person. The public is invited to view the meeting virtually or attend in person. Health and safety protocols may be required for those who attend in-person as TVA is following CDC guidance on masking and social distancing. A 1-hour public listening session for the public to present comments virtually or in person will be held October 3, 2022, at 2 p.m. ET. A link and instructions to view the meeting will be posted one week prior on TVA's RERC website at *www.tva.gov/rerc.*

ADDRESSES: The meeting will be held at TVA's Missionary Ridge Auditorium at

1101 Market St., Chattanooga, TN 37402. The meeting will also be available virtually to the public. Instructions to view the meeting will be posted at *www.tva.com/rerc* prior to the meeting. Due to COVID 19 conditions, anyone wishing to attend in person must preregister by 5 p.m. ET Thursday, September 29, 2022, by emailing *bhaliti@tva.gov.* Persons who wish to speak during the public listening session must pre-register by 5 p.m. ET Thursday, September 29, 2022, by emailing *bhaliti@tva.gov* and specifying whether they wish to make comments virtually or in-person. Anyone needing special accommodations should let the contact below know at least one week in advance.

FOR FURTHER INFORMATION CONTACT: Bekim Haliti, *bhaliti@tva.gov* or 931–349–1894.

SUPPLEMENTARY INFORMATION: The RERC was established to advise TVA on its energy resource activities and the priorities among competing objectives and values. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. app.2.

The meeting agenda includes the following:

Day 1—October 3

1. Welcome and Introductions
2. RERC and TVA Meeting Update
3. Update on TVA's Valley Vision 2035
4. Update on TVA's System Operations Center
5. Public Listening Session

Day 2—October 4

6. Welcome and Review of Day 1
7. Update from TVA's Nuclear Department

The RERC will hear views of citizens by providing a 1-hour public comment session starting October 3 at 2 p.m. ET. Persons wishing to speak in person or virtually must register by sending an email at *bhaliti@tva.gov* or by calling 931–349–1894 by 5 p.m. ET, on Thursday, September 29, 2022, and will be called on during the public listening session for up to five minutes to share their views. Written comments are also invited and may be emailed to *bhaliti@tva.gov* or mailed to the Regional Energy Resource Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 9D, Knoxville Tennessee 37902.

Dated: September 7, 2022.

Melanie Farrell,

Vice President, External Stakeholders and Regulatory Oversight, Tennessee Valley Authority.

[FR Doc. 2022–19889 Filed 9–14–22; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2022–0013]

Request for Comments on Significant Foreign Trade Barriers for the 2023 National Trade Estimate Report

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), publishes the National Trade Estimate Report on Foreign Trade Barriers (NTE Report) each year. USTR invites comments to assist it and the TPSC in identifying significant foreign barriers to, or distortions of, U.S. exports of goods and services, U.S. foreign direct investment, and U.S. electronic commerce for inclusion in the NTE Report. USTR also will consider responses to this notice as part of the annual review of the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services that are in force with respect to the United States.

DATES: The deadline for submission of comments is Friday, October 28, 2022, at 11:59 p.m. ET.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov* (*Regulations.gov*). The instructions for submitting comments are in section IV below. The docket number is USTR–2022–0013. For alternatives to online submissions, please contact Spencer Smith at *Spencer.L.Smith2@ustr.eop.gov* or (202) 395–2974 in advance of the deadline.

FOR FURTHER INFORMATION CONTACT: Spencer Smith at *Spencer.L.Smith2@ustr.eop.gov* or (202) 395–2974.

SUPPLEMENTARY INFORMATION:

I. Background

Section 181 of the Trade Act of 1974, as amended (19 U.S.C. 2241), requires USTR annually to publish the NTE Report, which sets out an inventory of significant foreign barriers to, or distortions of, U.S. exports of goods and services, including agricultural commodities and U.S. intellectual property; foreign direct investment by U.S. persons, especially if such investment has implications for trade in goods or services; and U.S. electronic commerce. The inventory facilitates U.S. negotiations aimed at reducing or eliminating these barriers and is a valuable tool in enforcing U.S. trade laws and agreements and strengthening the rules-based trading system. You can find the 2022 NTE Report on USTR's website at *https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2022.* To ensure compliance with the statutory mandate for the NTE Report and the Administration's commitment to focus on significant foreign trade barriers, USTR will take into account comments in response to this notice when deciding which significant barriers to include in the NTE Report.

II. Topics on Which the TPSC Seeks Information

To assist USTR in preparing the NTE Report, commenters should submit information related to one or more of the following categories of foreign trade barriers:

1. *Import policies.* Examples include tariffs and other import charges, quantitative restrictions, import licensing, pre-shipment inspection, customs barriers and shortcomings in trade facilitation or in valuation practices, and other market access barriers.

2. *Technical barriers to trade.* Examples include unnecessarily trade restrictive or discriminatory standards, conformity assessment procedures, labeling, or technical regulations, including unnecessary or discriminatory technical regulations or standards for telecommunications products.

3. *Sanitary and phytosanitary measures.* Examples include measures relating to food safety, or animal and plant life or health that are unnecessarily trade restrictive, discriminatory, or not based on scientific evidence.

4. *Government procurement restrictions.* Examples include closed bidding and bidding processes that lack transparency.

5. *Intellectual property protection.* Examples include inadequate patent, copyright, and trademark regimes, trade secret theft, and inadequate enforcement of intellectual property rights.

6. *Services.* Examples include prohibitions or restrictions on foreign participation in the market, discriminatory licensing requirements or standards, local-presence requirements, and unreasonable restrictions on what services may be offered.

7. *Digital trade and electronic commerce.* Examples include barriers to cross-border data flows, including data localization requirements, discriminatory practices affecting trade in digital products, restrictions on the supply of internet-enabled services, and

other restrictive technology requirements.

8. *Investment.* Examples include limitations on foreign equity participation and on access to foreign government-funded research and development programs, local content requirements, technology transfer requirements and export performance requirements, and restrictions on repatriation of earnings, capital, fees, and royalties.

9. *Subsidies, especially export subsidies and local content subsidies.* Examples of export subsidies include subsidies contingent upon export performance, and agricultural export subsidies that displace U.S. exports in third country markets. Examples of local content subsidies include subsidies contingent on the purchase or use of domestic rather than imported goods.

10. *Competition.* Examples include government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country's markets or abuse of competition laws to inhibit trade, and fairness and due process concerns by companies involved in competition investigatory and enforcement proceedings in the country.

11. *State-owned enterprises (SOEs).* Examples include actions by SOEs and by governments with respect to SOEs involved in the manufacture or production of non-agricultural goods or in the supply of services that constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investments, or U.S. electronic commerce, which may negatively affect U.S. firms and workers, such as subsidies and non-commercial advantages provided to and from SOEs; practices with respect to SOEs that discriminate against U.S. goods or services; or actions by SOEs that are inconsistent with commercial considerations in the purchase and sale of goods and services.

12. *Labor.* Examples include concerns with failures by a government to protect internationally recognized worker rights or to eliminate discrimination in respect of employment or occupation, in cases where these failures influence trade flows or investment decisions in ways that constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investment, or U.S. electronic commerce, which may negatively affect U.S. firms and workers. Internationally recognized worker rights include the right of association; the right to organize and bargain collectively; a prohibition on the use of any form of forced or compulsory labor; a minimum age for the employment of children, and a prohibition on the worst forms of child labor; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

13. *Environment.* Examples include concerns with a government's levels of environmental protection, unsustainable stewardship of natural resources, and harmful environmental practices that constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investment, or U.S. electronic commerce, which may negatively affect U.S. firms or workers.

14. *Other barriers.* Examples include significant barriers or distortions that are not covered in any other category above or that encompass more than one category, such as bribery and corruption, or that affect a single sector.

Please provide, if available, the titles of relevant laws or measures and a description of the concerns with which the laws or measures relate to the significant foreign barriers or distortions identified. Commenters should place particular emphasis on any practices that may violate U.S. trade agreements. USTR also is interested in receiving new or updated information pertinent to the barriers covered in the 2022 NTE Report as well as information on new barriers. If USTR does not include in the 2023 NTE Report information that it receives pursuant to this notice, it will maintain the information for potential use in future discussions or negotiations with trading partners.

Commenters should submit information related to one or more of the following export markets to be covered in the report: Algeria, Angola, the Arab League, Argentina, Australia, Bahrain, Bangladesh, Bolivia, Brazil, Brunei, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, the European Union, Ghana, Guatemala, Honduras, Hong Kong, India, Indonesia, Israel, Japan, Jordan, Kenya, Korea, Kuwait, Laos, Malaysia, Mexico, Morocco, New Zealand, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, the Philippines, Qatar, Russia, Saudi Arabia, Singapore, South Africa, Switzerland, Taiwan, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Uruguay, and Vietnam. Commenters may submit information related to significant barriers or distortions in export markets other than those listed in this paragraph.

In addition, section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) (Section 1377) requires USTR annually to review the operation and effectiveness of U.S. telecommunications trade agreements that are in force with respect to the United States. The purpose of the review is to determine whether any foreign government that is a party to one of those agreements is failing to comply with that government's obligations or is otherwise denying, within the context of a relevant agreement, ''mutually advantageous market opportunities'' to U.S. telecommunication products or services suppliers. USTR will consider responses to this notice in the review called for in Section 1377 and highlight both ongoing and emerging barriers to U.S. telecommunication services and goods exports in the 2023 NTE Report.

III. Estimate of Increase in Exports

To the extent possible, each comment should include an estimate of the potential increase in U.S. exports of goods or services, foreign direct investment, or electronic commerce that would result from removing any significant foreign trade barrier the comment identifies, as well as a description of the methodology the commenter used to derive the estimate. Commenters should express estimates within the following value ranges: less than $25 million; $25 million to $100 million; $100 million to $500 million; and over $500 million.

IV. Requirements for Submissions

Comments must be in English and must identify on the first page of the submission 'Comments Regarding Foreign Trade Barriers to U.S. Exports for 2023 Reporting—[Name of country or countries discussed]'. Commenters providing information on foreign trade barriers in more than one country should, whenever possible, provide a separate attachment for each country as part of the same submission. USTR strongly encourages commenters to provide only one submission.

The submission deadline is Friday, October 28, 2022 at 11:59 p.m. ET. USTR strongly encourages commenters to make online submissions, using *Regulations.gov*. To submit comments via *Regulations.gov,* enter docket number USTR–2022–0013 on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled 'comment.' For further information on using *Regulations.gov,* please consult the resources provided on the website by clicking on 'How to Use Regulations.gov' on the bottom of the home page.

Regulations.gov allows users to submit comments by filling in a 'type comment' field, or by attaching a document using an 'upload file' field. USTR prefers that you provide comments in an attached document. If you attach a document, please identify the name of the country to which the submission pertains in the 'type comment' field, *e.g.,* see attached comments with respect to (name of country). USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the 'type comment' field.

Filers submitting comments that do not contain business confidential information (BCI) should name their file using the name of the person or entity submitting the comment, and the name of the country or countries discussed. For any comments submitted electronically that contain BCI, the file name of the business confidential version should begin with the characters 'BCI.' Clearly mark any page containing BCI with 'BUSINESS CONFIDENTIAL' on the top of that page. Filers of submissions containing BCI also must submit a public version of their comments that USTR will place in the docket for public inspection. The file name of the public version should begin with the character 'P.' Follow the 'BCI' and 'P' with the name of the person or entity submitting the comments.

USTR will post comments in the docket for public inspection, except properly designated BCI. You can view comments on *Regulations.gov* by entering docket number USTR–2022–0013 in the search field on the home page. General information concerning USTR is available at *https://www.ustr.gov.*

William Shpiece,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2022–19896 Filed 9–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee (ARAC); Renewal

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

ACTION: Notice of renewal of the Aviation Rulemaking Advisory Committee charter.

SUMMARY: The FAA announces the charter renewal of the Aviation Rulemaking Advisory Committee (ARAC), a Federal advisory committee that works with industry and the public to improve the development of the FAA's regulations. This charter renewal will take effect on September 14, 2022, and will expire after 2 years unless otherwise renewed.

FOR FURTHER INFORMATION CONTACT: Lakisha Pearson, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–4191; fax (202) 267–5075; email *9-awa-arac@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), the FAA is giving notice of the charter renewal for the ARAC. The ARAC was established to provide advice and recommendations to FAA on regulatory matters. The ARAC is composed of representatives from member organizations and associations that represent the various aviation industry segments. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the ARAC website for details on pending tasks at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/.*

Issued in Washington, DC, on September 12, 2022.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2022–20029 Filed 9–13–22; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0353]

Airworthiness Criteria: Special Class Airworthiness Criteria for the MissionGO MGV100 Unmanned Aircraft

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

ACTION: Notice of proposed airworthiness criteria.

SUMMARY: The FAA announces the availability of and requests comments on proposed airworthiness criteria for the MissionGO Model MGV100 unmanned aircraft (UA). This document proposes the airworthiness criteria the FAA finds to be appropriate and applicable for the UA design.

DATES: Send comments on or before October 17, 2022.

ADDRESSES: Send comments identified by docket number FAA–2022–0353 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *https://regulations.gov,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *https://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *https://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christopher J. Richards, Emerging Aircraft Strategic Policy Section, AIR–618, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 6020 28th Avenue South, Room 103, Minneapolis, MN 55450, telephone (612) 253–4559.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in the development of these airworthiness criteria by sending written comments, data, or views. The most helpful comments reference a specific portion of the airworthiness

criteria, explain the reason for any recommended change, and include supporting data. Comments on operational, pilot certification, and maintenance requirements would address issues that are beyond the scope of this document.

Except for Confidential Business Information as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed airworthiness criteria. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these airworthiness criteria based on received comments.

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 these proposed airworthiness criteria contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these proposed airworthiness criteria, 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 these proposed airworthiness criteria. Submissions containing CBI should be sent to the individual listed under **FOR FURTHER INFORMATION CONTACT**. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for these proposed airworthiness criteria.

Background

MissionGO applied to the FAA on November 4, 2020, for a special class type certificate under 14 CFR 21.17(b) for the Model MGV100 UA.

The Model MGV100 consists of a rotorcraft UA and its associated elements (AE) including communication links and components that control the UA. The Model MGV100 UA has a maximum gross takeoff weight of 54 pounds. It has a rotor diameter of approximately 76.5 inches. It is approximately 66.5 inches in fuselage length and 28.5 inches in height. The Model MGV100 UA is battery-powered using electric motors for vertical takeoff, landing, and forward flight. The unmanned aircraft system (UAS) operations would rely on high levels of automation and include a single UA operated by a single pilot. MissionGO anticipates operators will use the Model MGV100 for delivering packages. The proposed concept of operations for the Model MGV100 identifies a maximum operating altitude of 400 feet above ground level, a maximum cruise speed of 38 knots, operations beyond visual line of sight of the pilot, and operations over human beings. MissionGO has not requested type certification for flight into known icing for the Model MGV100.

Discussion

The FAA establishes airworthiness criteria to ensure the safe operation of aircraft in accordance with 49 U.S.C. 44701(a) and 44704. UA are type certificated by the FAA as special class aircraft for which airworthiness standards have not been established by regulation. Under the provisions of 14 CFR 21.17(b), the airworthiness standards for special class aircraft are those the FAA finds to be appropriate and applicable to the specific type design.

The applicant has proposed a design with constraints upon its operations and an unusual design characteristic: the pilot is remotely located. The FAA developed existing airworthiness standards to establish an appropriate level of safety for each product and its intended use. The FAA's existing airworthiness standards did not envision aircraft with no pilot in the flight deck and the technologies associated with that capability.

The FAA has reviewed the proposed design and assessed the potential risk to the National Airspace System. The FAA considered the size of the proposed aircraft, its maximum airspeed and altitude, and operational limitations to address the number of unmanned aircraft per operator and address operations in which the aircraft would operate beyond the visual line of sight of the pilot. These factors allowed the FAA to assess the potential risk the aircraft could pose to other aircraft and to human beings on the ground. Using these parameters, the FAA developed airworthiness criteria to address those potential risks to ensure the aircraft remains reliable, controllable, safe, and airworthy.

The proposed criteria focus on mitigating hazards by establishing safety outcomes that must be achieved, rather than by establishing prescriptive requirements that must be met. This is in contrast to many current airworthiness standards, used to certificate traditional aircraft systems, which prescribe specific indicators and instruments for a pilot in a flight deck that would be inappropriate for UA. The FAA finds that the proposed criteria are appropriate and applicable for the UA design, based on the intended operational concepts for the UA as identified by the applicant.

The FAA selected the particular airworthiness criteria proposed by this notice for the following reasons:

General: In order to determine appropriate and applicable airworthiness standards for UA as a special class of aircraft, the FAA determined that the applicant must provide information describing the characteristics and capabilities of the UA and how it will be used.

D&R.001 Concept of Operations: To assist the FAA in identifying and analyzing the risks and impacts associated with integrating the proposed UA design into the National Airspace System, the applicant would be required to submit a Concept of Operations (CONOPS). The proposed criteria would require the applicant's CONOPS to identify the intended operational concepts for the UA and describe the UAS and its operation. The applicant would be required to describe the information in the CONOPS in sufficient detail to determine parameters and extent of testing, as well as operating limitations that will be placed in the UA Flight Manual. If the applicant requests to include collision avoidance equipment, the proposed criteria would require the applicant to identify such equipment in the CONOPS.

D&R.005 Definitions: The proposed criteria include a definitions section, distinguishing the term ''loss of flight'' from ''loss of control.''

Design and Construction: The FAA selected the design and construction criteria in this section to address airworthiness requirements where the flight testing demonstration alone may not be sufficient to demonstrate an appropriate level of safety.

D&R.100 UA Signal Monitoring and Transmission: To address the risks associated with loss of control of the UA, the applicant would be required to design the UA to monitor and transmit to the AE all information necessary for continued safe flight and operation. Some of the AE are located separately

from the UA, and therefore are a unique feature to UAS. As a result, no regulatory airworthiness standards exist that directly apply to this part of the system. The FAA based some of the proposed criteria on existing regulations that address the information that must be provided to a pilot in the flight deck of a manned aircraft, and modified them as appropriate to the UAS. These proposed criteria list the specific minimum types of information the FAA finds are necessary for the UA to transmit for continued safe flight and operation; however, the applicant must determine whether additional parameters are necessary.

D&R.105 UAS AE Required for Safe UA Operations: Because safe UAS operations depend and rely on both the UA and the AE, the FAA considers the AE in assessing whether the UA meets the criteria that comprise the certification basis. While the AE items themselves will be outside the scope of the UA type design, the applicant must provide sufficient specifications for any aspect of the AE, including the control station, which could affect airworthiness. The proposed criteria would require a complete and unambiguous identification of the AE and their interface with the UA, so that their availability or use is readily apparent.

As explained in FAA Policy Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA will approve either the specific AE or minimum specifications for the AE, as identified by the applicant, as part of the type certificate by including them as an operating limitation in the type certificate data sheet and flight manual. The FAA may impose additional operating limitations specific to the AE through conditions and limitations for inclusion in the operational approval (*i.e.,* waivers, exemptions, operating certificates, or a combination of these). In this way, the FAA will consider the entirety of the UAS for operational approval and oversight.

D&R.110 Software: Software for manned aircraft is certified under the regulations applicable to systems, equipment, and installations (*e.g.,* §§ 23.2510, 25.1309, 27.1309, or 29.1309). There are two regulations that specifically prescribe airworthiness standards for software: Engine airworthiness standards (§ 33.28) and propeller airworthiness standards (§ 35.23). The proposed UA software criteria are based on these regulations and tailored for the risks posed by UA software.

D&R.115 Cyber Security: The location of the pilot separate from the UA requires a continuous wireless connection (command and control link) with the UA for the pilot to monitor and control it. Because the purpose of this link is to control the aircraft, this makes the UA susceptible to cyber security threats in a unique way.

The current regulations for the certification of systems, equipment, and installations (*e.g.,* §§ 23.2510, 25.1309, 27.1309, and 29.1309) do not adequately address potential security vulnerabilities exploited by unauthorized access to aircraft systems, data buses, and services. For manned aircraft, the FAA therefore issues special conditions for particular designs with network security vulnerabilities.

To address the risks to the UA associated with intentional unauthorized electronic interactions, the applicant would be required to design the UAS's systems and networks to protect against intentional unauthorized electronic interactions and mitigate potential adverse effects. The FAA based the language for the proposed criteria on recommendations in the final report dated August 22, 2016, from the Aircraft System Information Security/Protection (ASISP) working group under the FAA's Aviation Rulemaking Advisory Committee. Although the recommendations pertained to manned aircraft, the FAA has reviewed the report and determined the recommendations are also appropriate for UA. The wireless connections used by UA make these aircraft susceptible to the same cyber security risks, and therefore require similar criteria as manned aircraft.

D&R.120 Contingency Planning: The location of the pilot and the controls for the UAS, separate from the UA, is a unique feature to UAS. As a result, no regulatory airworthiness standards exist that directly apply to this feature of the system.

To address the risks associated with loss of communication between the pilot and the UA, and thus the pilot's inability to control the UA, the proposed criteria would require that the UA be designed to automatically execute a predetermined action. Because the pilot needs to be aware of the particular predetermined action the UA will take when there is a loss of communication between the pilot and the UA, the proposed criteria would require that the applicant identify the predetermined action in the UA Flight Manual. The proposed criteria would also include requirements for preventing takeoff when quality of service is inadequate.

D&R.125 Lightning: Because of the size and physical limitations of this UA, it would be unlikely that this UA would incorporate traditional lightning protection features. To address the risks that would result from a lightning strike, the proposed criteria would require an operating limitation in the UA Flight Manual that prohibits flight into weather conditions conducive to lightning. The proposed criteria would also allow design characteristics to protect the UA from lightning as an alternative to the prohibition.

D&R.130 Adverse Weather Conditions: Because of the size and physical limitations of this UA, adverse weather such as rain, snow, and icing pose a greater hazard to the UA than to manned aircraft. For the same reason, it would be unlikely that this UA would incorporate traditional protection features from icing. The FAA based the proposed criteria on the icing requirements in 14 CFR 23.2165(b) and (c) and applied them to all of these adverse weather conditions. The proposed criteria would allow design characteristics to protect the UA from adverse weather conditions. As an alternative, the proposed criteria would require an operating limitation in the UA Flight Manual that prohibits flight into known adverse weather conditions, and either also prevent inadvertent flight into adverse weather or provide a means to detect and to avoid or exit adverse weather conditions.

D&R.135 Flight Essential Parts: The proposed criteria for flight essential parts are substantively the standards for normal category rotorcraft critical parts in § 27.602, with changes to reflect UA terminology and failure conditions. Because part criticality is dependent on safety risk to those on board the aircraft, the term ''flight essential'' is used for those components of an unmanned aircraft whose failure may result in loss of flight or unrecoverable loss of UA control.

Operating Limitations and Information: Similar to manned aircraft, the FAA determined that the UA applicant must provide airworthiness instructions, operating limitations, and flight and performance information necessary for the safe operation and continued operational safety of the UA.

D&R.200 Flight Manual: The proposed criteria for the UA Flight Manual are substantively the same as those in § 23.2620, with minor changes to reflect UA terminology.

D&R.205 Instructions for Continued Airworthiness: The proposed criteria for the Instructions for Continued Airworthiness (ICA) are substantively the same as that in § 23.1529, with

minor changes to reflect UA terminology.

Testing: Traditional certification methodologies for manned aircraft are based on design requirements verified at the component level by inspection, analysis, demonstration, or test. Due to the difference in size and complexity, the FAA determined testing methodologies that demonstrate reliability at the aircraft (UA) level, in addition to the design and construction criteria identified in this proposal, will achieve the same safety objective. The proposed testing criteria in sections D&R.300 through D&R.320 utilize these methodologies.

D&R.300 Durability and Reliability: The FAA intends the proposed testing criteria in this section to cover key design aspects and prevent unsafe features at an appropriate level tailored for this UA. The proposed durability and reliability testing would require the applicant to demonstrate safe flight of the UA across the entire operational envelope and up to all operational limitations, for all phases of flight and all aircraft configurations. The UA would only be certificated for operations within the limitations prescribed for its operating environment, as defined in the applicant's proposed CONOPS and demonstrated by test. The FAA intends for this process to be similar to the process for establishing limitations prescribed for special purpose operations for restricted category aircraft. The proposed criteria would require that all flights during the testing be completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside of the operator's recovery zone.

For some aircraft design requirements imposed by existing airworthiness standards (*e.g.,* §§ 23.2135, 23.2600, 25.105, 25.125, 27.141, 27.173, 29.51, 29.177), the aircraft must not require exceptional piloting skill or alertness. These rules recognize that pilots have varying levels of ability and attention. In a similar manner, the proposed criteria would require that the durability and reliability flight testing be performed by a pilot with average skill and alertness.

Flight testing will be used to determine the aircraft's ability to withstand flight loads across the range of operating limits and the flight envelope. Because small UA may be subjected to significant ground loads when handled, lifted, carried, loaded, maintained, and transported physically by hand, the proposed criteria would require that the aircraft used for testing endure the same worst-case ground loads as those the UA will experience in operation after type certification.

D&R.305 Probable Failures: The FAA intends the proposed testing criteria to evaluate how the UA functions after failures that are probable to occur. The applicant will test the UA by inducing certain failures and demonstrating that the failure will not result in a loss of containment or control of the UA. The proposed criteria contain the minimum types of failures the FAA finds are probable; however, the applicant must determine the probable failures related to any other equipment that will be addressed for this requirement.

D&R.310 Capabilities and Functions: The proposed criteria for this section address the minimum capabilities and functions the FAA finds are necessary for the design of the UA and would require the applicant to demonstrate these capabilities and functions by test. Due to the location of the pilot and the controls for UAS, separate from the UA, communication between the pilot and the UA is significant to the design. Thus, the proposed criteria would require the applicant to demonstrate the capability of the UAS to regain command and control after a loss. As with manned aircraft, the electrical system of the UA must have a capacity sufficient for all anticipated loads; the proposed criteria would require the applicant to demonstrate this by test.

The proposed criteria contain functions that would allow the pilot to command the UA to deviate from its flight plan or from its pre-programmed flight path. For example, in the event the pilot needs to deconflict the airspace, the UA must respond to pilot inputs that override any pre-programming.

In the event an applicant requests approval for certain features, such as geo-fencing or external cargo, the proposed criteria contain requirements to address the associated risks. The proposed criteria in this section would also require the design of the UA to safeguard against unintended discontinuation of flight or release of cargo, whether by human action or malfunction.

D&R.315 Fatigue: The FAA intends the proposed criteria in this section to address the risks from reduced structural integrity and structural failure due to fatigue. The proposed criteria would require the applicant to establish an airframe life limit and demonstrate that loss of flight or loss of control due to structural failure will be avoided throughout the operational life of the UA. These proposed criteria would require the applicant to demonstrate this by test, while maintaining the UA in accordance with the ICA.

D&R.320 Verification of Limits: This section would evaluate structural safety and address the risks associated with inadequate structural design. While the proposed criteria in D&R.300 address testing to demonstrate that the UA structure adequately supports expected loads throughout the flight and operational envelopes, the proposed criteria in this section would require an evaluation of the performance, maneuverability, stability, and control of the UA with a factor of safety.

Applicability

These airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the Model MGV100 UA. Should MissionGO apply at a later date for a change to the type certificate to include another model, these airworthiness criteria would apply to that model as well, provided the FAA finds them appropriate in accordance with the requirements of subpart D to part 21.

Conclusion

This action affects only the airworthiness criteria for the one model UA. It is not a standard of general applicability.

Authority Citation

The authority citation for these airworthiness criteria is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

Proposed Airworthiness Criteria

The FAA proposes to establish the following airworthiness criteria for type certification of the MissionGO Model MGV100 UA. The FAA proposes that compliance with the following would mitigate the risks associated with the proposed design and Concept of Operations appropriately and would provide an equivalent level of safety to existing rules:

General

D&R.001 Concept of Operations

The applicant must define and submit to the FAA a concept of operations (CONOPS) proposal describing the unmanned aircraft system (UAS) operation in the national airspace system for which unmanned aircraft (UA) type certification is requested. The CONOPS proposal must include, at a minimum, a description of the following information in sufficient detail to determine the parameters and extent of testing and operating limitations:

(a) The intended type of operations;

(b) UA specifications;
(c) Meteorological conditions;
(d) Operators, pilots, and personnel responsibilities;
(e) Control station, support equipment, and other associated elements (AE) necessary to meet the airworthiness criteria;
(f) Command, control, and communication functions;
(g) Operational parameters (such as population density, geographic operating boundaries, airspace classes, launch and recovery area, congestion of proposed operating area, communications with air traffic control, line of sight, and aircraft separation); and
(h) Collision avoidance equipment, whether onboard the UA or part of the AE, if requested.

D&R.005 Definitions

For purposes of these airworthiness criteria, the following definitions apply.
(a) *Loss of Control:* Loss of control means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. A loss of control means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristics, or similar occurrence, which could generally lead to crash.
(b) *Loss of Flight:* Loss of flight means a UA's inability to complete its flight as planned, up to and through its originally planned landing. It includes scenarios where the UA experiences controlled flight into terrain, obstacles, or any other collision, or a loss of altitude that is severe or non-reversible. Loss of flight also includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

Design and Construction

D&R.100 UA Signal Monitoring and Transmission

The UA must be designed to monitor and transmit to the AE all information required for continued safe flight and operation. This information includes, at a minimum, the following:
(a) Status of all critical parameters for all energy storage systems;
(b) Status of all critical parameters for all propulsion systems;
(c) Flight and navigation information as appropriate, such as airspeed, heading, altitude, and location; and
(d) Communication and navigation signal strength and quality, including contingency information or status.

D&R.105 UAS AE Required for Safe UA Operations

(a) The applicant must identify and submit to the FAA all AE and interface conditions of the UAS that affect the airworthiness of the UA or are otherwise necessary for the UA to meet these airworthiness criteria. As part of this requirement—
(1) The applicant may identify either specific AE or minimum specifications for the AE.
(i) If minimum specifications are identified, they must include the critical requirements of the AE, including performance, compatibility, function, reliability, interface, operator alerting, and environmental requirements.
(ii) Critical requirements are those that if not met would impact the ability to operate the UA safely and efficiently.
(2) The applicant may use an interface control drawing, a requirements document, or other reference, titled so that it is clearly designated as AE interfaces to the UA.
(b) The applicant must show the FAA the AE or minimum specifications identified in paragraph (a) of this section meet the following:
(1) The AE provide the functionality, performance, reliability, and information to assure UA airworthiness in conjunction with the rest of the design;
(2) The AE are compatible with the UA capabilities and interfaces;
(3) The AE must monitor and transmit to the operator all information required for safe flight and operation, including but not limited to those identified in D&R.100; and
(4) The minimum specifications, if identified, are correct, complete, consistent, and verifiable to assure UA airworthiness.
(c) The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual.
(d) The applicant must develop any maintenance instructions necessary to address implications from the AE on the airworthiness of the UA. Those instructions will be included in the instructions for continued airworthiness (ICA) required by D&R.205.

D&R.110 Software

To minimize the existence of software errors, the applicant must:
(a) Verify by test all software that may impact the safe operation of the UA;
(b) Utilize a configuration management system that tracks, controls, and preserves changes made to software throughout the entire life cycle; and
(c) Implement a problem reporting system that captures and records defects and modifications to the software.

D&R.115 Cybersecurity

(a) UA equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UA. Protection must be ensured by showing that the security risks have been identified, assessed, and mitigated as necessary.
(b) When required by paragraph (a) of this section, procedures and instructions to ensure security protections are maintained must be included in the ICA.

D&R.120 Contingency Planning

(a) The UA must be designed so that, in the event of a loss of the command and control (C2) link, the UA will automatically and immediately execute a safe predetermined flight, loiter, landing, or termination.
(b) The applicant must establish the predetermined action in the event of a loss of the C2 link and include it in the UA Flight Manual.
(c) The UA Flight Manual must include the minimum performance requirements for the C2 data link defining when the C2 link is degraded to a level where remote active control of the UA is no longer ensured. Takeoff when the C2 link is degraded below the minimum link performance requirements must be prevented by design or prohibited by an operating limitation in the UA Flight Manual.

D&R.125 Lightning

(a) Except as provided in paragraph (b) of this section, the UA must have design characteristics that will protect the UA from loss of flight or loss of control due to lightning.
(b) If the UA has not been shown to protect against lightning, the UA Flight Manual must include an operating limitation to prohibit flight into weather conditions conducive to lightning activity.

D&R.130 Adverse Weather Conditions

(a) For purposes of this section, ''adverse weather conditions'' means rain, snow, and icing.
(b) Except as provided in paragraph (c) of this section, the UA must have design characteristics that will allow the UA to operate within the adverse weather conditions specified in the

CONOPS without loss of flight or loss of control.

(c) For adverse weather conditions for which the UA is not approved to operate, the applicant must develop operating limitations to prohibit flight into known adverse weather conditions and either:

(1) Develop operating limitations to prevent inadvertent flight into adverse weather conditions; or

(2) Provide a means to detect any adverse weather conditions for which the UA is not certificated to operate and show the UA's ability to avoid or exit those conditions.

D&R.135 Flight Essential Parts

(a) A flight essential part is a part, the failure of which could result in a loss of flight or unrecoverable loss of UA control.

(b) If the type design includes flight essential parts, the applicant must establish a flight essential parts list. The applicant must develop and define mandatory maintenance instructions or life limits, or a combination of both, to prevent failures of flight essential parts. Each of these mandatory actions must be included in the Airworthiness Limitations Section of the ICA.

Operating Limitations and Information

D&R.200 Flight Manual

The applicant must provide a Flight Manual with each UA.

(a) The UA Flight Manual must contain the following information:

(1) UA operating limitations;

(2) UA operating procedures;

(3) Performance information;

(4) Loading information; and

(5) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(b) Those portions of the UA Flight Manual containing the information specified in paragraph (a)(1) of this section must be approved by the FAA.

D&R.205 Instructions for Continued Airworthiness

The applicant must prepare ICA for the UA in accordance with Appendix A to part 23, as appropriate, that are acceptable to the FAA. The ICA may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first UA or issuance of a standard airworthiness certificate, whichever occurs later.

Testing

D&R.300 Durability and Reliability

The UA must be designed to be durable and reliable when operated under the limitations prescribed for its operating environment, as documented in its CONOPS and included as operating limitations on the type certificate data sheet and in the UA Flight Manual. The durability and reliability must be demonstrated by flight test in accordance with the requirements of this section and completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.

(a) Once a UA has begun testing to show compliance with this section, all flights for that UA must be included in the flight test report.

(b) Tests must include an evaluation of the entire flight envelope across all phases of operation and must address, at a minimum, the following:

(1) Flight distances;

(2) Flight durations;

(3) Route complexity;

(4) Weight;

(5) Center of gravity;

(6) Density altitude;

(7) Outside air temperature;

(8) Airspeed;

(9) Wind;

(10) Weather;

(11) Operation at night, if requested;

(12) Energy storage system capacity; and

(13) Aircraft to pilot ratio.

(c) Tests must include the most adverse combinations of the conditions and configurations in paragraph (b) of this section.

(d) Tests must show a distribution of the different flight profiles and routes representative of the type of operations identified in the CONOPS.

(e) Tests must be conducted in conditions consistent with the expected environmental conditions identified in the CONOPS, including electromagnetic interference (EMI) and high intensity radiated fields (HIRF).

(f) Tests must not require exceptional piloting skill or alertness.

(g) Any UAS used for testing must be subject to the same worst-case ground handling, shipping, and transportation loads as those allowed in service.

(h) Any UA used for testing must use AE that meet, but do not exceed, the minimum specifications identified under D&R.105. If multiple AE are identified, the applicant must demonstrate each configuration.

(i) Any UAS used for testing must be maintained and operated in accordance with the ICA and UA Flight Manual. No maintenance beyond the intervals established in the ICA will be allowed to show compliance with this section.

(j) If cargo operations or external-load operations are requested, tests must show, throughout the flight envelope and with the cargo or external-load at the most critical combinations of weight and center of gravity, that—

(1) The UA is safely controllable and maneuverable; and

(2) The cargo or external-load is retainable and transportable.

D&R.305 Probable Failures

The UA must be designed such that a probable failure will not result in a loss of containment or control of the UA. This must be demonstrated by test.

(a) Probable failures related to the following equipment, at a minimum, must be addressed:

(1) Propulsion systems;

(2) C2 link;

(3) Global Positioning System (GPS);

(4) Flight control components with a single point of failure;

(5) Control station; and

(6) Any other AE identified by the applicant.

(b) Any UA used for testing must be operated in accordance with the UA Flight Manual.

(c) Each test must occur at the critical phase and mode of flight, and at the highest aircraft-to-pilot ratio.

D&R.310 Capabilities and Functions

(a) All of the following required UAS capabilities and functions must be demonstrated by test:

(1) Capability to regain command and control of the UA after the C2 link has been lost.

(2) Capability of the electrical system to power all UA systems and payloads.

(3) Ability for the pilot to safely discontinue the flight.

(4) Ability for the pilot to dynamically re-route the UA.

(5) Ability to safely abort a takeoff.

(6) Ability to safely abort a landing and initiate a go-around.

(b) The following UAS capabilities and functions, if requested for approval, must be demonstrated by test:

(1) Continued flight after degradation of the propulsion system.

(2) Geo-fencing that contains the UA within a designated area, in all operating conditions.

(3) Positive transfer of the UA between control stations that ensures only one control station can control the UA at a time.

(4) Capability to release an external cargo load to prevent loss of control of the UA.

(5) Capability to detect and avoid other aircraft and obstacles.

(c) The UA must be designed to safeguard against inadvertent discontinuation of the flight and inadvertent release of cargo or external load.

D&R.315 Fatigue

The structure of the UA must be shown to withstand the repeated loads expected during its service life without failure. A life limit for the airframe must be established, demonstrated by test, and included in the ICA.

D&R.320 Verification of Limits

The performance, maneuverability, stability, and control of the UA within the flight envelope described in the UA Flight Manual must be demonstrated at a minimum of 5% over maximum gross weight with no loss of control or loss of flight.

Issued in Washington, DC, on September 9, 2022.

Ian Lucas,

Manager, Policy Implementation Section, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–20001 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0020; Notice 2]

FCA US, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: FCA US, LLC, (f/k/a Chrysler Group, LLC) ''FCA,'' has determined that certain Mopar branded headlamp assemblies sold as aftermarket equipment and installed as original equipment in certain model year (MY) 2017–2018 Dodge Journey motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* FCA filed a noncompliance report for the replacement equipment dated March 14, 2019, and later amended it on April 9, 2019. FCA also filed a noncompliance report for the associated vehicles dated March 14, 2019, and later amended it on April 9, 2019, and April 25, 2019. FCA subsequently petitioned NHTSA (the ''Agency'') on April 5, 2019, and filed a supplemental petition on May 14, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of FCA's petition.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), (202) 366–5304, *Leroy.Angeles@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Overview

FCA has determined that certain MY 2017–2018 Dodge Journey motor vehicles and replacement Dodge Journey headlamp assemblies do not fully comply with paragraph S8.1.11 of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). FCA filed a noncompliance report for the replacement equipment dated March 14, 2019, and later amended it on April 9, 2019. FCA also filed a noncompliance report for the associated vehicles dated March 14, 2019, and later amended it on April 9, 2019, and April 25, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. FCA subsequently petitioned NHTSA on April 5, 2019, and filed a supplemental petition on May 14, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of FCA's petition was published with a 30-day public comment period, on February 28, 2020, in the **Federal Register** (85 FR 12059). No comments were received. To view the petition and all supporting documents, log onto the Federal Docket Management System's (FDMS) website at *https://www.regulations.gov/*. Then follow the online search instructions to locate docket number ''NHTSA–2019–0020.''

II. Equipment and Vehicles Involved

Approximately 16,604 Mopar headlamp assemblies sold as aftermarket equipment, manufactured between August 2, 2017, and July 6, 2018, are potentially involved. Approximately 84,908 MY 2017–2018 Dodge Journey motor vehicles, manufactured between August 2, 2017, and July 6, 2018, are potentially involved.

III. Noncompliance

FCA explains that its subject vehicles and equipment are noncompliant because the subject headlamp assemblies, sold as aftermarket equipment and equipped in certain MY 2017–2018 Dodge Journey motor vehicles, contain a front amber side reflex reflector that does not meet the photometric requirements specified in paragraph S8.1.11 of FMVSS No. 108. Specifically, the reflex reflector, in the subject headlamp assemblies, does not meet the minimum photometry requirements at the observation angle of 0.2 degrees.

IV. Rule Requirements

Paragraph S8.1.11 of FMVSS No. 108 includes the requirements relevant to this petition. Each reflex reflector must be designed to conform to the photometry requirements of Table XVI–a, when tested according to the procedure in paragraph S14.2.3 of FMVSS No. 108, for the reflex reflector.

V. Summary of FCA's Petition

The following views and arguments presented in this section, ''V. Summary of FCA's Petition,'' are the views and arguments provided by FCA. They do not reflect the views of NHTSA.

FCA described the subject noncompliance and stated that the noncompliance is inconsequential as it relates to motor vehicle safety. FCA submitted the following views and arguments in support of its petition:

1. FCA cites a prior NHTSA decision [1] on a petition for inconsequential noncompliance and quotes NHTSA, in part, as stating: ''For the purposes of FMVSS No. 108, the primary function of a reflex reflector is to prevent crashes by permitting early detection of an unlighted motor vehicle at an intersection or when parked on or by the side of the road.'' [2]

2. Per FCA, the reflex reflectors on the subject vehicles ''perform adequately to meet the safety purpose of the standard because they permit the early detection of an unlighted motor vehicle at an intersection or when parked, notwithstanding their deviation from certain photometric requirements.''

3. FCA believes that ''the failure of these reflex reflectors to meet the photometric requirements does not reduce their effectiveness in providing the necessary visibility for oncoming vehicles and that the difference between the reflectivity provided by a compliant reflector is not distinguishable from the reflectivity provided by a noncompliant reflector.'' FCA compared the performance of two Dodge Journey vehicles, one equipped with a compliant front side reflex reflector and the other a noncompliant front side reflex reflector parked front end-to-front end across a road's surface. Observers

[1] *See* DRV, LLC, Denial of Petition for Decision of Inconsequential Noncompliance; 82 FR 24204, May 25, 2017.

[2] Emphasis added by FCA.

used a different vehicle's headlamps as a source of illumination to evaluate the luminous intensity of each front side reflex reflector; that source of illumination was located 100 feet (30.5 meters) away from the two Dodge Journey vehicles. FCA chose an illumination distance of 100 feet (30.5 meters) because that is the same distance specified in FMVSS No. 108 for testing reflex reflectors using a goniometer in a photometric laboratory.

4. With regard to FCA's evaluation, FCA chose vehicles with varying mounting heights, which included a 2019 Jeep Cherokee with LED projector headlamps, a 2019 Ram 1500 Pickup Truck with LED reflector headlamps, and a 2019 Alfa Romeo Giulia with Bi-Xenon projector headlamps as sources of illumination. Sixteen FCA employees (and only eight for the Alfa Romeo tests) volunteered as evaluators and stood immediately in front of, and at the centerline of, the vehicles whose headlamps were being used as the source of illumination. None of the evaluators were able to distinguish any luminous intensity differences in the light being reflected in any of the scenarios. FCA believes that these vehicles cover the range of typical headlamp mounting heights for vehicles on the road today.

VI. NHTSA's Analysis

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[3] Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[4] NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [5] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [6]

The primary function of a reflex reflector is to prevent crashes by permitting early detection of an unlighted motor vehicle at an intersection or when parked on or by the side of a road. The purpose of these reflectors is to accurately depict the size of a vehicle when parked or disabled in the dark, which minimizes the risk of motor vehicle crashes.

The subject reflex reflectors failed 5 out of the 10 required test points where the photometry measurements were, at best, 68.6% below the minimum requirement. In other words, at specific test points, the reflex reflectors provide less than one-third of the illuminance that a compliant reflex reflector provides (*i.e.,* a reflex reflector which meets the minimum safety standard).

NHTSA does not find FCA's subjective evaluation described above sufficiently compelling to grant this petition. FCA's evaluation attempts to show that the average human eye cannot discern a difference in the luminous intensity between FCA's noncompliant reflectors and other compliant reflectors that meet the minimum safety standard. However, FCA's evaluation was limited to occupants standing no more than 100 feet from the test vehicles, and only at certain angles. While FMVSS No. 108 specifies a measurement distance for reflex reflector photometry of 100 feet, real world performance is not limited to a static distance measurement established in a minimum safety standard. For these reasons, NHTSA does not believe that FCA's subjective evaluation is sufficient to support a determination of inconsequential noncompliance.

As previously stated, the subject reflex reflectors failed by a significant margin to meet the minimum safety requirement at multiple required test points. Compared to a reflex reflector that meets the minimum safety standard, the subject reflex reflectors, at some test points, provided less than one-third of the required illuminance of a compliant reflex reflector. Therefore, NHTSA's evaluation of consequentiality of the subject noncompliance is based, in part, on NHTSA's determination that the performance failure of the subject reflex reflectors deviates to such a significant degree that it would be noticeable to drivers of other motor vehicles. Consequently, the subject noncompliance creates a risk to motor vehicle safety.

Another factor considered in the evaluation of this petition is a NHTSA study on the effectiveness of side marker lamps,[7] which showed that the addition of side marker lamps prevents 106,000 accidents, 93,000 nonfatal injuries and $347 million in property damage annually. While this study only relates to side marker lamps, the benefits are similar for reflex reflectors. Reflex reflectors aid in the visibility of parked or unlighted motor vehicles at night and are often mounted in the same or similar location as side marker lamps, and therefore, a performance failure of a reflex reflector is also consequential to motor vehicle safety due to reduced visibility for drivers of other vehicles.

In summary, given the magnitude of the performance failure of the subject reflex reflectors, the subject reflex reflectors create a risk that drivers of other vehicles will not detect a parked and unlighted motor vehicle early enough to avoid a vehicle crash. Consequently, NHTSA has determined that the subject noncompliance creates a risk to motor vehicle safety by failing to prevent motor vehicle crashes, which was the purpose of NHTSA's FMVSS No. 108 standard. *See* 49 CFR 571.108, S2.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that FCA has not met its burden of persuasion that the subject FMVSS No. 108 noncompliance of the affected equipment and vehicles is inconsequential to motor vehicle safety. Accordingly, FCA's petition is hereby denied. FCA is consequently obligated to provide notification of, and a free remedy for, that noncompliance, pursuant to 49 U.S.C. 30118 and 30120.

---

[3] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[4] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[5] *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

[6] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[7] *See An Evaluation of Side Marker Lamps for Cars, Trucks and Buses,* DOT HS–806–430 (July 1983). *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/806430.*

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.)

Anne L. Collins,

Associate Administrator for Enforcement.

[FR Doc. 2022–19994 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Securities Exchange Act Disclosure Rules

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment; correction.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled ''Securities Exchange Act Disclosure Rules.'' OCC also gives notice that it has sent the collection to OMB for review.

DATES: Comments must be received on or before October 17, 2022

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0106, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0106'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* You can find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

On May 23, 2022, the OCC published a 60-day notice for this information collection, 87 FR 31298. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- Viewing Comments Electronically: Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0106'' or ''Securities Exchange Act Disclosure Rules.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks that OMB extend its approval of the collection in this notice.

Title: Securities Exchange Act Disclosure Rules.

OMB Control No.: 1557–0106.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB approve its revised burden estimates.

The Securities and Exchange Commission (SEC) is required by statute to collect, in accordance with its regulations, certain information and documents from any firm that is required to register its stock with the SEC.[1] Federal law requires the OCC to apply similar regulations to any national bank or Federal savings association similarly required to be registered with the SEC (generally those with a class of equity securities held by 2,000 or more shareholders).[2]

12 CFR part 11 ensures that a national bank or Federal savings association whose securities are subject to registration provides adequate information about its operations to current and potential shareholders and the public. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed under the rule.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Number of Respondents: 44.

Estimated Total Annual Burden: 332.02 hours.

On May 23, 2022, the OCC published a 60-day notice for this information collection, 87 FR 31298. No comments were received. Comments continue to be invited on:

(a) Whether the information collections are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents,

[1] 15 U.S.C. 78m(a)(1).

[2] 15 U.S.C. 78l(i).

including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–19921 Filed 9–14–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Provisions Pertaining to Certain Investments in the United States by Foreign Persons and Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments should be received on or before November 14, 2022 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov*. Copies of the submissions may be obtained by emailing *CFIUS@treasury.gov,* calling (202) 622–1860, or viewing the entire information collection request at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

Title: Provisions Pertaining to Certain Investments in the United States by Foreign Persons and Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States.

OMB Control Number: 1505–0121.

Type of Review: Extension without change of a currently approved collection.

Description: Section 721 of the Defense Production Act of 1950, as amended (section 721), provides the President, acting through the Committee on Foreign Investment in the United States (CFIUS or the Committee), authority to review certain foreign investments in the United States in order to determine the effects of those transactions on the national security of the United States. In August 2018, section 721 was amended by the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII, *Public Law 115–232,* 132 Stat. 2173 (Aug. 13, 2018). FIRRMA maintains CFIUS's jurisdiction over any merger, acquisition, or takeover that could result in foreign control of any U.S. business, and broadens the authorities of the President and CFIUS under section 721 to review and take action to address any national security concerns arising from certain non-controlling investments and certain real estate transactions involving foreign persons.

Executive Order 13456, 73 FR 4677 (Jan. 23, 2008), directs the Secretary of the Treasury to issue regulations implementing section 721. The Department of the Treasury issued final regulations (*85 FR 3112* and *85 FR 3158*) on January 17, 2020, and subsequent amendments to the final regulations in 2020 and 2022 (85 FR 8747, 85 FR 45311, 85 FR 57124, and 87 FR 731), implementing FIRRMA, including information collections related to notices and declarations filed with or submitted to the Committee regarding transactions that could result in foreign control of a U.S. business, certain non-controlling investments and certain real estate transactions involving foreign persons.

The Department of the Treasury maintains a CFIUS Case Management System, featuring an online public portal for external parties to submit declarations and file notices with CFIUS in a standard form. Use of this online system is mandatory for all CFIUS submissions and filings.

Form Number: None.

Affected Public: Individuals and entities.

Estimated Number of Respondents: 1,100.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 1,100.

Estimated Time per Response: Varies from 15–20 hours per declaration and 116–130 hours per notice.

Estimated Total Annual Burden Hours: 57,400.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget 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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–19899 Filed 9–14–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Financial Research Advisory Committee

AGENCY: Office of Financial Research, Treasury.

ACTION: The reopening of the solicitation of applications for committee membership of the Financial Research Advisory Committee.

SUMMARY: The Office of Financial Research is soliciting applications for membership on its Financial Research Advisory Committee. This notice reopens the solicitation of applications for Committee membership. The deadline to apply is September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Melissa Avstreih, Designated Federal Officer, Office of Financial Research, Department of the Treasury, (202) 425–2483.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, (Pub. L. 92–463, 5 U.S.C. app. 2 1–16, as amended), the Treasury Department established a Financial Research Advisory Committee (FRAC, or Committee) to provide advice and recommendations to the Office of Financial Research (OFR) and to assist the OFR in carrying out its duties and authorities.

(I) Authorities of the OFR

Background

The OFR was established under Title I of the Dodd-Frank Wall Street Reform

and Consumer Protection Act (Pub. L. 111–203, July 21, 2010). The purpose of the OFR is to support the Financial Stability Oversight Council (Council) in fulfilling the purposes and duties of the Council and to support the Council's member agencies by:

—Collecting data on behalf of the Council, and providing such data to the Council and member agencies;
—Standardizing the types and formats of data reported and collected;
—Performing applied research and essential long-term research;
—Developing tools for risk measurement and monitoring;
—Performing other related services;
—Making the results of the activities of the OFR available to financial regulatory agencies; and
—Assisting such member agencies in determining the types and formats of data authorized by the Dodd-Frank Act to be collected by such member agencies.

(II) Scope and Membership of the FRAC

The FRAC was established to advise the OFR on issues related to the responsibilities of the office. It may provide its advice, recommendations, analysis, and information directly to the OFR and the OFR may share the Committee's advice and recommendations with the Secretary of the Treasury or other Treasury officials. The OFR will share information with the Committee as the OFR Director determines will be helpful in allowing the FRAC to carry out its role.

The FRAC is an advisory committee that was originally established on April 6, 2012. Its charter was renewed several times, most recently on January 26, 2022. The OFR is currently soliciting applications for membership in order to provide for rotation of membership, as provided in its original and current charter, as well as to provide for a diverse and balanced body with a variety of interests, backgrounds, and viewpoints represented. Providing for such diversity enhances the views and advice offered by the FRAC.

(II) Application for Advisory Committee Appointment

Treasury seeks applications from individuals representative of a constituency within the fields of economics, financial institutions and markets, statistical analysis, financial markets analysis, econometrics, applied sciences, risk management, data management, information standards, technology, or other areas related to OFR's duties and authorities. The terms of members chosen to serve are typically three years. No member of the Committee serving in their individual capacity (as opposed to those members specifically appointed to represent the interests of a nongovernmental entity, a recognizable group of persons, or nongovernmental entities) may be a Federally-registered lobbyist. Membership on the Committee is limited to the individuals appointed and is non-transferrable. Regular attendance is essential to the effective operation of the Committee. Some members of the Committee may be required to adhere to the conflict of interest rules applicable to Special Government Employees, as such employees are defined in 18 U.S.C. 202(a). These rules include relevant provisions in 18 U.S.C. related to criminal activity, Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), and Executive Order 12674 (as modified by Executive Order 12731).

To apply, an applicant must submit an appropriately detailed resume and a cover letter describing their interest, reasons for application, and qualifications. In accordance with Department of Treasury Directive 21–03, a clearance process includes criminal and subversive name checks or fingerprint checks with the Federal Bureau of Investigation for proposed advisory committee members, as well as pre-appointment tax checks with the Internal Revenue Service for all proposed and reappointed members.

The application period for interested candidates will close on September 30, 2022. Applications should be submitted in sufficient time to be received by the close of business on the closing date and should be sent to *OFR_FRAC@ofr.treasury.gov.*

Dated: September 9, 2022.

Emily Anderson,

Acting Deputy Director of Operations.

[FR Doc. 2022–19891 Filed 9–14–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0116]

Agency Information Collection Activity Under OMB Review: Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0116.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0116'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 1505 and 5313.

Title: Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution (VA Form 21–4193).

OMB Control Number: 2900–0116.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Form 21–4193 is used to gather information from penal institutions about incarcerated VA beneficiaries. When beneficiaries are incarcerated in penal institutions in excess of 60 days after conviction, VA benefits are reduced or terminated. Without this collection of information, VA would be unable to accurately adjust the rates of incarcerated beneficiaries and overpayments would result.

No substantive changes have been made to this form. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 133

on July 13, 2022, pages 41873 and 41874.

Affected Public: State, Local and Tribal Governments.

Estimated Annual Burden: 1,999.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 7,997.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–19942 Filed 9–14–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Thursday,

No. 178 September 15, 2022

Part II

Department of Transportation

National Highway Traffic Safety Administration

23 CFR Part 1300

Uniform Procedures for State Highway Safety Grant Programs; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1300

[Docket No. NHTSA–2022–0036]

RIN 2127–AM45

Uniform Procedures for State Highway Safety Grant Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes revised uniform procedures implementing State highway safety grant programs, as a result of enactment of the Infrastructure Investment and Jobs Act (IIJA, also referred to as the Bipartisan Infrastructure Law or BIL). It also reorganizes, streamlines and updates some grant requirements. The agency requests comments on the proposed rule.

DATES: Comments in response to this notice of proposed rulemaking must be submitted by October 31, 2022. In compliance with the Paperwork Reduction Act, NHTSA is also seeking comment on a new information collection. See the Paperwork Reduction Act section under Regulatory Analyses and Notices below. Comments concerning the new information collection requirements are due October 31, 2022 to NHTSA and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section.

ADDRESSES: You may submit written comments, identified by docket number or RIN, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call 202–366–9826 before coming.

Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket identified in the heading of this document.

Instructions: All written submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

For comments on the proposed collection of information, all submissions must include the agency name and docket number for the proposed collection of information. 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.

Docket: For access to the docket go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: Please see the Privacy Act heading under Regulatory Analyses and Notices.

FOR FURTHER INFORMATION CONTACT:

For program issues: Barbara Sauers, Acting Associate Administrator, Regional Operations and Program Delivery, National Highway Traffic Safety Administration; Telephone number: (202) 366–0144; Email: *barbara.sauers@dot.gov.*

For legal issues: Megan Brown, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; Telephone number: (202) 366–1834; Email: *megan.brown@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

We face a crisis on our roadways. NHTSA projects that an estimated 42,915 people died in motor vehicle crashes in 2021.[1] This projection is the largest annual percentage increase in the history of the Fatality Analysis Reporting System. Projections for the first quarter of 2022 are even bleaker; an estimated 9,560 people died in motor vehicle crashes during this period.[2] If these projections are confirmed, this will be the highest number of first-quarter fatalities since 2002. Behind each of these numbers is a life tragically lost, and a family left behind. This crisis is urgent and preventable. NHTSA is redoubling our safety efforts and asking our State partners to join us in this critical pursuit. The programs to be implemented under today's rulemaking are an important part of that effort. Now, more than ever, we all must seize the opportunity to deliver accountable, efficient, and data-driven highway safety programs to save lives and reverse the deadly trend on our Nation's roads.

On November 15, 2021, the President signed into law the ''Infrastructure Investment and Jobs Act'' (known also as the Bipartisan Infrastructure Law, or BIL), Public Law 117–58. The BIL provides for a once-in-a-generation investment in highway safety, including a significant increase in the amount of funding available to States under NHTSA's highway safety grants. It introduced expanded requirements for public and community participation in funding decisions, holding the promise of ensuring better and more equitable use of Federal funds to address highway safety problems in the locations where they occur. The BIL amended the highway safety grant program (23 U.S.C. 402 or Section 402) and the National Priority Safety Program grants (23 U.S.C. 405 or Section 405). The BIL significantly changed the application structure of the grant programs that were in place under MAP–21 and the FAST Act. The legislation replaced the current annual Highway Safety Plan

[1] National Center for Statistics and Analysis. (2022, May). Early estimates of motor vehicle traffic fatalities and fatality rate by sub-categories in 2021 (Crash·Stats Brief Statistical Summary. Report No. DOT HS 813 298). National Highway Traffic Safety Administration. *Available at https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813298.*

[2] National Center for Statistics and Analysis. (2022, August). Early estimate of motor vehicle traffic fatalities for the first quarter of 2022 (Crash·Stats Brief Statistical Summary. Report No. DOT HS 813 337). National Highway Traffic Safety Administration. *Available at https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813337.*

(HSP), which serves as both a planning and application document, with a triennial HSP and Annual Grant Application, and it codified the annual reporting requirement. The BIL also made the following changes to the Section 405 grant program:

- Maintenance of Effort—Removed the maintenance of effort requirement for the Occupant Protection, State Traffic Safety Information System Improvements Grants, and Impaired Driving Grants;
- Occupant Protection Grants—Expanded allowable uses of funds and specified that at least 10% of grant funds must be used to implement child occupant protection programs for low-income and underserved populations;
- State Traffic Safety Information System Improvements Grants—Streamlined application requirements (*e.g.,* allows certification to several eligibility requirements and removes assessment requirement) and expanded allowable uses of funds;
- Impaired Driving Countermeasures Grants—Expanded allowable uses of funds;
- Alcohol-Ignition Interlock Law Grants—Added criteria for States to qualify for grants (*e.g.,* specified three ways for a State to qualify) and amended allocation formula;
- 24–7 Sobriety Programs Grants—Amended allocation formula;
- Distracted Driving Grants—Amended definitions, changed allocation formula, and amended requirements for qualifying laws;
- Motorcyclist Safety Grants—Added an eligibility criterion (*i.e.,* helmet law);
- State Graduated Driver Licensing Incentive Grants—Discontinued grant;
- Nonmotorized Safety Grants—Amended the definition of nonmotorized road user and expanded allowable uses of funds;
- Preventing Roadside Deaths—Established new grant; and
- Driver and Officer Safety Education—Established new grant.

In addition, the BIL amended the racial profiling data collection grant authorized under the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' (SAFETEA–LU), Sec. 1906, Public Law 109–59 (Section 1906), as amended by the FAST Act, to expand the allowable uses of funds and amend the cap on grant award amounts. It also removed the time limit for States to qualify for a 1906 grant using assurances.

As in past authorizations, the BIL requires NHTSA to implement the grants pursuant to rulemaking. On April 21, 2022, the agency published a notification of public meeting and request for comments (RFC). 87 FR 23780. In that document, the agency sought comment on several aspects relating to this rulemaking. Today's action proposes regulatory language to implement the BIL provisions and addresses comments received at the public meeting and in response to the RFC.

This Notice of Proposed Rulemaking (NPRM) proposes application, approval, and administrative requirements for all 23 U.S.C. Chapter 4 grants and the Section 1906 grants, consistent with the requirements set forth in the BIL. Section 402, as amended by the BIL, continues to require each State to have an approved highway safety program designed to reduce traffic crashes and the resulting deaths, injuries, and property damage. Section 402 sets forth minimum requirements with which each State's highway safety program must comply. Under new procedures established by the BIL, each State must submit for NHTSA approval a triennial Highway Safety Plan (''triennial HSP'') that identifies highway safety problems, establishes performance measures and targets, describes the State's countermeasure strategies for programming funds to achieve its performance targets, and reports on the State's progress in achieving the targets set in the prior HSP. 23 U.S.C. 402(k). Each State must also submit for NHTSA approval an annual grant application that provides any necessary updates to the triennial HSP, identifies all projects and subrecipients to be funded by the State with highway safety grant funds during the fiscal year, describes how the State's strategy to use grant funds was adjusted based on the State's latest annual report, and includes an application for additional grants available under Chapter 4. (23 U.S.C. 402(l)) The agency proposes to reorganize and rewrite subpart B of part 1300, as well as 23 CFR 1300.35 to implement these changes.

As noted above, the BIL expanded the allowable uses of funds for many of the National Priority Safety Program grants, amended allocation formulas, added criteria for some grants and streamlined application requirements for others, deleted one grant, and established two new grants. For Section 405 grants with additional flexibility (Occupant Protection Grants, State Traffic Safety Information System Improvements Grants, Impaired Driving Countermeasures Grants, Alcohol-Ignition Interlock Law Grants, Distracted Driving Grants, Motorcyclist Safety Grants, Nonmotorized Safety Grants, and Racial Profiling Data Collection Grants) and for the new grants (Preventing Roadside Deaths Grants and Driver and Officer Safety Education Grants), where the BIL identified specific qualification requirements, today's action proposes adopting the statutory language with limited changes. The agency is also proposing aligning the application requirements for all Section 405 and Section 1906 grants with the new triennial HSP and annual grant application framework.

While many procedures and requirements continue unchanged by today's action, this NPRM makes limited changes to administrative provisions to address changes due to the triennial framework and changes made by revisions to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200.

II. Comments From the Public Meeting and Request for Comments

In response to the RFC, the following submitted comments to the public docket on *www.regulations.gov:* Aaron Katz; American Association of State Highway and Transportation Officials (AASHTO); Accident Scene Management, Inc.; Advocates for Highway & Auto Safety (Advocates); Amado Alejandro Baez; American Ambulance Association; American College of Surgeons, Committee on Trauma; Art Martynuska; Brandy Nannini (on behalf of both *Responsibility.org* and National Alliance to Stop Impaired Driving); Brian Maguire, Scot Phelps, Daniel Gerard, Paul Maniscalco, Kathleen Handal, and Barbara O'Neill (Brian Maguire, et al.); California Office of Traffic Safety (CA OTS); Center for Injury Research and Prevention at Children's Hospital of Philadelphia (CIRP); Connecticut Highway Safety Office (CT HSO); Covington County Hospital Ambulance Service; David Harden; Drew Dawson; Emergency Safety Solutions, Inc. (ESS, Inc.); Florida Department of Health, Bureau of Emergency Medical Oversight (FL DOH); Governor's Highway Safety Association (GHSA); Haas Alert; Institute for Municipal and Regional Policy at the University of Connecticut (IMRP); International Association of Emergency Medical Services Chiefs (IAEMSC); International Association of Fire Chiefs (IAFC); Joshua Snider; Kathleen Hancock; League of American Bicyclists; Leigh Anderson; Leon County, Emergency Medical Services; Lorrie Walker; Louis Lombardo; Louisiana Bureau of Emergency Medical Services; Louisiana Highway Safety Commission (LA HSC); Love to Ride;

Mari Lynch; Minnesota Department of Public Safety (MN DPS); National Association of City Transportation Officials (NACTO); National Association of Emergency Medical Technicians (NAEMT); National Association of State 911 Administrators (NASNA); National Association of State Emergency Medical Services Officials (NASEMSO); National Safety Council (NSC); National Sheriffs' Association; New York State Governor's Traffic Safety Committee (NY GTSC); Oregon Department of Transportation Safety Office (OR DOT); Paul Hoffman; Rebecca Sanders; Safe Kids Worldwide; Safe Routes Partnership; SafetyBeltSafe U.S.A.; Saratoga County, NY Emergency Medical Services (Saratoga County); Scott Brody; Pedestrian Safety Solutions; Tom Schwerdt; Transportation Equity Caucus; Vision Zero Network; Washington Traffic Safety Commission (WA TSC); Wisconsin Bureau of Transportation Safety (WI BOTS); Wisconsin Bureau of Transportation Safety, Division of State Patrol (WI BOTS Patrol); joint submission by the Departments of Transportation of Idaho, Montana, North Dakota, South Dakota and Wyoming (5-State DOTs); and three anonymous commenters. Five of these commenters (5-State DOTs; WA TSC; Brandy Nannini; MN DPS; and CT HSO) expressed general support for GHSA's comments. The WA TSC also expressed support for the comments provided by the MN DPS, CA HSO and NY GTSC.

NHTSA received communications directly from three organizations prior to the Request for Comment. (*See* letter from Governor's Highway Safety Association (GHSA); a letter from Mothers Against Drunk Driving (MADD); and a joint letter from Governor's Highway Safety Association, Responsibility Initiatives, National Alliance to Stop Impaired Driving, Mothers Against Drunk Driving, National Safety Council, and Coalition of Ignition Interlock Manufacturers.) Because of the substantive nature of these communications, NHTSA added them to the docket for this rule.

In this preamble, NHTSA addresses all comments and identifies any proposed changes made to the existing regulatory text in part 1300.[3] In addition, NHTSA makes several technical corrections to cross-references and other non-substantive editorial corrections necessitated by proposed changes to the rule. For ease of reference, the preamble identifies in parentheses within each subheading and at appropriate places in the explanatory paragraphs the CFR citation for the corresponding regulatory text.

Many commenters provided general input about the rulemaking process or to overarching aspects of highway safety that cannot be tied to a single regulatory provision. Those comments are discussed below.

A. Rulemaking Process

Several commenters[4] stated that NHTSA should ensure fidelity to the spirit and letter of Congressional directives, minimize administrative burden on States, and provide great flexibility in use of funds. They explained that unnecessary administrative burdens shift States' focus away from program delivery and discourage subrecipient participation. The 5-State DOTs additionally recommended that NHTSA strive to avoid duplicative planning and reporting burdens between DOT agencies, and to consult with FHWA during the rulemaking process. As will be clear throughout this preamble and in the proposed rule itself, NHTSA's primary goal in this notice of proposed rulemaking is to propose a regulation that will implement the statutory requirements for the highway safety grant program. It is not our intention to impose unnecessary administrative burdens on States or their subrecipients. However, as a grantor agency, we have a responsibility to ensure that Federal grant funds are spent for the purposes Congress specifies and consistent with all legal requirements. Applicable legal requirements include both the Section 402 and 405 statutory text, as well as other Federal grant laws and regulation. Those statutory requirements include the submission of a triennial plan that sets forth how a state will use funds to reduce traffic crashes, fatalities, serious injuries, and economic harm through the use of effective countermeasures.

AASHTO, GHSA and SafetyBeltSafe U.S.A. all submitted comments supporting increased public participation and opportunity to comment in NHTSA's rulemaking process. AASHTO encouraged NHTSA to consider all comments received, which we do in this action and will continue to do throughout the rulemaking process. GHSA expressed support for NHTSA's intention to publish a NPRM rather than publishing an Interim Final Rule, noting that it will provide opportunity for public comment. And SafetyBeltSafe U.S.A. expressed appreciation for the public meetings NHTSA held as part of its RFC, noting that they provided an opportunity to bring different parts of the traffic safety community together. NHTSA appreciates these comments and the comments received in response to the RFC, and we encourage comments responding to this NPRM. We commit to considering all comments carefully and thoughtfully.

GHSA requested that NHTSA complete the rulemaking process quickly in order to facilitate States in their highway safety planning and application processes. GHSA specifically sought first, publication of the final rule by October 2022, and in a later comment, publication by the end of December 2022. NHTSA appreciates the need to finalize the rule with sufficient time for States to rely on the rule in completing their fiscal year (FY) 2024 triennial HSPs and Annual Grant Applications, due July 1 and August 1, 2023, respectively. While it is not possible to complete the full rulemaking process, in accordance with the Administrative Procedure Act (5 U.S.C. 553), within the timeline proposed by GHSA, NHTSA plans to publish a Final Rule with sufficient time for States to rely on the rule for their FY24 grant applications.

GHSA further recommended that NHTSA establish an effective date of Federal fiscal year 2024 for the rule. Consistent with the BIL, the final rule, when published, will be effective for fiscal year 2024 and later grants.

GHSA and the NY GTSC stressed the importance of uniform and consistent guidance so that States can rely on the same interpretations. AASHTO recommended that the agency focus on providing program-level guidance while allowing for effective collaboration and coordination of State programs. GHSA further suggested several specific NHTSA guidance documents that it would like the agency to review or create in light of the statutory changes implemented in the BIL and based on past experience. The agency recognizes that some existing guidance may require modification or recission as a result of changes to the statute and this rule. We intend to begin reviewing existing guidance after this rulemaking is complete and will keep the specific

[3] Fourteen commenters submitted comments that are outside the scope of this rulemaking, including comments related to infrastructure and road design, vehicle and other private technologies, NHTSA's Section 403 authorities, suggestions for NHTSA research and messaging, substantive requirements for data systems, a recommendation that NHTSA mandate cell phone technology, a request that NHTSA publish outside entities' research, and general statements about the importance of traffic safety. As these comments are outside the scope of NHTSA's Section 402 and 405 grant programs, they are beyond the scope of this rulemaking and will not be addressed further in this preamble.

[4] AASHTO, GHSA, MN DPS, NY GTSC, WI BOTS and 5-State DOTs.

suggestions provided by GHSA in mind at that time.

B. Equity

NHTSA received several comments stressing the importance of equity in traffic safety programs. The Transportation Equity Caucus noted that the concept of public safety may be defined differently in different communities and recommended that NHTSA be guided by Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through Federal Government. NHTSA strongly supports the policies and commitment to equity laid out in the Executive Order and is committed to fulfilling our responsibilities under the Order and to following its principles. For example, NHTSA's Office of Civil Rights (NCR) recently hired a Division Chief to focus on the enforcement of Title VI of the Civil Rights Act of 1964, which prohibits recipients of Federal financial assistance from discriminating against persons on the basis of race, color, or national origin (including limited English proficiency). NCR is also hiring a Division Chief to serve as principal staff advisor on all activities related to the Americans with Disabilities Act and Section and Section 504 of the Rehabilitation Act of 1973. Additionally, NHTSA's Office of Grants Management and Operations is preparing to hire two program analysts to focus on stakeholder engagement, equity in traffic safety, and the needs of populations that are overrepresented in traffic fatalities and serious injuries.

In addition, NHTSA was guided, in part, by the Order's requirement to increase opportunities for public engagement when we decided to hold three hearings and publish an RFC in advance of drafting this notice of proposed rulemaking. As a result of those hearings and the RFC, NHTSA received numerous comments from groups specifically focused on equity, from representatives of non-profit community groups, and from members of the public. Many commenters emphasized the importance of equity in highway traffic safety, and several made specific recommendations for the agency to consider. Many of the comments touch on different areas of NHTSA's work that have an impact on the grant program, including NHTSA's research and technical assistance activities. A number of the comments relate to NHTSA activities that fall outside the scope of the rulemaking, which is limited to applications and grant management in the highway safety grant program. In recognition of the importance of the topic, and in appreciation for the thoughtful consideration that went into submission of those comments, we will nonetheless summarize and briefly respond to all comments we received relating to equity.

Many commenters submitted comments asking NHTSA to place less emphasis on enforcement as a traffic safety countermeasure [5] or to discontinue funding law enforcement altogether.[6] Relatedly, several commenters expressed concern that NHTSA's grant funds provide support for pretextual stops by law enforcement, with several specifically mentioning NHTSA's support for the Data-Driven Approaches to Crime and Traffic Safety (DDACTS) program.[7] The commenters expressed serious and data-driven concerns about the disparate impacts of policing and the incidence of police violence during traffic stops, especially during pretextual stops. (*See id.*)

NHTSA's partnerships with law enforcement and advocacy communities are an important part of traffic safety work, and equity must be at the forefront in that work. The public must be able to trust that law enforcement will treat all persons fairly, regardless of race, color, sex, age, national origin, religion or disability. NHTSA engages in an ongoing dialog with the Center for Policing Equity regarding advancing equity in traffic safety enforcement. NHTSA is also working to center equity in its ongoing relationship with both the National Sheriffs' Association and the International Association of Chiefs of Police, as the National Sheriffs' Association recommended in its comment.

Equally important are the States' partnerships and relationships of trust with their own law enforcement resources. Fundamentally, recipients of Federal grant funds are prohibited from using the funds in a discriminatory manner. As a result, all State grant recipients must ensure that the law enforcement agencies to which they provide highway safety grant funds have strong equity-based enforcement practices. NHTSA's highway safety grant funds may only be used for permissible traffic safety purposes. Use of NHTSA grant funds for discriminatory practices, including those associated with pretextual policing, violates Federal civil rights laws and NHTSA will seek repayment of any grant funds that are found to be used for such purposes and refer any discriminatory incidents to the Department of Justice.

DDACTS is a law enforcement operational model that integrates location-based traffic-crash and crime data to determine the most effective methods for deploying law enforcement and other resources. It focuses on community collaboration to reinforce the role that partnerships play in improving the quality of life in communities and encourages law enforcement agencies to use effective engagement and new strategies. NHTSA continuously reviews the content of DDACTS training and works to ensure that the training focuses on community engagement and the appropriate application of fair and equitable traffic enforcement strategies. Note, however, that not all DDACTS-related activities are eligible uses of NHTSA's highway traffic safety grant funds. NHTSA's grant funds may only be used for traffic safety activities; any other use of law enforcement is not eligible for funding under the highway traffic safety grants. NHTSA will continue to evaluate DDACTS to ensure that it promotes only enforcement that is implemented fairly and equitably.

Both the Vision Zero Network and Safe Routes Partnerships stressed the importance of meaningful community engagement in designing equitable traffic safety programs. The BIL added a requirement for States to include meaningful public participation and engagement in State highway safety programs. 23 U.S.C. 402(b)(1)(B). In addition, Title VI of the Civil Rights Act of 1964 (Title VI), as implemented through DOT Order 1000.12C, requires that recipients of Federal funding submit a Community Participation Plan to ensure diverse views are heard and considered throughout all stages of the consultation, planning, and decision-making process. NHTSA agrees with the commenters that increased community engagement can help ensure that State highway safety programs are more equitable, and proposes regulatory provisions to implement BIL's requirement along with the Community Participation requirements from Title VI of the Civil Rights Act of 1964.[8] These requirements will be discussed in more detail in the relevant sections of this preamble. *See* 23 CFR 1300.11(b)(2) and 23 CFR 1300.12(b)(2).

The Vision Zero Network recommended several strategies to rethink and expand the ways education and enforcement are utilized in traffic safety. Among other things, it

[5] League of American Bicyclists, NACTO, Safe Routes Partnerships, and Vision Zero Network.

[6] TEC.

[7] League of American Bicyclists, NACTO, Transportation Equity Caucus, and Vision Zero Network.

[8] 42 U.S.C. 2000d *et seq.*

recommended that NHTSA: research equitable education and enforcement strategies; promote alternatives to traditional enforcement strategies, criminalization, and fines; educate key influencers in the safe system approach; promote safe, sustainable mobility options; and support grassroots safety advocacy. NHTSA appreciates these suggestions and is already beginning to implement these strategies, including through a cooperative agreement with the National Safety Council supporting the Road to Zero Coalition's community traffic safety grants. NHTSA encourages States to consider these and other strategies when planning their highway safety programs and will work with States as they develop their triennial Highway Safety Plans. The Vision Zero Network also suggested that NHTSA fund State assessments of equity outcomes of enforcement work and pilot alternative strategies. Some NHTSA grant funds may be used for these purposes. For example, the 1906 grant program provides funding for collecting, maintaining, and evaluating race and ethnicity data on traffic stops, as well as to develop and implement programs to reduce the disparate impacts of traffic stops. In addition, the Section 402 grant program provides broad eligible uses of funds, including demonstration programs. NHTSA encourages States to reach out to their Regional Office to discuss whether a particular pilot program may be an eligible use of NHTSA grant funds as these determinations are often fact-specific. NHTSA will also work with States to share information about best practices and to identify effective and allowable uses of funds for equity outcomes in enforcement work.

The NY GTSC recommended some specific actions that the State has implemented to support the inclusion of equity in its highway safety program, including creation of groups such as the New York State Equity Subcommittee, to ensure programming reaches underserved communities that are overrepresented in traffic crashes. In addition, New York recommended that States expand the data sources they consider, to include census and demographic information, as well as anecdotal information combined with localized crash data in order to conduct outreach efforts. NHTSA appreciates these examples and the efforts that the State already has underway. The agency supports all States looking into additional ways to identify and reach non-traditional highway safety partners and will work to encourage the sharing of effective programs among the States.

The Vision Zero Network recommended that NHTSA take action on the equity-related suggestions in the Federal Highway Administration's report titled ''Integrating the Safe System Approach with the Highway Safety Improvement Program.'' While that report is targeted to FHWA's HSIP program, NHTSA nonetheless agrees with the overarching principles, including the need to include equity considerations throughout all aspects of the highway safety grant program. This proposal supports these efforts through the increased emphasis on public participation in highway safety planning and through explicitly including demographic data as a resource for States to consult during problem identification.

Finally, the League of American Bicyclists recommended that NHTSA consider discriminatory outcomes of countermeasures when promoting our *Countermeasures That Work* guide.[9] It specifically mentioned the costs of discriminatory enforcement and disparate impacts of required fines on low-income people. As noted earlier, discriminatory enforcement has no place in NHTSA's grant programs or under Federal civil rights laws, and NHTSA will take prompt and appropriate action when it becomes aware of any such activity under NHTSA grant programs. NHTSA is currently working on the next edition of the *Countermeasures That Work,* and will explore the considerations raised by the commenter in the course of that undertaking.

C. National Roadway Safety Strategy and the Safe System Approach

NHTSA appreciates the thoughtful feedback from several commenters regarding the Department's implementation of the National Roadway Safety Strategy (NRSS) and the Safe System Approach (SSA). While the substance of the Department's strategy laid out in the NRSS and the SSA is not within the scope of this rulemaking, the activities carried out through the grant program play an important role in implementing the NRSS and the SSA. The objectives of the NRSS/SSA are inherently intertwined with NHTSA's data-driven mission to save lives, prevent injuries, and reduce economic costs due to road traffic crashes through education, research, safety standards, and enforcement. To address the unacceptable increases in fatalities on our nation's roadways, the NRSS/SSA adopts a data-driven, holistic, and comprehensive approach focused on reducing the role that human mistakes play in negative traffic outcomes and in recognizing the vulnerability of humans on the roads. We recognize all the contributing factors involved with a safe system approach: equity, engineering, education, enforcement, and emergency medical services.

Four commenters[10] stated broad support for the principles and promise of the NRSS. Six commenters[11] noted that implementing the NRSS will require NHTSA to afford administrative flexibility to States, which NHTSA intends to provide consistent with the law. AASHTO stressed the need to coordinate behavioral and infrastructure-based traffic safety initiatives. This comment is consistent with Congress' clear intent. Section 402 requires that a State highway safety program must coordinate the highway safety plan, data collection, and information systems with the State strategic highway safety plan (SHSP) under 23 U.S.C. 148(a). NHTSA has long incorporated this requirement into the grant program regulation at 23 CFR 1300.4(c)(11). In addition, since 2016, States have been required to submit and report on identical common performance measures in both the HSP and the SHSP, thus ensuring that State behavioral and infrastructure-based programs collaborate in planning and measuring progress towards those common targets.

The League of American Bicyclists recommended that NHTSA allow States to use highway safety grant funds to provide education on the ways that the built environment can influence safe behaviors. Similarly, Vision Zero Network recommended that NHTSA and States shift the focus from education and enforcement to speed management and roadway design changes. NHTSA notes that while highway safety grant funds may not be used for roadway design, Section 402 grant funds (and in some cases Section 405 grant funds) may be used to fund educational efforts on the interaction between the built environment and behavior, provided such activities are part of a countermeasure strategy for programming funds that is supported by problem ID.

GHSA raised the concern that the SSA framing that people make mistakes will be misunderstood to absolve drivers from responsibility for safe driving

[9] *Available online at https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-09/Countermeasures-10th_080621_v5_tag.pdf.*

[10] CA OTS, ESS, Inc., League of American Bicyclists and WA TSC.

[11] Brandy Nannini, CT HSO, GHSA, MN DPS, WI BTS and 5-State DOTs.

behaviors. Acknowledging that humans make mistakes does not absolve drivers of responsibility; it seeks to understand better how mistakes happen, identify potential solutions and develop redundancies in the system in order to minimize the consequences when any part of the system fails. As the League of American Bicyclists and WA TSC noted, roadway safety is a shared responsibility. The traveling public also has a role to play. Each of us uses our roads almost every day, whether as a motorist, a passenger, or when walking, biking, or rolling. Our actions should prioritize safety first and we should use every effective strategy we can to reduce fatalities and injuries.

Four commenters suggested that NHTSA undertake activities to help States implement the NRSS and the SSA. CA OTS, GHSA, and Vision Zero Network all suggested that NHTSA support State efforts to implement the SSA by undertaking research to identify best practices and then providing guidance to States on those best practices. Vision Zero Network and WA TSC recommended that NHTSA train the State highway safety offices (HSOs) on the SSA and that the HSOs in turn train their subrecipients. In May 2022, as part of NHTSA's ongoing efforts to provide resources to assist states with implementing the NRSS and the SSA, NHTSA announced an expanded safety program technical assistance offered to States. This technical assistance aligns with the priorities and objectives of the NRSS. We will continue to assess States' needs and offer assistance in implementing the NRSS and SSA where possible as States implement their programs.

D. Transparency

The BIL expanded the transparency requirements for Section 402. Specifically, the BIL requires NHTSA to publicly release, on a DOT website, all approved triennial HSPs and annual reports. 23 U.S.C. 402(n)(1). In addition, the website must allow the public to search specific information included in those documents: performance measures, the State's progress towards meeting the performance targets, program areas and expenditures, and a description of any sources of funds other than NHTSA highway safety grant funds that the State proposes to use to carry out the triennial HSP. *Id.* NHTSA will post this information on *NHTSA.gov* consistent with the statutory requirements. While the statutory requirement for NHTSA to release this information does not require regulatory implementation, the information contained in the State documents, and thereafter released online, implicates the substance of the rule. For ease of reading, NHTSA addresses the majority of the requirements for the triennial HSP and annual report in other sections of this rule. However, we will address some of the transparency recommendations that commenters specifically provided here.

Both Advocates and the NSC submitted comments that broadly supported increased transparency, noting that transparency is vital for the public to measure the success of the highway safety grant program. Several commenters provided recommendations for information that they believe would help allow States and stakeholders to compare programs between States. The League of American Bicyclists recommended that NHTSA require States to provide information in the annual application that will show who receives grant funding and what the funding is used for in a manner that allows comparisons between States. NHTSA agrees, and believes that the project information, including subrecipients and information on the eligible use of funds, that BIL and the proposed regulation require for each project will serve this purpose. *See* 23 U.S.C. 402(l)(1)(C)(ii) and 23 CFR 1300.12(b)(2). The NSC recommended that NHTSA require states to submit, and then release publicly, information on how much funding is used for direct programmatic activities, the short- and long-term impacts of State highway safety programs, and discussion about how community engagement informed the State's proposed use of funds. NHTSA proposes to include some of this information in the proposed regulation. Specifically, NHTSA proposes to require that States identify in the annual grant application the amount of costs attributed to planning and administration. *See* 23 CFR 1300.12(b)(2)(viii). In addition, NHTSA proposes to require that States assess progress towards meeting performance targets and provide a description of how the projects that the State implemented were informed by meaningful public participation and engagement. *See* 23 CFR 1300.35(a) and 1300.35(b)(1). NSC further recommended that at a minimum, States be required to report financial data, information on which regulations they complied with, and project data showing progress and community impact. NHTSA notes that financial data are required of all Federal grant recipients by 2 CFR 200.328 and that requirement is incorporated into NHTSA's proposed regulation at 23 CFR 1300.12(b)(2). NHTSA does not believe it is necessary to require States to provide a list of regulations to which they adhere. Federal grant recipients are responsible for, and States certify to, compliance with all applicable Federal laws and regulations, and States may be further subject to State laws and regulations. Many of those applicable laws and regulations are listed in proposed appendix A. Finally, NSC recommended that annual reports should be made available to the public for comment and that States should be required to incorporate those comments into their triennial HSPs. NHTSA already posts State annual reports online at *NHTSA.gov,* as is required by the BIL. *See* 23 U.S.C. 402(n)(2)(B). However, NHTSA does not have authority to impose public comment on State annual reports, nor does NHTSA have authority to require States to incorporate any comments on annual reports that they may receive through other channels. That said, States may do so as part of a public engagement process, if they wish.

GHSA noted that transitioning to an electronic grant management system would enable greater transparency in the use of NHTSA highway safety grant funds by allowing State program information contained in that system to be aggregated, organized, and made available to the public in a user-friendly manner. NHTSA agrees and is currently in the process of working to update our grant management system. We expect that this will facilitate greater cross-state collaboration and data analysis in addition to greater transparency in the use of program funding. In the meantime, NHTSA requests comment on a potential approach to develop a standardized template, codified as an appendix to the regulation, that States could use to provide information in a uniform manner similar to what we hope will be enabled by a future E-grant system. This would also potentially respond to comments from the League of American Bicyclists, Safe Routes Partnership, and Vision Zero Network seeking reports that are easier to read and that enable comparison between States in a useful manner.

E. Emergency Medical Services

Twenty-one commenters provided comments related to various aspects of emergency medical services, post-crash care, and 911 systems. These comments covered three general themes: eligibility for NHTSA grant funds, allowable use of grant funds, and NHTSA's actions related to emergency medical services (EMS) and 911.

Eight commenters discussed eligibility for funding under NHTSA's

highway safety grant program. NAEMT and Saratoga County EMS both provided a general statement that funding should be provided to EMS offices and providers via the State highway safety offices. Aaron Katz and the American Ambulance Association both requested that funding be provided to EMS offices regardless of whether the EMS provider is for-profit, a hospital, or a municipal service. The International Association of Fire Chiefs seeks to ensure that even the smaller EMS agencies receive Federal funding. Leon County EMS, Covington County Hospital Ambulance and Brian Maguire, et. al all requested that NHTSA provide funding directly to EMS agencies, rather than going through State highway safety offices. Finally, Brian Maguire, et. al recommended that States be required to report the amount of funding that is provided to EMS agencies and that all grant funds that remain unexpended at the end of the third quarter be reallocated directly to EMS agencies. NHTSA supports the EMS communities' efforts to integrate post-crash care initiatives into State highway safety programs where supported by the data and encourages States to consider funding eligible EMS activities with NHTSA's highway safety grant funds. However, under our grant statute, NHTSA does not have the authority to direct State funding choices or to provide funding directly to EMS agencies.

Eighteen commenters [12] provided recommendations or requests that specified that certain costs be considered allowable uses of NHTSA highway safety grant funds. Identified costs included post-crash care, training, research, development and purchase of equipment and technology, data gathering and access, emergency vehicle outfitting, enhancements to 911 systems and collision notification systems. NASEMSO requested specific clarification that EMS agencies are not required to limit funding requests related to NEMSIS software, personnel, maintenance and training only in proportion to the percentage of NEMSIS entries that are connected to traffic-related incidents. Determinations of allowable use of funds are highly fact-specific and are dependent on many factors, including the funding source to be used (*i.e.,* Section 402 or one of the Section 405 incentive grants) and the details of the activity to be funded. In some cases, projects may be limited to proportional funding, if there is not a sufficient nexus to traffic safety to fund the entirety of the project. In addition, all activities funded by NHTSA highway safety grant funds must be tied to countermeasure strategies for programming funds in the State's triennial HSP, which in turn must be based on a State's problem identification and performance targets. NHTSA strongly encourages all stakeholders, including the EMS community, to work closely with State HSOs to educate them on all available data sources, including NEMSIS, that would assist them with problem identification and the development of countermeasure strategies, as well as to offer ideas for potential activities that may be eligible for NHTSA formula grant funding.

Six commenters [13] provided comments related to the activities of NHTSA's Office of Emergency Medical Services (OEMS). Drew Dawson and NASEMSO both recommended that the grant program coordinate with the Office of EMS to provide guidance on EMS and 911 funding requests. The Office of EMS is a knowledgeable and useful resource to States, EMS agencies, and to NHTSA itself in addressing the post-crash care component of the highway safety grant program. The remaining comments were out of scope of this rulemaking because they relate to NHTSA's activities outside of the highway safety grant program.

F. Other

GHSA requested amendments to appendices A and B, both of which are required components of State's annual grant application submission. Specifically, GHSA asked that NHTSA format the Appendices, which serve as application documents, so that the signature page is separate from the other pages of the document in order to streamline State approval. The Appendices, consisting of the Certifications and Assurances for Highway Safety Grants and the Application Requirements for Section 405 and Section 1906 Grants, serve as official documents for State grant applications. The signature on those documents serves as a formal, legal attestation from the Governor's Representative that the contents of the State's application are accurate and that the State agrees to comply with all applicable laws, regulations, and financial and programmatic requirements. It is therefore necessary that the signatory see the entire document and that the document not be edited after a signature is appended. NHTSA therefore declines to adopt this suggestion.

Separately, GHSA noted that the BIL expanded the eligible use of Section 154 and Section 164 grant funds to include measures to reduce drug-impaired driving, and requested that NHTSA clarify that those changes had immediate effect. NHTSA affirms GHSA's interpretation; the BIL changes to Section 154/164 took effect immediately upon enactment of the BIL.

III. General Provisions (Subpart A)

A. Definitions (23 CFR 1300.3)

This NPRM proposes to add definitions for several terms. Some of these definitions (automated traffic enforcement system (ATES) and Indian country) merely incorporate statutory definitions into NHTSA's regulation. 23 U.S.C. 402(c)(4)(A) and 23 U.S.C. 402(h)(1), respectively. Other definitions (annual grant application, countermeasure strategy for programming funds, and triennial Highway Safety Plan (triennial HSP) were drawn from statutory program requirements. The proposed definition for countermeasure strategy for programming funds was informed by a comment from GHSA asking the agency to clarify its applicability to traffic records programs. Lorrie Walker asked the agency to define ''underserved populations,'' while GHSA recommended that NHTSA allow States to identify ''underserved populations'' on a State by State basis and to articulate their rationale because data sources and populations may vary from State to State. After considering these comments, the agency proposes a broad definition for ''underserved populations'' that is based on the definition used in Executive Order 13985. This high-level definition should provide States with guidance in identifying the specific populations within their jurisdictions, while providing flexibility for different State situations. NHTSA developed definitions for two additional terms to clarify potential sources of confusion for States regarding grant program requirements. The definition of community is intended to build upon the common understanding of the term. The agency developed the definition for political subdivision of a State after consulting definitions codified by other Federal agencies and making adjustments to tailor the definition to the highway safety grant program.

[12] Aaron Katz; Accident Scene Management, Inc.; Amado Alejandro Baez; American Ambulance Association; American College of Surgeons; Art Martynuska; Brian Maguire, et. al; David Harden; FL DOH; IAEMSC; IAFC; Leigh Anderson; LA EMS; Leon County EMS; NASEMSO; NAEMT; NASNA; Saratoga County EMS.

[13] Brian Maguire, et. al; Drew Dawson; IAFC; Louis Lombardo; NASEMSO; Saratoga County EMS.

Today's action also proposes to amend some existing definitions, such as those for performance target, problem identification, and program area, to provide further clarity to States. The definition for project was amended to incorporate the BIL's statutory definition of ''funded project.'' 23 U.S.C. 406(a). The agency proposes to amend the definition for serious injuries to reflect the publication of the 5th Edition of the Model Minimum Uniform Crash Criteria (MMUCC) Guideline.

Finally, this NPRM proposes to delete the definitions for three terms that are not used in the regulatory text: fatality rate, five-year (5 year) rolling average, and number of serious injuries. NHTSA also proposes to delete the definition for ''number of fatalities'' as we believe it is self-explanatory.

B. State Highway Safety Agency (23 CFR 1300.4)

Today's action proposes updates to the authorities and functions of the State Highway Safety Agency, also referred to as the State Highway Safety Office (State HSO or SHSO). The NPRM explicitly adds the requirement that the Governor's Representative (GR) is responsible for coordinating with the Governor and other State agencies, and clarifies that the GR may not be positioned in an entity that would create a conflict of interest with the SHSO; however, these are not new requirements. Section 402 requires that the Governor of the State imbue the State highway safety agency with adequate powers and that it be suitably equipped and organized to carry out the State's highway safety program. 23 U.S.C. 402(b)(1)(A). Recognizing that Governors delegate this responsibility, NHTSA long ago created the requirement for the Governor to designate a GR. In order to carry out the requirements of Section 402, the GR must have the authority to coordinate with the Governor and other State agencies in carrying out the highway safety program. Conflict of interest restrictions are a fundamental component of Federal grant law. *See* 2 CFR 200.112. Consistent with NHTSA's emphasis on equity considerations in highway safety programs and the BIL's emphasis on meaningful public participation and engagement and identification of disparities in traffic enforcement, the agency proposes to add the requirement that State Highway Safety Agencies be authorized to foster such engagement and include demographic data in their highway safety programs.

III. Triennial Highway Safety Plan and Annual Grant Application (Subpart B)

The creation of a new triennial framework is the most significant change that BIL made to the highway safety grant program. In BIL, Congress replaced the annual Highway Safety Plan (HSP), which serves as both a planning and application document under MAP–21 and the FAST Act, with a Triennial HSP and Annual Grant Application. As part of this framework, Congress increased community participation requirements and codified the annual reporting requirement.

Under the new procedures established by BIL, each State must submit for NHTSA approval a triennial Highway Safety Plan (''triennial HSP'' or ''3HSP'') that identifies highway safety problems, establishes performance measures and targets, describes the State's countermeasure strategies for programming funds to achieve its performance targets, and reports on the State's progress in achieving the targets set in the prior HSP. (23 U.S.C. 402(k)) Each State must also submit for NHTSA approval an annual grant application that provides any necessary updates to the triennial HSP, identifies all projects and subrecipients to be funded by the State with highway safety grant funds during the fiscal year, describes how the State's strategy to use grant funds was adjusted by the State's latest annual report, and includes an application for additional grants available under Chapter 4. (23 U.S.C. 402(l)(1)) Finally, each State must submit an annual report that assesses the progress made by the State in achieving the performance targets set out in the triennial HSP and describes how that progress aligns with the triennial HSP, including any plans to adjust the State's countermeasure strategy for programming funds in order to meet those targets. (23 U.S.C. 402(l)(2))

This new framework continues many of the requirements that States previously were required to meet under the annual HSP requirement, but distributes them between the triennial HSP and the annual application. This redistribution requires NHTSA to update language throughout the regulation in order to clarify to which submission a particular requirement applies. References to the HSP have now been updated to refer to either the triennial HSP or, more frequently, the annual grant application. In addition, NHTSA has removed all references to planned activities throughout the regulation. This will address GHSA's comments that the concept of planned activities was burdensome to States. NHTSA had created the concept of planned activities in the final rule implementing the FAST Act in response to comments from States that they did not have project-level information available at the time of drafting the HSP. However, the BIL now explicitly requires project information in the annual grant application, as described in more detail below. As a result, references to planned activities in the HSP have been updated throughout the regulation to refer to projects in the annual grant application. References to ''countermeasure strategies'' now link to the triennial HSP instead of the HSP.

In addition, NHTSA has reorganized subpart B of part 1300 to accommodate the new triennial framework. Where previously subpart B was fully directed at the HSP, the subpart now includes separate sections for the triennial HSP, the annual grant application, and specific requirements for Section 402. Section 1300.10 provides that, in order to apply for any highway safety grant under Chapter 4 and Section 1906, a State must submit both a triennial Highway Safety Plan and an annual grant application. The requirements for the triennial HSP and annual grant application, including deadline, contents, and review and approval procedures, are set out in §§ 1300.11 and 1300.12, respectively. Section 1300.13 lays out the special funding conditions for Section 402 grants, and Section 1300.15 provides the rules for NHTSA's apportionment and obligation of Federal funds under Section 402. The agency reserves § 1300.14. The contents of each section will be discussed in more depth below.

There appears to be some confusion among commenters about the timeframes envisioned by BIL for submissions under this framework. AASHTO and GHSA, supported by many State commenters, recommended that for the first year of each triennial cycle, States only be required to submit a triennial HSP along with appendix B, with no annual grant application. They then agreed that States would submit annual applications in the second and third years. This is inconsistent with the statutory requirement. As laid out in BIL, States must submit both a triennial HSP and an annual application in the first year of a triennial cycle, with only an annual grant application for years two and three. *See* 23 U.S.C. 402. As the many commenters who urged NHTSA to clearly distinguish the two submissions make clear, the triennial HSP and annual grant application fulfill different

purposes. As commenters [14] rightly noted, the triennial HSP provides longer-term, program-level planning spanning a three-year period while the annual grant application implements that plan each year through project-level details.

In addition to the broad comments that the agency ensure fidelity to the law in drafting the regulatory text, GHSA specifically requested that NHTSA refrain from requiring application or reporting requirements beyond those explicitly authorized by law. NHTSA has striven to do so. However, we note that relevant legal requirements are not limited to the BIL. For example, OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) provide many requirements applicable to the grant program, both for States as award recipients and to NHTSA as the awarding agency. We have included several of those requirements throughout this regulation.

NHTSA believes that the triennial framework created by the BIL, with annual projects tied to longer-range planning based on performance targets and countermeasure strategies, is a valuable tool for States as they and NHTSA work to address the recent increase in traffic fatalities. It has never been more important for States to carry out strong, data-driven and performance-based highway safety programs. While NHTSA has worked to implement the statutory requirements and avoid adding unnecessary burden on States, we are committed to ensuring through our review and approval authority that State triennial HSPs and annual grant applications provide for data-driven and performance based highway safety programs. NHTSA will not approve a triennial HSP that has worsening performance targets or where countermeasure strategies are not sufficient to allow the State to meet its targets or are not supported by evidence that they are effective. NHTSA also will not approve an annual grant application where the projects provided are not sufficient to carry out the countermeasure strategy in an approved triennial HSP.

A. General (23 CFR 1300.10)

NHTSA proposes revisions to 23 CFR 1300.10 to provide, according to the BIL, that in order to apply for a highway safety grant under 23 U.S.C. Chapter 4 and Section 1906, a State must submit both a triennial Highway Safety Plan and an annual grant application.

B. Triennial Highway Safety Plan (23 CFR 1300.11)

The triennial HSP documents the State's planning for a three-year period of the State's highway safety program that is data-driven in establishing performance targets and selecting the countermeasure strategies for programming funds to meet those performance targets. As many commenters noted,[15] the triennial HSP is intended by Congress to focus on program-level information. As discussed below, NHTSA proposes to require States to submit five components in the triennial HSP: (1) the highway safety planning process and problem identification; (2) public participation and engagement; (3) performance plan; (4) countermeasure strategy for programming funds; and (5) performance report.

1. Due Date (23 CFR 1300.11(a))

NHTSA incorporates the July 1 deadline set by the BIL. 23 U.S.C. 402(k)(2).

2. Highway Safety Planning Process and Problem Identification (23 CFR 1300.11(b)(1))

As with previous HSPs submitted annually, the triennial HSP must include the State's problem identification that will serve as the basis for setting performance targets, selecting countermeasure strategies and, later, developing projects. This ensures that the State's highway safety program is data-driven, consistent with 23 U.S.C. 402(b)(1)(B). NHTSA proposes to retain the requirements that the State describe the processes, data sources and information used in its highway safety planning and describe and analyze the State's overall highway safety problems through analysis of data (*i.e.,* problem identification, or problem ID). These requirements are substantively unchanged from the prior regulation except that NHTSA has added sociodemographic data as an example of a data source that the State may wish to consider in conducting problem ID. 23 CFR 1300.11(b)(1)(ii).

The WA TSC commented that NHTSA will need to change the way it evaluates States' problem ID in order to acknowledge factors that shape human behavior outside of raw crash data. NHTSA agrees that data other than crash data are valuable for State's problem ID, but does not agree that NHTSA has limited the types of data States may use to conduct problem ID so strictly. States are encouraged to utilize all data and information sources to conduct problem identification. The WA TSC also stated that raw crash data such as number of crashes and the outcomes of those crashes are outside the control of the SHSO. NHTSA disagrees with this premise. While States may not control all of the factors that contribute to raw crash numbers, such as population or increased VMT, State highway safety programs must be designed to account for those factors and adjust as necessary in order to address the myriad other factors that contribute to increases in traffic fatalities and injuries. As the WA TSC also noted, States can and should submit data in the triennial HSP that demonstrates that the State has conducted a careful analysis of traffic safety problems in the State and then has chosen strategies that are designed to address the specific behaviors that form the root cause of those problems.

NASEMSO and League of American Bicyclists recommended, respectively, that States be required to include consideration of post-crash care issues and perceptions of safety in bicycling and walking as part of their problem identification and, therefore, in their countermeasure strategies. NHTSA encourages States to consider the full constellation of State highway safety problems. However, in order to ensure that States have the needed flexibility to assess data to determine the problems within their borders, the agency declines to specify problem areas for consideration outside those mandated by Congress.

Drew Dawson recommended that NHTSA require States to provide the strategy laying out how the State will continue regular data assessments, including who will perform the analysis, what sources they will consult, and at what intervals. NHTSA does not believe this is necessary because States are already required to submit annual reports that assess their progress in meeting performance targets. 23 CFR 1300.35.

3. Public Participation and Engagement (23 CFR 1300.11(b)(2))

In BIL, Congress added a requirement that State highway safety programs result from meaningful public participation and engagement from affected communities, particularly those most significantly impacted by traffic crashes resulting in injuries and fatalities. 23 U.S.C. 402(b)(1)(B). Relatedly, Title VI of the Civil Rights

[14] Brandy Nannini, CA OTS, CT HSO, GHSA, MN DPS, NY GTSC, WA TSC, WI BOTS, and 5-State DOTs.

[15] Brandy Nannini, CA OTS, CT HSO, GHSA, MN DPS, NY GTSC, WA TSC, WI BOTS, and 5-State DOTs.

Act of 1964 (or Title VI) prohibits discrimination on the basis of race, color or national origin in any Federal program, including programs funded with Federal dollars. Title VI requires that all recipients of DOT financial assistance ensure that no person is excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any Federally-funded program or activity nondiscrimination. As implemented through the U.S. Department of Transportation Title VI Program Order (DOT Order 1000.12C), Title VI requires, among other things, that all recipients submit a Community Participation Plan. The purpose of the Community Participation Plan is to facilitate full compliance with Title VI by requiring meaningful public participation and engagement to ensure that applicants and recipients are adequately informed about how programs or activities will potentially impact affected communities, and to ensure that diverse views are heard and considered throughout all stages of the consultation, planning, and decision-making process. Because the public participation and engagement required by BIL and the Community Participation Plan required by Title VI have complementary goals, NHTSA proposes to structure grant requirements so that States can meet both requirements at the same time.

NHTSA proposes to incorporate these statutory requirements into the highway safety grant rule in three ways. First, NHTSA proposes a public participation and engagement section in the triennial HSP that would ensure States meet both requirements through a single submission. 23 CFR 1300.11(b)(2). NHTSA proposes to require that the triennial HSP include a description of the starting goals and a plan for integrating public engagement into the State's planning processes, a description of the activities conducted and the outcomes of those activities, and a plan for continuing public participation and engagement activities throughout the three years covered by the triennial HSP. Second, in order to ensure that the public participation and engagement that the State conducts for the triennial HSP plays a meaningful role in the choice and implementation of projects, not just at the planning stage, NHTSA also proposes to require States to describe in the annual report how the projects that were implemented were informed by the State's public participation and engagement. 23 CFR 1300.35(b)(1)(iii). Finally, in order to ensure that SHSOs have the necessary authority to carry out these requirements, NHTSA proposes to add a requirement that each State Highway Safety agency be authorized to foster meaningful public participation and engagement from affected communities. 23 CFR 1300.4(b)(3).

NHTSA received many comments about the BIL's requirement for meaningful public participation in the States' highway safety grant programs. Because they span multiple sections of the rule, NHTSA will address all engagement-related comments here. MN DPS and GHSA both stated their strong support for the requirement and were joined by Brandy Nannini, CA OTS, and NY GTSC in calling for flexibility and for NHTSA to take a long-term view for States' implementation of the requirement. The NSC signaled support for the requirement by advising NHTSA to encourage States to incorporate viewpoints of multiple stakeholders in identifying key safety needs and countermeasures. GHSA and NY GTSC noted that States are already including public participation as part of their highway safety programs, but that each State is doing so differently because they have different landscapes of communities and differing staffing and funding resources. GHSA and NSC both recommended that NHTSA allow States to carry out the required public participation directly, through partner subrecipients, or as part of a multidisciplinary effort run by the State DOT. The Transportation Equity Caucus recommended that States create models to transfer ownership of highway safety planning processes to communities and neighborhoods. Other commenters recommended that NHTSA require States to spend a specified amount of funds to carry out public participation and engagement in areas with the most need, where a certain percentage of fatalities or injuries take place, or in the communities where safety programs are intended to be implemented. *See* GHSA and anonymous commenter. NHTSA appreciates States' stated commitment to public participation and recognizes that public participation efforts are already underway in many States. With our proposal, we seek to implement these statutory requirements in a manner that reflects the importance of the requirement while recognizing variations between States by focusing on State's public participation planning and the impact of that participation on State programs and projects. In reviewing a State's public participation planning and outreach efforts in the triennial HSP, NHTSA will look to see if the State made a concerted effort to identify and reach out to impacted communities; however, we do not propose to require a specified funding level. A State must use the problem identification process to ensure that its most vulnerable, at-risk populations are identified and set performance targets and countermeasure strategies for programming funds accordingly. As long as a State is able to meet the requirements of the triennial HSP and annual report, it may facilitate public participation in the manner best suited to the needs of the State and its communities.

Commenters also provided input on how to measure State public participation efforts. GHSA cautioned that States cannot compel participation and asked NHTSA not to measure compliance by volume of comments or engagement. Other commenters suggested that States be required to report their public participation efforts, including: how they advertised and facilitated public engagement opportunities, what engagement took place, and the impact of that participation on the State's program. *See* League of American Bicyclists and NSC. NHTSA does not propose to require a specific form of public participation and engagement, nor to require specified outcomes. Instead, as described above, NHTSA proposes to require that the triennial HSP include a description of the starting goals and plan for integrating public engagement into the State's planning processes, a description of the activities conducted and the outcomes of those activities, and a plan for continuing public participation and engagement activities throughout the three years covered by the triennial HSP. While NHTSA does not propose to set a specified required outcome for a State's public participation activities, the agency expects that if a State does not achieve reasonable participation through the participation plan described in the triennial HSP, it will use that experience to inform its efforts for continuing public participation during the period covered by the annual HSPs and into the next triennial HSP. In addition, as described above, the agency proposes to require States to describe in the annual report how their public participation efforts informed the projects they implemented during the grant year.

NHTSA received many comments about the need to provide funding for BIL's increased public engagement requirements. GHSA noted that States would need additional funding in order to carry out the required public engagement efforts, while the National Safety Council recommended that States

be allowed to compensate partners or trusted community organizations to carry out public engagement work on their behalf. Many commenters also observed that States would likely achieve better and more diverse participation if they are able to compensate community members for their participation and attendance costs. *See* League of American Bicyclists, National Safety Council, Rebecca Sanders, and WA TSC. NHTSA acknowledges that increased efforts require more resources from State highway safety offices and that participation in public planning processes may present costs in time and money for participants. Public participation is fundamental to the workings of State governments, as it is for the Federal government. Therefore, we would expect that States have processes and procedures in place for conducting public outreach and participation. The specifics of whether and how NHTSA grant funds may be used to pay for these costs are highly fact specific and implicate many different Federal laws and regulations. In general, Federal grant funds may not be expended on activities required to qualify for the grant. State laws, also, may impact these sorts of expenditures. For example, Washington TSC noted in its comment that Washington State has recently passed laws to remove the historical prohibition against compensating the public for participation in State processes. It is likely that other States still have such prohibitions. Nothing in this proposed rule would dictate a specific determination about whether these sorts of costs may be an allowable use of NHTSA grant funds.

Commenters provided several suggestions for States about how to conduct their public participation efforts. NHTSA encourages States to consider any and all methods when planning their public engagement efforts. Suggestions included: ensuring that online tools are easy to use (Mari Lynch), publicizing the planning process and explaining how the public can provide input (Drew Dawson, League of American Bicyclists), presenting at schools or other community gathering locations (anonymous), widespread use of social media outlets and other communication channels (NASEMSO), regular opportunities for local information gathering (NSC), joining regional public health or EMS authority meetings (Drew Dawson), and elevating the voices of non-profits and representatives of marginalized groups in State committees and advisory groups (NASEMSO). NASEMSO and an anonymous commenter also recommended that States could increase community engagement through disseminating easy to understand and compelling safety data, including correlation of policies to data improvements.

NHTSA received many comments suggesting non-traditional partners that States should consider including in their planning processes. Recommendations spanned from national to State to local and community levels and are summarized below. NHTSA encourages States to consider all of these groups as they plan their public participation and engagement activities and as they implement their programs. NHTSA will work to share effective means of increasing participation with States.

The League of American Bicyclists and National Sheriffs' Association both recommended using national stakeholder organizations to advertise participation opportunities to their local members. The League of American Bicyclists recommended focusing on national organizations focused on equity and transportation safety. The National Sheriffs' Association specifically recommended using themselves and the International Association of Chiefs of Police to filter funding and messaging down to the local level. Drew Dawson recommended that States work with national-level 911 organizations.

State-level partners recommended by commenters included State agencies, such as transportation, public health, EMS, rural health, economic development, and State law enforcement agencies. *See* Drew Dawson, NASEMSO, NSC, Vision Zero Network. Drew Dawson also recommended coordinating with the State agencies responsible for implementing the U.S. Department of Housing and Urban Development's Community Development Block Grants.

The Vision Zero Network recommended that States prioritize local needs, and suggested that they work with local transportation, health, and policy organizations and community leaders. The League of American Bicyclists also emphasized the importance of working collaboratively with local community organizations, recommending that NHTSA require States to get letters of support for work undertaken within local communities. While NHTSA encourages collaboration with local community groups and supports the Share to Local requirement described in more detail later in this notice, it is beyond our authority to impose such a requirement. An anonymous commenter recommended that States work with local governments, which in turn should work with schools, community centers, churches, and non-profits within their jurisdiction in order to reach communities that may have less resources to interact directly with the State government. Drew Dawson identified local Public Safety Answering Points (PSAPs) and local or regional emergency medical organizations as helpful partners. Finally, the NSC recommended that States seek out existing local or regional task forces.

Many commenters recommended that States build relationships with affected communities beyond traditional partners, such as governmental entities and public figures, in order to gain the benefit of lived experiences. *See* League of American Bicyclists. Lorrie Walker and Rebecca Sanders both noted that building capacity within the communities that the highway safety program serves is necessary but that it may take some time to see results. The NSC and Rebecca Sanders both stressed the importance of collecting and considering community-based lived experience in addition to existing traffic safety data. Commenters identified a range of types of community members for States to reach out to, including parish nurses, childcare workers, parent-teacher associations, hospitals, physicians/surgeons, associations of attorneys. *See* Drew Dawson, Lorrie Walker. The Transportation Equity Caucus recommended that States work with community-based organizations, including groups focused on civil rights, racial and social equity, disability justice, mobility justice, public health, social services and other groups led by affected demographics. Specific community groups identified included communities of color, American Indians, teens, and rural communities. The National Safety Council suggested that States research active and trusted community organizations who are part of the safe system of transportation.

NHTSA supports and encourages States to reach out to and seek input from a full and diverse range of traffic safety stakeholders, both traditional and non-traditional. States should use all available resources to engage with new stakeholders and increase community engagement. NHTSA acknowledges that many States have already begun working to increase engagement and build community partnerships, and encourages them to continue those efforts. NHTSA will also work to share best practices and effective strategies to increase community engagement.

The BIL also added a related but separate requirement that States support data-driven traffic safety enforcement programs that foster effective community collaboration to increase public safety. 23 U.S.C. 402(b)(1)(E). This provision is essential to ensuring that highway safety programs carried out by law enforcement agencies are equitable and community-based. NHTSA proposes to implement this statutory provision by requiring States to discuss in the annual report the community collaboration efforts that are part of the States' evidence-based enforcement program. 23 CFR 1300.35(b)(2). GHSA recommended that States be allowed to count their efforts in meeting the separate requirement for meaningful public engagement in their triennial HSP in order to show compliance with the community collaboration requirement for enforcement programs. NHTSA disagrees. Congress created two separate and independent requirements: a requirement for a State to provide for a comprehensive, data-driven traffic safety program that results from meaningful public participation (23 U.S.C. 402(b)(1)(B); and a requirement that the State's highway safety program support data-driven traffic safety enforcement programs that foster effective community collaboration to increase public safety (23 U.S.C. 402(b)(1)(E)(i)). Collapsing the two requirements into the broader meaningful public engagement requirement would undermine Congress' intent that States address these as two separate requirements. As described above, States have broad latitude in how to provide meaningful public participation and engagement in the State traffic safety program. It may be possible, though difficult, that some efforts involved in the broader meaningful engagement may be specific enough to be part of the required community collaboration in enforcement programs. If a State is able to fulfill the requirements for both regulatory provisions with the same activities, it may do so; but NHTSA will evaluate the two statutory requirements separately.

4. Performance Plan (23 CFR 1300.11(b)(3)

States have been using a performance-based planning process in their highway safety plans for many years now. While some States were using performance measures on a voluntary basis already, Congress mandated the use of performance measures for all States in MAP–21 and continued the requirements under the FAST Act. While the BIL separated the planning process and the grant application into the triennial HSP and annual grant application, respectively, it maintained the reliance on performance measures as a fundamental component of State highway safety program planning in the triennial HSP. The BIL maintains the existing structure that requires States to provide documentation of the current safety levels for each performance measure, quantifiable performance targets for each performance measure, and a justification for each performance target. However, the BIL now specifies that performance targets must demonstrate constant or improved performance. 23 U.S.C. 402(d)(4)(A)(ii). Although the BIL makes no other changes to the statutory text specifically related to performance measures, the move from an annual to a triennial HSP presents some practical implications for performance measures as well. NHTSA received many comments on both changes, statutory and practical, and discusses them in more detail below.[16]

As a preliminary matter, instead of the annual performance measures provided in the prior annual HSP, States now must provide performance measures that cover the three-year period covered by the triennial HSP. NHTSA proposes to allow States to set a single three-year target, with informal annual benchmarks provided in the triennial HSP against which they can assess progress in the annual report.

The BIL provides that States must set performance targets that demonstrate constant or improved performance and provide a justification for each performance target that explains why the target is appropriate and evidence-based. 23 U.S.C. 402(k)(4)(A)(ii) and (iii). This is consistent with the NRSS, which sets an ambitious long-term goal of reaching zero roadway fatalities by 2050. Transportation performance management focuses agencies on desired outcomes, outlines how to attain results, and clarifies necessary resources in the near-term. It allows for transparent and open discussions about desired outcomes and the direction an agency should take now. In an era of increasing fatalities, it is vital that performance targets offer realistic expectations that work toward the long-term goal of zero roadway fatalities and provide a greater understanding of how safety issues are being addressed.

Several commenters[17] argued that requiring targets that show constant or improved performance is contrary to the requirement that targets be appropriate and evidence based. The WA TSC stated that States could set targets that demonstrate constant or improved performance, but not for measures that are related to outcomes that are outside the control of the State highway safety office. As an example, WA TSC noted that raw numbers of fatalities and injuries are impacted by changes in population and VMT. NHTSA disagrees that targets should focus only on variables within the control of State highway safety offices. Performance management is intended to refocus attention on national transportation goals, increase the accountability and transparency of the highway safety grant program, and improve program decisionmaking through performance-based planning and programming. Performance targets are inextricably tied to the countermeasure strategies for programming funds that States describe in their triennial HSPs. Targets should be developed to reflect the outcomes that States should expect, based on the evidence available, *after* implementing their planned programs. If, while setting its performance targets, a State determines that its countermeasure strategy for programming funds is not likely to yield constant or improved performance, the State should consider different countermeasure strategies or adjust funding levels.

Other commenters[18] expressed support for the BIL's emphasis on constant and improved performance, exhorting NHTSA to ensure that States do not set performance targets that increase fatalities and injuries. As the League of American Bicyclists points out, under the Safe System Approach, redundancies are meant to ensure that even when one component of a system fails, fatalities and injuries can still be reduced. Rebecca Sanders recommended that NHTSA implement consequences, such as reduced funding or directed spending, for States that do not achieve performance targets. NHTSA does not have the authority to withhold funds or direct State expenditure of funds for failure to achieve a performance target. However, the BIL provides that the State's annual grant application must include a description of the means by which the State's countermeasure strategy for programming funds was adjusted and

[16] Brian Maguire, et. al recommended, in effect, that NHTSA establish a performance-based framework, suggesting that NHTSA require States to provide a link between funding and improvements in safety in order to assess progress over time. As shown here, this is already in effect.

[17] AASHTO, CA OTS, CT HSO, GHSA, MN DPS, NY GTSC, OR DOT, and WI BOTS Patrol.

[18] League of American Bicyclists, NSC, Rebecca Sanders, Vision Zero Network.

informed by the State's assessment of its progress in meeting its targets in the most recent annual report. 23 U.S.C. 402(l)(1)(C)(iii). NHTSA proposes to implement this requirement by requiring that all States include either a narrative description of the means by which the State's countermeasure strategy for programming funds was adjusted and informed by the most recent annual report, or a written explanation of why the State made no adjustments to the strategy for programming funds. If a State determined in its most recent annual report that it was on track to meet its performance targets, it may simply state that fact. If a State determined that it was not on track to achieve its performance targets, it would be required to explain why it is not necessary to adjust the countermeasure strategy for programming funds in order to meet its targets.

AASHTO, CT HSO, GHSA and OR DOT expressed concern that the requirement to set performance measures that demonstrate constant or improved performance will cause States to have to set aggressive performance targets and that States will face penalties if they fail to meet aggressive targets. While Section 402 requires States to assess the progress made in achieving performance targets in the annual report (23 U.S.C. 402(l)(2)), and NHTSA is required to publicly release an evaluation of State achievement of performance targets (23 U.S.C. 402(n)(1)), there are no monetary or programmatic penalties for failure to achieve a performance target in the highway safety grant program. The WA TSC commented that States that set a goal of zero traffic deaths will not be punished with additional administrative burdens. The long-term goal of zero traffic deaths is central to the NRSS and SSA. NHTSA acknowledges and appreciates that many states would like to plan and set targets aimed at that goal. We therefore encourage states to thoughtfully consider targets for their triennial HSPs that keep this long-term goal in mind while using a data-based approach based on achievable targets in the short-term. Finally, AASHTO points out that States may face monetary consequences under FHWA's Highway Safety Improvement Program (HSIP) for failure to achieve a common performance measure. However, as a point of clarification, States do not face a monetary penalty under the FHWA's HSIP; they do, however, lose flexibility to redirect safety funds to other programs. NHTSA does not have discretion to undermine the statutory requirement that all performance measures show constant or improved performance.

Several commenters [19] expressed concern that the new triennial HSP framework created by the BIL will create inconsistencies with the common measures that States also report annually to FHWA for the HSIP.[20] GHSA and the WI BOTS Patrol both recommended that NHTSA require that the common measures be reported annually in the annual application, rather than in the triennial HSP, to maintain alignment with the HSIP. The League of American Bicyclists recommended that NHTSA work with States to ensure the HSP is consistent with the HSIP, including consistent performance measures and countermeasure strategies. The BIL provides that performance measures are submitted with the triennial HSP, so NHTSA does not have discretion to change that. 23 U.S.C. 402(k)(4). However, the BIL also provides that States may submit updates, as necessary, to the triennial HSP in the annual grant application. NHTSA believes it would undermine Congress' intent in providing for more long-term planning and performance management under the highway safety grant program to allow States to frequently adjust performance measures that are intended to be part of a triennial highway safety planning process. Rather, States should adjust their countermeasure strategies for programming funds if they determine that they are not on track to meet their performance measures. However, the agency recognizes the difficulty for States in having measures that are subject to the disparate planning timeframes of the triennial HSP and annual HSIP. Therefore, we propose to allow States to amend the common measures in the annual grant application, but not the other measures. 1300.12(b)(1)(ii). AASHTO stated that the regulation should more clearly vest target establishment authority in the States, arguing that it is inconsistent to require NHTSA approval for performance targets when 23 U.S.C. 150(d)(1) provides States with authority to establish targets for the HSIP without FHWA approval. FHWA previously addressed this comment in its final rule for the National Performance Management Measures: Highway Safety Improvement Program, which set out the parameters of the common performance measures.[21] As the substance of the relevant statutes has not changed, NHTSA incorporates the response FHWA provided at that time. NHTSA *emphasizes* that the statute requires States to coordinate their highway safety plan with the HSIP and that States certify their compliance with this requirement in Appendix A. *See* 23 U.S.C. 402(b)(F)(vi) and Appendix A. Further, NHTSA does not have discretion to override the statutory requirement that NHTSA approve or disapprove triennial HSPs, including the performance measures contained therein. *See* 23 U.S.C. 402(k)(6).

NHTSA received many comments related to the data that States use to set and assess progress towards meeting performance measures. Several commenters noted that States frequently do not have access to up-to-date FARS or other data available when setting targets or at the time of performance reporting and asked that States be allowed to use the latest available data regardless of data source for these purposes. *See* GHSA, Kathleen Hancock, NY GTSC. Though not specifically targeted to the performance measures, the BIL also amended Section 402 to provide that triennial HSPs, including performance measures, be based on the information available on the date of submission. 23 U.S.C. 402(k)(4). In addition, the BIL requires that States provide, in the annual report, an assessment of progress made in achieving the performance targets identified in the triennial HSP based on the most currently available Fatality Analysis Reporting System (FARS) data. 23 U.S.C. 402(l)(2)(A). The OR DOT recommended that NHTSA allow States to use a State data source, rather than FARS, for fatality data reporting. Because the statute requires that States use FARS data for the annual report, NHTSA does not have the authority to allow States to use another data source for the appropriate measures. States may, however, supplement their analysis by using FARS *and* other data sources. However, FARS only provides comprehensive data related to fatal injuries suffered in motor vehicle crashes; it therefore is not an appropriate data source for non-fatality measures. As a result, NHTSA proposes to require that States assess progress in their annual reports using the most currently available data. 23 CFR 1300.35(a)(1). To accurately assess progress, the State must consult the same data source that was used to set the performance target. However, it may also look to other data sources to

[19] AASHTO, GHSA, OR DOT, and WI BOTS Patrol.

[20] Common performance measures are set out in 23 CFR 490.209(1) and 23 CFR 1300.11.

[21] 81 FR 13882, 13901 (Mar. 15, 2016).

provide a fuller picture of current levels. Where a target, such as the common fatality measures, requires the use of FARS data, States must use the most currently available FARS data in the annual reports. Similarly, States may supplement their analysis with non-FARS data, but must at a minimum use the most currently available FARS data. Where targets necessarily are based on other data sources, States must use the most currently available data for that data source, but may supplement with additional data.

Several commenters provided feedback on other aspects of performance measure data. WA TSC noted that since FARS data are provided by NHTSA, States should not be required to report FARS data back to NHTSA. However, the statute and the regulation require not just data reporting, but analysis of the data. *See* 23 U.S.C. 402(l)(2)(A) and 23 CFR 1300.35(a)(1). A State would be unable to assess its progress in meeting FARS-based targets without reporting the FARS data. NASEMSO recommended that States be required to provide historical data covering a 3-to-5-year period prior to the period covered by the triennial HSP. While NHTSA does not explicitly require States to provide baseline data for performance measures, as a general matter, baseline data will be a key part of State's performance target setting and will usually be provided in the triennial HSP as part of the justification for the target set by the State. WI BOTS recommended that NHTSA allow States to set targets based on an average of the prior 4 years of FARS data plus State data in order to set a target percentage as opposed to a hard number. The comment did not provide enough details for NHTSA to be certain which target the commenter is referring to. In general, with the exception of the required common and minimum performance measures, States have flexibility to determine the appropriate performance measure needed for their programs. Safe Kids Worldwide suggested that States look to tangible events and metrics to measure performance, including FARS data. Drew Dawson and NASEMSO recommended that States consider use of NEMSIS and trauma registry data in performance measures. In order to ensure consistency and to facilitate a nationwide view of progress in traffic safety, the common and minimum performance measures specify the type of data source that States should use. However, for the other performance measures that States select, based on problem identification, States may use any available data source that is appropriate, including NEMSIS and trauma registry data.

Many commenters [22] requested that NHTSA and GHSA work together to update the minimum performance measures that were developed in 2008 [23] in accordance with 23 U.S.C. 402(k)(5). In contrast, the 5-State DOTs stated that they do not believe any new performance measures are required. Commenters [24] also provided specific advice and recommendations for measures they believe should be considered, deleted, or amended. The current action does not propose to revise the minimum measures; however, NHTSA agrees with the majority of commenters who believe that the minimum performance measures need to be reconsidered and updated. That said, NHTSA does not believe that it is feasible to undertake the required collaboration to develop new performance measures in time for States to use them in their first triennial HSP. In addition, NHTSA believes that being able to use familiar performance measures will reduce the burden on States as they complete their first triennial HSP cycle under BIL. NHTSA intends to convene meetings with stakeholders and to collaborate with GHSA to update the minimum performance measures well in advance of the FY 2027 triennial HSP submission date. NHTSA will bring all of the comments received under this rulemaking into that effort and will seek further input from these and other groups at that time. As we did previously, NHTSA commits to publish the proposed minimum performance measures in the **Federal Register** for public inspection and comment. For the purposes of the FY 24 triennial HSP, NHTSA would like to note that States are not limited to only the minimum performance measures. States are strongly encouraged to develop additional measures, consistent with 23 CFR 1300.11(b)(3)(iii), for problems identified by the State that are not covered by existing minimum performance measures. Those measures may cover issue areas such as equity, injury data, SHSO output measures, and more.

[22] CA OTS, GHSA, MN DPS, NASEMSO, NY GTSC, and WA TSC.

[23] ''Traffic Safety Performance Measures for States and Federal Agencies'' (DOT HS 811 025) (Aug. 2008).

[24] Brian McGuire, Drew Dawson, IAEMSC, League of American Bicyclists, NASEMSO, NSC, NY GTSC, Rebecca Sanders, Safe Kids Worldwide, Safe Routes Partnership, TEC, Vision Zero Network, and WA TESC.

Finally, OR DOT recommended that NHTSA reconcile its definition for ''vulnerable road user'' with the definition used by FHWA. NHTSA does not provide, nor does it propose, a definition for ''vulnerable road user'' in the regulation. As such, there is no contradiction with any definitions provided by FHWA. For purposes of the highway safety grant program, States have flexibility to define ''vulnerable road users'' based on the highway safety challenges identified by their problem ID.

5. Countermeasure Strategy for Programming Funds (23 CFR 1300.11(b)(4))

The BIL requires each State to submit, as part of the triennial HSP, a countermeasure strategy for programming funds for projects that will allow the State to meet the performance targets set in the triennial HSP, including data and analysis supporting the effectiveness of the proposed countermeasures and a description of the Federal funds that the State plans to use to carry out the strategy. 23 U.S.C. 402(k)(4)(B–D). NHTSA proposes to incorporate this requirement into the regulation by requiring States to provide, for each countermeasure strategy: identification of the problem ID that the countermeasure strategy addresses and a description of the link between the problem ID and the countermeasure strategy; a list of the countermeasures that the State will implement as part of the countermeasure strategy; identification of the performance targets the countermeasure strategy will address with a description of the link between the countermeasure strategy and the target; a description of the Federal funds the State plans to use; a description of the considerations the State will use to determine what projects to fund to implement the countermeasure strategy; and a description of the manner in which the countermeasure strategy was informed by the uniform guidelines issued by NHTSA in accordance with 23 U.S.C. 402(a)(2).

GHSA recommended that NHTSA amend the definition of countermeasure strategy in order to clarify that it includes innovative countermeasures, and to explain how States can justify the use of innovative countermeasures. While NHTSA has amended the definition of countermeasure strategy for programming funds (see definition section for explanation), that definition does not incorporate the considerations GHSA recommends. Instead, NHTSA proposes to make these suggested clarifications directly in the regulatory

text of this requirement. As a preliminary matter, NHTSA would like to clarify the distinction between a countermeasure and a countermeasure strategy for programming funds, which consists of a combination of countermeasures along with information on how the State plans to implement those countermeasures, such as funding amounts, subrecipient types, locations, etc. Specifically, NHTSA proposes to require that, for each countermeasure that a State plans to implement as part of a countermeasure strategy, the State provide data and analysis supporting the effectiveness of the countermeasure. NSC recommended that NHTSA require States to provide justification for use of established countermeasures in order to reflect evolving knowledge. However, NHTSA believes that requiring States to provide independent justification for all countermeasures, even ones that have been proven over time, is burdensome without any added gain. Therefore, the agency proposes that for countermeasures that are rated 3 or more stars in *Countermeasures That Work,* the State need only provide a citation to the countermeasure in the most recent edition of that document. For all other countermeasures including innovative countermeasures, States must provide justification supporting the potential of the countermeasure strategy, which may include research, evaluation, or substantive anecdotal evidence. *See* 23 CFR 1300.11(b)(4)(ii). The WA TSC suggests that NHTSA accept the SSA principles as a justification for choosing countermeasure strategies in the triennial HSP. While NHTSA agrees that the SSA principles are great guiding principles for a State to use in selecting countermeasures, NHTSA notes that principles do not qualify as data and the data analysis required to justify the use of a countermeasure.

GHSA noted that the BIL removed the previous requirement that States have a traffic safety enforcement program (TESP) (previously 23 U.S.C. 402(b)(1)(E)), and requested that NHTSA remove the related regulatory requirement that the HSP include a specific TSEP section (current 23 CFR 1300.11(d)(5)). Instead, GHSA recommended that States be required only to provide an assurance in Appendix A that the triennial HSP provides for sustained enforcement, and to provide any required information for Section 405 grant applications. NHTSA agrees that it is not necessary to require a dedicated section of the triennial HSP to cover the TSEP. However, we disagree that an assurance is sufficient for States to meet the requirement for States to have a traffic safety enforcement program. The BIL requires that a State program support data-driven traffic safety enforcement programs that foster effective community collaboration to increase public safety. 23 U.S.C. 402(b)(1)(E). NHTSA believes that this statutory requirement represents a step forward in ensuring equitable outcomes in traffic enforcement. While NHTSA agrees that a separate section of the triennial HSP is not required to satisfy this requirement, the agency will not approve a triennial HSP that does not include such a traffic safety enforcement program as part of its countermeasure strategies. The flexibility allowed by removing the separate section requirement will allow States to structure countermeasure strategies that rely on enforcement as only one part of a multi-countermeasure strategy. In recognition that community collaboration efforts may depend on the specific enforcement projects that States implement, NHTSA proposes to require States to discuss the community collaboration efforts that were conducted as part of their evidence-based enforcement programs in the annual report, rather than in the triennial HSP. *See also* the discussion about the annual report, below.

GHSA also pointed out that the BIL removed the requirement to describe non-Federal funds that the State intends to use to carry out countermeasure strategies in the triennial HSP. NHTSA has drafted proposed text accordingly.

WA TSC recommended that NHTSA adopt a model of behavior change for State countermeasure strategies, by requiring States to create a theory of change for each countermeasure submitted, including a clear statement of assumptions and a description of how the chosen strategy will influence public behavior. The League of American Bicyclists recommended that NHTSA use the triennial HSP to implement the Safe Systems Approach by promoting the use of the rubric presented by GHSA in its report titled ''Putting the Pieces Together: Addressing the Role of Behavioral Safety in the Safe System Approach.'' While NHTSA does not endorse any specific strategies over others, the agency supports States thinking outside of the box and encourages States to work together to identify opportunities to learn from each other and share new or innovative ideas. NHTSA will also work with states to identify strategies that incorporate the Safe Systems Approach and to facilitate the sharing of innovative strategies among states.

6. Performance Report (23 CFR 1300.11(b)(5))

The BIL requires that the triennial HSP include a report on the State's success in meeting its safety goals and performance targets set forth in the most recently submitted highway safety plan. NHTSA has incorporated this statutory requirement into the proposed regulatory text, adding that the report must contain the level of detail provided in the annual report. *See* 23 CFR 1300.11(b)(5). The agency's intent in doing so is to foster connection between the triennial HSP and the annual reports. We also believe that this will reduce burdens on States by enabling them to import relevant analysis from the annual reports into the triennial HSP and vice versa. So, for example, the FY27 triennial HSP (due July 1, 2026) would be able to incorporate the assessment from the FY24 and FY25 annual reports that were submitted in January 2025 and 2026, respectively, and would include a partial assessment for FY26. NHTSA recognizes that the triennial HSP is due prior to the end of the last fiscal year covered by the prior triennial HSP and will therefore not expect the assessment for the final fiscal year to cover the entire year. The State could then use the partial assessment provided in the FY27 HSP as a starting point to develop its assessment in the FY26 annual report (due January 2027). For the FY24 triennial HSP, NHTSA only expects analysis of the State's progress towards meeting the targets set in the FY23 HSP.

7. Review and Approval Procedures (23 CFR 1300.11(c))

The BIL provides that NHTSA must review and approve or disapprove a State's triennial HSP within no more than 60 days. It further provides that NHTSA may request a State to provide additional information needed for review of the triennial HSP and may extend the deadline for approval by no more than an additional 90 days as a result. The BIL further sets out a requirement that States respond to any requests for additional information within 7 business days of receiving the request. NHTSA proposes to adopt this language in the regulation at 23 CFR 1300.11(c). This is consistent with GHSA's request that NHTSA do so.

The BIL retained the previous statutory approval and disapproval requirements. NHTSA proposes to retain the regulatory provisions incorporating those requirements with only one amendment. In order to meet the approval deadline, NHTSA proposes to require that where NHTSA

disapproves a triennial HSP, States must resubmit a triennial HSP with any necessary modifications within 30 days from the date of disapproval. 23 CFR 1300.11(c)(4).

C. Annual Grant Application (23 CFR 1300.12)

The annual grant application provides project level information about the State's highway safety program and demonstrates alignment with the most recent triennial HSP. NHTSA proposes to require the following 4 components be provided in the State's annual grant application: (1) updates to the triennial HSP (for the second and third year annual grant applications); (2) project and subrecipient information; (3) grant application for section 405 and 1906 grant programs; and (4) certifications and assurances.

1. Due Date (23 CFR 1300.12(a))

The BIL allows NHTSA to set the due date for the annual grant application, subject to the requirement that the deadline must enable NHTSA to provide the grants early in the fiscal year. *See* 23 U.S.C. 402(l)(1)(B) and 23 U.S.C. 406(d)(2). Additionally, the statute provides that NHTSA must review and approve or disapprove annual grant applications within 60 days. 23 U.S.C. 402(l)(1)(D). GHSA recommended that the due date for the annual grant application be different than the July 1 deadline for the triennial HSP, noting that many States do not have project information by July 1. GHSA recommended that NHTSA set a due date of August 31 in order to align with the due date for HSIP annual reports. NHTSA agrees that there should be separate deadlines for the annual grant application and the triennial HSP, in part to lessen the burden on States during the years when both submissions are required. However, NHTSA would not be able to complete approval or disapproval of applications submitted on August 31 until October 30, which does not allow NHTSA to meet the statutory requirement to provide grant funds as early in the fiscal year as possible. NHTSA therefore proposes a deadline of August 1 for States' annual grant applications. 23 CFR 1300.12(a)

2. Updates to Triennial HSP (23 CFR 1300.12(b)(1))

The BIL provides that States must include, in their annual grant applications, any updates necessary to any analysis in the State's triennial HSP. 23 U.S.C. 402(l)(1)(C)(i). Separately, the BIL requires States to include a description of the means by which the strategy of the State to use grant funds was adjusted and informed by the previous annual report. 23 U.S.C. 402(l)(1)(C)(iii). Because the countermeasure strategy referred to here is part of the triennial HSP, NHTSA proposes to group these two statutory requirements into one requirement. Accordingly, NHTSA proposes that, at a minimum, States must provide a description of the means by which the strategy for programming funds was adjusted and informed by the most recent annual report, or an explanation of why the State made no adjustments. Where a State determined, in its annual report, that it was on track to meet all performance targets, it need merely briefly state that fact. However, in order to give weight to Congress' intent, NHTSA will require any State that is not on track to meet all performance targets to either explain how it will adjust the strategy for programming funds or explain why it is not doing so.

In addition, NHTSA proposes to specify allowable updates related to performance measures. As described more fully in the performance measures section, above, as a general rule, performance measures must be set in the triennial HSP and remain the same throughout the three years covered by the HSP. States can then adjust their countermeasure strategy for programming funds in order to ensure that they remain on track to meet those performance measures. However, NHTSA recognizes that in some cases, a State may identify new highway safety problems during the triennial cycle. In that case, a State may wish to update its analysis to provide new problem ID, with a new performance target and corresponding countermeasure strategy for programming funds. The need for new (or annual) performance targets may additionally arise as a result of the State's application for a motorcyclist safety grant under Section 1300.25. For these reasons, NHTSA proposes to allow States to add new performance measures. Additionally, as described above, NHTSA recognizes the difficulty for States in setting common performance measures with the three year performance measures required for NHTSA's triennial HSP and the annual performance measures required for FHWA's HSIP. As a result, NHTSA proposes to allow States to amend common performance measures. States may not amend any other performance measures, but instead, should consider adjustments to countermeasure strategies for programming funds to meet the targets set.

GHSA stated that the statute provides that the State, not NHTSA, determines what additional analysis might be necessary. NHTSA disagrees with GHSA's interpretation. The statute is silent as to who determines what additional analysis is necessary. Further, the statute requires NHTSA to approve or disapprove of a State's annual grant application in part on the basis of whether it demonstrates alignment with the approved triennial HSP. 23 U.S.C. 402(l)(1)(A)(i). NHTSA will not approve an annual grant application that is inconsistent with the approved triennial HSP.

3. Project and Subrecipient Information (23 CFR 1300.12(b)(2))

The BIL requires States to submit, as part of their annual grant application, identification of each project and subrecipient to be funded by the State using grants during the fiscal year covered by the application. The statute further provides that States may submit information for additional projects throughout the grant year as that information becomes available. *See* 23 U.S.C. 402(l)(C)(ii).

GHSA and WI BOTS Patrol both requested that NHTSA commit to not performing granular review of projects on the merits. GHSA stated that States have expressed frustration in the past with NHTSA approving programs or planned activities in the HSP and then later disapproving projects after the project agreement has been signed. They argued that States should be able to rely on NHTSA's regulatory decisions. GHSA argued that NHTSA should use the project level information provided in the annual grant application for financial management, transparency, or program analysis, not for administratively burdensome preapproval. GHSA further stated that, rather than a front-end burden to preapprove State projects, NHTSA should allow States more flexibility to implement compliant activities and that States should face consequences for non-compliance. When approving the annual grant application, NHTSA is looking to see whether the State's submitted projects are sufficient to reasonably carry out the countermeasure strategies in the State's triennial HSP, as well as checking for high-level regulatory compliance issues such as proper funding source. NHTSA review and approval of annual grant applications, similar to our current approval of annual HSPs, does not equate to approval of all projects or activities listed in the application. GHSA is correct in stating that NHTSA approval of the annual grant application should not and does not conflate with specific approval of projects. States have an independent obligation to expend

grant funds in accordance with Federal grant requirements. And, because NHTSA does not review and approve all projects, NHTSA may find during grant program oversight that a project that is listed in an approved annual grant application is not allowable in full or in part. That said, if a reviewer notes an obviously unallowable or questionable project, the reviewer may raise that issue to the State at that time in order to avoid the State continuing with a project that may later be disallowed.

NHTSA proposes to require States to submit the following information in order to satisfy the statutory requirement to identify projects and subrecipients: project name and description, project agreement number, subrecipient(s), Federal funding source(s), amount of Federal funds, eligible use of funds, identification of P & A costs, identification of costs subject to Section 1300.41(b), and the countermeasure strategy that the project supports. 23 CFR 1300.12(2) These proposed requirements are intended to ensure that NHTSA is able to understand whether the identified projects are sufficient for the State to carry out the countermeasure strategies in the triennial HSP, to identify projects against later submitted vouchers, and to meet statutory transparency requirements. GHSA recommended that NHTSA be guided, and limited by, the project information required for project agreements in the OMB Uniform Administrative Requirements at 2 CFR 200.332(a)(1). GHSA specifically recommended a list of signed project agreements with subrecipient identification, program area classification, project agreement number, amount of federal funds by funding source, and eligible use of funds. NHTSA agrees that the Uniform Administrative Requirements are a valuable source for identifying useful information and proposes to include all of the information suggested by GHSA. The WA TSC recommended providing a link to the countermeasure strategy that the project supports. NHTSA agrees and proposes to include that in the proposed regulation.

The WA TSC also advised NHTSA not to use zip codes as a measure for identifying high priority areas. The WA TSC stated that it would be challenging to account for zip codes for efforts conducted by statewide entities. NHTSA believes that zip codes and other identifying location information are a valuable part of a project description and help ensure that States are implementing programs in the areas that are identified by the State's problem ID. However, NHTSA recognizes that there are many grant-funded activities that are Statewide or, like data system projects, have no physical location. Therefore, NHTSA proposes to include zip codes as an example of information that may be provided as part of a project description, but does not require it for all projects. *See* 23 CFR 1300.12(b)(2)(i).

Brian Maguire, et. al recommended that NHTSA require States to provide the dollar amount of funding dedicated to each of the five objectives of the NRSS, particularly post-crash care. NHTSA believes that such a parsing would be too burdensome and would not provide sufficient benefit as dollar value, alone, does not align with safety improvements.

The Transportation Equity Council recommended that, in order to facilitate comparison, NHTSA provide a sample list of organization and use of fund types that States should include as project information. NHTSA agrees that such a list is useful. Currently, States use categories provided in the Grants Tracking System to identify eligible use of funds. NHTSA also proposes examples of subrecipient types to be provided in 23 CFR 1300.12(b)(2)(iii).

Finally, GHSA notes that the statute allows states to provide project information throughout the grant year. As noted in 23 CFR 1300.12(d), NHTSA intends to implement this at 23 CFR 1300.32 and will discuss the amendment process and comments in more detail there.

4. Section 405 and Section 1906 Racial Profiling Data Collection Grant Applications (23 CFR 1300.12(b)(3) and Appendix B)

The BIL requires States to provide the application for the Section 405 and Section 1906 grants as part of the annual grant application. 23 U.S.C. 402(l)(1)(C)(iv). As in the past, NHTSA incorporates the requirements for the Section 405 and Section 1906 grants in subpart C and appendix B of part 1300. *See* 23 CFR 1300.12(b)(3). The specific requirements and comments for the national priority safety program and racial profiling data collection grants are discussed in more detail in the relevant sections, below.

5. Certifications and Assurances (23 CFR 1300.12(b)(4) and Appendix A)

As under MAP–21 and the FAST Act, NHTSA continues the requirement for States to submit certifications and assurances for all 23 U.S.C. Chapter 4 and Section 1906 grants, signed by the Governor's Representative for Highway Safety, certifying the annual grant application contents and providing assurances that the State will comply with applicable laws and regulations, financial and programmatic requirements and any special funding conditions. 23 CFR 1300.12(b)(4). The certifications and assurances are provided in appendix A to part 1300. NHTSA has proposed general updates to the certifications and assurances in appendix A to reflect current Federal requirements. Specifically, NHTSA has updated the Nondiscrimination certifications to reflect DOT Order 1050.2A, ''DOT Standard Title VI Assurances and Non-Discrimination Provisions.'' NHTSA also added a certification on conflict of interest, consistent with the requirement in 2 CFR 200.112. Neither certification creates a new requirement for States; instead, the certifications merely make clear the existing requirements that apply.

Finally, NHTSA proposes updates to the Section 402 requirements consistent with statutory changes in the BIL. NHTSA deletes the requirement that political subdivisions of the State be formally authorized to carry out local highway safety programs, consistent with the BIL's removal of that requirement at former 23 U.S.C. 402(b)(1)(B). However, as described below, this does not remove the requirement for political subdivision participation, which remains an important focus. NHTSA updates the certification regarding the traffic safety enforcement program to reflect the new statutory requirements at 23 U.S.C. 402(b)(1)(E). NHTSA adds the requirement that States (with the exception of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands) participate in the FARS. 23 U.S.C. 402(b)(1)(F)(vi). Finally, NHTSA amends the certification regarding automated traffic enforcement systems to reflect the changes in 23 U.C.S. 402(c)(4).

6. Review and Approval Procedures (23 CFR 1300.12(c))

The BIL provides that NHTSA must review and approve or disapprove an annual grant application within 60 days. 23 U.S.C. 402(l)(D). NHTSA proposes to implement this deadline and additionally proposes to provide procedures for NHTSA to request additional information from States if necessary for review. GHSA is correct in noting that the BIL has language specifically allowing the agency to request additional information in order to review the triennial HSP, but no similar language concerning the annual application. GHSA argued that requests

for additional information raise the risk of micromanagement. While NHTSA recognizes that the statute sets out a process, with timelines, for the agency to request additional information in the triennial HSP, it does not prohibit such inquiry in connection with the annual application, and we have a long-standing practice of seeking clarifications during review of State grant applications. These clarifications are necessary to ensure that the agency has sufficient information to approve State grant applications. The intent of these requests for clarification is not to micromanage State programs. Rather, without these clarifications States are more likely to be denied a grant or portion of a grant that, with the necessary clarification, would be approved. We therefore propose to provide for clarification in the annual grant application as well, though without the same strict time frames set out by statute for the triennial HSP. *See* 23 CFR 1300.12(c)(1).

D. Special Funding Conditions for Section 402 Grants (23 CFR 1300.13)

While Section 402 provides broad flexibility for States to use grant funds to conduct approved highway safety programs, it has long included some specific requirements related to use of funds. NHTSA's grant regulation previously included some, but not all, of these requirements in various parts of the regulation. In addition, the BIL added two new requirements regarding specific uses of grant funds. With this action, we propose to consolidate the statutory funding conditions for Section 402 grant funds into 23 CFR 1300.13 so that State recipients may see these statutory requirements in one place. As part of this effort, NHTSA proposes to delete Appendices C and D and to move those provisions (participation by political subdivisions and P & A costs, respectively) into the main body of the regulatory text. (23 CFR 1300.13(a) and (b)). In addition, NHTSA has added regulatory provisions to incorporate the statutory requirements related to use of grant funds for reducing marijuana-impaired driving, an unattended passengers program, use of funds to check for motorcycle helmet usage, a teen traffic safety program, and the prohibition on the use of grant funds for automated traffic enforcement systems. *See* 23 CFR 1300.13(c–g). States should note, however, that expenditures are still subject to all other relevant Federal funding requirements, including the requirements and cost principles contained in 2 CFR part 200 that all Federal grantees must follow.

1. Planning and Administration (P & A) Costs (23 CFR 1300.13(a))

In moving Appendix D (Planning and Administration (P & A) costs), into 23 CFR 1300.13(a), NHTSA has streamlined the regulatory language by removing duplicative language. The substance of the provision remains the same. Three commenters (GHSA, MN DPS, and WI BOTS) requested that NHTSA increase the percentage of funds that can be allocated to Planning and Administration (P & A) costs from 15% to 18% in order to cover increased costs due to the increase in grant funding provided by BIL, inflation, technological demands, and expenses associated with remote work. NHTSA notes that the significant increase in 402 funding provided by BIL provides a proportional increase in the total dollar value that is eligible to be used for P & A activities. We do not believe that an increase in the percentage of funds that can be used for non-programmatic activities is warranted at this time. However, if commenters provide additional data in support of this request, we will take it into consideration for the final rule.

2. Participation by Political Subdivisions (Local Expenditure Requirement) (23 CFR 1300.13(b))

NHTSA's highway safety grant program has included a statutory requirement that 40 percent of Section 402 grant funds apportioned to a State be expended by the State's political subdivisions to carry out approved local highway safety programs since the inception of the program with the passage of the Highway Safety Act of 1966.[25] Except for the addition in 1998 of the requirement that 95 percent of funds apportioned to the Secretary of the Interior be expended by Indian tribes,[26] the statutory requirement has been largely unchanged since that time. NHTSA incorporated the requirement into its regulations via regulatory text that has also remained largely unchanged since 1976.[27] NHTSA's regulatory construction of the requirement provided that States could meet the 40 percent required expenditure by political subdivisions either through direct expenditures by political subdivisions or through demonstration that the political subdivision had an active voice in the initiation, development and implementation of approved local highway safety programs. Appendix C to part 1300.

The BIL amended the statutory requirement underlying this provision by removing the requirement that the local highway safety programs funded with these funds be approved by the Governor. The existing grant regulation provides four avenues for States to demonstrate participation by political subdivisions: (1) direct expenditure, (2) active voice participation by the specific political subdivision, (3) active voice participation by other political subdivisions that is incorporated by request of a different political subdivision; and (4) request by a political subdivision as part of an approved local highway safety program. The statutory change would nullify the fourth avenue, significantly altering the construction of the requirement. In addition, NHTSA also received comments from both GHSA and the League of American Bicyclists related to this requirement. GHSA's comments focused on the difficulty States face in documenting active voice participation by political subdivisions in the expenditure of grant funds due to the large number of local subrecipients. It suggested that NHTSA allow States to meet this requirement through documentation at levels above the individual subrecipient level. It also requested that State-sponsored communication efforts, including those related to HVE campaigns, be allowed to count towards the 40 percent requirement. NHTSA recognizes that States face a large task in coordinating with so many political subdivisions; however, it was clearly the intent of Congress, sustained over decades, that State highway safety programs ensure that Federal funds make their way into the hands (and decision-making authority) of political subdivisions. The statutory requirement is focused on the expenditure of funds, which is not consistent with GHSA's recommendation to allow compliance with this requirement above the subrecipient level. Similarly, a State-sponsored communication effort, tied to a State HVE campaign, by definition, does not meet the condition that the funds be expended by political subdivisions. However, NHTSA recognizes that the existing regulatory requirement to demonstrate ''active voice'' participation may be unclear or confusing for States and political subdivisions. As described in more detail below, NHTSA is proposing a

[25] Public Law 89–564, 101 (Sept. 9, 1966), codified at 23 U.S.C. 402(b)(1)(B & C).

[26] *See* Public Law 105–178, 2001(d) (June 9, 1998).

[27] *See* ''Political Subdivision Participation in State Highway Safety Programs'' (41 FR 23949 (June 14, 1976)) which codified a previously uncodified directive, and, for the current regulatory text, appendix C to part 1300.

new framework for compliance with this local expenditure requirement.

Offering a different perspective, the League of American Bicyclists recommended that NHTSA require additional reporting from States on how they meet the local expenditure requirement, including demonstration of community support for the work performed and proof of coordination. While NHTSA agrees that States must provide evidence that political subdivisions directed the expenditure of funds to qualify under this requirement, requiring additional demonstration of community support in order to qualify for this requirement exceeds NHTSA's statutory authority and could impose an unnecessary burden on the communities it is intended to support.

As a result of the BIL's amendments to this requirement, the new triennial framework for highway safety programs, NHTSA's experience administering this requirement, and comments received through the RFC (addressed below), NHTSA proposes a new conceptualization of this statutory requirement. Under the proposed rule, States would show compliance with the statutory local expenditure requirement either through direct expenditure by political subdivisions (*i.e.,* the political subdivision is a subrecipient of grant funds) or through expenditures by the State on behalf of the political subdivision. Where a State relies on State expenditures to meet this requirement, it would have to show evidence that the political subdivision was involved in identifying its traffic safety needs and provided input into the implementation of the activity.

While the statute provides that 40 percent of funds must be expended by the political subdivisions (or 95 percent, in the case of tribal governments), NHTSA recognizes that in some cases it may be advantageous for both the State and the political subdivisions to allow States to expend grant funds on behalf of the political subdivisions. This would enable smaller political subdivisions that may have fewer resources to direct grant funds towards their highway traffic safety needs and would also allow political subdivisions to benefit from the economies of scale that a State-run program can provide. In order to provide the most flexibility for political subdivisions and States, consistent with the statutory limitations, NHTSA proposes to allow expenditures by States to count towards the 40 percent local expenditure requirement so long as there is adequate evidence of the political subdivision's role in the process leading to implementation of the activity. States may demonstrate that expenditures meet this requirement in two ways.

First, the State may provide evidence that the political subdivision was involved in the State's highway safety program planning processes. States can incorporate this into existing processes, such as the public participation component of the triennial HSP, the planning process to determine projects for annual applications, or during the State's ongoing program planning processes. The State would then enter into projects based on the identification of need and implementation notes by the political subdivision during the planning process. Finally, to ensure that the activities implemented do meet the needs of the specific political subdivision, the State must obtain written acceptance by that political subdivision for the project that the State is implementing.

Second, the State may demonstrate that a political subdivision directed the expenditure of funds through a documented request by the political subdivision for an activity to be carried out on its behalf. The request need not be a formal application, but must contain a description of the political subdivision's problem identification and a description of how or where the activity should be deployed within the political subdivision.

During NHTSA's administration of this requirement over time, many States and subrecipients have expressed confusion about which entities qualify as political subdivisions. To resolve this confusion, NHTSA proposes to add a definition of political subdivision to the definitions at 1300.3. In drafting this definition, NHTSA consulted regulatory definitions by other Federal agencies and made adjustments to tailor the definition to the highway traffic safety program.

In order to streamline the regulation, NHTSA proposes to move the Participation by Political Subdivisions regulatory text out of the Appendices and into the body of the regulation at 23 CFR 1300.13(b), along with the other funding conditions for Section 402 grants.

3. Congressionally Specified Uses of Funds (23 CFR 1300.13(c–g)

The BIL provides new and amended specified uses of Section 402 grant funds. First, the BIL requires States that have legalized medicinal or recreational marijuana to consider implementing programs to educate drivers and reduce injuries and deaths resulting from marijuana-impaired driving. 23 U.S.C. 402(a)(3). Second, the BIL requires each State to use a portion of Section 402 grant funds to carry out a program to educate the public about the risks of leaving a child or passenger unattended in a vehicle. 23 U.S.C. 402(o). Finally, as explained further below, the BIL amended the prohibition on funding automated traffic enforcement systems. 23 U.S.C. 402(c)(4).

GHSA submitted comments regarding the new requirements related to funding programs related to marijuana-impaired driving and unattended passengers. GHSA noted that all States currently have efforts underway related to drug-impaired driving, so it should not be difficult for them to comply with the new requirement. GHSA asked that NHTSA not specify a required minimum amount that States must expend on unattended passenger awareness because such activities may be tied into larger safety campaigns, so long as States can show that they are implementing a sound countermeasure strategy. NHTSA agrees and does not propose to require a specific monetary amount or specific activities that States must implement to satisfy this requirement. However, States will need to clearly state in their triennial HSPs and annual grant applications which countermeasure strategies and projects address this requirement.

GHSA requested that NHTSA reconsider the decision, formalized in a memo from the Chief Counsel on June 26, 2018, that NHTSA's statutory authority under Section 4007 of the FAST Act prohibits the use of NHTSA grant funds to conduct motorcycle helmet use surveys. As the legislative prohibition has not been rescinded, NHTSA does not have authority to allow NHTSA funds to be used for statutorily-prohibited uses.

The FAST Act prohibited States from expending Section 402 grant funds on automated traffic enforcement systems (ATES) and required each State to either certify that ATES were not used on any public roads within the State or to conduct a biennial ATES survey. The BIL provides a new exception to the prohibition on ATES, allowing States to use Section 402 grant funds to carry out a program to purchase, operate, or maintain an ATES in a work zone or school zone, consistent with guidelines established by the Secretary. The BIL also removed the certification and biennial survey requirement. This action proposes to incorporate these statutory changes. Three commenters (GHSA, Vision Zero Network, and NACTO) requested simplified and updated guidance for the use of ATES. FHWA publishes ATES guidelines in

coordination with NHTSA.[28] The agencies are currently in the process of revising the Speed Enforcement Camera Systems Operational Guidelines to reflect the latest automated speed enforcement technologies and operating practices. NHTSA notes that BIL limits the eligible use of ATES to school zones and work zones and State or local laws may provide further clarifications and/or restrictions on their use. NHTSA notes that while the statute sets location restrictions on ATES use associated with school and work zones, it does not condition their use in other ways such as by establishing a specific time or month of use. NHTSA looks forward to seeing how States might strategically employ ATES to support and improve programs, and will work with States that seek to implement these programs in an effective and equitable manner.

While one commenter suggested that pedestrians and bicyclists receive a share of all funding at least equal to the proportion of fatalities on the network (Rebecca Sanders), NHTSA does not have the authority to require this type of funding directive. States determine grant fund expenditures on various highway safety problems within their borders based on data. However, the BIL does designate that seven percent of the National Priority Safety Programs be expended on nonmotorized safety grants, and today's proposal incorporates this requirement.

E. Information and Data for Consideration

The BIL further provides that in order to be approved, a State highway safety program must support data collection and analysis to ensure transparency, identify disparities in law enforcement, and inform traffic enforcement policies, procedures, and activities. 23 U.S.C. 402(b)(1)(E). As an anonymous commenter noted, better records and data are important to efforts to increase safety. NHTSA received many comments relating to data sources that States should be required to consult or report to NHTSA. Some commenters specified particular documents, while most recommended the same data be included in each submission to NHTSA or did not specify. Many commenters tied their suggestions to improved transparency. In addition, many commenters recommended that NHTSA initiate or require States to work toward improved consistency in their data systems. As these comments appear to be broadly focused, we address them here as a group, in the context of the triennial framework as a whole.[29]

GHSA, WI BTS, 5-State DOTs; MN DPS all recommended that NHTSA provide flexibility as to which data sources States are required to consult in order to meet their planning, application and reporting requirements for NHTSA highway safety grant funds. These commenters explained that data system resources and capabilities, including the specific data captured and how it is shared, vary from State to State and that State Highway Safety Offices have limited control over most, if not all, of the data systems involved in assessing highway safety problems. They specifically noted that States are at varying levels of readiness to meet any potential requirement for universal traffic stop data, particularly because it depends on getting buy-in from law enforcement agencies at all levels of government, not just at the State level. (*See* id.) These commenters recommended that, instead of setting specific requirements on data sources and data points that States must submit, NHTSA should provide flexibility to States to use the data that are available to them and to allow States to continue efforts to improve data collection and data systems.

Two groups, NACTO and NASEMSO, appear to acknowledge that State data capabilities are not yet at a level to provide all the data that they would like to see reported in State applications and annual reports. NACTO recommended that States work to enhance data collection and reporting procedures, including through requiring all State and local law enforcement agencies to collect and publicly report data for all stops in order to ensure that enforcement actions have a demonstrable public safety impact. Similarly, NASEMSO recommended that States identify the steps that they are taking in preparation for a forthcoming universally unique identifier (UUIS) that would link EMS patient care reports and trauma registry records to crash records. As noted below, NHTSA cannot require States to do so, but these may be eligible uses of grant funds.

NASEMSO recommended that NHTSA require States to provide baseline data from traditional sources such as State crash, vehicle, driver, roadway, and citation & adjudication databases in order to ensure projects are funded in the areas of most need. This is the underlying rationale for the requirement for States to conduct data-driven problem identification in the triennial HSP (see 23 CFR 1300.11(b)(1)). NHTSA notes, however, as described below, that States should consider not only traditional highway safety data sources, but also other data that may provide useful information.

In general, NHTSA seeks to balance the need for data and other information that will help the States and the public understand how and where NHTSA grant funds are being used and the outcomes of the highway safety grant programs being carried out with Federal funds with the need to minimize administrative burdens on both States and their subrecipients so that they can focus efforts on implementing needed highway safety programs. As is described more fully in the sections of this preamble that discuss the proposed requirements for the triennial HSP, annual grant application, and annual report, the information that NHTSA is proposing that States submit in those documents is based on statutory requirements from Section 402 and Section 405, administrative grant requirements in the OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and, in limited instances, the agency's experience with fielding requests for information from Congress and auditors. *See* 23 CFR 1300.11, 1300.12, and 1300.35. Except for limited circumstances, including the common performance measures that require the use of FARS data, NHTSA does not prescribe specific data sources that States must provide or consult. Instead, NHTSA proposes that States use the best data available to them to conduct problem ID, set performance targets, and assess their progress in meeting those targets. States are also encouraged to think critically about how all available data can and should be used to analyze their programs beyond the data that is specifically required. Further, NHTSA encourages States to consider ways to improve State data systems in order to increase the data that are available to them in conducting

[28] Speed Enforcement Camera Systems Operational Guidelines (DOT HS 810 916) (2008), *available at https://safety.fhwa.dot.gov/speedmgt/ref_mats/fhwasa1304/resources/Speed%20Camera%20Guidelines.pdf* and Red Light Camera Systems Operational Guidelines (FHWA–SA–05–002) (2005c), *available at https://safety.fhwa.dot.gov/intersection/signal/fhwasa05002.pdf.*

[29] A couple of commenters suggested actions that NHTSA could take to improve data availability. For example, the Center for Injury Research and Prevention suggested that NHTSA should use grant funds to incentivize States to provide access to State data to researchers. NHTSA does not have statutory authority to provide such an incentive. Two other commenters suggested areas of study that NHTSA could undertake—applied research and guidelines to expand use of NEMSIS (Drew Dawson) and a national study on the State of data collection and analysis across the country (TEC). As this rule is targeted toward the grant program requirements for States, not NHTSA's research, these comments are out of scope of the rule.

problem ID and setting performance targets. NHTSA encourages States to take full advantage of the State traffic safety information system improvements grants (23 U.S.C. 405(c) and 23 CFR 1300.22) and the racial profiling data collections grants (Section 1906 and 23 CFR 1300.29), which are intended to support those efforts.

Numerous commenters provided specific recommendations for data that NHTSA should require States to submit or otherwise share with the public. While NHTSA proposes to allow States flexibility to use the data sources that will best inform their highway safety work, NHTSA will relay the recommendations of the commenters below so that States may have the advantage of these diverse suggestions.

The League of American Bicyclists and the TEC both recommended that States should collect and report demographic data in order to identify disparities in traffic safety and in the application of countermeasures, including law enforcement. Both groups recommended that States consult demographic data on traffic stops and citations. The TEC further recommended that States consult a variety of data sources, including traffic stops, citation and adjudication systems, and crash records, aggregated by race, income, geography and other relevant factors in order to inform the State's problem identification and to identify traffic safety disparities. The OR DOT similarly recommended that States add human characteristics to existing crash data by including demographic data, such as income and race, in States' problem identification and program planning. Safe Kids Worldwide and Rebecca Sanders recommended that States include age and race in assessments of fatality and injury numbers. NHTSA agrees that demographic information is invaluable to State highway safety problem identification and program planning. We encourage States to think expansively and seek out all available data sources. However, given the broad reach of the highway safety programs, NHTSA does not propose to require States to provide demographic information for all projects, such as a Statewide paid media campaign, though we do encourage States to provide demographic information as part of a project description where it is relevant. (*See* 23 CFR 1300.12(b)(2))

Other commenters stressed the importance of including data elements relating to the built environment in order to better understand traffic safety needs. The League of American Bicyclists and Rebecca Sanders both recommended that States look at road design, road speed, and the presence of ped/bike facilities. Rebecca Sanders further recommended that States break down crash data by mode (*i.e.,* driving, bicycling, pedestrian) and severity of injury along with demographic information. The League of American Bicyclists suggested more granularity for assessing data for fatalities and injuries of vulnerable road users; specifically, looking at the percentages of fatalities and injuries that are represented by vulnerable road users and taking note of the presence of ped/bike facilities and lighting. NHTSA agrees that data elements related to the roadways on which crashes occur are a valuable part of State problem identification and program planning, and encourages States to consider all available data to better understand the specific traffic safety problems in the State.

Several commenters recommended that States either consider or be required to use a combination of data from law enforcement crash records, NEMSIS and the State trauma registry, both in recognition of the role that post-crash care plays in State highway traffic safety and to provide a better understanding of all parts of the system that play a role in State fatality and serious injury rates. (*See* Brian Maguire, et. al, Drew Dawson, NASEMSO, and an anonymous commenter.) NHTSA agrees that NEMSIS is a valuable resource and encourages States to make use of it.

NASEMSO submitted several recommendations for detailed project-related data that it believes NHTSA should require States to provide. This includes information on trainings funded by the grant, including number of enrollments, number of participants who completed the course, and a delta that shows the knowledge change for participants. NASEMSO also recommended that NHTSA require measures that show the penetration of State programs, such as the percentage of all target organizations that are eligible to apply for grants, the percentage of organizations that actually applied, the percentage of applicants who received a grant, and the percent of awardees who completed their grant activities. Further, NASEMSO recommended that NHTSA seek equipment availability and usage rate information, including the percentage of vehicles or shifts for which equipment was used and the type and frequency of use for all equipment used to link EMS, trauma and crash records data. Brian Maguire, et. al recommended that NHTSA require States to provide data regarding EMS professionals in the annual report. NHTSA agrees that much of this information could be informative for States and their subrecipients in implementing and supporting their programs or projects, and some of this information (such as equipment use) may be required to support allowability of certain uses of funds during the life of the grant. However, NHTSA believes that requiring this level of information in application or annual report documents would unduly burden States and their subrecipients. NHTSA is especially concerned that this level of reporting would severely discourage smaller or less resourced, often community-led groups, including many EMS organizations, from seeking highway safety grant funds from States. We therefore decline to require this level of information in the proposed regulation.

Finally, Rebecca Sanders recommended that States provide information on community outreach and feedback, including use of community perception surveys. States may consider gathering and using this sort of information.

IV. National Priority Safety Program and Racial Profiling Data Collection (Subpart C)

The Section 405 and Section 1906 grant programs provide incentive grants that focus on National priority safety areas identified by Congress. Under this heading, we describe the requirements proposed in today's action for the grants under Section 405—Occupant Protection, State Traffic Safety Information System Improvements, Impaired Driving Countermeasures, Distracted Driving, Motorcyclist Safety, Nonmotorized Safety, Preventing Roadside Deaths, and Driver and Officer Safety Education, and the Section 1906 grant—Racial Profiling Data Collection. The subheadings and explanatory paragraphs contain references to the relevant sections of this NPRM where a procedure or requirement is implemented, as appropriate.

NHTSA received several comments that apply to all Section 405 and Section 1906 grants. GHSA suggested that, in order to decrease burden, NHTSA allow States to certify compliance with Section 405 eligibility requirements that remain static rather than restating information from prior years. NHTSA declines to do so. Congress authorized the Section 405 grants as annual grants with an annual grant application and annual qualification. NHTSA therefore must review full applications for the Section 405 grants every fiscal year. Where specific Section 405 grants allow for a specific criterion to serve as a qualifying criterion in multiple years of

grant applications, NHTSA has noted so specifically in that section and laid out what the State must provide to incorporate a prior year response. Most of the Section 405 grant applications, however, require updated information based on current data, updated program plans, or evidence of recent progress.

GHSA urged NHTSA to create a complete qualification checklist for each Section 405 grant program in order to assist States in developing and providing the required information. Appendix B is formatted to serve as the application framework for States and provides a list of application requirements at a high, checklist-style level. However, for full details on application criteria and requirements, NHTSA stresses that States must read the relevant statutory and regulatory text, which provide all application criteria. In rare occasions, the preamble may provide additional clarification, but NHTSA has striven to ensure that the regulation is an easy-to-read, one-stop resource for States to consult in developing and submitting grant applications.

GHSA requested that appendix B be amended to provide States with a checklist of potential reasons for not applying for a grant under Section 405 so that that information can be captured in the grant determination chart that NHTSA publishes online consistent with Section 4010(2) of the FAST Act, as amended by the BIL.[30] The statute requires that NHTSA publish a list of States that were awarded grants, States that applied but did not receive a grant, and States that did not apply for a grant under each section of Section 405. It further requires that NHTSA publish a list of all deficiencies that made a State ineligible for a grant for which it applied. It is not possible for NHTSA to create a list of every reason a State may not apply, nor does the statute require it. We therefore decline to make this change.

Advocates recommended that NHTSA provide States with a full explanation when they fail to qualify for a grant and to provide guidance on how to meet qualifying criteria. As explained above, NHTSA is required to publish a list of all deficiencies that caused a State to fail to qualify for a grant. In addition, NHTSA has been and remains willing to provide technical assistance to States who seek to resolve any deficiencies identified for future grant cycles.

ESS encouraged NHTSA to express the importance of fully investing Section 405 funds for the Congressionally expressed purposes and to streamline and make efficient the administration of the Section 405 grants. Congress authorized the Section 405 grant programs in response to identified National highway safety priority areas and prescribed allowed uses of funds that address those areas. NHTSA encourages States to use all Section 405 grant funds available.

A. General (23 CFR 1300.20)

Some common provisions apply to most or all of the grants authorized under Sections 405 and 1906. The agency proposes changes to only two paragraphs of this section.

1. Definitions (23 CFR 1300.20(b))

The agency proposes to move the definition of personal wireless communications device to 23 CFR 1300.24—distracted driving grants—for ease of reference.

2. Transfer of Funds (23 CFR 1300.20(e))

As described in more detail in the relevant grant programs, below, new grant programs and amendments to existing grant programs have led to more diversity in the statutory formulas that NHTSA applies for award determinations under Section 405 and Section 1906. As a result, NHTSA proposes to add provisions setting out the statutory award determination information in each grant program, as opposed to in this section. Therefore, the agency proposes to retitle this paragraph as Transfer of Funds and to delete paragraphs 1 and 2.

The 5-State DOTs requested that NHTSA continue to transfer any remaining Section 405 grant funds to Section 402. NHTSA will continue to do so consistent with statute. 23 U.S.C. 405(a)(10) and 23 CFR 1300.20(e). Currently, the regulation provides that NHTSA shall distribute remaining funds in proportion to the amount each State received under Section 402 for fiscal year 2009. In this action, NHTSA proposes to update the regulation to require distribution in proportion to the amount each State received under Section 402 for fiscal year 2022. This will ensure that distribution is based on more current population and public road mileage and matches the distribution basis that Congress provided in the new grant programs. *See* 23 U.S.C. 405(h & i).

As in previous authorizations, in the event that all grant funds authorized for Section 1906 grants are not distributed, the BIL does not authorize NHTSA to reallocate unawarded Section 1906 funds to other State grant programs. Rather, any such funds will be returned for use under 23 U.S.C. 403, and do not fall within the scope of this proposal.

B. Maintenance of Effort (23 CFR 1300.21, 1300.22 and 1300.23)

Under the FAST Act, States were required to provide an assurance that they would maintain their aggregate State-level expenditures (Maintenance of Effort, or MOE). The BIL removed this requirement and with this action, the agency proposes to remove the requirement from the regulatory text as well. This would resolve the comment from the 5-State DOTs requesting that NHTSA remove the MOE requirement.

GHSA requested that NHTSA provide clarity on how the FAST Act's MOE requirement applies to oversight of existing grant funds. Since the BIL amendments take effect for the FY24 grant cycle, FAST Act requirements (including MOE) will continue to apply to FY22 and FY23 grant funds.[31] NHTSA waived the MOE requirement for FY20 and FY21 grant funds consistent with our authority under the CARES Act (Pub. L. 116–136, Division B, 22005(a)).[32]

C. Occupant Protection Grants (23 CFR 1300.21)

The BIL continues the MAP–21 and FAST Act Occupant Protection Grants with three substantive amendments. The BIL removed the maintenance of effort requirement that was in effect under the FAST Act, extended the period of time between occupant protection assessments for the assessment criterion for lower seat belt use states, and expanded the allowable uses of funds under this grant program. This NPRM proposes amendments to the existing regulatory language to implement those changes and to update existing requirements to align with the new triennial HSP and annual application framework.

NHTSA received comments related to the Occupant Protection Grants from four commenters.[33] Several comments related to general program administration. CIRP expressed support

[30] Codified as a note to 23 U.S.C. 405.

[31] Appropriations restrictions in FY 22 prohibit NHTSA from spending appropriated funds to enforce the maintenance of efforts requirements set forth in 23 U.S.C. 405(a)(9); however, those requirements still apply to States and may be identified by other auditors. See Consolidated Appropriations Act, 2022, Public Law 117–103, tit. I, div. L, 142, 136 Stat. 49, 709 (Mar. 15, 2022).

[32] *See* NHTSA's waiver notices, dated April 9, 2020 and April 29, 2021, respectively for the waivers related to FY20 and FY21 grant funds. *Available at https://www.nhtsa.gov/coronavirus-resources-nhtsa.*

[33] GHSA, Center for Injury Research and Prevention at Children's Hospital of Philadelphia (CIRP), SafetyBeltSafe U.S.A., and Safe Kids Worldwide.

for prioritization of child traffic safety through evidence-based interventions. SafetyBeltSafe U.S.A. provided several suggestions for NHTSA's child occupant protection program, including a recommendation that NHTSA increase age and weight limits for child safety seats. NHTSA's Child Car Safety Campaign emphasizes the importance of children riding in a seat appropriate for their age and size and encourages parents to maximize the safety benefits of each seat by having their child remain in each seat up to the manufacturers' maximum weight or height limits. SafetyBeltSafe U.S.A. stated that passenger safety advocates' experience is that 90 percent of families have inadvertent errors in child restraint use, and asked NHTSA to adjust the agency's messaging to reflect this rate rather than the 46 percent rate of misuse currently cited by NHTSA. In 2015, NHTSA conducted the National Child Restraint Use Special Study, a nationally representative survey that applied a consistent definition of ''misuse'' to find the 46 percent misuse rate.[34] Current data from the National Digital Car Seat Check Form, a free and publicly available resource, finds a 59 percent rate of misuse.[35] NHTSA agrees that families need to be made aware of the frequency of unknowing child restraint misuse, and provides extensive support for child passenger safety programs, including through the Occupant Protection Grant Program and through NHTSA's Child Car Safety Campaign. SafetyBeltSafe U.S.A. also recommended that the agency allow a two-year grant in order to allow more opportunity for community engagement in the occupant protection program. While the NHTSA grant program is, by statute, an annual grant program, States may enter into multi-year agreements with subrecipients subject to the proviso that later year funding is contingent on availability of funds.

1. Qualification Criteria for a High Seat Belt Use Rate State (23 CFR 1300.21(d))

To qualify for an Occupant Protection grant, all States must meet several requirements. As a result of the new triennial HSP framework created by the BIL, NHTSA made some conforming amendments to these requirements. In addition to replacing ''planned activities'' with ''projects,'' as described in more detail above, NHTSA also proposes to clarify that the State's occupant protection plan must be updated annually. The Section 405 grants are annual grants, so NHTSA interprets all application requirements to be annual requirements. That said, not all components of the occupant protection plan must be updated annually. A State could rely on the problem ID, performance measures, targets, and countermeasure strategies laid out in its triennial HSP for the period covered by the triennial HSP. In that case, it would only be required to update the projects component of the occupant protection plan on an annual basis.

2. Qualification Criteria for a Lower Seat Belt Use Rate State (23 CFR 1300.21(e))

To qualify for an Occupant Protection Grant, all States must meet several requirements, as noted above. In addition to meeting the requirements applicable to all States, States with a seat belt use rate below 90 percent must meet at least three of six criteria to qualify for grant funds. The BIL amended one of those criteria, the requirement to complete an assessment of the State's occupant protection program by expanding the time period between assessments from three to five years. In this action, the agency proposes to amend the regulatory requirement to reflect this statutory change.

3. Award Amounts (23 CFR 1300.21(f)

As mentioned above, NHTSA proposes to move the award amount provisions from 23 CFR 1300.20 into each individual grant program. NHTSA proposes to incorporate the statutory award allocation provision without change.

4. Use of Grant Funds (23 CFR 1300.21(g))

The BIL made amendments to increase the emphasis on child passenger safety programs aimed at serving low-income and underserved populations. It did so by requiring that all States, including high belt use States, spend at least 10 percent of grant funds to carry out child passenger safety program activities aimed at serving low-income and underserved populations and adding eligible uses for such programs.

Specifically, all States are now required to use at least 10 percent of their occupant protection funds to carry out specified activities related to child passenger safety programs aimed at serving low-income and underserved populations. High belt use rate States may continue to use the remaining 90 percent of their occupant protection funds for any project or activity eligible for funding under section 402. Low belt use rate States must use the remaining 90 percent of their occupant protection funds for eligible occupant protection activities.

GHSA recommended that NHTSA not set out a strict definition of ''low-income and underserved populations'', but instead allow States to articulate their rationale for their own definition because data sources and populations may vary from State to State. While NHTSA agrees that data sources and populations vary from State to State, the agency proposes to provide a high-level definition that will provide States with guidance in identifying the specific populations within their jurisdiction.

SafetyBeltSafe U.S.A. and Safe Kids Worldwide submitted comments expressing support for BIL's emphasis on underserved populations and encouraged broader community engagement in child occupant protection. Both commenters suggested increased use of community members as CPS technicians in order to better engage communities, including low-income and underserved populations, in child passenger safety. Safe Kids Worldwide suggested the agency and States work with stakeholders to expand virtual child passenger safety checks. NHTSA encourages States to consider these recommendations when planning their child passenger safety program activities.

SafetyBeltSafe U.S.A. commented that the agency should avoid ''siloing'' interconnected safety issues such as occupant protection and impaired driving and that occupant protection programs should consider more categories of affected populations, such as pregnant people. NHTSA agrees that traffic safety issues may intersect or be interconnected and that countermeasure strategies may need to go beyond strict program boundaries. Occupant Protection grant funds may be used only for the specified occupant protection uses laid out in statute and should consider all relevant aspects of the State's occupant protection problem ID, including, where applicable, any contributing factors.[36] If the specified uses of Section 405(b) grant funds are too narrow to cover a specific project, States should consider whether Section 402 grant funds may be used.

[34] *See https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812157.*

[35] *See https://carseatcheckform.org/national-dashboard.*

[36] However, high belt use rate States may, consistent with statute, use up to 90 percent of Occupant Protection Grant funds on Section 402 uses. 23 U.S.C. 405(b)(4)(b).

D. State Traffic Safety Information System Improvements Grants (23 CFR 1300.22)

The BIL continues, with some changes, the traffic safety information system improvements grant program originally authorized under SAFETEA–LU and extended through MAP–21 and the FAST Act. The purpose of this program remains to support State efforts to improve the data systems needed to help identify priorities for Federal, State and local highway and traffic safety programs and to evaluate the effectiveness of such efforts, to link intra-State data systems, to improve the compatibility and interoperability of State data systems with national data systems and the data systems of other States, and to enhance the ability to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances. (23 CFR 1300.22(a)).

As explained in more detail below, the BIL streamlined the application requirements by allowing States to submit a certification regarding the State traffic records coordinating committee (TRCC) and the State traffic records strategic plan and removing the FAST Act requirement that States have an assessment of their highway safety data and traffic records system. States must still submit documentation demonstrating a quantitative improvement in relation to a significant data program attribute of a core highway safety database. The BIL removed the maintenance of effort requirement that was in effect under the FAST Act. It also expanded the allowable uses of funds under this grant program.

Finally, while not addressed in the regulatory text of this NPRM, the BIL also provided authorization for NHTSA to provide technical assistance to States with respect to improving the program attributes of State safety data. States are encouraged to reach out to their Regional Office for more information on the types of assistance available and how to request that assistance.

In response to the agency's RFC, commenters generally expressed support for fully implementing and encouraging BIL's expansion of allowable costs under this grant program. Those comments are addressed under the relevant heading below.

1. Certification (23 CFR 1300.22(b)(1))

The role of the TRCC in the State Traffic Safety Information System Improvements Grant program under this NRPM remains the same as it was under the FAST Act, but the application requirements have been streamlined. The BIL streamlined the application requirements by allowing States to submit certifications relating to the structure and responsibilities of the State traffic records coordinating committee (TRCC) and the contents of the State traffic record strategic plan. NHTSA proposes to adopt those changes in this NPRM. While States are still responsible for ensuring that the TRCC and strategic plan meet grant eligibility requirements, and these requirements may be subject to NHTSA oversight activities, States are no longer required to provide NHTSA with supporting documentation at the time of application.

State must still have a traffic records strategic plan that has been approved by the TRCC and describes specific quantifiable and measurable anticipated improvements in the State's core safety databases. Previously, States requested guidance from NHTSA on traffic records strategic planning. In response, NHTSA developed a practical guide titled ''State Traffic Records Coordinating Committee Strategic Planning Guide'' (DOT HS 812 773a) [37] that States are encouraged to consult for practical, replicable processes for developing and implementing effective strategic plans.

2. Quantitative Improvement (23 CFR 1300.22(b)(2))

The BIL retained the requirement that States demonstrate quantitative progress in a significant data program attribute of a core highway safety database. This NPRM proposes no substantive changes to this application criteria. However, based on prior questions from States, NHTSA would like to clarify that a State need only submit required documentation demonstrating quantitative improvement in a single data attribute of a core highway safety database.

NHTSA continues to strongly encourage States to submit one or more voluntary interim progress reports to their Regional office prior to the application due date documenting performance measures and supporting data that demonstrate quantitative progress in relation to one or more of the six significant data program attributes. However, Regional office review of an interim progress report does not constitute pre-approval of the performance measure for the grant application.

[37] The guide is *available at https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812773A.*

5. Award Amounts (23 CFR 1300.22(c))

As mentioned above, NHTSA proposes to move the award amount provisions from 23 CFR 1300.20 into each individual grant program. NHTSA proposes to incorporate the statutory award allocation provision without change.

6. Use of Grant Funds (23 CFR 1300.22(d))

Four commenters addressed the use of Section 405(c) grant funds. GHSA expressed support for the expanded use of funds and specifically noted the new provisions allowing purchase of equipment for use by law enforcement for near-real time electronic reporting of crash data. WI BOTS similarly encouraged use of Section 405(c) grant funds to improve citation and crash reporting. GHSA also requested that NHTSA revise the guidance it previously issued on expenditures under the Section 405(c) grant program. The agency will review whether it needs to rescind or revise the guidance after this rule is finalized. Two commenters (FL DOH and NASEMSO) emphasized the importance of BIL's addition of the National Emergency Medical Services Information System (NEMSIS) into the Section 405(c) grant statute and encouraged use of Section 405(c) grant funds to make data quality improvements, expand access, and support applied research using NEMSIS data. The IAFC encouraged NHTSA to promote greater direct access to NEMSIS data by EMS practitioners. The regulation mirrors the BIL's inclusion of NEMSIS as a traffic safety data system.

As the commenters noted, the BIL expanded the allowable uses of grant funds awarded under this paragraph by specifying several additional allowable uses of funds. This NPRM proposes to incorporate the allowable uses of funds directly from the statute. States should note that the statute, as well as this NPRM, provides that these specified allowable uses are only allowable to the extent that they make data program improvements to core highway safety databases (including crash, citation and adjudication, driver, EMS or injury surveillance system, roadway and vehicle databases) in one of the significant data program attributes (*i.e.,* accuracy, completeness, timeliness, uniformity, accessibility or integration). For example, while the statute provides that States may use grant funds to purchase technology for use by law enforcement for near-real time, electronic reporting of crash data, those purchases must be tied to quantifiable, measurable progress in a program

attribute (*e.g.,* timeliness) of a core highway safety database (*e.g.,* State crash data system).

E. Impaired Driving Countermeasures Grants (23 CFR 1300.23)

The impaired driving countermeasures grant program was created by the Drunk Driving Prevention Act of 1988 and codified at 23 U.S.C. 410. As originally conceived, States could qualify for basic and supplemental grants under this program. Since the inception of the Section 410 program, it has been amended several times to change the grant criteria and grant award amounts. With MAP–21, the impaired driving countermeasures grant program was consolidated into one grant program with other traffic safety grants and codified at 23 U.S.C. 405. The FAST Act made only targeted amendments to the existing grant program under MAP–21, adding flexibility to a separate grant program for States with mandatory ignition interlock laws and creating a new grant program for States with 24–7 sobriety programs.

With the recent passage of the BIL, additional targeted amendments were made to the program with the most significant changes occurring to the interlock grant program that include additional means of compliance and a use of funds section that adds several additional funding categories.

The average impaired driving fatality rate, the basis for most grant awards under this section, refers to the number of fatalities in motor vehicle crashes in a State that involve a driver with a blood alcohol concentration of at least 0.08 percent for every 100,000,000 vehicle miles traveled (VMT). Rate determinations based on FARS data from the most recently reported three calendar years for a State are then averaged to determine a final rate. These determinations are used to identify States as either low-, mid- or high-range States in accordance with the BIL requirements. The agency expects to make rate information available to the States by January each year. If there is any delay in the availability of FARS data in a given year such that it may have an effect on the awarding of grants, the agency may consider allowing the use of rate calculations from the preceding year.

The BIL continues to use the same definitions for low-, mid-, and high-range States. As the agency has noted previously, the agency will not round any rates for the purposes of determining how a State should be classified among these ranges.

1. Definitions (23 CFR 1300.23(b))

The agency proposes to slightly amend the definition of a 24–7 sobriety program to note that State or local courts can carry out a program, consistent with the BIL. 23 U.S.C. 405(d)(7)(A). The agency also proposes to delete the definitions for alcohol and drugs. These definitions were carried over from prior authorizations and are not applicable to these grant requirements. As a basis for the use of grant funds under this section, the agency has deferred to the applicable State law definitions and how the State applies the terms to define various offenses for many years. No changes to any other definitions are proposed for this section.

2. Qualification Criteria for a Low-Range State (23 CFR 1300.23(d)

States that have an average impaired driving fatality rate of 0.30 or lower are considered low-range States. As noted above, the agency will inform each State that qualifies for a grant as a low-range State. These States are not required to provide any additional information in order to receive grant funds. However, States will continue to be required to provide an assurance that they will use grants funds awarded under this section only for the implementation and enforcement of programs authorized under the statute.

The above requirements that apply to low-range States are the minimum requirements that apply to all States that receive a grant under this section.

3. Qualification Criteria for a Mid-Range State (23 CFR 1300.23(e))

States that have an average impaired driving fatality rate that is higher than 0.30 and lower than 0.60 are considered mid-range States. In accordance with the statutory requirements, States qualifying as mid-range States are required to submit a statewide impaired driving plan that addresses the problem of impaired driving. The plan must have been developed by a statewide impaired driving task force within the three years prior to the application due date. If the State has not developed and submitted a plan that meets the requirements at the time of the application deadline, then it must provide an assurance that one will be developed and submitted to NHTSA by August 1 of the grant year. Consistent with the statute, this assurance-based method of compliance is only available during the first year of the grant, covering fiscal year 2024 grants only. No assurance-based compliance is available after the first year, regardless of circumstance. If the State fails to submit the plan related to the first-year grant, the agency will seek the return of any grant funds that the State qualified for based on its assurance that it would submit the plan by the deadline, and will redistribute the grant funds to other qualifying States under this section.

In accordance with the BIL, the agency has reviewed the requirements associated with the impaired driving task force and statewide impaired driving plan and determined that some changes are necessary. The proposed changes recognize the continuing serious problem of impaired driving on our nation's roadways and the need to ensure that the approaches taken to combat the problem are sufficiently comprehensive.

For the statewide impaired driving plan, the plan continues to be organized in accordance with the general areas laid out in NHTSA's Uniform Guidelines for State Highway Safety Programs No. 8—Impaired Driving. The proposed changes to the plan requirements make clear that program management and strategic direction, as well as community engagement, are specific requirements. Although these components are features of the existing Uniform Guideline and some States have included specific related sections in their existing statewide plans, the agency seeks to reinforce the importance of these areas to the development of a comprehensive approach to the problem of impaired driving. Program management and strategic direction, in part, cover things like the development of management policies and procedures that ensure program activities are equitably and effectively undertaken and that the activities pursued have maximum value to the public. These policies also focus on identifying needs in the State to ensure sufficient funding and staffing exist to support the impaired driving activities identified. In addition, the proposal adds community engagement as a specific part of the prevention section. Although this approach follows the Uniform Guideline, States are free to identify community engagement as a separate section in their plan. A plan that provides for community engagement and seek community-supported enforcement stands a better chance of overall success. It also reinforces the BIL's requirement that States support data-driven traffic safety enforcement programs that foster effective community collaboration. 23 U.S.C. 402(b)(E)(i). Similarly, the activities should strive to include all demographics and engage prevention strategies through a variety of means.

Community engagement, for example, should involve groups like schools, businesses, medical professionals, community organizers and coalitions as part of an impaired driving activity.

All qualifying plans also must be developed by a statewide impaired driving task force. As part of a more comprehensive strategy for addressing impaired driving, the proposal increases the number of required members of the task force. In addition to key stakeholders from the State highway safety office, State and local law enforcement, and representatives of the criminal justice system, public health officials, experts in drug-impaired driving countermeasures (such as a DRE coordinator), and specialists in communications and community engagement must be included. Public health officials and experts in drug-impaired countermeasures recognize the increasing prevalence of drug intoxication in impaired driving offenses, while communications and community engagement specialists add expertise on means to ensure that activities are understood and supported at local levels.

NHTSA continues the streamlined approach it took under prior authorizations for the application, only requiring the submission of one document (in addition to any required assurances and certifications)—a Statewide impaired driving plan—to demonstrate compliance with the statute. The plan document should be self-contained, including all required information without the need for appendices or references to information unless it is already contained elsewhere in the impaired driving countermeasures grant application. Within the plan document, there should be three separate sections.

The first section requires the State to provide a narrative statement that explains the authority of the task force to operate and describes the process used by the task force to develop and approve the plan. The State must also identify the date of approval of the plan. The information will help the agency to determine compliance with the requirement that the impaired driving plan be developed by a task force within three years prior to the application due date.

In comments submitted to the agency, GHSA indicated that States must include a ''statutory authority'' to convene the impaired driving task force and recommended that NHTSA provide a means to allow States to use a ''non-statutorily established impaired driving task force.'' As with the prior regulation, the agency's proposal continues the requirement that a State simply identify the authority and basis for operation of the task force. This requirement does not specify that a task force have a statutory basis and only seeks a narrative statement that explains the authority. For example, if the authority is derived from the Governor's executive powers as opposed to a State law, the narrative statement can describe this basis. The critical aspect is that the State provide a reasonably clear explanation of its authority to operate and the basis to provide guidance to State and local officials on addressing impaired driving issues in the State.

The second section requires a list of task force members that includes names, titles and organizations for each person. The information must allow the agency to determine that the task force includes key stakeholders from the identified areas. The State may include other individuals on the task force, as determined appropriate, from areas such as 24–7 sobriety programs, driver licensing, data and traffic records, ignition interlock, treatment and rehabilitation, and alcohol beverage control. The goal is that the State has identified individuals from different backgrounds that will bring varying perspectives to impaired driving countermeasure activities such that a comprehensive treatment of the problem is assured.

GHSA commented on the requirement to include a list of task force members, indicating that States should be allowed to certify to the list in their HSPs if the information is already included in the impaired driving plan submission. While the agency does not have an issue with an approach where a State provides a cross-reference in one section to identical information found elsewhere in its application, we are not familiar with a specific requirement to provide the task force member information in the HSP. Without more information about the concern, we cannot fully address it in this proposal. The agency notes that with HSPs moving to a triennial requirement, the need to provide similar information in various parts of the application is lessened.

The final section requires the State to provide its statewide plan to reduce and prevent impaired driving. As noted above, the plan is required to be organized in accordance with the Highway Safety Program Guideline No 8—Impaired Driving, and cover the specified areas. Each area is defined within the guideline. Plans that do not cover the required areas are not eligible to receive a grant. States may cover other areas in their plans provided the areas meet the qualifying uses of funds (as identified in the BIL).

4. Qualification Criteria for a High-Range States (23 CFR 1300.23(f))

States that have an average impaired driving fatality rate that is 0.60 or higher are considered high-range States. In accordance with the statutory requirements, a State qualifying as high-range State is required to have conducted a NHTSA-facilitated assessment of its impaired driving program within the three years prior to the application due date or provide an assurance that it will conduct an assessment during the first grant year.

High-range States are also required to submit a statewide impaired driving plan that addresses the problem of impaired driving. The plan must have been developed by a statewide impaired driving task force (both the task force and plan requirements are described in the preceding section under mid-range States). If the State has not developed and submitted a plan that meets the requirements at the time of the application deadline, then similar to a mid-range State, the State must provide an assurance that one will be developed and submitted to NHTSA by August 1 of the grant year in order to receive a grant. Consistent with the statute, these assurances for high-range States are only available during the first year of the grant, covering fiscal year 2024 grants. No assurance-based compliance is available after the first year, regardless of circumstance. If the State fails to submit the plan, the agency will seek the return of any grant funds that it qualified for based on its assurance, and will redistribute the grant funds to other qualifying States under this section.

In addition to meeting the requirements associated with developing a statewide impaired driving plan, the plan also must address any recommendations from the required assessment. The plan also must include a detailed strategy for spending grant funds and include a description of how such spending supports the statewide impaired driving programs and will contribute to the State meeting its impaired driving program performance targets.

High-range States must update the plan in each subsequent year of the grant and then submit the updated statewide plan for NHTSA's review.

5. Grants to States With Alcohol-Ignition Interlock Laws (23 CFR 1300.23(g))

Under the BIL, a separate grant for States with alcohol-ignition interlock laws has been extended. The BIL made

no changes to the provisions that existed in prior authorizations that provided grants to States that adopted and enforced mandatory alcohol-ignition interlock laws for all individuals convicted of a DUI offense. The statute also continues three exemptions from these mandatory interlock requirements. Specifically, a State's law may include exceptions from mandatory interlock use if—(1) an individual is required to drive an employer's motor vehicle in the course and scope of employment, provided the business entity that owns the vehicle is not owned or controlled by the individual; (2) an individual is certified in writing by a physician as being unable to provide a deep lung breath sample for analysis by an ignition interlock device; or (3) a State-certified ignition interlock provider is not available within 100 miles of the individual's residence. The agency's proposal makes no changes to these requirements and the current implementation that mandatory interlock use apply for not less than 6 months (or 180 days).

Under the BIL, two additional bases for compliance have been added to the grant. A State can receive a grant if it restricts driving privileges of individuals convicted of driving under the influence of alcohol or of driving while intoxicated until the individual installs on each motor vehicle registered, owned, or leased an ignition interlock for a period of not less than 180 days. 23 U.S.C. 405(d)(6)(ii). Separately, a State can receive a grant by requiring individuals that refuse a test to determine the presence or concentration of an intoxicating substance to install an interlock for a period of not less than 180 days. 23 U.S.C. 405(d)(6)(iii). This grant criterion also requires the State to have a compliance-based removal program that requires an individual convicted of a DUI to have an interlock installed for not less than 180 days and to serve a minimum period of interlock use without program violations before removal of the interlock. *Id.* The proposed regulation makes some edits to these additional grant criteria, but these are not intended to be substantive changes. The agency intends to implement the statutory language in as clear a way as possible in regulation so that States understand the basis for compliance.

The agency received several comments on the new grant criteria. Brandy Nannini expressed general support for the increased number of grant criteria and the potential that more States might receive awards. A joint comment submitted by GHSA, Responsibility Initiatives, National Alliance to Stop Impaired Driving, Mothers Against Drunk Driving, National Safety Council, and Council of Ignition Interlock Manufacturers (hereinafter ''group commenters'') noted the two additional methods of compliance. The group commenters also encouraged NHTSA ''to utilize . . . funding to the fullest extent possible.'' The proposal would incorporate into the regulation the statutory language of the additional grant criteria with only clarifying changes. The agency plans to provide grant awards to all States that demonstrate compliance.

The group commenters also provided comments on the first new criterion that requires an offender to meet an installation requirement of not less than 180 days before receiving licensing privileges. The group commenters noted that the requirement does not apply to all offenders but simply to ''an individual required to show proof of installation of an interlock after conviction. . . .'' As noted above, NHTSA proposes to use the statutory language as the basis for compliance determinations. To the degree the group commenters are noting the statutory basis for compliance and urging its use as the basis for determinations, the agency agrees with such an approach. Accordingly, the agency's proposal only applies the requirement to those offenders that are required to use an interlock as a result of their conviction for driving under the influence.

The agency also received comments on the second new criterion. As a general matter, the group commenters noted that the criterion ''components are to be read together'' and the State must satisfy both requirements to qualify for a grant. The agency agrees that the structure of the criterion has three distinct requirements, and the State must demonstrate compliance with each to receive a grant. The group commenters also noted that the statute is clear ''that the State law only requires a sanction be imposed'' and that criminal convictions are not necessary. The agency agrees with the observation that the criterion covers more than just the individuals convicted of a refusal and that the installation requirement also covers those administratively sanctioned for test refusal. In order to meet this component, in accordance with the statute, State law must show that for each type of offender required to install an interlock, the interlock period must be for not less than 180 days.

For the compliance-based removal program, the agency received comments from the group commenters and, individually, from GHSA. The group commenters touted the compliance-based removal process as something that ''will better ensure that individuals who are at risk of recidivism remain on the ignition interlock until behavior has changed to better ensure public safety.'' The group commenters also noted that ''this criterion is met if an individual is required to meet a States' compliance based removal standard rather than the requirement that it is mandatory for all individuals who install an ignition interlock.'' In accordance with the statute, the agency's proposal does not apply to all individuals who install interlocks, but only to those convicted of the specified offenses *and* also ordered to use an interlock. State law will need to apply the compliance-based program requirements to those offenders. Under the requirement, the group commenters also requested that ''NHTSA should show flexibility and should work with states to define what constitutes a program violation.'' GHSA went further in a separate comment to request that NHTSA not limit eligibility for what qualifies as compliance-based removal. GHSA noted that ''States have established a range of typical program violations [and] . . . may consider additional violations and future new best practices. . . .'' Accordingly, GHSA urges ''NHTSA not to limit State eligibility with a restriction that may be difficult to update.'' In general, we agree with the approach and do not believe it is necessary to define specifically what constitutes a program use violation under the grant. Accordingly, the agency will defer to the States on program violations. In the application, States must still identify compliance-based removal information, specifying the period of the installation requirement and separate information indicating the completion of a minimum consecutive period of not less than 40 percent of the required period of ignition interlock installation (immediately preceding the date of release of the individual without a confirmed violation of the program use requirements).

6. Grants to States With a 24–7 Sobriety Program (23 CFR 1300.23(h))

The agency's proposal continues a separate grant for States with 24–7 sobriety programs consistent with the statutory requirement. Although the definition of a 24–7 sobriety program has been slightly amended to note that State or local courts can carry out a program, this does not affect the qualifying basis for a grant. 23 CFR 1300.23(b).

The first requirement mandates that a State enact and enforce a law that requires all individuals convicted of driving under the influence of alcohol or of driving while intoxicated to receive a restriction on driving privileges for at least 30 days. The second requirement mandates that a State provide a 24–7 sobriety program. States should continue to submit information identifying a State law or program that authorizes a 24–7 sobriety program in line with the statutory requirement.

GHSA commented that States should qualify on the basis of identifying a State statute authorizing ''local 24/7 sobriety programs.'' The basis for compliance is a determination of whether the State law or program meets the definition of a 24–7 sobriety program. The entities that carry out the State law or program are not part of the evaluation. A State law could be submitted that authorizes local courts to carry out a 24–7 sobriety program, for example. Provided the State law meets the statutory definition of a 24–7 sobriety program it would be eligible for a grant.

7. Award Amounts (23 CFR 1300.23(i))

As in the explanation for 23 CFR 1300.20, above, in today's action, the agency proposes to move award allocation provisions from the general section of the rule into the specific grant programs. We propose to incorporate the statutory allocation provisions without substantive change.

8. Use of Grant Funds (23 CFR 1300.23(j))

The BIL specifies the eligible uses of the grant funds, and the agency's proposal codifies those uses without change. With the exceptions discussed below, grant funds may be distributed among any of the uses identified in the BIL. The agency has adopted in its proposal the statutory basis for using grant funds depending on whether the State has qualified as a low-, med- or high-range State or is receiving separate grant funds as a State with either alcohol-ignition interlock laws or 24–7 sobriety programs. No changes have been made to these requirements.

The agency received comments related to the specific uses of grant funds that were added in the BIL. Brandy Nannini submitted a comment that expressed support for some of these new grant uses as being important to state success. The comment specifically mentioned the ability to use funds to backfill officers during drug recognition expert (DRE) training and, separately, to purchase new screening and testing technologies. In a related comment, GHSA urged that NHTSA should ''allow the use of [grant] funding to temporarily replace officers in DRE training or serving as a DRE instructor'' to include ''funding for compensation for officers who are not involved in grant-eligible activities.'' Under the BIL, a new provision allows grant funding to be used to provide compensation for a law enforcement officer to carry out safety grant activities while another law enforcement officer involved in safety grant activities is away receiving drug recognition expert training or participating as an instructor in drug recognition expert training. This backfill provision allows police agencies to send officers to training without sacrificing overall levels of service. By its terms, however, the statutory provision limits compensation to law enforcement officers that carry out *safety grant activities.* 23 U.S.C. 405(d)(4)(B)(iii). Regardless of whether ''safeguards'' could be deployed to limit potential abuse of GHSA's desired approach, the statutory language is clear and does not support compensation for other than safety grant activities. Where the language is unambiguous, the agency must follow the statute as written.

GHSA also provided a comment indicating that ''States have expressed a sense of ambiguity whether they can spend federal funds in support of oral fluid testing programs and other leading technological applications to address impaired driving that may often not yet be considered 'proven effective countermeasures.' '' GHSA recommends that NHTSA allow funds to be used to test and implement new allowable initiatives. Under the BIL, a new provision allows funds to be used for ''testing and implementing programs, and purchasing technologies, to better identify, monitor, or treat impaired drivers, including . . . oral fluid-screening technologies.'' 23 U.S.C. 405(4)(xi). On that basis, States are allowed to use funds for such expenditures. However, all requirements associated with grant expenditures under this regulation and 2 CFR part 200 would apply to such uses. Because such expenditures have the potential to result in wasteful uses of Federal taxpayer funds, States should expect NHTSA to apply the uniform administration requirements to such activities, including such general concepts as reasonableness, allowability, and allocability of any proposed funding. In addition, States are reminded that equipment only purchases are not permitted and any such purchases would need to be carried out as part of an approved traffic safety activity that meets all associated requirements. Further, the statute explicitly states that these technologies are eligible as part of ''developing and implementing *programs.*'' Accordingly, the agency will not approve the purchase of any technologies that are not part of a State's activities to develop and implement an eligible program.

The National Sheriffs' Association recommended that NHTSA consider funding to encourage State legislation related to stricter penalties for impaired driving. NHTSA notes that this is not a specified allowable use of funds under the BIL and that Federal grant funds may not be spent on lobbying.

F. Distracted Driving Grants (23 CFR 1300.24)

MAP–21 established a new program authorizing incentive grants to States that enact and enforce laws prohibiting distracted driving. Few States qualified for a distracted driving grant under the statutory requirements of MAP–21. The FAST Act amended the qualification criteria for a distracted driving grant, revising the requirements for a Comprehensive Distracted Driving Grant and providing for Special Distracted Driving Grants for States that do not qualify for a Comprehensive Distracted Driving Grant. While more States qualified for grants under the FAST Act, the criteria remained difficult for States to meet.

The BIL resets the distracted driving incentive grant program by significantly amending the statutory compliance criteria. The statute establishes two types of distracted driving grants—distracted driving awareness on the driver's license examination and distracted driving laws. A State may qualify for both types of distracted driving grants. At least 50 percent of the Section 405(e) funds are available to States that include distracted driving awareness as part of the driver's license examination, and not more than 50 percent of the Section 405(e) funds are available to States for distracted driving laws.[38]

1. Distracted Driving Awareness Grant (23 CFR 1300.24(c))

The basis for a Distracted Driving Awareness Grant (''Awareness Grant'') is the requirement that the State test for distracted driving awareness as part of the State driver's license examination.

[38] One commenter, Paul Hoffman, submitted a comment requesting that NHTSA enforce the hands-free cell phone use prohibition in Monsey, NY. NHTSA does not have authority to enforce requirements in local jurisdictions; that comment is therefore outside the scope of this rulemaking.

23 U.S.C. 405(e)(2). Typically States have a battery of questions that are randomly assigned to an examinee in a ''regular'' or ''normal'' driver's license examination. If distracted driving awareness is included as part of the battery of random questions, the State may be eligible for an Awareness Grant. To demonstrate this requirement, NHTSA proposes that the State submit at least one sample distracted driving question from its driver's license examination as part of its application.

In a letter to NHTSA, GHSA interpreted the changes in the BIL as automatically distributing 50 percent of the section 405(e) funds to all States but limiting State expenditure to the authorized uses under Section 405(e)(8). This interpretation is not supported by the statutory language. The Section 405(e)(2) *Grant Program* specifies that NHTSA ''shall provide a grant . . . to any State that includes distracted driving awareness as part of the driver's license examination of the State.'' This provision would have no meaning under GHSA's interpretation of automatic distribution of the distracted driving grant funds. For this reason, NHTSA believes that that at least 50 percent of the distracted driving grant funds are to be allocated to States that include distracted driving awareness as part of the State's driver's license examination.

2. Distracted Driving Law Grant (23 CFR 1300.24(d))

The BIL sets out three different types of laws for which a State may qualify for a Distracted Driving Law Grant (''Law Grant''): (1) prohibition on texting while driving; (2) prohibition on handheld phone use while driving; and (3) prohibition on youth cell phone use while driving. 23 U.S.C. 405(e)(3)(B). In its letter, GHSA interpreted the changes in the BIL as allocating the ''remaining 50%'' among States with a qualifying distracted driving law for banning texting, banning handheld use, or banning teen cell phone use. GHSA further claimed that States are eligible for an ''extra 25% of their apportionment'' if the State prohibits a driver from viewing a device while driving. NHTSA agrees with GHSA that a State can qualify for a grant under Section 405(e) with a either law banning texting while driving, handheld use while driving, OR youth cell phone use while driving. However, the agency does not agree that States are eligible for an extra 25 percent for prohibiting viewing while driving. Such an interpretation is not supported by the language of the statute. Section 405(e)(3)(B)(iv) states that ''the allocation under this subparagraph to a State that enacts and enforces a law that prohibits a driver from viewing a personal wireless communications device (except for purposes of navigation) *shall be 25 percent of the amount* calculated to be allocated to the State under clause (i)(I).'' This language does not provide an additional or extra allocation. A further point against such an interpretation is that it might not be executable. For example, if all States qualified for a primary distracted driving law grant, each State would receive 100 percent of the allocated amount, and no additional funds would be available to distribute an extra 25 percent to States that also prohibit viewing while driving.

While this statutory language is not without ambiguity,[39] the agency believes that in order to give meaning to all provisions in Section 405(e)(3), a State may be eligible for 25 percent of the State's allocation if the State law prohibits viewing a personal wireless communications device and does not meet the criteria for a law banning texting while driving, handheld use while driving, OR a youth cell phone use while driving. The BIL appears to set out a structure to incentivize States with higher grant awards to enact and enforce stricter distracted driving laws, *e.g.,* 100 percent for primary texting compared to 50 percent for secondary texting. By allocating grant funds to a State with a law that only prohibits viewing while driving, the statute limits that allocation to the smallest amount, *i.e.,* 25 percent. As a result, a State may qualify for 100 percent for a primary texting, handheld or youth law; 50 percent for a secondary texting, handheld or youth law; or 25 percent for a law prohibiting the viewing of a personal wireless communications device.

Accordingly, the agency proposes making a grant to a State for a conforming law that prohibits one of the following: (1) texting while driving; (2) handheld phone use while driving; (3) youth cell phone use while driving; or (4) viewing while driving. The agency further proposes that a State that is able to meet more than one of these eligibility requirements would be approved for the award that results in the highest grant amount. The statute prescribes in detail the criteria for a conforming law, including definitions and exceptions. As discussed below, the agency proposes to adopt the criteria, including definitions and exceptions, without change.

i. Definitions (23 CFR 1300.24(b))

The statute defines the terms driving, personal wireless communications device, text, and text message.[40] While the definition of driving remains unchanged, the BIL changed the definition of personal wireless communications device adding the following to the existing definition: ''a mobile telephone or other portable electronic communication device with which a user engages in a call or writes, sends, or reads a text message using at least 1 hand.'' 23 U.S.C. 405(e)(1)(B). It is the agency's understanding that this language captures a subset of devices that is already covered under the existing language (*i.e.,* a device through which personal wireless services are transmitted). Therefore, this amendment would not substantively change the devices covered by the existing definition. The BIL also changed the FAST Act's term for ''texting'' to ''text'' and also added ''manually to enter, send, or retrieve a text message to communicate with another individual or device'' to the essentially unchanged definition. 23 U.S.C. 405(e)(1)(E). Similarly, the added language includes a smaller subset of behaviors that were already included under the original language (*i.e.,* to read from, or manually to enter data into, a personal wireless communications device); and this addition would not substantively change the definition of ''text''. Finally, the BIL added a new definition for ''text message.'' 23 U.S.C. 405(e)(1). NHTSA proposes to adopt these statutory definitions without change.

ii. Prohibition on Texting While Driving (23 CFR 1300.24(d)(1))

The BIL retained much of the FAST Act requirements for a conforming law prohibiting texting while driving. In order to qualify, the statute provides that the State law must prohibit a driver from texting through a personal wireless communications device while driving; must establish a fine for a violation of the law; and must not provide for an exemption that specifically allows a driver to use a personal wireless communications device for texting while stopped in traffic. The BIL changed the FAST Act requirement for a minimum fine by striking ''minimum.'' To implement this change, the agency deletes the existing

[39] The Bipartisan Infrastructure Law does not have any legislative history on the distracted driving grant to help explain the intent of this provision.

[40] The statute also defines primary offense and public road. Those definitions are applicable to other section 405 grants. For consistency, those terms are defined in 23 CFR 1300.20(b).

requirement for a minimum fine of $25, which the agency implemented in the MAP–21 and FAST Act rulemakings. NHTSA proposes to adopt the statutory language without change. Finally, the agency notes that the BIL removes primary enforcement of the texting law from the qualification requirements, and as discussed above, allows the State to receive 100 percent of its allocation if the State's conforming law is enforced as a primary offense.

iii. Prohibition on Handheld Phone Use While Driving (23 CFR 1300.24(d)(2))

The prohibition on handheld phone use while driving is new under the BIL. The statutory language is clear that the State law must prohibit a driver from holding a personal wireless communications device while driving in order to satisfy this component for a conforming law prohibiting handheld phone use while driving. The State law must also satisfy two additional components for a qualifying law, the same as those for a prohibition on texting while driving law—establish a fine for a violation of the law and not provide an exemption that specifically allows a driver to use a personal wireless communications device for texting while stopped in traffic. NHTSA proposes to adopt these provisions without change.

iv. Prohibition on Youth Cell Phone Use While Driving or Stopped in Traffic (23 CFR 1300.24(d)(3))

As with the prohibition on texting while driving law, the BIL retained much of the FAST Act requirements for a conforming law prohibiting youth cell phone use while driving. However, the BIL amended the requirement for a youth law by striking the reference to the State Graduated Driver Licensing Incentive Grant, which was repealed. Instead, the State law must now prohibit a driver from using a personal wireless communications device while driving if the driver is under 18 years of age or in the State's learner's permit or intermediate license stage in order to qualify for a grant. Graduated driver licensing, also known as a multi-stage licensing process, is a three-phase system for beginning drivers consisting of a learner's permit, an intermediate or provisional license, and a full license. A learner's permit allows driving only while supervised by a fully licensed driver. An intermediate or provisional license allows unsupervised driving under certain restrictions, such as nighttime or passenger restrictions. While the graduated driver licensing program differs from State to State, the agency does not intend to define any specific requirements for the learner's permit or intermediate license stages. In order to satisfy this component, the State law must prohibit a younger driver in the State's learner's permit or intermediate license stage from any use of a personal wireless communications device while driving. Note that the State law must not provide an exemption for hands-free use. Similar to the texting law discussed above, the BIL also strikes ''minimum'' from the fine requirement and removes primary enforcement from the qualification requirements, and the agency proposes to adopt these changes without change.

v. Prohibition on Viewing a Personal Wireless Communications Device While Driving (23 CFR 1300.24(d)(4))

As discussed above, the statute is not specific regarding the allocation for a State that enacts and enforces a law that ''prohibits a driver from viewing a personal wireless communications device (except for purposes of navigation).'' The BIL incentivizes States to enact and enforce three different types of laws (prohibition on texting while driving, handheld phone use while driving, and youth cell phone use while driving), with higher grant amounts for the strictest of these laws, *e.g.,* States with primary enforcement laws receive 100 percent of their allocation and States with secondary enforcement laws receive 50 percent of their allocation. The agency believes that by awarding a still smaller percentage of the State's allocation (25 percent) for a law that prohibits a driver from viewing a personal wireless communications device, Congress intended that lower threshold to result in an award only when a State could not meet the higher threshold of any one of the other three laws identified in the statute. For this reason, the agency proposes that a State law that simply prohibits viewing a personal wireless communications device (except for navigation purposes) would meet the requirements for this grant. The agency proposes that no other elements, *e.g.,* fine, restricted exceptions, applicable to the other distracted driving laws would apply for this grant.

3. Award Amounts (23 CFR 1300.24(e))

For both grants, the BIL specifies how grant funds are allocated among the States—based on the proportion that the apportionment of the State under section 402 for fiscal year 2009 bears to the apportionment of all States under section 402 for that fiscal year. 23 U.S.C. 405(e)(3). In determining the grant award under each distracted driving grant, NHTSA proposes to apply the section 402 apportionment formula for fiscal year 2009 as if all States qualified for grants and then make awards to qualifying States based on the application of the formula.

4. Use of Funds (23 CFR 1300.24(f))

The BIL made no changes to the use of funds for a distracted driving grant. However, NHTSA proposes to amend the language for demonstrating conformance with MMUCC. In 2020, NHTSA mapped States' conformance with the most recent MMUCC. Instead of requiring States to complete the NHTSA-developed MMUCC Mapping spreadsheet within 30 days, NHTSA proposes to require States to submit its most recent crash report with the distracted driving data element(s) within 30 days of award. NHTSA can then confirm whether the State's distracted driving data element(s) conform(s) to the most recent MMUCC.

G. Motorcyclist Safety Grants (23 CFR 1300.25)

In 2005, Congress enacted SAFETEA–LU, which authorized the Motorcyclist Safety Grants under section 2010. This grant program has largely remained unchanged since it was established, despite several revisions to the National Priority Safety Programs (23 U.S.C. 405).

Under BIL, Congress amended the Motorcyclist Safety Grants by increasing the number of criteria available for a state to qualify for a grant to seven from six and made a minor terminology change to ''crash'' from accident in two paragraphs. A State is eligible under the new criterion if a State has a helmet law that requires the use of a helmet for each motorcycle rider under the age of 18. 23 U.S.C. 405(f)(3)(C). With the addition of this criterion, States qualify for a grant by meeting two of the following seven grant criteria: Motorcycle Rider Training Course; Motorcyclists Awareness Program; Helmet Law; Reduction of Fatalities and Crashes Involving Motorcycles; Impaired Driving Program; Reduction of Fatalities and Crashes Involving Impaired Motorcyclists; and Use of Fees Collected from Motorcyclists for Motorcycle Programs. The BIL made no additional amendments to the Motorcyclist Safety Grants. Today the agency proposes amendments to 1300.25 to incorporate these changes and to update references to planned activities in the annual HSP for the new triennial framework. We discuss the new Helmet Law criterion in further detail below. NHTSA received no comments related to the Motorcycle Safety Grants.

1. Helmet Law Criterion (23 CFR 1300.25(c))

To be eligible for a Motorcyclist Safety Grant under this criterion, the BIL requires that a ''State shall have a law requiring the use of a helmet for each motorcycle rider under the age of 18.'' *See* Public Law 117–58, section 24105(a)(6). We interpret this to require a mandatory helmet law for all riders under 18 years of age with no exceptions. This view is based upon language of the statute and the existing definition ''motorcycle'' in § 1300.25. The express language of the statute requires a State that seeks to qualify under this criterion to have a mandatory helmet law for all individuals under 18 that ride on a motorcycle. Under § 1300.25, a motorcycle means ''a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.'' 23.CFR 1300.25(b). Under today's proposed action, a State law that exempts any individual under age 18 or any vehicle meeting the definition of a motorcycle, such as a moped or a low speed vehicle, from its helmet law would not qualify under the criterion. To demonstrate compliance with this criterion, a State will have to submit, in accordance with part 7 of appendix B, the citation to the State law that requires the use of a helmet for each motorcycle rider under the age of 18.

2. Award Amounts (23 CFR 1300.25(l))

As described above, NHTSA proposes to address award amounts in the grant-specific sections. NHTSA therefore proposes to incorporate the statutory award distribution formula and limitation for the motorcyclist safety grant in the regulatory text at 23 CFR 1300.25(l).

H. Nonmotorized Safety Grants (23 CFR 1300.26)

The FAST Act introduced the nonmotorized safety grant as part of the National Priority Safety Programs, recognizing the need for a stand-alone safety grant for roadway users outside the motor vehicle. The BIL changed the nonmotorized safety grant to help address the recent exponential rise in pedestrian and bicyclist fatalities and the growing use of low-powered or nonmotorized personal transportation devices such as e-scooters and electric bicycles (which it defines as non-motorized). Pedestrian and bicyclist fatalities have continued to rise, from 14 percent of total motor-vehicle-related traffic fatalities in 2009 to approximately 19 percent today. Further, micromobility, which includes such vehicles as e-scooters, e-bikes and other low-speed personal transporters, is a mode of transportation that both holds promise for users with physical challenges and offers more affordable mobility. However, micromobility is changing rapidly and growing in use, and States are struggling to keep pace with these emerging modes of transportation and their safety implications.

Research-driven and innovative countermeasures and strategies that address safety and accessibility problems can significantly differ for pedestrians, bicyclists, or micromobility users. States often make significant roadway infrastructure improvements, such as raised crosswalks, narrowing lanes, separated bike lanes, or pedestrian refuge islands, to create safe, accessible and equitable transportation for nonmotorized users. However, behavioral safety countermeasures, such as outreach, education, community engagement, enforcement, and data analysis are essential for a comprehensive approach to nonmotorized road user safety. The Section 405(g) grant aims to address the unique needs of nonmotorized roadway users with non-infrastructure investments.

1. Eligibility Determination (23 CFR 1300.26(b))

Similar to the grant under the FAST Act, States are eligible for a nonmotorized safety grant under the BIL if the State's nonmotorized road user fatalities in the State exceed 15 percent of the total annual crash fatalities in the State, based on the most recent final FARS data. However, while the FAST Act specified combined pedestrian and bicyclist fatalities, the BIL expands the definition of nonmotorized road user to a pedestrian; an individual using a nonmotorized mode of transportation, including a bicycle, scooter, or personal conveyance; and an individual using a low-speed or low-horse powered motorized vehicle, including an electric bicycle, electric scooter, personal mobility assistance device, personal transporter, or all-terrain vehicle. NHTSA plans to adopt this definition without change. Using FARS data, NHTSA proposes to calculate the percentage of each State's annual nonmotorized road user fatalities in relation to the State's annual total crash fatalities, using Statistical Analysis System (SAS) software and truncating the calculation. Consistent with the statute, all States that exceed 15 percent will be eligible for a grant.

The agency proposes to inform each State that is eligible for a grant prior to the application due date.

2. Qualification Criteria (23 CFR 1300.26(c))

To qualify for a grant under this section, NHTSA proposes to change the self-certification as the application for a nonmotorized safety grant under the previous regulation and require States to submit a list of project(s) and subrecipient(s) information the State plans to conduct in the fiscal year of the grant consistent with § 1300.12(b)(2). NHTSA believes that this aligns the application requirements for the nonmotorized safety grants with the other highway safety grants.

3. Use of Funds (23 CFR 1300.26(d))

The BIL makes significant amendments to the use of funds for the nonmotorized safety grant program. Under the FAST Act, the statute limited the use of funds to activities related to *State* traffic laws on pedestrian and bicycle safety, such as law enforcement training, mobilizations and campaigns, and public education and awareness programs. This not only presented challenges to the States in terms of identifying narrowly defined projects in communities where the greatest need exists, but also failed to address the unique needs of each community's nonmotorized crash problem. As noted by several commenters, the BIL expands the eligible uses to the safety of nonmotorized road users, as defined by the statute. *See* GHSA; League of American Bicyclists. Activities related to State traffic laws on nonmotorized road user safety continue as allowable uses under the statute, but the broadened eligible use of funds will provide States with the flexibility to use behavioral safety countermeasures that will best address the nonmotorized road user problem, both at the State level and at the local level.

The Safe System Approach intentionally broadens the focus of addressing highway safety problems, such as nonmotorized road user safety, to more systemic, community-level strategies. Using the Safe System Approach and a comprehensive problem identification process as guiding principles, each community's nonmotorized safety grant project within each State's highway safety program will likely be unique.[41] State

[41] Communities are strongly encouraged to adopt a Safe System Approach (see *https://safety.fhwa.dot.gov/zerodeaths/docs/FHWA_SafeSystem_Brochure_V9_508_200717.pdf*) in applying non-motorized safety grant funds to their

highway safety offices are well-positioned to ensure nonmotorized safety grant funds are directed to the communities most overrepresented in crashes from their State-level data analysis. However, pedestrian, bicycle and micromobility safety programs cannot be developed as a one-size-fits-all approach. In order to be effective, States should customize their approach to meet each community's specific needs, based on problem identification that involves not only crash and exposure data, but also demographic analysis, observational surveys and community assessments. Depending on the specific community's problem identification, for instance, States may use grant funds for expanded eligible uses, such as Walking Safety Assessments, nonmotorized community traffic safety programs, costs related to outreach, and staffing a pop-up bicycle lane.

Several organizations and members of the public commented on the use of funds for the nonmotorized safety grant. One commenter, Tom Schwerdt, recommended that designs need to be changed to get cyclists and pedestrians out of the roadway. The BIL specifies eligible uses for the nonmotorized grant funds, and the statute does not allow them to be used for infrastructure designs. However, States may use grant funds to raise public awareness and provide education to inform road users of infrastructure designed to improve nonmotorized road user safety. *See* League of American Bicyclists. The League of American Bicyclists also commented that NHTSA and States should engage community groups to build support for infrastructure safety improvements that will influence road user behavior and address systemic racism that has led to disparities and roadway fatalities, including to nonmotorized road users. Under the expanded eligible use of funds for nonmotorized grants, States may use grant funds for the safety of nonmotorized road users, including engaging with community groups. In addition, NHTSA is engaging with other Department of Transportation modal administrations and outside stakeholders on ways to influence road user behavior and address disparities in roadway fatalities. While Love to Ride suggested that the agency list specific eligible uses of funds, NHTSA does not believe that such an approach would serve the interests of the flexibility afforded by the statute, and proposes instead to adopt the broad statutory language. NHTSA notes that many of these uses, such as training (virtually or in-person), are allowable uses of funds under the nonmotorized grant program and Section 402 grants.

I. Preventing Roadside Deaths Grants (23 CFR 1300.27)

The BIL created a new Preventing Roadside Death grant program, authorizing grants to prevent death and injury from crashes involving motor vehicles striking other vehicles and individuals stopped at the roadside. The purpose of the new grant program is to support State efforts to decrease roadside deaths involving vehicles and pedestrians on the side of the road. NHTSA proposes a new § 1300.27 to implement the Preventing Roadside Death grant program.

The agency received several comments that acknowledge the safety risk posed by disabled vehicles and supported the Preventing Roadside Death grant program for both first responders and civilians.[42] ESS submitted comments that underscore the prevalence of deaths and injuries and the increased harm that results to individuals and first responders when a vehicle is disabled on the side of the road. It demonstrated that roadside crashes disproportionately affect low-income and African American communities.

1. Definitions (23 CFR 1300.27(b))

The BIL did not define terms in section 23 U.S.C. 405(h). In order to provide clarity, today's proposal includes definitions for digital alert technology, optical visibility, and public information campaign. The agency developed these definitions based on what we consider common understanding of the terms. We seek comment on these proposed definitions.

2. Qualification Criteria (23 CFR 1300.27(c))

As directed by the BIL, a State is eligible for a Preventing Roadside Death grant if it submits a plan that describes the method by which the State will use grant funds according to the eligible uses identified in the statute. 23 U.S.C. 405(h). Consistent with the BIL, NHTSA proposes that States submit a plan that requires information familiar to States and is consistent with the type of information States provide in other plans provided to NHTSA. Accordingly, we propose that the State's plan, at a minimum, list the eligible use(s) selected, identify the specific safety problems to be addressed, and specify the performance measures and targets, and the countermeasure strategies and projects that implement those strategies, that the State will use to address those problems. We seek comments on the proposed criteria to be included in the State's plan and whether additional information should be included in the plan.

3. Award Amounts (23 CFR 1300.27(d))

The agency incorporates the statutory award allocation provision into the regulation.

4. Use of Grant Funds (23 CFR 1300.27(e))

The BIL specifies with particularity how States may use Preventing Roadside Death grant funds. 23 U.S.C. 405(h)(4). Today, we propose to adopt the BIL language without change.

NHTSA received several comments related to use of funds under this grant program. ESS notes that the statute authorizes the use of funds to ''pilot and incentivize measures, including optical visibility measures, to increase the visibility of stopped and disabled vehicles'' (23 U.S.C. 405(h)(4)(E)) and encourages the agency to promote the grant to address the disabled vehicle safety issue. Another vendor, Haas Alert, encourages NHTSA to address impediments that exist for a State to apply for a grant such as contract administration costs and the inability of private industry to subcontract with States. Meanwhile, Paul Hoffman encourages the agency to promote enforcement and educational activities under the Preventing Roadside Death grant. The International Association of Fire Chiefs also encourages driver education to improve first responder safety. The use of grant funds authorized by Congress in BIL, and incorporated by the agency into the proposed rule, covers all of the activities (and also supports data collection activities) that were raised by commenters. As is typical of all Federal grants, States must adhere to 2 CFR part 200 requirements when administering grant funds awarded under the Preventing Roadside Deaths grant. These requirements apply to all Federal grantees and address contract administration and subrecipient requirements. NHTSA notes that Federal rules do not prohibit States from contracting with private entities.

J. Driver and Officer Safety Education Grants (23 CFR 1300.28)

The BIL created a new driver and officer safety education grant program, authorizing incentive grants to States

larger pedestrian/bicycle/micromobility safety projects.

[42] Emergency Safety Solutions, Inc. (ESS), Haas Alert, Paul Hoffman.

that enact and enforce laws or adopt and implement programs that include certain information on law enforcement practices during traffic stops in driver education and driving safety courses or peace officer training programs. 23 U.S.C. 405(i). As described below, States may also qualify for a grant under this section if they can demonstrate that they have taken meaningful steps toward full implementation of such programs.

1. Definitions (23 CFR 1300.28(b)

This NPRM proposes to adopt the definition of ''peace officer'' directly from the statute. 23 U.S.C. 405(i)(1). NHTSA also provides a definition for driver education and driving safety course to clarify the types of courses/programs that can qualify for the grant.

2. Qualification Criteria (23 CFR 1300.28(c))

The BIL provides that States may qualify for a driver and officer safety education grant in one of two ways: (a) a current law or program that requires specified information to be provided in either driver education and driving safety courses or peace officer training programs; or, (b) for a period not to exceed 5 years, by providing proof that the State is taking meaningful steps towards establishing such a law or program. 23 U.S.C. 405(i)(4). We discuss these qualification criteria in more detail below.

i. Driver and Officer Safety Law or Program (23 CFR 1300.28(d))

The BIL provides that one way a State may qualify for a grant under this section is with a law or program requiring that driver education and driver safety courses provided by educational and motor vehicle agencies of the State include instruction and testing materials relating to law enforcement practicing during traffic stops, covering the role of law enforcement, duties and responsibilities of peace officers, the legal rights of individuals, best practices for civilians and peace officers during interactions, consequences for failure to comply with the law or program, and information regarding how to file complaints or compliments relating to a police officer. 23 U.S.C. 405(i)(4)(A). NHTSA incorporates the requirements for the State's law or program directly from the statute. NHTSA proposes regulatory text to provide clarity to States regarding how to demonstrate compliance with the requirements, whether applying with a legal citation or with documentation, including a certification from the GR and course materials demonstrating that the State is implementing a compliant program.

ii. Peace Officer Training Programs (23 CFR 1300.28(d)(2)

The BIL provides that another way a State may qualify for a grant under this section is by having either a law or program requiring that the State develop and implement a training program for peace officers and reserve law enforcement officers with respect to proper interaction with civilians during traffic stops. 23 U.S.C. 405(i)(4)(B). NHTSA proposes to incorporate those requirements without change. NHTSA proposes regulatory text to provide clarity to States regarding how to demonstrate compliance with the requirements, whether applying with a legal citation or with documentation, including a certification from the GR and course materials demonstrating that the State is implementing a compliant training program.

iii. Qualifying State (23 CFR 1300.28(e))

If a State is unable to apply for a grant under the two options described above, the BIL provides a third, though time-limited way, for a State to qualify for a grant under this section. The BIL allows a State that has not fully enacted or adopted a compliant law or program to qualify for a grant if it can demonstrate that it has taken meaningful steps toward full implementation of such a law or program, including establishment of a timetable for implementation. 23 U.S.C. 405(i)(7). States may only receive a grant under this section for 5 years. *Id.* In this NPRM, NHTSA proposes that States applying under this criterion provide, at a minimum, either (1) a proposed bill that has been introduced, but not yet enacted into law, or (2) official planning or strategy document(s) that identify the actions the State has taken and still plans to take to develop and implement a qualifying law or program. States must also provide a timetable demonstrating that the State will implement the law or program within 5 years of first applying as a qualifying State.

3. Matching (23 CFR 1300.28(f))

The BIL provides that the Federal share of the cost of carrying out an activity funded through a grant under this program may not exceed 80 percent. 23 U.S.C. 405(i)(3). NHTSA proposes to implement this requirement without change.

4. Award Amounts (23 CFR 1300.28(g))

The BIL specifies that grant funds under this section shall be allocated in proportion to the apportionment of that State under Section 402 in fiscal year 2022. 23 U.S.C. 405(i)(6). The BIL further specifies, however, that NHTSA shall withhold 50 percent of grant funds that would be allocated under that formula from States that qualify as a ''qualifying State'' (*i.e.,* that are not yet implementing a qualifying law or program). 23 U.S.C. 405(i)(7)(B). It further provides that the withheld funds must be distributed to the States that qualified with fully implemented laws or programs. *Id.* NHTSA proposes to adopt this allocation structure without substantive change.

5. Use of Grant Funds (23 CFR 1300.28(h))

The BIL laid out specific allowable uses of grant funds under this grant program. Specifically, BIL provides that States may use driver and officer safety education grant funds for the production of educational materials and training of staff and for the implementation of a qualifying law or program. 23 U.S.C. 405(i)(5). This NPRM proposes to incorporate the uses of funds directly from the statute without change.

K. Racial Profiling Data Collection Grants (23 CFR 1300.29)

Section 1906 of SAFETEA–LU established an incentive grant program to prohibit racial profiling. The BIL continues the intent of the Section 1906 grant program, which is to encourage States to enact and enforce laws that prohibit the use of racial profiling in traffic law enforcement and to maintain and allow public inspection of statistical information regarding the race and ethnicity of the driver for each motor vehicle stop in the State. BIL revised several aspects of the Section 1906 Program.[43]

1. Award Amounts (23 CFR 1300.29(c))

For Section 1906, the BIL, like the FAST Act, does not specify how the grant awards are to be allocated. Under the FAST Act, NHTSA allocated Section 1906 grant awards in the same manner as the Section 405 grants. However, as described elsewhere in this preamble, the BIL diversified the allocation formulas for the Section 405 grants so that there is no longer a default formula. In order to ensure the most up-to-date distribution of funds, NHTSA proposes to apply the same formula that Congress developed for the two new Section 405

[43] Unlike the amendments to Section 402 requirements (which are effective beginning with the FY24 grants), amendments to the Section 1906 grant program were effective immediately upon passage of the BIL. States used the amended statutory text for their FY23 grant applications.

grants under BIL (Section 405(h) and 405(i)) to the Section 1906 grants. Accordingly, NHTSA proposes to allocate grant funds in proportion to the apportionment of the State under Section 402 for FY 2022.

The FAST Act placed two limitations on States' ability to receive grant funds under Section 1906. The BIL removed the limitation that provided that a State may not receive a grant by providing assurances for more than 2 fiscal years. The BIL amended the other limitation, which provided a 5 percent maximum amount limitation on a State's total grant award. Specifically, the BIL specified that the total amount provided to a State that qualifies using official documentation may not exceed 10 percent of the amount made available to carry out this section in that fiscal year; and that the total amount provided to a State that qualifies by providing assurances may not exceed 5 percent of the amount made available to carry out this section in that fiscal year. The agency proposes to incorporate these revisions into the regulatory text.

2. Use of Grant Funds (23 CFR 1300.29(d))

The BIL extended the allowable uses of the grant funds awarded under the Section 1906 Program by allowing States to expend grant funds to develop and implement programs, public outreach, and training to reduce the impact of traffic stops. This NPRM proposes to incorporate those uses directly from the statutes. States should note the specific allowable uses of the grant funds are only allowed to the extent that they carry out the intent of the grant program, which is to reduce the disparate impact of racial profiling during traffic stops and to encourage States to maintain and allow public inspection of statistical information on the race and ethnicity of the driver for all motor vehicle stops on Federal-Aid Highways. For example, States may conduct outreach to law enforcement agencies that is geared toward data collection, evaluation of data reports, and implementation of changes to address issues found in data reports.

Several commenters (Institute for Municipal and Regional Policy (IMRP), GHSA, and TEC) expressed broad support for the 1906 grant program and the expanded use of funds authorized by the BIL. Specifically, both IMRP and the Vision Zero Network submitted comments recommending the use of 1906 grant funds for efforts beyond data collection and analysis, such as police training programs, community outreach and engagement, collection and analysis of pedestrian data. The League of American Bicyclists called for NHTSA to encourage States to apply the 1906 Program not just to traffic stops of motor vehicle drivers, but to traffic stops of pedestrians and bicyclists. As stated above, NHTSA proposes to incorporate the new statutorily allowed use of funds provision that allows use of funds to develop and implement programs to reduce the impact of racial profiling during traffic stops. Traffic stops of nonmotorized road users, including pedestrians and bicyclists, may potentially be included in the data collection as they are a component of traffic safety. However, States should be aware that statutory use of funds provision is limited to traffic stops, so any stop of a nonmotorized road user that is covered by the program would have to occur in that context.

Multiple commenters [44] expressed strong support for the BIL's provision that ten percent of the amount available to carry out Section 1906 may be used by NHTSA to provide technical assistance to States. IMRP recommended that NHTSA hire a technical consultant to help more States develop a meaningful program under the 1906 guidelines. Similarly, the League of American Bicyclists suggested that NHTSA identify a third party to actively promote the Section 1906 Program to States that qualify and requested that NHTSA highlight best practices for 1906 programs. NHTSA intends to provide needed technical assistance and will take these comments into consideration as it determines what technical assistance would be most useful to States.

Finally, the IMRP called for the data collected under the 1906 Grant Program to be submitted to a national data repository to help NHTSA and other Federal and State partners access data to continue furthering research on practices to achieve a safe, fair, and equitable traffic enforcement system. While NHTSA appreciates the value such a repository would provide, the BIL does not provide NHTSA with the authority to require States to submit such data and no such national data repository currently exists.

V. Administration of Highway Safety Grants, Annual Reconciliation, and Non-Compliance (Subparts D Through F)

Subparts D, E and F provide post-award requirements for NHTSA's highway traffic safety grant program. This includes rules governing the administration and closeout of the grants, as well as consequences for non-compliance with grant requirements.

A. Nonsubstantive Changes

With the exception of the sections discussed below, NHTSA proposes only nonsubstantive changes to the regulatory requirements in subparts D, E, and F. The nonsubstantive changes are limited to updating references to the annual HSP to adjust for the new triennial framework and providing updated citations resulting from OMB's revisions to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR part 200.

B. Updated Administrative Procedures of Note

The agency is responsible for overseeing and monitoring implementation of the grant programs to help ensure that recipients are meeting program and accountability requirements. Oversight procedures for monitoring the recipients' use of awarded funds can help the agency determine whether recipients are operating efficiently and effectively. Effective oversight procedures based on internal control standards for monitoring recipients' use of awarded funds are key to ensuring that program funds are being spent in a manner consistent with statute and regulation. In order to improve oversight of grantee activities and management of Federal funds and to implement requirements of the BIL, this NPRM proposes updates to the following procedures for administering the highway safety grant programs.

1. Equipment (23 CFR 1300.31)

NHTSA proposes to add a sentence to make clear that equipment may only be purchased if necessary to perform eligible grant activities or if specifically authorized as an allowable use of funds. 23 CFR 1300.32(b). This is not a new requirement; the proposed addition merely incorporates and makes clearer a long-standing requirement into NHTSA's grant rule.[45]

2. Amendments to the Highway Safety Plans (23 CFR 1300.32)

Under the FAST Act, NHTSA provided a regulatory procedure for States to submit amendments to the annual HSP. Under the BIL, States must, at a minimum, be allowed to amend the

[44] IMRP, League of American Bicyclists, and TEC.

[45] The requirement is based on both NHTSA's existing regulatory requirements relating to use of equipment (23 CFR 1300.31) and OMB's Uniform Administrative Requirements related to equipment (2 CFR 200.313) and allowability of costs (2 CFR 200.403).

annual grant application to provide updated project and subrecipient information. *See* 23 U.S.C. 402(l)(1)(C)(ii). In addition, although the annual grant application allows an opportunity for States to update the triennial HSP once a year, NHTSA recognizes that States may need to provide updates to the triennial HSP more frequently. *See* GHSA. For instance, a State might identify a new traffic safety problem or a change in conditions, such as a natural disaster, could occur such that a State's planned countermeasure strategy needs to be adjusted mid-grant-year. As a result, States may have a need to submit amendments to either the triennial HSP or the annual grant application or both. However, because the annual grant application includes a section that provides for updates to the triennial HSP, NHTSA proposes that a State may amend either the annual grant application or the triennial HSP through an amendment to the annual grant application. With this action, NHTSA proposes to provide procedures for amendments to annual grant applications at 23 CFR 1300.32.

GHSA commented that NHTSA should maintain the current HSP amendment process for annual grant applications, but should also allow HSP amendments to be submitted between application submissions. As noted above, NHTSA agrees. GHSA specified that NHTSA should not require States to provide formal quarterly submissions of HSP amendments, but should continue to require States to amend the annual grant application prior to beginning project performance. NHTSA agrees. The agency proposes very limited revisions to the existing regulatory text in order to update the text for the BIL's triennial framework. We replace all but one reference to the HSP (*see* § 1300.32(c)) with annual grant application to clarify that all amendments, even amendments updating the triennial HSP will be submitted as amendments to the annual grant application. Historically, most amendments relate to project-level details. We update § 1300.32(b) to require States to provide complete and updated project and subrecipient information prior to beginning project performance. NHTSA also proposes to add language to remind States that approval of an amendment to the annual grant application does not constitute approval of the project; States remain independently responsible to ensure that projects constitute an appropriate use of highway safety grant funds.

The CT HSO and GHSA both expressed concern about the amount of time it currently takes NHTSA to approve amendments, with GHSA recommending that NHTSA respond to HSP amendments within 5 business days and resolve amendments within 30 days. NHTSA appreciates the feedback and strives and will continue to strive to respond promptly to States. However, some amendments present novel issues or complexities, and NHTSA's ability to resolve amendments is dependent on receiving all information required to adequately assess the request.

WI BOTS requested clarification regarding the types of substantive changes to the triennial HSP and annual grant application that would require amendments. States are required to provide project and subrecipient information for all projects funded during the grant year; the BIL provides that States may submit this information throughout the grant year as the information becomes available. *See* 23 U.S.C. 402(l)(1)(C)(ii). States must, therefore, provide updated project information as it becomes available, and at a minimum prior to beginning project performance. NHTSA will not approve a voucher for payment if the voucher is inconsistent with project and subrecipient information in the annual grant application. In addition, if a State adds a new project to the annual grant application, but that project cannot be linked to an existing countermeasure strategy for programming funds in the triennial HSP, the State will have to submit an amendment updating the triennial HSP to provide the required information to support the countermeasure strategy.

3. Vouchers and Project Agreements (23 CFR 1300.33)

NHTSA proposes two limited changes to the requirements relating to vouchers and project agreements. First, NHTSA proposes that, in addition to the information currently required to be in a voucher, States also provide the eligible use(s) of funds that the voucher covers. 23 CFR 1300.33(b)(3). This addition is to ensure that NHTSA has the information necessary to understand the costs that are being vouchered for prior to approving reimbursements and to assist subsequent audits and reviews.

In addition, NHTSA proposes to extend the deadline for States to submit a final voucher from 90 days to 120 days, consistent with the extension for closeout provided in 2 CFR 200.344.

4. Program Income (23 CFR 1300.34)

The agency deleted the regulatory provision on program income in the last rulemaking, opting instead to rely on the OMB Uniform Administrative Requirements to address program income. However, in the years since finalizing the last rule, NHTSA has found that the removal increased confusion for grantees about which rules relating to program income apply to NHTSA grant funds. Accordingly, NHTSA now proposes to reinstate the regulatory language on program income, targeted at the use of program income within NHTSA's grant programs. The proposed language is modelled on the prior regulatory language, but has been updated to reflect updates to 2 CFR 200.307 and 2 CFR 1201.80.

5. Annual Report (23 CFR 1300.35)

The most significant change to the administrative requirements for NHTSA's grant program is the BIL's codification of the annual report. Consistent with OMB rules that apply to all Federal grants,[46] NHTSA has long required each State to submit an annual report providing performance and financial information on the State's activities during the grant year at 23 CFR 1300.35. The BIL codified the requirement and specified that the annual report must include an assessment of the State's progress in achieving performance targets identified in the triennial HSP and a description of the extent to which that progress is aligned with the State's triennial HSP. The BIL also provides that the State must describe any plans to adjust the strategy for programming funds in order to achieve performance targets, if applicable. *See* 23 U.S.C. 402(l)(2).

The NSC commented that States should be required to provide regular annual information on programs, including participants, use of funds, and updates on tracked performance measures. NHTSA notes that the annual report fulfills these functions. NASEMSO suggested that NHTSA require annual report content to be provided in a well-structured format, including qualitative explanations related to obstacles and successes in order to assist with future planning in the State and to serve as a resource to other States. NHTSA agrees that a well-structured format will make annual reports more accessible to stakeholders, the public, and other States in terms of allowing ease of reading and comparison between State reports. The agency has therefore proposed a structure for the report that provides for two sections: a performance report and an activity report. In the past, NHTSA has provided States with a voluntary

[46] Currently implemented at 2 CFR 200.328 and 200.329 (financial and performance reporting, respectively).

template for reporting. NHTSA seeks comment on whether States find this helpful and whether they would support NHTSA creating a mandatory template. If yes, NHTSA also seeks comments on the substance of the template.

GHSA noted that the BIL provides 120 days for States to submit an annual report after the end of the fiscal year and requested that NHTSA implement that provision. NHTSA has done so. In addition, GHSA noted that the BIL's codification of the annual report is limited to performance reporting and requested that NHTSA remove all aspects of the prior annual report that are not explicitly required by the BIL. GHSA opined, however, that NHTSA could retain the requirement to report HVE activities because it places a low burden on States who already collect that information.

NHTSA notes that the annual report serves many purposes for NHTSA's grant program. As provided in the BIL, it serves as the State's required annual performance report, consistent with 2 CFR 200.329. In order to satisfy the requirements of 2 CFR 200.329, NHTSA proposes to also require States to describe how the projects funded under the grant contributed to meeting the States' performance targets. States are also required, as a condition of receiving Federal grant funds, to submit annual financial reports. *See* 2 CFR 200.328.[47] Because the BIL requires States to update project information provided in the annual grant application throughout the year, NHTSA believes that the updated project information in the annual grant application provides the information that is required financial reporting and therefore does not propose to require duplicative information in the annual report. However, as a result it is vital that States provide updated project information in the annual grant application no later than 120 days after the close of the fiscal year, to match the deadline for the annual report.

Additionally, because NHTSA has implemented several grant requirements through certifications and assurances, it is important for grant oversight that NHTSA get year-end information to ensure that States have met those assurances. As a result, NHTSA proposes the activity report section of the annual report. As part of the annual activity report, NHTSA proposes to require States to provide a description of all projects and activities funded and implemented for each countermeasure strategy, including the total amount of Federal funds expended and the zip codes in which projects were performed (or identification as a State-wide project), an explanation of reasons for projects that were planned but not implemented, and a description of how the projects were informed by the meaningful public participation and engagement described in the State's triennial HSP. The intent of the requirement to provide location information via zip code is for NHTSA to understand where the funding is being utilized compared with the State's problem ID and performance targets. The agency seeks comment on whether there is a better metric to achieve this same goal. The agency requires an explanation as to why projects were not implemented in order to understand why the State has veered from the projects it identified to apply for the grant. The agency proposes to require the State to provide a description of how projects were informed by meaningful public participation and engagement in order to ensure that the public participation and engagement described in the State's planning process in the triennial HSP impacted the State's highway safety program in implementation, not just planning. *See* 23 U.S.C. 402(b)(1)(B). *See also* the discussion about Meaningful Public Engagement, above. NHTSA also proposes to require the State to describe the evidence-based enforcement program activities, including discussion of the community collaboration efforts and data collection and analysis required by the BIL. *See* 23 U.S.C. 402(b)(1)(E). Finally, NHTSA proposes to retain the requirement that States submit information regarding mobilization participation.

6. Appeals of Written Decision by the Regional Administrator (23 CFR 1300.36)

GHSA requested two amendments to the regulatory appeal process at 23 CFR 1300.36 that provides the process for formal appeals of the written decisions of NHTSA Regional Administrators to the NHTSA Associate Administrator, Regional Operations and Program Delivery. GHSA requested a requirement that NHTSA responses to State appeals be made in writing, not via an informal email or in a phone call. NHTSA agrees. A formal written appeal that meets the requirements of section 1300.36 is entitled to the same level of response as required of the appeal. We propose regulatory text to clarify that NHTSA must reply in writing. Second, GHSA requested that NHTSA amend the regulation to allow States to appeal decisions of the Associate Administrator to the Administrator. The agency declines to accept this recommendation. The Associate Administrator is delegated authority to exercise the powers and perform the duties of the Administrator with respect to the grants to States under chapter 4 of title 23. *See* 49 CFR 501.8(i). As such, the Associate Administrator has the authority to issue determinations on grant appeals on behalf of the agency.

7. Disposition of Unexpended Balances (23 CFR 1300.41)

NHTSA proposes to extend the deadline for submitting a final voucher from 90 days to 120 days in order to align with the timeframe for closeout in 2 CFR 200.344. GHSA requested that NHTSA ensure that notifications regarding unexpended funds under 23 CFR 1300.41(b)(2) be sent to the State highway safety office director, not solely to the Governor's Representative. NHTSA notes that the GR is required to be responsible for the State's highway safety program and must therefore maintain communication with the SHSO director. That said, NHTSA will be mindful to include all appropriate contacts in communications with the State.

VII. Request for Comments

Historically, NHTSA was unable to request comments on regulations implementing these grant programs in connection with new authorizations due to lead-time constraints. As BIL afforded the necessary lead-time, the agency was pleased to issue the earlier RFC and associated public meetings as the first step in this process, and the comments we received informed today's notice. NHTSA is equally pleased to now request comments on all aspects of this NPRM from all interested stakeholders. This section describes how you can participate in the process.

How do I prepare and submit comments?

Your comments must be written in English.[48] To ensure that your comments are correctly filed in the docket, please include the docket number NHTSA–2022–0036 in your comment. Your comments must not be more than 15 pages long.[49] NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments, and there is no limit

[47] NHTSA has an exemption that allows the agency to use its own financial reporting, instead of commonly used and OMB-approved Federal Financial Report. 2 CFR 1200.327.

[48] 29 CFR 553.21.

[49] *Id.*

on the length of the attachments. If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents please be scanned using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions.[50] Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *https://www.gpo.gov/fdsys/pkg/FR-2002-02-22/pdf/R2-59.pdf*. DOT's guidelines may be accessed at *https://www.transportation.gov/dotinformation-dissemination-qualityguidelines*.

Tips for Preparing Your Comments

When submitting comments, please remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified in the **DATES** section above.

How can I be sure that my comments were received?

If you submit your comments to NHTSA's docket by mail and wish DOT Docket Management to notify you upon receipt of your comments, please enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

[50] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing confidential business information, you should include a cover letter setting forth the information specified in 49 CFR part 512.

In addition, you should submit a copy from which you have deleted the claimed confidential business information to the Docket by one of the methods set forth above.

Will NHTSA consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent practicable, we will also consider comments received after that date. If interested persons believe that any information that the agency places in the docket after the issuance of the NPRM affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule. However, the agency's ability to consider any such late comments in this rulemaking will be limited due to the time frame for issuing a final rule. If a comment is received too late for us to practicably consider in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the materials placed in the dockets for this document (*e.g.,* the comments submitted in response to this document by other interested persons) at any time by going to *https://www.regulations.gov*. Follow the online instructions for accessing the dockets. You may also read the materials at the DOT Docket Management Facility by going to the street address given above under **ADDRESSES**.

IX. Regulatory Analyses and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563. This action establishes revised uniform procedures implementing State highway safety grant programs, as a result of enactment of the Infrastructure Investment and Jobs Act (IIJA, also referred to as the Bipartisan Infrastructure Law or BIL). While this Notice of Proposed Rulemaking (NPRM) would establish minimum criteria for highway safety grants, most of the criteria are based on statute. NHTSA has no discretion over the grant amounts, and its implementation authority is limited and non-controversial. Therefore, this rulemaking has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

This NPRM is a rulemaking that will establish revised uniform procedures implementing State highway safety grant programs, as a result of enactment of the Infrastructure Investment and Jobs Act (IIJA, also referred to as the Bipartisan Infrastructure Law or BIL). Under these grant programs, States will receive funds if they meet the application and qualification requirements. These grant programs will affect only State governments, which are not considered to be small entities as that term is defined by the RFA. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires NHTSA to develop an accountable process to

ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' 64 FR 43255 (August 10, 1999). ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, an agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed regulation. An agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. First, we note that the regulation implementing these grant programs is required by statute. Moreover, the agency has determined that this NPRM would not have sufficient Federalism implications as defined in the order to warrant formal consultation with State and local officials or the preparation of a federalism summary impact statement. Nevertheless, NHTSA notes that it has consulted with States representatives through public meetings, continues to engage with State representatives regarding general implementation of the BIL, including these grant programs, and expects to continue these informal dialogues.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 (61 FR 4729 (February 7, 1996)), ''Civil Justice Reform,'' the agency has considered whether this proposed rule would have any retroactive effect. I conclude that it would not have any retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. A person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The Information Collection Request (ICR) described below has been forwarded to OMB for review and comment. 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.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: State Highway Safety Grant Programs.

Type of Request: New collection.

OMB Control Number: Not assigned.

Form Number: N/A (Highway Safety Plan and Annual Plan).

Requested Expiration Date of Approval: Three years from the approval date.

Summary of Collection of Information: On November 15, 2021, the President signed into law the ''Infrastructure Investment and Jobs Act'' (the Bipartisan Infrastructure Act, or BIL), Public Law 117–58, which reauthorized highway safety grant programs administered by NHTSA. Specifically, these grant programs include the Highway Safety Program grants (23 U.S.C. 402 or Section 402), the National Priority Safety Program grants (23 U.S.C. 405 or Section 405), and a separate grant on racial profiling restored (with some changes) from a previous authorization (Sec. 1906, Pub. L. 109–59, as amended by Sec. 4011, Pub. L. 114–94, or Section 1906). The BIL requires NHTSA to award these grants to States pursuant to a rulemaking.

The BIL alters the structure of the Section 402 grant program, replacing the current annual Highway Safety Plan (HSP), which serves as both a planning and application document, with a triennial HSP and an annual grant application. The BIL also removes one grant program and adds two new grant programs (preventing roadside deaths and driver and officer safety education), but otherwise does not significantly change the structure of the Section 405 grants. The statute provides that States must submit two documents to apply for Section 402, Section 405 and Section 1906 grants: a triennial Highway Safety Plan (HSP), which serves as a planning document, and an annual grant application. It further codifies an annual report that States must submit at the end of the grant year.

The information collected under this proposed rulemaking is to include a triennial HSP consisting of information on the highway safety planning process, public participation, performance plan, countermeasure strategies, and a performance report. *See* 23 CFR 1300.11. It also includes an annual grant application consisting of updates to the triennial HSP, project and subrecipient information, applications for Section 405 and Section 1906 grans, and certifications and assurances. *See* 23 CFR 1300.12. After award of grant funds, States are required to update the project and subrecipient information (*see* 23 CFR 1300.12 and 23 CFR 1300.32) and to submit an annual report, assessing performance and verifying compliance with assurances provided in the grant application. *See* 23 CFR 1300.35. In addition, as part of the statutory criteria for certain Section 405 grants (occupant protection and impaired driving countermeasures),[51] States may be required to receive assessments of their State programs in order to receive a grant. As part of the assessment process, States must provide information and respond to questions.

Description of the Need for the Information and Use of the Information: As noted above, the statute provides that the triennial Highway Safety Plan and annual grant application are the basis for State applications for the grants identified each fiscal year. This information is necessary to determine whether a State satisfies the criteria for grant awards. The annual report tracks progress in achieving the aims of the grant program. The information is necessary to verify performance under the grants and to provide a basis for improvement.

Description of the Likely Respondents: This collection impacts the 57 governmental entities that are eligible to apply for grants under the NHTSA

[51] Under occupant protection grants, one criterion that a State with a lower belt use rate may use to receive a grant is to complete an assessment of its occupant protection program once every five years (23 U.S.C. 405(b)(3)(B)(ii)(VI)); and another criterion is a comprehensive occupant protection program that includes a program assessment conducted every five years as one of its elements (23 U.S.C. 405(b)(3)(B)(ii)(V)). Under impaired driving countermeasure grants, a State with high average impaired driving fatality rates must have an assessment of its impaired driving program once every 3 years in order to receive a grant. (23 U.S.C. 405(d)(3)(C)(i)(I)).

Highway Safety Grant Program (the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the U.S. Virgin Islands, and the Bureau of Indian Affairs on behalf of Indian tribes). These respondents will hereafter be referred to as ''State respondents.'' This collection also impacts the subject matter experts and administrative assistants who are involved in performing assessments for the grant program. NHTSA estimates that there will be approximately 260 assessor respondents per year.

Frequency: The triennial Highway Safety Plan (HSP) is a planning document for a State's entire traffic safety program and outlines the performance targets and countermeasure strategies for key program areas as identified by State and Federal data and problem identification. The annual grant application provides project level information and applications for the Section 405 and Section 1906 grants. By statute, States must submit, and NHTSA must approve, the triennial HSP and annual grant application as a condition of providing Section 402 grant funds. States also are required to submit their Section 405 and Section 1906 grant applications as part of the annual grant application. States must submit the triennial HSP once every three years and an annual grant application every fiscal year in order to qualify for grant funds. As described above, assessments may be required for a State to apply for certain Section 405 grant programs and are submitted once every five years. In addition, States provide an annual report evaluating their progress under the programs.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: NHTSA calculates the estimated burden hours for all State applicant respondents and for the non-State subject matter experts and administrative assistants who conduct assessments for the States.

The estimated burden hours for the collection of information for State applicants are based on all eligible respondents for each of the grants:

- Section 402 grants: 57 (fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Secretary of the Interior);
- Section 405 Grants (except Motorcyclist Safety Grants) and Section 1906 Grant: 56 (fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and
- Section 405, Motorcyclist Safety Grants: 52 (fifty States, the District of Columbia, and Puerto Rico).

We estimate that it will take each State respondent approximately 320 hours in the first year of a triennial cycle and 100 hours per year for the second and third years of the triennial cycle to collect, review and submit the required information to NHTSA for the Section 402 program. We estimate that it will take each respondent approximately 270 hours to collect, review and submit the required information to NHTSA for the Section 405 and Section 1906 program every year. We estimate that it will take each respondent approximately 88 hours per assessment to collect, review and submit the required information for the Section 405 assessments.[52] We further estimate that it will take each respondent approximately 80 hours to collect, review and submit the required information to NHTSA for the annual reports every year.

Based on the above information, the total estimated annual burden hours averaged over the triennial cycle for all State respondents is 30,704 hours annually. The total estimated annual burden hours for all respondents in the first year is 39,064 hours; and the total estimated burden hours for all respondents in the second and third years of the cycle is 26,524 per year.

The estimated annual burden hours averaged over the triennial cycle for each State respondent is 523.3 hours, with no more than 176 additional hours if the respondent submits two assessments in a given year. The estimated annual burden hours for each respondent in the first year of the triennial cycle is 670 hours and the estimated annual burden hours for each respondent in the second and third years of the cycle is 450 hours per year. To estimate annual burden hours for each respondent, the agency has added the burden hours for the Section 402 Program, the Section 405 and Section 1906 Program and the annual reports. For each Section 405 assessment submitted by a respondent (no more than 2 assessments in a five-year period), an additional 88 hours should be added.[53]

Assuming the average salary of individuals responsible for submitting the information is $55.17 per hour,[54] the estimated cost averaged over the triennial cycle for each respondent is $28,870.461, with up to an additional $9,709.92 if the respondent submits two Section 405 assessments); the estimated total cost averaged over the triennial cycle for all State respondents is $1,693,939.68 per year.

These estimates are based on every eligible respondent submitting the required information for every available grant every year. However, not all States apply for and receive a grant each year under each of these programs. Similarly, under Section 405 grants, some requirements allow States to submit a criterion covering multiple years, allowing States to simply recertify or resubmit existing materials in subsequent years. Considering the agency's steps to streamline the submission process, these estimates represent the highest possible burden hours and amounts for States submitting the required information.

In addition to State applicant respondents, NHTSA estimates that there will be a total of 78 additional subject matter expert and administrative assistant respondents per year. These respondents (65 subject matter experts and 13 administrative assistants) conduct the Section 405 assessments for States and are recruited by NHTSA or the State and paid for their time. As stated above, NHTSA estimates that there will be a total of 13 assessments conducted in a year (9 assessments for Section 405 occupant protection grants, and 4 assessments for Section 405 impaired driving countermeasures grant). For these assessments, NHTSA estimates that the subject matter expert assessors spend 80 hours of time on each assessment and that the administrative assistants spend 46 hours on each assessment. Therefore, NHTSA estimates the total annual burden for the subject matter experts and administrative assistants who conduct State assessments to be 6,032 hours per year.

---

[52] NHTSA estimates that there will be 9 assessments for Section 405 occupant protection grants and 4 assessments for the Section 405 impaired driving grants each year. This yields total estimated annual burden hours for all respondents of 1,144 hours per year. No individual State will have more than 2 assessments over a three year period; many States may complete only one or no assessments in a three year period.

[53] The total estimated burden hours for assessments is based on the average number of State asssesments carried out each year in each covered grant area.

[54] NHTSA used the estimated average wage for State and local government ''Management Analysts,'' Occupation Code 13–1111, which the Bureau of Labor Statistics estimates to be $34.15. *See* May 2021 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 336100—Motor Vehicle Manufacturing, available at *https://www.bls.gov/oes/current/naics4_999200.htm.* The Bureau of Labor Statistics estimates that wages for State and local government workers represent 61.9% of total compensation costs. *See* Table 1. Employer Costs for Employee Compensation by ownership, available at *https://www.bls.gov/news.release/ecec.t01.htm.*

To calculate the estimated cost associated with the subject matter expert assessors and administrative assistants, NHTSA uses the amounts paid for these services. For assessments, the State pays each subject matter expert a flat rate of $2,700, and each administrative assistant a flat rate of $2,100. The total estimated costs associated with burden hours for all assessment respondents is $202,800.

Total Estimated Burden: Accordingly, NHTSA estimates the total annual burden hours, averaged over a triennial cycle, for all respondents to be 36,736 hours and the associated estimated total cost averaged over a triennial cycle for all respondents to be $1,896,739.68.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Whether the agency's estimate for the burden of the information collection is accurate.
- Ways to enhance the quality, utility, and clarity of the information to be collected.
- 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.

Please submit any comments, identified by the docket number in the heading of this document, by any of the methods described in the **ADDRESSES** section of this document. Comments are due by October 31, 2022.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). This NPRM would not meet the definition of a Federal mandate because the resulting annual State expenditures would not exceed the minimum threshold. The program is voluntary and States that choose to apply and qualify would receive grant funds.

G. National Environmental Policy Act

NHTSA has considered the impacts of this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that this NPRM would not have a significant impact on the quality of the human environment.

H. Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) is determined to be economically significant as defined under Executive Order 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not likely to have a significantly adverse effect on the supply of, distribution of, or use of energy. This rulemaking has not been designated as a significant energy action. Accordingly, this rulemaking is not subject to Executive Order 13211.

K. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The agency has analyzed this NPRM under Executive Order 13175, and has determined that today's action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

L. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

M. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The BIL requires NHTSA to award highway safety grants pursuant to rulemaking. (Section 24101(d), BIL; and 23 U.S.C. 406). The Regulatory Information Service Center publishes the Unified Agenda in or about April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

N. Privacy Act

Please note that 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 FR19477) or you may visit *http://dms.dot.gov.*

List of Subjects in 23 CFR Part 1300

Grant programs—transportation, Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure, Alcohol abuse, Drug abuse, Motor vehicles—motorcycles.

■ For the reasons discussed in the preamble, under the authority of 23 U.S.C. 401 *et seq.,* the National Highway Traffic Safety Administration proposes to amend 23 CFR chapter III by revising part 1300 to read as follows:

PART 1300—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY GRANT PROGRAMS

Subpart A—General

Sec.

Subpart B—Triennial Highway Safety Plan and Annual Grant Application

Subpart C—National Priority Safety Program and Racial Profiling Data Collection Grants

Authority: 3 U.S.C. 402; 23 U.S.C. 405; Sec. 1906, Pub. L. 109–59, 119 Stat. 1468, as amended by Sec. 4011, Pub. L. 114–94, 129 Stat. 1512; delegation of authority at 49 CFR 1.95.

Subpart A—General

§ 1300.1 Purpose.

This part establishes uniform procedures for State highway safety programs authorized under 23 U.S.C. Chapter 4 and Sec. 1906, Public Law 109–59, as amended by Sec. 4011, Public Law 114–94.

§ 1300.2 [Reserved].

§ 1300.3 Definitions.

As used in this part—

Annual grant application means the document that the State submits each fiscal year as its application for highway safety grants (and amends as necessary), which provides any necessary updates to the State's most recent triennial HSP, identifies all projects the State will implement during the fiscal year to achieve its highway safety performance targets, describes how the State has adjusted its countermeasure strategy for programming funds based on the annual report, and includes the application for grants under Sections 405 and 1906.

Annual Report File (ARF) means FARS data that are published annually, but prior to final FARS data.

Automated traffic enforcement system (ATES) means any camera which captures an image of a vehicle for the purposes only of red light and speed enforcement, and does not include hand held radar and other devices operated by law enforcement officers to make an on-the-scene traffic stop, issue a traffic citation, or other enforcement action at the time of the violation.

Carry-forward funds means those funds that a State has not expended on projects in the fiscal year in which they were apportioned or allocated, that are within the period of availability, and that are being brought forward and made available for expenditure in a subsequent fiscal year.

Community means populations sharing a particular characteristic or geographic location.

Contract authority means the statutory language that authorizes an agency to incur an obligation without the need for a prior appropriation or further action from Congress and which, when exercised, creates a binding obligation on the United States for which Congress must make subsequent liquidating appropriations.

Countermeasure strategy for programming funds means a proven effective or innovative countermeasure or group of countermeasures along with information on how the State plans to implement those countermeasures (*i.e.,* funding amounts, subrecipient types, location or community information) that the State proposes to be implemented with grant funds under 23 U.S.C. Chapter 4 or Section 1906 to address identified problems and meet performance targets.

Data-driven means informed by a systematic review and analysis of quality data sources when making decisions related to planning, target establishment, resource allocation and implementation.

Evidence-based means based on approaches that are proven effective with consistent results when making decisions related to countermeasure strategies and projects.

Fatality Analysis Reporting System (FARS) means the nationwide census providing yearly public data regarding fatal injuries suffered in motor vehicle traffic crashes, as published by NHTSA.

Final FARS means the FARS data that replace the annual report file and contain additional cases or updates that became available after the annual report file was released.

Fiscal year means the Federal fiscal year, consisting of the 12 months beginning each October 1 and ending the following September 30.

Governor means the Governor of any of the fifty States, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, the Mayor of the District of Columbia, or, for the application of this part to Indian Country as provided in 23 U.S.C. 402(h), the Secretary of the Interior.

Governor's Representative for Highway Safety (GR) means the official appointed by the Governor to implement the State's highway safety program or, for the application of this part to Indian Country as provided in 23 U.S.C. 402(h), an official of the Bureau of Indian Affairs or other Department of Interior official who is duly designated by the Secretary of the Interior to implement the Indian highway safety program.

Highway safety program means the planning, strategies and performance measures, and general oversight and management of highway safety strategies and projects by the State either directly or through subrecipients to address highway safety problems in the State, as defined in the triennial Highway Safety Plan and the annual grant application, including any amendments.

Indian country means all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof and whether within or without the limits of a State; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

NHTSA means the National Highway Traffic Safety Administration.

Performance measure means a metric that is used to establish targets and to assess progress toward meeting the established targets.

Performance target means a quantifiable level of performance or a goal, expressed as a value, to be achieved through implementation of countermeasure strategies within a specified time period.

Political subdivision of a State means a separate legal entity of a State that usually has specific governmental functions, and includes Indian tribal governments. Political subdivision includes, but is not limited to, local governments and any agencies or

instrumentalities thereof, school districts, intrastate districts, associations comprised of representatives from political subdivisions acting in their official capacities (including State or regional conferences of mayors or associations of chiefs of police), local court systems, and any other regional or interstate government entity.

Problem identification means the data collection and analysis process for identifying areas of the State, types of crashes, types of populations (*e.g.,* high-risk populations), related data systems or other conditions that present specific highway safety challenges within a specific program area.

Program area means any of the national priority safety program areas identified in 23 U.S.C. 405 or a program area identified by a State in the Highway Safety Plan as encompassing a major highway safety or related data problem in the State and for which documented effective countermeasure strategies have been identified or projected by analysis to be effective.

Project (or funded project) means a discrete effort involving identified subrecipients or contractors to be funded, in whole or in part, with grant funds under 23 U.S.C. Chapter 4 or Section 1906 and that addresses countermeasure strategies identified in the Highway Safety Plan.

Project agreement means a written agreement at the State level or between the State and a subrecipient or contractor under which the State agrees to perform a project or to provide Federal funds in exchange for the subrecipient's or contractor's performance of a project that supports the highway safety program.

Project agreement number means a unique State-generated identifier assigned to each project agreement.

Public road means any road under the jurisdiction of and maintained by a public authority and open to public travel.

Section 402 means section 402 of title 23 of the United States Code.

Section 405 means section 405 of title 23 of the United States Code.

Section 1906 means section 1906, Public Law 109–59, as amended by section 4011, Public Law114–94.

Serious injuries means, until April 15, 2019, injuries classified as ''A'' on the KABCO scale through the use of the conversion tables developed by NHTSA, and thereafter, ''suspected serious injury (A)'' as defined in the Model Minimum Uniform Crash Criteria (MMUCC) Guideline, 5th Edition.

State means, except as provided in § 1300.25(b), any of the fifty States of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or, for the application of this part to Indian Country as provided in 23 U.S.C. 402(h), the Secretary of the Interior.

State highway safety improvement program (HSIP) means the program defined in 23 U.S.C. 148(a)(10).

State strategic highway safety plan (SHSP) means the plan defined in 23 U.S.C. 148(a)(11).

Triennial Highway Safety Plan (triennial HSP) means the document that the State submits once every three fiscal years, documenting its highway safety program, including the State's highway safety planning process and problem identification; public participation and engagement; performance plan; countermeasure strategy for programming funds; and performance report.

Underserved populations means populations sharing a particular characteristic or geographic location, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.

§ 1300.4 State Highway Safety Agency—authority and functions.

(a) *In general.* In order for a State to receive grant funds under this part, the Governor shall exercise responsibility for the highway safety program by appointing a Governor's Representative for Highway Safety who shall be responsible for a State Highway Safety Agency that has adequate powers and is suitably equipped and organized to carry out the State's highway safety program and for coordinating with the Governor and other State agencies. To avoid a potential conflict of interest, the Governor's Representative for Highway Safety may not be employed by a subrecipient of the State Highway Safety Agency.

(b) *Authority.* Each State Highway Safety Agency shall be equipped and authorized to—

(1) Develop and execute the triennial Highway Safety Plan, annual grant application, and highway safety program in the State;

(2) Manage Federal grant funds effectively and efficiently and in accordance with all Federal and State requirements;

(3) Foster meaningful public participation and engagement from affected communities;

(4) Obtain information about highway safety programs and projects administered by other State and local agencies;

(5) Maintain or have access to information contained in State highway safety data systems, including crash, citation or adjudication, emergency medical services/injury surveillance, roadway and vehicle recordkeeping systems, and driver license data;

(6) Periodically review and comment to the Governor on the effectiveness of programs to improve highway safety in the State from all funding sources that the State plans to use for such purposes;

(7) Provide financial and technical assistance to other State agencies and political subdivisions to develop and carry out highway safety strategies and projects; and

(8) Establish and maintain adequate staffing to effectively plan, manage, and provide oversight of projects implemented under the annual grant application and to properly administer the expenditure of Federal grant funds.

(c) *Functions.* Each State Highway Safety Agency shall—

(1) Develop and prepare the triennial HSP and annual grant application based on evaluation of highway safety data, including crash fatalities and injuries, roadway, driver, demographics and other data sources to identify safety problems within the State;

(2) Establish projects to be funded within the State under 23 U.S.C. Chapter 4 based on identified safety problems and priorities and projects under Section 1906;

(3) Conduct risk assessments of subrecipients and monitor subrecipients based on risk, as provided in 2 CFR 200.332;

(4) Provide direction, information and assistance to subrecipients concerning highway safety grants, procedures for participation, development of projects and applicable Federal and State regulations and policies;

(5) Encourage and assist subrecipients to improve their highway safety planning and administration efforts;

(6) Review, approve, and evaluate the implementation and effectiveness of State and local highway safety programs and projects from all funding sources that the State plans to use under the triennial HSP and annual grant application, and approve and monitor the expenditure of grant funds awarded under 23 U.S.C. Chapter 4 and Section 1906;

(7) Assess program performance through analysis of highway safety data and data-driven performance measures;

(8) Ensure that the State highway safety program meets the requirements of 23 U.S.C. Chapter 4, Section 1906, and applicable Federal and State laws, including but not limited to the standards for financial management

systems required under 2 CFR 200.302 and internal controls required under 2 CFR 200.303;

(9) Ensure that all legally required audits of the financial operations of the State Highway Safety Agency and of the use of highway safety grant funds are conducted;

(10) Track and maintain current knowledge of changes in State statutes or regulations that could affect State qualification for highway safety grants or transfer programs;

(11) Coordinate the triennial HSP, annual grant application, and highway safety data collection and information systems activities with other federally and non-federally supported programs relating to or affecting highway safety, including the State SHSP as defined in 23 U.S.C. 148(a); and

(12) Administer Federal grant funds in accordance with Federal and State requirements, including 2 CFR parts 200 and 1201.

§ 1300.5 Due dates—interpretation.

If any deadline or due date in this part falls on a Saturday, Sunday or Federal holiday, the applicable deadline or due date shall be the next business day.

Subpart B—Triennial Highway Safety Plan and Annual Grant Application

§ 1300.10 General.

To apply for any highway safety grant under 23 U.S.C. Chapter 4 and Section 1906, a State shall submit electronically and according to the due dates in the relevant sections below—

(a) A triennial Highway Safety Plan meeting the requirements of this subpart; and

(b) An annual grant application.

§ 1300.11 Triennial Highway Safety Plan.

The State's triennial highway safety plan documents a three-year period of the State's highway safety program that is data-driven in establishing performance targets and selecting the countermeasure strategies for programming funds to meet those performance targets.

(a) *Due date for submission.* A State shall submit its triennial highway safety plan electronically to NHTSA no later than 11:59 p.m. EDT on July 1 preceding the first fiscal year covered by the plan. Failure to meet this deadline may result in delayed approval of the triennial highway safety plan which could impact approval and funding under a State's annual grant application.

(b) *Contents.* In order to be approved, the triennial highway safety plan submitted by the State must cover three fiscal years beginning with the first fiscal year following submission of the plan and contain the following components:

(1) *Highway safety planning process and problem identification.* (i) Description of the processes, data sources and information used by the State in its highway safety planning (*i.e.,* problem identification, public participation and engagement, performance measures, and countermeasure strategies); and

(ii) Description and analysis of the State's overall highway safety problems as identified through an analysis of data, including but not limited to fatality, injury, enforcement, judicial and sociodemographic data.

(2) *Public participation and engagement.* (i) Description of the State's public participation and engagement planning efforts in the highway safety planning process and program, including—

(A) A statement of the State's starting goals for the public engagement efforts, including how the public engagement efforts will contribute to the development of the State's countermeasure strategies for programming funds;

(B) Identification of the affected and potentially affected communities, including particular emphasis on underserved communities and communities overrepresented in the data, d (*i.e.,* what communities did the State identify at the outset of the process) and a description of how those communities were identified;

(C) The steps taken by the State to reach and engage those communities, including accessibility measures implemented by the State both in outreach and in conducting engagement opportunities;

(ii) The results of the State's engagement efforts, including, as applicable—

(A) A list of the engagement opportunities conducted, including type of engagement (*e.g.,* stakeholder or community meetings, town hall events, focus groups, surveys and online engagement), location(s) (*e.g.,* virtual, city/town), date(s), summary of issues covered; and

(B) Identification of the actual participants (*e.g.,* specific community and constituent groups, first responders, highway safety committees, program stakeholders, governmental stakeholders, and political subdivisions, particularly those representing the most significantly impacted by traffic crashes resulting in injuries and fatalities) and their roles in the State's highway safety planning process;

(iii) A description of the public participation and engagement efforts the State plans to undertake during the three-year period covered by the triennial HSP, at the level of detail required in paragraph (b)(2)(i) of this section.

(3) *Performance plan.* (i) List of data-driven, quantifiable and measurable highway safety performance targets, as laid out in paragraphs (b)(3)(ii) and (b)(3)(iii) of this section, that demonstrate constant or improved performance over the three-year period covered by the triennial HSP and based on highway safety program areas identified by the State during the planning process conducted under paragraph (b)(1) of this section.

(ii) All performance measures developed by NHTSA in collaboration with the Governors Highway Safety Association (''Traffic Safety Performance Measures for States and Federal Agencies'' (DOT HS 811 025)), as revised in accordance with 23 U.S.C. 402(k)(5) and published in the **Federal Register**, which must be used as minimum measures in developing the performance targets identified in paragraph (b)(3)(i) of this section, provided that—

(A) At least one performance measure and performance target that is data-driven shall be provided for each program area identified by the State during the planning process conducted under paragraph (b)(1) of this section that enables the State to track progress toward meeting the quantifiable annual target;

(B) For each program area performance measure, the State shall provide—

(1) Quantifiable performance targets culminating in the final year covered by the triennial HSP, with annual benchmarks to assist States in tracking progress; and

(2) Justification for each performance target that explains how the target is data-driven, including a discussion of the factors that influenced the performance target selection; and

(C) State HSP performance targets are identical to the State DOT targets for common performance measures (fatality, fatality rate, and serious injuries) reported in the HSIP annual report, as coordinated through the State SHSP.

(iii) Additional performance measures not included under paragraph (b)(3)(ii) of this section. For program areas identified by the State where performance measures have not been jointly developed (*e.g.,* risky drivers, vulnerable road users, etc.) and for which States are using highway safety

grant program funds, the State shall develop its own performance measures and performance targets that are data-driven, and shall provide the same information as required under paragraph (b)(3)(ii) of this section.

(4) *Countermeasure strategy for programming funds.* For each program area identified by the State during the planning process conducted under paragraph (b)(1) of this section, a description of the countermeasure strategies that will guide the State's program implementation and annual project selection in order to achieve specific performance targets described in paragraph (b)(3) of this section, including, at a minimum—

(i) The problem identified during the planning process described in paragraph (b)(1) of this section that the countermeasure strategy addresses and a description of the linkage between the problem identification and the countermeasure strategy;

(ii) A list of the countermeasures that the State will implement, including;

(A) For countermeasures rated 3 or more stars in *Countermeasures That Work,* citation to the countermeasure in the most recent edition of *Countermeasures That Work;* or

(B) For State-developed countermeasure strategies, justification supporting the countermeasure strategy, including data, data analysis, research, evaluation and/or substantive anecdotal evidence, that supports the effectiveness of the proposed countermeasure strategy;

(iii) Identification of the performance target(s) the countermeasure strategy will address, along with an explanation of the link between the effectiveness of the countermeasure strategy and the performance target;

(iv) A description of any Federal funds that the State plans to use to carry out the countermeasure strategy including, at a minimum, the funding source(s) (*e.g.,* Section 402, Section 405(b), etc.) and an estimated allocation of funds;

(v) A description of considerations the State will use to determine what projects to fund to implement the countermeasure strategy, including, as applicable, public engagement, traffic safety data, affected communities, impacted locations, solicitation of proposals; and

(vi) A description of the manner in which the countermeasure strategy was informed by the uniform guidelines issued in accordance with 23 U.S.C. 402(a)(2) and, if applicable, NHTSA-facilitated programmatic assessments.

(5) *Performance report.* A report on the State's progress towards meeting State performance targets from the most recently submitted triennial HSP, at the level of detail in § 1300.35.

(c) *Review and approval procedures*—(1) *General.* Subject to paragraphs (c)(2) and (4) of this section, the Regional Administrator shall review and approve or disapprove a triennial HSP within 60 days from date of receipt. NHTSA will not approve a triennial HSP that does not meet the requirements of this section.

(2) *Additional information.* NHTSA may request additional information from a State to ensure compliance with the requirements of this part. Upon receipt of the request, the State must submit the requested information within 7 business days. NHTSA may extend the deadline for approval or disapproval of the triennial HSP by no more than 90 additional days, as necessary to facilitate the request.

(3) *Approval or disapproval of triennial Highway Safety Plan.* Within 60 days after receipt of the triennial HSP under this subpart the Regional Administrator shall issue—

(i) A letter of approval, with conditions, if any, to the Governor's Representative for Highway Safety; or

(ii) A letter of disapproval to the Governor's Representative for Highway Safety informing the State of the reasons for disapproval and requiring resubmission of the triennial HSP with any modifications necessary for approval.

(4) *Resubmission of disapproved triennial Highway Safety Plan.* The State shall resubmit the triennial HSP with necessary modifications within 30 days from the date of disapproval. The Regional Administrator shall issue a letter of approval or disapproval within 30 days after receipt of a revised triennial HSP resubmitted as provided in paragraph (c)(3)(ii) of this section.

§ 1300.12 Annual grant application.

The State's annual grant application provides project level information on the State's highway safety program and demonstrates alignment with the State's most recent triennial HSP. Each fiscal year, the State shall submit an annual grant application, that meets the following requirements:

(a) *Due date for submission.* A State shall submit its annual grant application electronically to NHTSA no later than 11:59 p.m. EDT on August 1 preceding the fiscal year to which the application applies. Failure to meet this deadline may result in delayed approval and funding of a State's Section 402 grant or disqualification from receiving a Section 405 or racial profiling data collection grant to avoid a delay in awarding grants to all States.

(b) *Contents.* In order to be approved, the annual grant application submitted by the State must contain the following components:

(1) *Updates to triennial HSP.* Any updates, as necessary, to any analysis included in the triennial highway safety plan of the State, at the level of detail required by § 1300.11, including at a minimum:

(i) *Adjustments to countermeasure strategy for programming funds.* (A) If the State adjusts the strategy for programming funds, a narrative description of the means by which the State's strategy for programming funds was adjusted and informed by the most recent annual report submitted under § 1300.35; or

(B) If the State does not adjust the strategy for programming funds, a written explanation of why the State made no adjustments.

(ii) *Changes to Performance Plan.* The State may add additional performance measures based on updated traffic safety problem identification or as part of an application for a grant under Section 405 and may amend common performance measures developed under § 1300.11(b)(3)(ii)(C), but may not amend any other existing performance targets.

(2) *Project and subrecipient information.* For each project to be funded by the State using grant funds during the fiscal year covered by the application, the State must provide—

(i) Project name and description (*e.g.,* purpose, activities, zip codes where project will be implemented, affected communities, etc.);

(ii) Project agreement number (if necessary, may be provided in a later amendment to the annual grant application);

(iii) Subrecipient(s) (including name and type of organization; *e.g.,* county or city DOT, state or local law enforcement, non-profit, EMS agency, etc.);

(iv) Federal funding source(s) (*i.e.,* Section 402, Section 405(b), etc.);

(v) Amount of Federal funds;

(vi) Eligible use of funds;

(vii) Whether the costs are P & A costs pursuant to § 1300.13(a) and the amount;

(viii) Whether the project will be used to meet the requirements of § 1300.41(b); and

(ix) The countermeasure strategy or strategies for programming funds identified in the most recently submitted triennial HSP under § 1300.11(b)(4) or in an update to the

triennial HSP submitted under § 1300.12(b)(1) that the project supports.

(3) *Section 405 grant and Section 1906 racial profiling data collection grant applications.* Application(s) for any of the national priority safety program grants and the racial profiling data collection grant, in accordance with the requirements of subpart C and as provided in Appendix B, signed by the Governor's Representative for Highway Safety.

(4) *Certifications and Assurances.* The Certifications and Assurances for 23 U.S.C. Chapter 4 and Section 1906 grants contained in appendix A, signed by the Governor's Representative for Highway Safety, certifying to the annual grant application contents and providing assurances that the State will comply with applicable laws and financial and programmatic requirements.

(c) *Review and approval procedures*—(1) *General.* Upon receipt and initial review of the annual grant application, NHTSA may request additional information from a State to ensure compliance with the requirements of this part. Failure to respond promptly to a request for additional information concerning the Section 402 grant application may result in delayed approval and funding of a State's Section 402 grant. Failure to respond promptly to a request for additional information concerning a Section 405 or Section 1906 grant application may result in a State's disqualification from consideration for a Section 405 or Section 1906 grant to avoid a delay in awarding grants to all States. NHTSA will not approve a grant application that does not meet the requirements of this section.

(2) *Approval or disapproval of annual grant application.* Within 60 days after receipt of the annual grant application under this subpart, the NHTSA administrator shall notify States in writing of grant awards and specify any conditions or limitations imposed by law on the use of funds.

(d) *Amendments to project and subrecipient information.* Notwithstanding the requirement in paragraph (b)(2) of this section to provide project and subrecipient information at the time of application, States may amend the annual grant application throughout the fiscal year of the grant to add additional projects or to update project information for previously submitted projects, consistent with the process set forth in § 1300.32.

§ 1300.13 Special funding conditions for Section 402 Grants.

The State's highway safety program under Section 402 shall be subject to the following conditions, and approval under § 1300.12 shall be deemed to incorporate these conditions:

(a) *Planning and administration (P & A) costs.* (1)(i) *Planning and administration (P & A) costs* are those direct and indirect costs that are attributable to the management of the Highway Safety Agency. Such costs could include salaries, related personnel benefits, travel expenses, and rental costs specific to the Highway Safety Agency. The salary of an accountant on the State Highway Safety Agency staff is an example of a direct cost attributable to P & A. Centralized support services such as personnel, procurement, and budgeting would be indirect costs.

(ii) *Program management costs* are those costs attributable to a program area (*e.g.,* salary and travel expenses of an impaired driving program manager/coordinator of a State Highway Safety Agency). Compensation for activity hours of a DWI (Driving While Intoxicated) enforcement officer is an example of a direct cost attributable to a project.

(2) Federal participation in P & A activities shall not exceed 50 percent of the total cost of such activities, or the applicable sliding scale rate in accordance with 23 U.S.C. 120. The Federal contribution for P & A activities shall not exceed 15 percent of the total funds the State receives under Section 402. In accordance with 23 U.S.C. 120(i), the Federal share payable for projects in the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent. The Indian Country is exempt from the provisions of P & A requirements. NHTSA funds shall be used only to fund P & A activities attributable to NHTSA programs.

(3) P & A tasks and related costs shall be described in the P & A module of the State's annual grant application. The State's matching share shall be determined on the basis of the total P & A costs in the module.

(4) A State may allocate salary and related costs of State highway safety agency employees to one of the following, depending on the activities performed:

(i) If an employee works solely performing P & A activities, the total salary and related costs may be programmed to P & A;

(ii) If the employee works performing program management activities in one or more program areas, the total salary and related costs may be charged directly to the appropriate area(s); or

(iii) If an employee works on a combination of P & A and program management activities, the total salary and related costs may be charged to P & A and the appropriate program area(s) based on the actual time worked under each area. If the State Highway Safety Agency elects to allocate costs based on actual time spent on an activity, the State Highway Safety Agency must keep accurate time records showing the work activities for each employee.

(b) *Participation by political subdivisions (local expenditure requirement)*—(1) *Determining local expenditure.* In determining whether a State meets the requirement that 40 percent (or 95 percent for Indian tribes) of Section 402 funds be expended by political subdivisions (also referred to as the local expenditure requirement) in a fiscal year, NHTSA will apply the requirement sequentially to each fiscal year's apportionments, treating all apportionments made from a single fiscal year's authorizations as a single amount for this purpose. Therefore, at least 40 percent of each State's apportionments (or at least 95 percent of the apportionment to the Secretary of the Interior) from each year's authorizations must be used in the highway safety programs of its political subdivisions prior to the end of the fiscal year.

(2) *Direct expenditures by political subdivisions.* When Federal funds apportioned under 23 U.S.C. 402 are expended by a political subdivision, such expenditures clearly qualify as part of the required local expenditure. A political subdivision may expend funds through direct performance of projects (including planning and administration of eligible highway safety project-related activities) or by entering into contracts or subawards with other entities (including non-profit entities) to carry out projects on its behalf.

(3) *Expenditures by State on behalf of a political subdivision.* Federal funds apportioned under 23 U.S.C. 402 that are expended by a State on behalf of a specific political subdivision (either through direct performance of projects or by entering into contracts or subawards with other entities) may qualify as part of the required local expenditure, provided there is evidence of the political subdivision's involvement in identifying its traffic safety need(s) and input into implementation of the activity within its jurisdiction. A State may not arbitrarily ascribe State agency expenditures as ''on behalf of a local government.'' Such expenditures qualify if—

(i) The specific political subdivision is involved in the planning process of the State's highway safety program (for example, as part of the public participation described in § 1300.11(b)(2), as part of the State's planning for the annual grant application, or as part of ongoing planning processes), and the State then enters into agreements based on identification of need by the political subdivision and implements the project or activity accordingly. The State must maintain documentation that shows the political subdivision's participation in the planning processes (*e.g.,* meeting minutes, data submissions, etc.), and also must obtain written acceptance by the political subdivision of the project or activity being provided on its behalf prior to implementation.

(ii) The political subdivision is not involved in the planning process of the State's highway safety program, but submits a request for the State to implement a project on its behalf. The request does not need to be a formal application but should, at minimum, contain a description of the political subdivision's problem identification and a description of where and/or how the project or activity should be deployed to have effect within political subdivision (may include: identification of media outlets to run advertising, locations for billboard/sign placement or enforcement activities, schools or other venues to provide educational programming, specific sporting events/venues, etc.).

(4) *Allocation of qualifying costs.* Expenditures qualify as local expenditures only when the expenditures meet the qualification criteria described in paragraphs (b)(2) and (3) of this section. In some cases, only a portion of the expenditures under a given project may meet those requirements. States must allocate funds in proportion to the amount of costs that can be documented to meet the requirements for a specific political subdivision.

(5) *Waivers.* While the requirement for participation by political subdivisions may be waived in whole or in part by the NHTSA Administrator, it is expected that each State program will generate and maintain political subdivision participation at the level specified in the Federal statute so that requests for waivers are minimized. Where a waiver is requested, however, the State shall submit a written request describing the extraordinary circumstances that necessitate a waiver, or providing a conclusive showing of the absence of legal authority over highway safety activities at the political subdivision levels of the State, and must recommend the appropriate percentage participation to be applied in lieu of the required 40 percent or 95 percent (for Indian tribes) local expenditure.

(c) *Use of grant funds for marijuana-impaired driving.* A State that has legalized medicinal or recreational marijuana shall consider implementing programs to—

(1) Educate drivers regarding the risks associated with marijuana-impaired driving; and

(2) Reduce injuries and deaths resulting from marijuana-impaired driving.

(d) *Use of grant funds for unattended passengers program.* The State must use a portion of grant funds received by the State under Section 402 to carry out a program to educate the public regarding the risks of leaving a child or unattended passenger in a vehicle after the vehicle motor is deactivated by the operator.

(e) *Use of grant funds for teen traffic safety program.* The State may use a portion of the funds received under Section 402 to implement statewide efforts to improve traffic safety for teen drivers.

(f) *Prohibition on use of grant funds to check for helmet usage.* Grant funds under this part shall not be used for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

(g) *Prohibition on use of grant funds for automated traffic enforcement systems.* The State may not expend funds apportioned to the State under Section 402 to carry out a program to purchase, operate, or maintain an automated traffic enforcement system except in a work zone or school zone. Any ATES system installed using grant funds under this section must comply with guidelines established by the Secretary, as updated.

§ 1300.14 [Reserved].

§ 1300.15 Apportionment and obligation of Federal funds.

(a) Except as provided in paragraph (b) of this section, on October 1 of each fiscal year, or soon thereafter, the NHTSA Administrator shall, in writing, distribute funds available for obligation under 23 U.S.C. Chapter 4 and Section 1906 to the States and specify any conditions or limitations imposed by law on the use of the funds.

(b) In the event that authorizations exist but no applicable appropriation act has been enacted by October 1 of a fiscal year, the NHTSA Administrator may, in writing, distribute a part of the funds authorized under 23 U.S.C. Chapter 4 and Section 1906 contract authority to the States to ensure program continuity, and in that event shall specify any conditions or limitations imposed by law on the use of the funds. Upon appropriation of grant funds, the NHTSA Administrator shall, in writing, promptly adjust the obligation limitation and specify any conditions or limitations imposed by law on the use of the funds.

(c) Funds distributed under paragraph (a) or (b) of this section shall be available for expenditure by the States to satisfy the Federal share of expenses under the approved annual grant application, and shall constitute a contractual obligation of the Federal Government, subject to any conditions or limitations identified in the distributing document. Such funds shall be available for expenditure by the States as provided in § 1300.41(b), after which the funds shall lapse.

(d) Notwithstanding the provisions of paragraph (c) of this section, payment of State expenses of 23 U.S.C. Chapter 4 or Section 1906 funds shall be contingent upon the State's submission of up-to-date information about approved projects in the annual grant application, in accordance with §§ 1300.12(b)(2) and 1300.32.

Subpart C—National Priority Safety Program and Racial Profiling Data Collection Grants

§ 1300.20 General.

(a) *Scope.* This subpart establishes criteria, in accordance with Section 405 for awarding grants to States that adopt and implement programs and statutes to address national priorities for reducing highway deaths and injuries and, in accordance with Section 1906, for awarding grants to States that maintain and allow public inspection of race and ethnic information on motor vehicle stops.

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

Blood alcohol concentration or *BAC* means grams of alcohol per deciliter or 100 milliliters blood, or grams of alcohol per 210 liters of breath.

Majority means greater than 50 percent.

Passenger motor vehicle means a passenger car, pickup truck, van, minivan or sport utility vehicle with a gross vehicle weight rating of less than 10,000 pounds.

Primary offense means an offense for which a law enforcement officer may stop a vehicle and issue a citation in the absence of evidence of another offense.

(c) *Eligibility and application*—(1) *Eligibility.* Except as provided in

§ 1300.25(c), the 50 States, the District of Columbia, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam and the U.S. Virgin Islands are each eligible to apply for grants identified under this subpart.

(2) *Application.* For all grants under Section 405 and Section 1906—

(i) The Governor's Representative for Highway Safety, on behalf of the State, shall sign and submit with the annual grant application, the information required under appendix B of this part.

(ii) If the State is relying on specific elements of the annual grant application or triennial HSP as part of its application materials for grants under this subpart, the State shall identify the specific location where that information is located in the relevant document.

(d) *Qualification based on State statutes.* Whenever a qualifying State statute is the basis for a grant awarded under this subpart, such statute shall have been enacted by the application due date and be in effect and enforced, without interruption, by the beginning of and throughout the fiscal year of the grant award.

(e) *Transfer of funds.* If it is determined after review of applications that funds for a grant program under Section 405 will not all be awarded and distributed, such funds shall be transferred to Section 402 and shall be distributed in proportion to the amount each State received under Section 402 for fiscal year 2022 to ensure, to the maximum extent practicable, that all funding is distributed.

(f) *Matching.* (1) Except as provided in paragraph (f)(2) of this section, the Federal share of the costs of activities or programs funded with grants awarded under this subpart may not exceed 80 percent.

(2) The Federal share of the costs of activities or programs funded with grants awarded to the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent.

§ 1300.21 Occupant protection grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(b), for awarding grants to States that adopt and implement effective occupant protection programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles.

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

Child restraint means any device (including a child safety seat, booster seat used in conjunction with 3-point belts, or harness, but excluding seat belts) that is designed for use in a motor vehicle to restrain, seat, or position a child who weighs 65 pounds (30 kilograms) or less and that meets the Federal motor vehicle safety standard prescribed by NHTSA for child restraints.

High seat belt use rate State means a State that has an observed seat belt use rate of 90.0 percent or higher (not rounded) based on validated data from the State survey of seat belt use conducted during the previous calendar year, in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340 (*e.g.,* for a grant application submitted on August 1, 2023, the ''previous calendar year'' would be 2022).

Lower seat belt use rate State means a State that has an observed seat belt use rate below 90.0 percent (not rounded) based on validated data from the State survey of seat belt use conducted during the previous calendar year, in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340 (*e.g.,* for a grant application submitted on August 1, 2023, the ''previous calendar year'' would be 2022).

Low-income and underserved populations means

(i) Populations meeting a threshold income level that is at least as inclusive as the U.S. Department of Health and Human Services Poverty Guidelines [1] identified by the State, or

(ii) Populations sharing a particular characteristic or geographic location, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.

Seat belt means, with respect to open-body motor vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt, and with respect to other motor vehicles, an occupant restraint system consisting of integrated lap and shoulder belts.

(c) *Eligibility determination.* A State is eligible to apply for a grant under this section as a high seat belt use rate State or as a lower seat belt use rate State, in accordance with paragraph (d) or (e) of this section, as applicable.

(d) *Qualification criteria for a high seat belt use rate State.* To qualify for an Occupant Protection Grant in a fiscal year, a high seat belt use rate State (as determined by NHTSA) shall submit as part of its annual grant application the following documentation, in accordance with part 1 of appendix B to this part:

(1) *Occupant protection plan.* State occupant protection program area plan, updated annually, that

(i) Identifies the safety problems to be addressed, performance measures and targets, and the countermeasure strategies the State will implement to address those problems, at the level of detail required under § 1300.11(b); and

(ii) Identifies the projects, provided under § 1300.12(b)(2), that the State will implement during the fiscal year to carry out the plan.

(2) *Participation in Click-it-or-Ticket national mobilization.* Description of the State's planned participation in the Click it or Ticket national mobilization, including a list of participating agencies during the fiscal year of the grant;

(3) *Child restraint inspection stations.* (i) Projects, at the level of detail required under § 1300.12(b)(2), demonstrating an active network of child passenger safety inspection stations and/or inspection events based on the State's problem identification. The description must include estimates for the following requirements in the upcoming fiscal year:

(A) The total number of planned inspection stations and/or events in the State; and

(B) Within the total in paragraph (d)(3)(i)(A) of this section, the number of planned inspection stations and/or inspection events serving each of the following population categories: urban, rural, and at-risk.

(ii) Certification, signed by the Governor's Representative for Highway Safety, that the inspection stations/events are staffed with at least one current nationally Certified Child Passenger Safety Technician.

(4) *Child passenger safety technicians.* Projects, at the level of detail required under § 1300.12(b)(2), for recruiting, training and maintaining a sufficient number of child passenger safety technicians based on the State's problem identification. The description must include, at a minimum, an estimate of the total number of classes and the estimated total number of technicians to be trained in the upcoming fiscal year to ensure coverage of child passenger safety inspection stations and inspection events by nationally Certified Child Passenger Safety Technicians.

(e) *Qualification criteria for a lower seat belt use rate State.* To qualify for an Occupant Protection Grant in a fiscal year, a lower seat belt use rate State (as determined by NHTSA) shall satisfy all the requirements of paragraph (d) of this section, and submit as part of its annual grant application documentation demonstrating that it meets at least three

[1] *Available online at https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references/2021-poverty-guidelines.*

of the following additional criteria, in accordance with part 1 of appendix B to this part:

(1) *Primary enforcement seat belt use statute.* The State shall provide legal citations to the State law demonstrating that the State has enacted and is enforcing occupant protection statutes that make a violation of the requirement to be secured in a seat belt or child restraint a primary offense.

(2) *Occupant protection statute.* The State shall provide legal citations to State law demonstrating that the State has enacted and is enforcing occupant protection statutes that:

(i) Require—

(A) Each occupant riding in a passenger motor vehicle who is under eight years of age, weighs less than 65 pounds and is less than four feet, nine inches in height to be secured in an age-appropriate child restraint;

(B) Each occupant riding in a passenger motor vehicle other than an occupant identified in paragraph (e)(2)(i)(A) of this section to be secured in a seat belt or age- appropriate child restraint;

(C) A minimum fine of $25 per unrestrained occupant for a violation of the occupant protection statutes described in this paragraph (e)(2)(i).

(ii) Notwithstanding paragraph (e)(2)(i) of this section, permit no exception from coverage except for—

(A) Drivers, but not passengers, of postal, utility, and commercial vehicles that make frequent stops in the course of their business;

(B) Persons who are unable to wear a seat belt or child restraint because of a medical condition, provided there is written documentation from a physician;

(C) Persons who are unable to wear a seat belt or child restraint because all other seating positions are occupied by persons properly restrained in seat belts or child restraints;

(D) Emergency vehicle operators and passengers in emergency vehicles during an emergency;

(E) Persons riding in seating positions or vehicles not required by Federal Motor Vehicle Safety Standards to be equipped with seat belts; or

(F) Passengers in public and livery conveyances.

(3) *Seat belt enforcement.* The State shall identify the projects, at the level of detail required under § 1300.12(b)(2), and provide a description demonstrating that the State conducts sustained enforcement (*i.e.,* a program of recurring efforts throughout the fiscal year of the grant to promote seat belt and child restraint enforcement), and that based on the State's problem identification, involves law enforcement agencies responsible for seat belt enforcement in geographic areas in which at least 70 percent of either the State's unrestrained passenger vehicle occupant fatalities occurred or combined fatalities and serious injuries occurred.

(4) *High risk population countermeasure programs.* The State shall identify the projects, at the level of detail required under § 1300.12(b)(2), demonstrating that the State will implement data-driven programs to improve seat belt and child restraint use for at least two of the following at-risk populations:

(i) Drivers on rural roadways;

(ii) Unrestrained nighttime drivers;

(iii) Teenage drivers;

(iv) Other high-risk populations identified in the occupant protection program area plan required under paragraph (d)(1) of this section.

(5) *Comprehensive occupant protection program.* The State shall submit the following:

(i) Date of NHTSA-facilitated program assessment that was conducted within five years prior to the application due date that evaluates the occupant protection program for elements designed to increase seat belt use in the State;

(ii) Multi-year strategic plan based on input from Statewide stakeholders (task force), updated on a triennial basis, under which the State developed—

(A) *Data-driven performance targets* to improve occupant protection in the State, at the level of detail required under § 1300.11(b)(3);

(B) *Countermeasure strategies* (such as enforcement, education, communication, policies/legislation, partnerships/outreach) designed to achieve the performance targets of the strategic plan, at the level of detail required under § 1300.11(b)(4), which must include an enforcement strategy that includes activities such as encouraging seat belt use policies for law enforcement agencies, vigorous enforcement of seat belt and child safety seat statutes, and accurate reporting of occupant protection system information on police crash report forms; and

(C) *A program management strategy* that provides leadership and identifies the State official responsible for implementing various aspects of the multi-year strategic plan.

(iii) The name and title of the State's designated occupant protection coordinator responsible for managing the occupant protection program in the State, including developing the occupant protection program area of the triennial HSP and overseeing the execution of the projects designated in the annual grant application; and

(iv) A list that contains the names, titles and organizations of the Statewide occupant protection task force membership that includes agencies and organizations that can help develop, implement, enforce and evaluate occupant protection programs.

(6) *Occupant protection program assessment.* The State shall identify the date of the NHTSA-facilitated assessment of all elements of its occupant protection program, which must have been conducted within five years prior to the application due date.

(f) *Award amounts.* The amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount each State received under Section 402 for fiscal year 2009.

(g) *Use of grant funds*—(1) *Eligible uses.* Except as provided in paragraph (g)(2) of this section, a State may use grant funds awarded under 23 U.S.C. 405(b) for the following programs or purposes only:

(i) To support high-visibility enforcement mobilizations, including paid media that emphasizes publicity for the program, and law enforcement;

(ii) To train occupant protection safety professionals, police officers, fire and emergency medical personnel, educators, and parents concerning all aspects of the use of child restraints and occupant protection;

(iii) To educate the public concerning the proper use and installation of child restraints, including related equipment and information systems;

(iv) To provide community child passenger safety services, including programs about proper seating positions for children and how to reduce the improper use of child restraints;

(v) To implement programs—

(A) To recruit and train nationally certified child passenger safety technicians among police officers, fire and other first responders, emergency medical personnel, and other individuals or organizations serving low-income and underserved populations;

(B) To educate parents and caregivers in low-income and underserved populations regarding the importance of proper use and correct installation of child restraints on every trip in a motor vehicle;

(C) To purchase and distribute child restraints to low-income and underserved populations; or

(vi) To establish and maintain information systems containing data about occupant protection, including the collection and administration of

child passenger safety and occupant protection surveys.

(2) *Special rule.* Notwithstanding paragraph (g)(1) of this section—

(i) A State that qualifies for grant funds must use not less than 10 percent of grant funds awarded under this section to carry out activities described in paragraph (g)(1)(v) of this section.

(ii) A State that qualifies for grant funds as a high seat belt use rate State may elect to use no more than 90 percent of grant funds awarded under this section for any eligible project or activity under Section 402.

§ 1300.22 State Traffic safety information system improvements grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(c), for grants to States to develop and implement effective programs that improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of State safety data needed to identify priorities for Federal, State, and local highway and traffic safety programs; evaluate the effectiveness of such efforts; link State data systems, including traffic records and systems that contain medical, roadway, and economic data; improve the compatibility and interoperability of State data systems with national data systems and the data systems of other States, including the National EMS Information System; and enhance the agency's ability to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

(b) *Qualification criteria.* To qualify for a grant under this section in a fiscal year, a State shall submit as part of its annual grant application the following documentation, in accordance with part 2 of appendix B:

(1) *Certification.* The State shall submit a certification that it has—

(i) A functioning *traffic records coordinating committee (TRCC)* that meets at least three times each year;

(ii) Designated a traffic records coordinating committee coordinator; and

(iii) Established a State traffic records strategic plan, updated annually, that has been approved by the TRCC and describes specific, quantifiable and measurable improvements anticipated in the State's core safety databases, including crash, citation or adjudication, driver, emergency medical services or injury surveillance system, roadway, and vehicle databases; and

(2) *Quantitative improvement.* The State shall demonstrate quantitative improvement in the data attribute of accuracy, completeness, timeliness, uniformity, accessibility or integration of a core database by providing—

(i) A written description of the performance measure(s) that clearly identifies which performance attribute for which core database the State is relying on to demonstrate progress using the methodology set forth in the ''Model Performance Measures for State Traffic Records Systems'' (DOT HS 811 441), as updated; and

(ii) Supporting documentation covering a contiguous 12-month performance period starting no earlier than April 1 of the calendar year prior to the application due date, that demonstrates quantitative improvement when compared to the comparable 12-month baseline period.

(c) *Award amounts.* The amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount the State received under Section 402 for fiscal year 2009.

(d) *Use of grant funds.* A State may use grant funds awarded under 23 U.S.C. 405(c) only to make data program improvements to core highway safety databases relating to quantifiable, measurable progress in the accuracy, completeness, timeliness, uniformity, accessibility or integration of data in a core highway safety database, including through:

(1) Software or applications to identify, collect, and report data to State and local government agencies, and enter data into State core highway safety databases, including crash, citation or adjudication, driver, emergency medical services or injury surveillance system, roadway, and vehicle data;

(2) Purchasing equipment to improve a process by which data are identified, collated, and reported to State and local government agencies, including technology for use by law enforcement for near-real time, electronic reporting of crash data;

(3) Improving the compatibility and interoperability of the core highway safety databases of the State with national data systems and data systems of other States, including the National EMS Information System;

(4) Enhancing the ability of a State and the Secretary to observe and analyze local, State, and national trends in crash occurrences, rates, outcomes, and circumstances;

(5) Supporting traffic records improvement training and expenditures for law enforcement, emergency medical, judicial, prosecutorial, and traffic records professionals;

(6) Hiring traffic records professionals for the purpose of improving traffic information systems (including a State Fatal Accident Reporting System (FARS) liaison);

(7) Adoption of the Model Minimum Uniform Crash Criteria, or providing to the public information regarding why any of those criteria will not be used, if applicable;

(8) Supporting reporting criteria relating to emerging topics, including—

(i) Impaired driving as a result of drug, alcohol, or polysubstance consumption; and

(ii) Advanced technologies present on motor vehicles; and

(9) Conducting research relating to State traffic safety information systems, including developing programs to improve core highway safety databases and processes by which data are identified, collected, reported to State and local government agencies, and entered into State core safety databases.

§ 1300.23 Impaired driving countermeasures grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(d), for awarding grants to States that adopt and implement effective programs to reduce traffic safety problems resulting from individuals driving motor vehicles while under the influence of alcohol, drugs, or a combination of alcohol and drugs; that enact alcohol-ignition interlock laws; or that implement 24–7 sobriety programs.

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

24–7 sobriety program means a State law or program that authorizes a State or local court or an agency with jurisdiction, as a condition of bond, sentence, probation, parole, or work permit, to require an individual who was arrested for, pleads guilty to, or was convicted of driving under the influence of alcohol or drugs to—

(i) Abstain totally from alcohol or drugs for a period of time; and

(ii) Be subject to testing for alcohol or drugs at least twice per day at a testing location, by continuous transdermal alcohol monitoring via an electronic monitoring device, by drug patch, by urinalysis, by ignition interlock monitoring (provided the interlock is able to require tests twice a day without vehicle operation), by other types of electronic monitoring, or by an alternative method approved by NHTSA.

Assessment means a NHTSA-facilitated process that employs a team of subject matter experts to conduct a comprehensive review of a specific highway safety program in a State.

Average impaired driving fatality rate means the number of fatalities in motor vehicle crashes involving a driver with

a blood alcohol concentration of at least 0.08 percent for every 100,000,000 vehicle miles traveled, based on the most recently reported three calendar years of final data from the FARS.

Driving under the influence of alcohol, drugs, or a combination of alcohol and drugs means operating a vehicle while the alcohol and/or drug concentration in the blood or breath, as determined by chemical or other tests, equals or exceeds the level established by the State, or is equivalent to the standard offense, for driving under the influence of alcohol or drugs in the State.

Driving While Intoxicated (DWI) Court means a court that specializes in cases involving driving while intoxicated and abides by the Ten Guiding Principles of DWI Courts in effect on the date of the grant, as established by the National Center for DWI Courts.

High-range State means a State that has an average impaired driving fatality rate of 0.60 or higher.

High-visibility enforcement efforts means participation in national impaired driving law enforcement campaigns organized by NHTSA, participation in impaired driving law enforcement campaigns organized by the State, or the use of sobriety checkpoints and/or saturation patrols conducted in a highly visible manner and supported by publicity through paid or earned media.

Low-range State means a State that has an average impaired driving fatality rate of 0.30 or lower.

Mid-range State means a State that has an average impaired driving fatality rate that is higher than 0.30 and lower than 0.60.

Restriction on driving privileges means any type of State-imposed limitation, such as a license revocation or suspension, location restriction, alcohol-ignition interlock device, or alcohol use prohibition.

Saturation patrol means a law enforcement activity during which enhanced levels of law enforcement are conducted in a concentrated geographic area (or areas) for the purpose of detecting drivers operating motor vehicles while impaired by alcohol and/or other drugs.

Sobriety checkpoint means a law enforcement activity during which law enforcement officials stop motor vehicles on a non-discriminatory, lawful basis for the purpose of determining whether the operators of such motor vehicles are driving while impaired by alcohol and/or other drugs.

Standard offense for driving under the influence of alcohol or drugs means the offense described in a State's statute that makes it a criminal offense to operate a motor vehicle while under the influence of alcohol or drugs, but does not require a measurement of alcohol or drug content.

(c) *Eligibility determination.* A State is eligible to apply for a grant under this section as a low-range State, a mid-range State or a high-range State, in accordance with paragraph (d), (e), or (f) of this section, as applicable. Independent of qualification on the basis of range, a State may also qualify for separate grants under this section as a State with an alcohol-ignition interlock law, as provided in paragraph (g) of this section, or as a State with a 24–7 sobriety program, as provided in paragraph (h) of this section.

(d) *Qualification criteria for a low-range State.* To qualify for an Impaired Driving Countermeasures Grant in a fiscal year, a low-range State (as determined by NHTSA) shall submit as part of its annual grant application the assurances in Part 3 of Appendix B that the State will use the funds awarded under 23 U.S.C. 405(d)(1) only for the implementation and enforcement of programs authorized in paragraph (j) of this section.

(e) *Qualification criteria for a mid-range State.* (1) *General requirements.* To qualify for an Impaired Driving Countermeasures Grant in a fiscal year, a mid-range State (as determined by NHTSA) shall submit as part of its annual grant application the assurance required in paragraph (d) of this section and a copy of a Statewide impaired driving plan that contains the following information, in accordance with part 3 of appendix B to this part:

(i) Section that describes the authority and basis for the operation of the Statewide impaired driving task force, including the process used to develop and approve the plan and date of approval;

(ii) List that contains names, titles, and organizations of all task force members, provided that the task force includes stakeholders from the following groups:

(A) State Highway Safety Office;

(B) State and local law enforcement;

(C) Criminal justice system (*e.g.,* prosecution, adjudication, and probation);

(D) Public health;

(E) Drug-impaired driving countermeasure expert (*e.g.,* DRE coordinator); and

(F) Communications and community engagement specialist.

(iii) Strategic plan based on the most recent version of Highway Safety Program Guideline No. 8—Impaired Driving, which, at a minimum, covers the following:

(A) Program management and strategic planning;

(B) Prevention, including community engagement and coalitions;

(C) Criminal justice systems;

(D) Communications programs;

(E) Alcohol and other drug misuse, including screening, treatment, assessment and rehabilitation; and

(F) Program evaluation and data.

(2) *Assurance qualification for fiscal year 2024 grants.* For the application due date of August 1, 2023 only, if a mid-range State is not able to meet the requirements of paragraph (e)(1) of this section, the State may submit the assurance required in paragraph (d) of this section and a separate assurance that the State will convene a Statewide impaired driving task force to develop a Statewide impaired driving plan that meets the requirements of paragraph (e)(1) of this section, and submit the Statewide impaired driving plan by August 1 of the grant year. The agency will require the return of grant funds awarded under this section if the State fails to submit a plan that meets the requirements of paragraph (e)(1) of this section by the deadline and will redistribute any such grant funds in accordance with § 1200.20(e) to other qualifying States under this section.

(3) *Previously submitted plan.* A mid-range State that has received a grant for a previously submitted Statewide impaired driving plan under paragraph (e)(1) or (f)(1) of this section that was approved after the application due date of August 1, 2023 and for a period of three years after the approval occurs may, in lieu of submitting the plan required under paragraph (e)(1) of this section, submit the assurance required in paragraph (d) of this section and a separate assurance that the State continues to use the previously submitted plan.

(f) *Qualification criteria for a high-range State.* (1) *General requirements.* To qualify for an Impaired Driving Countermeasures Grant in a fiscal year, a high-range State (as determined by NHTSA) shall submit as part of its annual grant application the assurance required in paragraph (d) of this section, the date of a NHTSA-facilitated assessment of the State's impaired driving program conducted within three years prior to the application due date, a copy of a Statewide impaired driving plan that contains the information required in paragraphs (e)(1)(i) through (iii) of this section and that includes the following additional information, in accordance with part 3 of appendix B to this part:

(i) Review that addresses in each plan area any related recommendations from the assessment of the State's impaired driving program;

(ii) Projects implementing impaired driving activities listed in paragraph (j)(4) of this section that must include high-visibility enforcement efforts, at the level of detail required under § 1300.12(b)(2); and

(iii) Description of how the spending supports the State's impaired driving program and achievement of its performance targets.

(2) *Assurance qualification for fiscal year 2024 grants.* For the application due date of August 1, 2023 only, if a high-range State is not able to the meet the requirements of paragraph (f)(1) of this section, the State may submit the assurance required in paragraph (d) of this section and separate information that the State has conducted a NHTSA-facilitated assessment within the last three years, or an assurance that the State will conduct a NHTSA-facilitated assessment during the grant year and convene a statewide impaired driving task force to develop a statewide impaired driving plan that meets the requirements of paragraph (f)(1) of this section, and submit the statewide impaired driving plan by August 1 of the grant year. The agency will require the return of grant funds awarded under this section if the State fails to submit a plan that meets the requirements of paragraph (f)(1) of this section by the deadline and will redistribute any such grant funds in accordance with § 1200.20(e) to other qualifying States under this section.

(3) *Previously submitted plans.* A high-range State that has received a grant for a previously submitted Statewide impaired driving plan under paragraph (f)(1) of this section that was approved after the application due date of August 1, 2023 and for a period of three years after the approval occurs may, in lieu of submitting the plan required under paragraph (f)(1) of this section, submit the assurance required in paragraph (d) of this section and provide updates to its Statewide impaired driving plan that meet the requirements of paragraphs (e)(1)(i) through (iii) of this section and updates to its assessment review and spending plan that meet the requirements of paragraphs (f)(1)(i) through (iii) of this section.

(g) *Grants to States with alcohol-ignition interlock laws.* (1) To qualify for an alcohol-ignition interlock law grant, a State shall submit legal citation(s) or program information (for paragraph (g)(1)(iii)(B) of this section only), in accordance with part 4 of appendix B to this part, that demonstrates that—

(i) All individuals who are convicted of driving under the influence of alcohol or of driving while intoxicated are permitted to drive only motor vehicles equipped with alcohol-ignition interlocks for a period of not less than 180 days; or

(ii) All individuals who are convicted of driving under the influence of alcohol or of driving while intoxicated and who are ordered to use an alcohol-ignition interlock are not permitted to receive any driving privilege or driver's license unless each such individual installs on each motor vehicle registered, owned, or leased by the individual an alcohol-ignition interlock for a period of not less than 180 days; or

(iii)(A) All individuals who are convicted of, or whose driving privileges have been revoked or denied for, refusing to submit to a chemical or other appropriate test for the purpose of determining the presence or concentration of any intoxicating substance and who are ordered to use an alcohol-ignition interlock are required to install on each motor vehicle to be operated by each such individual an alcohol-ignition interlock for a period of not less than 180 days; and

(B) All individuals who are convicted of driving under the influence of alcohol or of driving while intoxicated and who are ordered to use an alcohol-ignition interlock must—

(*1*) Install on each motor vehicle to be operated by each such individual an alcohol-ignition interlock for a period of not less than 180 days; and

(*2*) Complete a minimum consecutive period of not less than 40 percent of the required period of alcohol-ignition interlock installation immediately prior to the end of each such individual's installation requirement, without a confirmed violation of the State's alcohol-ignition interlock program use requirements.

(2) *Permitted exceptions.* A State statute providing for the following exceptions, and no others, shall not be deemed out of compliance with the requirements of paragraph (g)(1) of this section:

(i) The individual is required to operate an employer's motor vehicle in the course and scope of employment and the business entity that owns the vehicle is not owned or controlled by the individual;

(ii) The individual is certified in writing by a physician as being unable to provide a deep lung breath sample for analysis by an ignition interlock device; or

(iii) A State-certified ignition interlock provider is not available within 100 miles of the individual's residence.

(h) *Grants to States with a 24–7 Sobriety Program.* To qualify for a 24–7 sobriety program grant, a State shall submit the following as part of its annual grant application, in accordance with part 5 of appendix B to this part:

(1) Legal citation(s) to State statute demonstrating that the State has enacted and is enforcing a statute that requires all individuals convicted of driving under the influence of alcohol or of driving while intoxicated to receive a restriction on driving privileges, unless an exception in paragraph (g)(2) of this section applies, for a period of not less than 30 days; and

(2) Legal citation(s) to State statute or submission of State program information that authorizes a Statewide 24–7 sobriety program.

(i) *Award amounts.* (1) The amount available for grants under paragraphs (d) through (f) of this section shall be determined based on the total amount of eligible States for these grants and after deduction of the amounts necessary to fund grants under 23 U.S.C. 405(d)(6).

(2) The amount available for grants under 23 U.S.C. 405(d)(6)(A) shall not exceed 12 percent of the total amount made available to States under 23 U.S.C. 405(d) for the fiscal year.

(3) The amount available for grants under 23 U.S.C. 405(d)(6)(B) shall not exceed 3 percent of the total amount made available to States under 23 U.S.C. 405(d) for the fiscal year.

(j) *Use of grant funds*—(1) *Eligible uses.* Except as provided in paragraphs (j)(2) through (6) of this section, a State may use grant funds awarded under 23 U.S.C. 405(d) only for the following programs:

(i) High-visibility enforcement efforts;

(ii) Hiring a full-time or part-time impaired driving coordinator of the State's activities to address the enforcement and adjudication of laws regarding driving while impaired by alcohol, drugs or the combination of alcohol and drugs;

(iii) Court support of impaired driving prevention efforts, including—

(A) Hiring criminal justice professionals, including law enforcement officers, prosecutors, traffic safety resource prosecutors, judges, judicial outreach liaisons, and probation officers;

(B) Training and education of those professionals to assist the professionals in preventing impaired driving and handling impaired driving cases, including by providing compensation to a law enforcement officer to carry out

safety grant activities to replace a law enforcement officer who is receiving drug recognition expert training or participating as an instructor in that drug recognition expert training; or

(C) Establishing driving while intoxicated courts;

(iv) Alcohol ignition interlock programs;

(v) Improving blood alcohol and drug concentration screening and testing, detection of potentially impairing drugs (including through the use of oral fluid as a specimen), and reporting relating to testing and detection;

(vi) Paid and earned media in support of high-visibility enforcement efforts, conducting initial and continuing standardized field sobriety training, advanced roadside impaired driving evaluation training, law enforcement phlebotomy training, and drug recognition expert training for law enforcement, and equipment and related expenditures used in connection with impaired driving enforcement;

(vii) Training on the use of alcohol and drug screening and brief intervention;

(viii) Training for and implementation of impaired driving assessment programs or other tools designed to increase the probability of identifying the recidivism risk of a person convicted of driving under the influence of alcohol, drugs, or a combination of alcohol and drugs and to determine the most effective mental health or substance abuse treatment or sanction that will reduce such risk;

(ix) Developing impaired driving information systems;

(x) Costs associated with a 24–7 sobriety program; or

(xi) Testing and implementing programs, and purchasing technologies, to better identify, monitor, or treat impaired drivers, including—

(A) Oral fluid-screening technologies;

(B) Electronic warrant programs;

(C) Equipment to increase the scope, quantity, quality, and timeliness of forensic toxicology chemical testing;

(D) Case management software to support the management of impaired driving offenders; or

(E) Technology to monitor impaired-driving offenders, and equipment and related expenditures used in connection with impaired-driving enforcement.

(2) *Special rule—low-range States.* Notwithstanding paragraph (j)(1) of this section, a State that qualifies for grant funds as a low-range State may elect to use—

(i) Grant funds awarded under 23 U.S.C. 405(d) for programs designed to reduce impaired driving based on problem identification, in accordance with § 1300.11; and

(ii) Up to 50 percent of grant funds awarded under 23 U.S.C. 405(d) for any eligible project or activity under Section 402.

(3) *Special rule—mid-range States.* Notwithstanding paragraph (j)(1) of this section, a State that qualifies for grant funds as a mid-range State may elect to use grant funds awarded under 23 U.S.C. 405(d) for programs designed to reduce impaired driving based on problem identification in accordance with § 1300.11, provided the State receives advance approval from NHTSA.

(4) *Special rule—high-range States.* Notwithstanding paragraph (j)(1) of this section, a high-range State may use grant funds awarded under 23 U.S.C. 405(d) only for—

(i) High-visibility enforcement efforts; and

(ii) Any of the eligible uses described in paragraph (j)(1) of this section or programs designed to reduce impaired driving based on problem identification, in accordance with § 1300.11, if all proposed uses are described in a Statewide impaired driving plan submitted to and approved by NHTSA in accordance with paragraph (f) of this section.

(5) *Special rule—reporting and impaired driving measures.* Notwithstanding paragraph (j)(1) of this section, a State may use grant funds awarded under 23 U.S.C. 405(d) for any expenditure relating to—

(i) Increasing the timely and accurate reporting to Federal, State, and local databases of crash information, including electronic crash reporting systems that allow accurate real-or near-real-time uploading of crash information, or impaired driving criminal justice information; or

(ii) Researching or evaluating impaired driving countermeasures.

(6) *Special rule—States with alcohol-ignition interlock laws or 24–7 sobriety programs.* Notwithstanding paragraph (j)(1) of this section, a State may elect to use grant funds awarded under 23 U.S.C. 405(d)(6) for any eligible project or activity under Section 402.

§ 1300.24 Distracted driving grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(e), for awarding grants to States that include distracted driving awareness as part of the driver's license examination and enact and enforce a statute prohibiting distracted driving.

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

Driving means operating a motor vehicle on a public road, and does not include operating a motor vehicle when the vehicle has pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary.

Personal wireless communications device means a device through which personal wireless services are transmitted; and a mobile telephone or other portable electronic communication device with which the user engages in a call or writes, sends, or reads a text message using at least one hand. Personal wireless communications device does not include a global navigation satellite system receiver used for positioning, emergency notification, or navigation purposes.

Text means to read from, or manually enter data into, a personal wireless communications device, including for the purpose of SMS texting, emailing, instant messaging, or any other form of electronic data retrieval or electronic data communication; and manually to enter, send, or retrieve a text message to communicate with another individual or device.

Text message means a text-based message, an instant message, an electronic message, and email, but does not include an emergency alert, traffic alert, weather alert, or a message relating to the operation or navigation of a motor vehicle.

(c) *Qualification criteria for a Distracted Driving Awareness Grant.* To qualify for a Distracted Driving Awareness Grant in a fiscal year, a State shall submit as part of its annual grant application, in accordance with part 6 of appendix B to this part, sample distracted driving questions from the State's driver's license examination.

(d) *Qualification criteria for a Distracted Driving Law Grant.* To qualify for a Distracted Driving Law Grant in a fiscal year, a State shall submit as part of its annual grant application, in accordance with part 6 of appendix B to this part, legal citations to the State statute demonstrating compliance with one of the following requirements:

(1) *Prohibition on texting while driving.* The State statute shall—

(i) Prohibit a driver from texting through a personal wireless communications device while driving;

(ii) Establish a fine for a violation of the statute; and

(iii) Not provide for an exemption that specifically allows a driver to use a personal wireless communication device for texting while stopped in traffic.

(2) *Prohibition on handheld phone use while driving.* The State statute shall—

(i) Prohibit a driver from holding a personal wireless communications device while driving;

(ii) Establishes a fine for a violation of that law; and

(iii) Not provide for an exemption that specifically allows a driver to use a personal wireless communications device for texting while stopped in traffic.

(3) *Prohibition on youth cell phone use while driving.* The State statute shall—

(i) Prohibit a driver who is younger than 18 years of age or in the learner's permit or intermediate license stage from using a personal wireless communications device while driving;

(ii) Establish a fine for a violation of the statute; and

(iii) Not provide for an exemption that specifically allows a driver to use a personal wireless communication device for texting while stopped in traffic.

(4) *Prohibition on viewing devices while driving.* The State statute shall prohibit a driver from viewing a personal wireless communications device (except for purposes of navigation).

(5) *Permitted exceptions.* For State statutes under paragraphs (d)(1) through (3) of this section, a State statute providing for the following exceptions, and no others, shall not be deemed out of compliance with the requirements of this paragraph (d):

(i) A driver who uses a personal wireless communications device during an emergency to contact emergency services to prevent injury to persons or property;

(ii) Emergency services personnel who use a personal wireless communications device while operating an emergency services vehicle and engaged in the performance of their duties as emergency services personnel;

(iii) An individual employed as a commercial motor vehicle driver or a school bus driver who uses a personal wireless communications device within the scope of such individual's employment if such use is permitted under the regulations promulgated pursuant to 49 U.S.C. 31136;

(iv) A driver who uses a personal wireless communications device for navigation;

(v) except for a law described in paragraph (d)(3) of this section (prohibition on youth cell phone use while driving), the use of a personal wireless communications device in a hands-free manner, with a hands-free accessory, or with the activation or deactivation of a feature or function of the personal wireless communications device with the motion of a single swipe or tap of the finger of the driver.

(e) *Award amounts*—(1) *In general.* (i) The amount available for distracted driving awareness grants under paragraph (c) of this section shall not be less than 50 percent of the amounts available under 23 U.S.C. 405(e) for the fiscal year; and the amount available for distracted driving law grants under paragraph (d) of this section shall not be more than 50 percent of the amounts available under 23 U.S.C. 405(e) for the fiscal year.

(ii) A State may be eligible for a distracted driving awareness grant under paragraph (c) of this section and for one additional distracted driving law grant under paragraph (d) of this section.

(2) *Grant amount.*—(i) *Distracted driving awareness.* The amount of a distracted driving awareness grant awarded to a State under paragraph (c) of this section shall be based on the proportion that the apportionment of the State under section 402 for fiscal year 2009 bears to the apportionment of all States under section 402 for that fiscal year.

(ii) *Distracted driving laws.* Subject to paragraph (e)(2)(iii) of this section, the amount of a distracted driving law grant awarded to a State under paragraph (d) of this section shall be based on the proportion that the apportionment of the State under section 402 for fiscal year 2009 bears to the apportionment of all States under section 402 for that fiscal year.

(iii) *Special rules for distracted driving laws.* (A) A State that qualifies for a distracted driving law grant under paragraph (d)(1), (2), or (3) of this section and enforces the law as a primary offense shall receive 100 percent of the amount under paragraph (e)(2)(ii) of this section.

(B) A State that qualifies for a distracted driving law grant under paragraph (d)(1), (2), or (3) of this section and enforces the law as a secondary offense shall receive 50 percent of the amount under paragraph (e)(2)(ii) of this section.

(C) A State that qualifies for a prohibition on viewing devices while driving law grant under paragraph (d)(4) of this section shall receive 25 percent of the amount under paragraph (e)(2)(ii) of this section.

(f) *Use of funds*—(1) *Eligible uses.* Except as provided in paragraphs (f)(2) and (3) of this section, a State may use grant funds awarded under 23 U.S.C. 405(e) only to educate the public through advertising that contains information about the dangers of texting or using a cell phone while driving, for traffic signs that notify drivers about the distracted driving law of the State, or for law enforcement costs related to the enforcement of the distracted driving law.

(2) *Special rule.* Notwithstanding paragraph (f)(1) of this section, a State may elect to use up to 50 percent of the grant funds awarded under 23 U.S.C. 405(e) for any eligible project or activity under Section 402.

(3) *Special rule—MMUCC conforming States.* Notwithstanding paragraphs (f)(1) and (2) of this section, a State may use up to 75 percent of amounts received under 23 U.S.C. 405(e) for any eligible project or activity under Section 402 if the State has conformed its distracted driving data element(s) to the most recent Model Minimum Uniform Crash Criteria (MMUCC). To demonstrate conformance with MMUCC, the State shall submit within 30 days after notification of award, the State's most recent crash report with the distracted driving data element(s). NHTSA will notify those States submitting a crash report with the distracted driving data element(s) whether the State's distracted driving data element(s) conform(s) with the most recent MMUCC.

§ 1300.25 Motorcyclist safety grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(f), for awarding grants to States that adopt and implement effective programs to reduce the number of single-vehicle and multiple-vehicle crashes involving motorcyclists.

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

Data State means a State that does not have a statute or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs but can show through data and/or documentation from official records that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs, without diversion.

Impaired means alcohol-impaired or drug-impaired as defined by State law, provided that the State's legal alcohol-impairment level does not exceed .08 BAC.

Law State means a State that has a statute or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle

training and safety programs and no statute or regulation diverting any of those fees.

Motorcycle means a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

State means any of the 50 States, the District of Columbia, and Puerto Rico.

(c) *Eligibility.* The 50 States, the District of Columbia and Puerto Rico are eligible to apply for a Motorcyclist Safety Grant.

(d) *Qualification criteria.* To qualify for a Motorcyclist Safety Grant in a fiscal year, a State shall submit as part of its annual grant application documentation demonstrating compliance with at least two of the criteria in paragraphs (e) through (k) of this section.

(e) *Motorcycle rider training course.* A State shall have an effective motorcycle rider training course that is offered throughout the State and that provides a formal program of instruction in crash avoidance and other safety-oriented operational skills to motorcyclists. To demonstrate compliance with this criterion, the State shall submit, in accordance with part 7 of appendix B to this part—

(1) A certification identifying the head of the designated State authority over motorcyclist safety issues and stating that the head of the designated State authority over motorcyclist safety issues has approved and the State has adopted one of the following introductory rider curricula:

(i) Motorcycle Safety Foundation Basic Rider Course;

(ii) TEAM OREGON Basic Rider Training;

(iii) Idaho STAR Basic I;

(iv) California Motorcyclist Safety Program Motorcyclist Training Course;

(v) A curriculum that has been approved by the designated State authority and NHTSA as meeting NHTSA's Model National Standards for Entry-Level Motorcycle Rider Training; and

(2) A list of the counties or political subdivisions in the State where motorcycle rider training courses will be conducted during the fiscal year of the grant and the number of registered motorcycles in each such county or political subdivision according to official State motor vehicle records, provided that the State must offer at least one motorcycle rider training course in counties or political subdivisions that collectively account for a majority of the State's registered motorcycles.

(f) *Motorcyclist awareness program.* A State shall have an effective Statewide program to enhance motorist awareness of the presence of motorcyclists on or near roadways and safe driving practices that avoid injuries to motorcyclists. To demonstrate compliance with this criterion, the State shall submit, in accordance with part 7 of appendix B to this part—

(1) A certification identifying the head of the designated State authority over motorcyclist safety issues and stating that the State's motorcyclist awareness program was developed by or in coordination with the designated State authority over motorcyclist safety issues; and

(2) One or more performance measures and corresponding performance targets developed for motorcycle awareness at the level of detail required under § 1300.11(b)(3) that identifies, using State crash data, the counties or political subdivisions within the State with the highest number of motorcycle crashes involving a motorcycle and another motor vehicle. Such data shall be from the most recent calendar year for which final State crash data are available, but must be data no older than three calendar years prior to the application due date (*e.g.,* for a grant application submitted on August 1, 2023, a State shall provide calendar year 2022 data, if available, and may not provide data older than calendar year 2020); and

(3) Projects, at the level of detail required under § 1300.12(b)(2), demonstrating that the State will implement data-driven programs in a majority of counties or political subdivisions where the incidence of crashes involving a motorcycle and another motor vehicle is highest. The State shall submit a list of counties or political subdivisions in the State ranked in order of the highest to lowest number of crashes involving a motorcycle and another motor vehicle per county or political subdivision. Such data shall be from the most recent calendar year for which final State crash data are available, but data must be no older than three calendar years prior to the application due date (*e.g.,* for a grant application submitted on August 1, 2023, a State shall provide calendar year 2022 data, if available, and may not provide data older than calendar year 2020). The State shall select projects implementing those countermeasure strategies to address the State's motorcycle safety problem areas in order to meet the performance targets identified in paragraph (f)(2) of this section.

(g) *Helmet law.* A State shall have a law requiring the use of a helmet for each motorcycle rider under the age of 18. To demonstrate compliance with this criterion, the State shall submit, in accordance with part 7 of appendix B to this part, the legal citation to the statute(s) requiring the use of a helmet for each motorcycle rider under the age of 18, with no exceptions.

(h) *Reduction of fatalities and crashes involving motorcycles.* A State shall demonstrate a reduction for the preceding calendar year in the number of motorcyclist fatalities and in the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 registered motorcycle registrations), as computed by NHTSA. To demonstrate compliance a State shall, in accordance with part 7 of appendix B to this part—

(1) Submit State data and a description of the State's methods for collecting and analyzing the data, showing the total number of motor vehicle crashes involving motorcycles in the State for the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date and the same type of data for the calendar year immediately prior to that calendar year (*e.g.,* for a grant application submitted on August 1, 2023, the State shall submit calendar year 2022 data and 2021 data, if both data are available, and may not provide data older than calendar year 2020 and 2019, to determine the rate);

(2) Experience a reduction of at least one in the number of motorcyclist fatalities for the most recent calendar year for which final FARS data are available as compared to the final FARS data for the calendar year immediately prior to that year; and

(3) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction in the rate of crashes involving motorcycles for the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date, as compared to the calendar year immediately prior to that year.

(i) *Impaired motorcycle driving program.* A State shall implement a Statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation. The State shall submit, in accordance with part 7 of appendix B to this part—

(1) One or more performance measures and corresponding

performance targets developed to reduce impaired motorcycle operation at the level of detail required under § 1300.11(b)(3). Each performance measure and performance target shall identify the impaired motorcycle operation problem area to be addressed. Problem identification must include an analysis of motorcycle crashes involving an impaired operator by county or political subdivision in the State; and

(2) Projects, at the level of detail required under § 1300.12(b)(2), demonstrating that the State will implement data-driven programs designed to reach motorcyclists in those jurisdictions where the incidence of motorcycle crashes involving an impaired operator is highest (*i.e.,* the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes involving an impaired operator) based upon State data. Such data shall be from the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date (*e.g.,* for a grant application submitted on August 1, 2023, a State shall provide calendar year 2022 data, if available, and may not provide data older than calendar year 2020). Projects and the countermeasure strategies they support shall prioritize the State's impaired motorcycle problem areas to meet the performance targets identified in paragraph (h)(1) of this section.

(j) *Reduction of fatalities and crashes involving impaired motorcyclists.* A State shall demonstrate a reduction for the preceding calendar year in the number of fatalities and in the rate of reported crashes involving alcohol-impaired and drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations), as computed by NHTSA. The State shall, in accordance with part 7 of appendix B to this part—

(1) Submit State data and a description of the State's methods for collecting and analyzing the data, showing the total number of reported crashes involving alcohol-and drug-impaired motorcycle operators in the State for the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date and the same type of data for the calendar year immediately prior to that year (*e.g.,* for a grant application submitted on August 1, 2023, the State shall submit calendar year 2022 data and 2021 data, if both data are available, and may not provide data older than calendar year 2020 and 2019, to determine the rate);

(2) Experience a reduction of at least one in the number of fatalities involving alcohol-impaired and drug-impaired motorcycle operators for the most recent calendar year for which final FARS data are available as compared to the final FARS data for the calendar year immediately prior to that year; and

(3) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction in the rate of reported crashes involving alcohol- and drug-impaired motorcycle operators for the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date, as compared to the calendar year immediately prior to that year.

(k) *Use of fees collected from motorcyclists for motorcycle programs.* A State shall have a process under which all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are used for motorcycle training and safety programs. A State may qualify under this criterion as either a Law State or a Data State.

(1) To demonstrate compliance as a Law State, the State shall submit, in accordance with part 7 of appendix B to this part, the legal citation to the statutes or regulations requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs and the legal citations to the State's current fiscal year appropriation (or preceding fiscal year appropriation, if the State has not enacted a law at the time of the State's application) appropriating all such fees to motorcycle training and safety programs.

(2) To demonstrate compliance as a Data State, the State shall submit, in accordance with part 7 of appendix B to this part, data or documentation from official records from the previous State fiscal year showing that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs. Such data or documentation shall show that revenues collected for the purposes of funding motorcycle training and safety programs were placed into a distinct account and expended only for motorcycle training and safety programs.

(l) *Award amounts.* The amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount each State received under Section 402 for fiscal year 2009, except that a grant awarded under 23 U.S.C. 405(f) may not exceed 25 percent of the amount apportioned to the State for fiscal year 2009 under Section 402.

(m) *Use of grant funds*—(1) *Eligible uses.* Except as provided in paragraph (m)(2) of this section, a State may use grant funds awarded under 23 U.S.C. 405(f) only for motorcyclist safety training and motorcyclist awareness programs, including—

(i) Improvements to motorcyclist safety training curricula;

(ii) Improvements in program delivery of motorcycle training to both urban and rural areas, including—

(A) Procurement or repair of practice motorcycles;

(B) Instructional materials;

(C) Mobile training units; and

(D) Leasing or purchasing facilities for closed-course motorcycle skill training;

(iii) Measures designed to increase the recruitment or retention of motorcyclist safety training instructors; or

(iv) Public awareness, public service announcements, and other outreach programs to enhance driver awareness of motorcyclists, including ''share-the-road'' safety messages developed using Share-the-Road model language available on NHTSA's website at *http://www.trafficsafetymarketing.gov.*

(2) *Special rule—low fatality States.* Notwithstanding paragraph (m)(1) of this section, a State may elect to use up to 50 percent of grant funds awarded under 23 U.S.C. 405(f) for any eligible project or activity under Section 402 if the State is in the lowest 25 percent of all States for motorcycle deaths per 10,000 motorcycle registrations (using FHWA motorcycle registration data) based on the most recent calendar year for which final FARS data are available, as determined by NHTSA.

(3) *Suballocation of funds.* A State that receives a grant under this section may suballocate funds from the grant to a nonprofit organization incorporated in that State to carry out grant activities under this section.

§ 1300.26 Nonmotorized safety grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(g), for awarding grants to States for the purpose of decreasing nonmotorized road user fatalities involving a motor vehicle in transit on a trafficway.

(b) *Eligibility determination.* (1) A State is eligible for a grant under this section if the State's annual combined nonmotorized road user fatalities exceed 15 percent of the State's total annual crash fatalities based on the most recent

calendar year for which final FARS data are available, as determined by NHTSA.

(2) For purposes of this section, a nonmotorized road user means a pedestrian; an individual using a nonmotorized mode of transportation, including a bicycle, a scooter, or a personal conveyance; and an individual using a low-speed or low-horsepower motorized vehicle, including an electric bicycle, electric scooter, personal mobility assistance device, personal transporter, or all-terrain vehicle.

(c) *Qualification criteria.* To qualify for a Nonmotorized Safety Grant in a fiscal year, a State meeting the eligibility requirements of paragraph (b) of this section shall submit as part of its annual grant application a list of project(s) and subrecipient(s) information that the State plans to conduct in the fiscal year of the grant, at the level of detail required under § 1300.12(b)(2) for authorized uses identified in paragraph (e) of this section.

(d) *Award amounts.* The amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount each State received under Section 402 for fiscal year 2009.

(e) *Use of grant funds.* A State may use grant funds awarded under 23 U.S.C. 405(g) only for the safety of nonmotorized road users, including—

(1) Training of law enforcement officials relating to nonmotorized road user safety, State laws applicable to nonmotorized road user safety, and infrastructure designed to improve nonmotorized road user safety;

(2) Carrying out a program to support enforcement mobilizations and campaigns designed to enforce State traffic laws applicable to nonmotorized road user safety;

(3) Public education and awareness programs designed to inform motorists and nonmotorized road users regarding—

(i) Nonmotorized road user safety, including information relating to nonmotorized mobility and the importance of speed management to the safety of nonmotorized road users;

(ii) The value of the use of nonmotorized road user safety equipment, including lighting, conspicuity equipment, mirrors, helmets, and other protective equipment, and compliance with any State or local laws requiring the use of that equipment;

(iii) State traffic laws applicable to nonmotorized road user safety, including the responsibilities of motorists with respect to nonmotorized road users; and

(iv) Infrastructure designed to improve nonmotorized road user safety; and

(4) The collection of data, and the establishment and maintenance of data systems, relating to nonmotorized road user traffic fatalities.

§ 1300.27 Preventing roadside deaths grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(h), for awarding grants to States that adopt and implement effective programs to prevent death and injury from crashes involving motor vehicles striking other vehicles and individuals stopped at the roadside.

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

Digital alert technology means an electronic system to alert drivers to the location of first responder vehicles on the roadside using traveler information systems *e.g.,* navigation providers, smartphone apps, or a connected vehicle on-board unit.

Optical visibility measure means an action to ensure that items are seen using visible light.

Public information campaign means activities to build awareness with the motoring public of a traffic safety issue through media, messaging, and an organized set of communication tactics that may include but are not limited to advertising in print, internet, social media, radio and television.

(c) *Qualification criteria.* To qualify for a grant under this section in a fiscal year, a State shall submit a plan that describes the method by which the State will use grant funds in accordance with paragraph (e) of this section. At a minimum, the plan shall state the eligible use(s) selected, consistent with paragraph (e) of this section, and include an identification of the specific safety problems to be addressed, performance measures and targets, the countermeasure strategies at the level of detail required by § 1300.11(b)(1), (3), and (4) and projects at the level of detail required by § 1300.12(b)(2) that implement those strategies the State will implement to address those problems.

(d) *Award amounts.* The amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount each State received under Section 402 for fiscal year 2022.

(e) *Use of grant funds.* A State may only use grant funds awarded under 23 U.S.C. 405(h) as follows.

(1) To purchase and deploy digital alert technology that—

(i) Is capable of receiving alerts regarding nearby first responders; and

(ii) In the case of a motor vehicle that is used for emergency response activities, is capable of sending alerts to civilian drivers to protect first responders on the scene and en route;

(2) To educate the public regarding the safety of vehicles and individuals stopped at the roadside in the State through public information campaigns for the purpose of reducing roadside deaths and injuries;

(3) For law enforcement costs related to enforcing State laws to protect the safety of vehicles and individuals stopped at the roadside;

(4) For programs to identify, collect, and report to State and local government agencies data related to crashes involving vehicles and individuals stopped at the roadside; and

(5) To pilot and incentivize measures, including optical visibility measures, to increase the visibility of stopped and disabled vehicles.

§ 1300.28 Driver and officer safety education grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(i), for awarding grants to States that enact and enforce a law or adopt and implement programs that include certain information on law enforcement practices during traffic stops in driver education and training courses or peace officer training programs.

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

Driver education and driving safety course means any programs for novice teen drivers or driver improvement programs sanctioned by the State DMV, which include in-class or virtual instruction and may also include some behind the wheel training.

Peace officer means any individual who is an elected, appointed, or employed agent of a government entity; who has the authority to carry firearms and to make warrantless arrests; and whose duties involve the enforcement of criminal laws of the United States.

(c) *Qualification criteria.* To qualify for a grant under this section in a fiscal year, a State shall submit, as part of its annual grant application, documentation demonstrating compliance with either paragraph (d) or (e) of this section, in accordance with part 8 of appendix B of this part. A State may qualify for a grant under paragraph (e) of this section for a period of not more than 5 years.

(d) *Driver and officer safety law or program.* A law or program that requires 1 or more of the following:

(1) *Driver education and driving safety courses*—(i) *General.* A State must provide either a legal citation to a law or supporting documentation that demonstrates that driver education and

driver safety courses provided to individuals by educational and motor vehicle agencies of the State include instruction and testing relating to law enforcement practices during traffic stops, including, at a minimum, information relating to—

(A) The role of law enforcement and the duties and responsibilities of peace officers;

(B) The legal rights of individuals concerning interactions with peace officers;

(C) Best practices for civilians and peace officers during those interactions;

(D) The consequences for failure of an individual or officer to comply with the law or program; and

(E) How and where to file a complaint against, or a compliment relating to, a peace officer.

(ii) *If applying with a law.* A State shall provide a legal citation to a law that demonstrate compliance with the requirements described in paragraph (d)(1)(i) of this section.

(iii) *If applying with supporting documentation.* A State shall have a driver education and driving safety course that is required throughout the State for licensing or pursuant to a violation. To demonstrate compliance, the State shall submit:

(A) A certification signed by the GR attesting that the State has developed and is implementing a driver education and driving safety course throughout the State that meets the requirements described in paragraph (d)(1)(i) of this section; and

(B) Curriculum or course materials, along with citations to where the requirements described in paragraph (d)(1)(i) of this section are located within the curriculum.

(2) *Peace officer training programs*—(i) *General.* A State must provide either a legal citation to a law or supporting documentation that demonstrates that the State has developed and is implementing a training program for peace officers and reserve law enforcement officers (other than officers who have received training in a civilian course described in paragraph (d)(1)) of this section with respect to proper interaction with civilians during traffic stops. Proper interaction means utilizing appropriate industry standards as established through a State Police Officer Standards and Training Board (POST) or similar association.

(ii) *Applying with a Law.* A State shall provide a legal citation to a law that establishes a peace training program that meets the requirements described in paragraph (d)(2)(i) of this section.

(iii) *Applying with Supporting Documentation.* A State shall have a peace officer training program that is required for employment as a peace officer throughout the State and meets the requirements described in paragraph (d)(2)(i) of this section. To demonstrate compliance, the State shall submit:

(A) A certification signed by the GR attesting that the State has developed and is implementing a peace officer training program throughout the State that meets the requirements described in paragraph (d)(2)(i) of this section; and

(B) Curriculum or course materials, along with citations to where the requirements described in paragraph (d)(2)(i) of this section.

(e) *Qualifying State.* A State that has not fully enacted or adopted a law or program described in paragraph (d) of this section qualifies for a grant under this section if it submits:

(1) Evidence that the State has taken meaningful steps towards the full implementation of such a law or program. To demonstrate compliance with this criterion, the State shall submit one or more of the following—

(i) A proposed bill that has been introduced in the State, but has not yet been enacted into law, that meets the requirements in paragraph (d)(1) or (2) of this section; or

(ii) Planning or strategy document(s) that identify meaningful steps the State has taken as well as actions the State plans to take to develop and implement a law or program that meets the requirements in paragraph (d)(1) or (2) of this section; and

(2) A timetable for implementation of such a law or program within 5 years of first applying as a qualifying State under this paragraph (e).

(f) *Matching.* The Federal share of the cost of carrying out an activity funded through a grant under this subsection may not exceed 80 percent.

(g) *Award amounts.* (1) *In general.* Subject to paragraph (g)(2) of this section, the amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount each State received under Section 402 for fiscal year 2022.

(2) *Limitation.* Notwithstanding paragraph (g)(1) of this section, a State that qualifies for a grant under paragraph (e) of this section shall receive 50 percent of the amount determined from the calculation under paragraph (g)(1) of this section.

(3) *Redistribution of funds.* Any funds that are not distributed due to the operation of paragraph (g)(2) of this section shall be redistributed to the States that qualify for a grant under paragraphs (c) and (d) of this section in proportion to the amount each such State received under Section 402 for fiscal year 2022.

(h) *Use of grant funds.* A State may use grant funds awarded under 23 U.S.C. 405(i) only for:

(1) The production of educational materials and training of staff for driver education and driving safety courses and peace officer training described in paragraph (d) of this section; and

(2) The implementation of a law or program described in paragraph (d) of this section.

§ 1300.29 Racial profiling data collection grants.

(a) *Purpose.* This section establishes criteria, in accordance with Section 1906, for incentive grants to encourage States to maintain and allow public inspection of statistical information on the race and ethnicity of the driver for all motor vehicle stops made on all public roads except those classified as local or minor rural roads.

(b) *Qualification criteria.* To qualify for a Racial Profiling Data Collection Grant in a fiscal year, a State shall submit as part of its annual grant application, in accordance with part 11 of appendix B of this part—

(1) Official documents (*i.e.,* a law, regulation, binding policy directive, letter from the Governor, or court order) that demonstrate that the State maintains and allows public inspection of statistical information on the race and ethnicity of the driver for each motor vehicle stop made by a law enforcement officer on all public roads except those classified as local or minor rural roads; or

(2) Assurances that the State will undertake activities during the fiscal year of the grant to comply with the requirements of paragraph (b)(1) of this section, and projects, at the level of detail required under § 1300.12(b)(2), supporting the assurances.

(c) *Award amounts.* (1) Subject to paragraph (c)(2) of this section, the amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount each State received under Section 402 for fiscal year 2022.

(2) Notwithstanding paragraph (c)(1) of this section, the total amount of a grant awarded to a State under this section in a fiscal year may not exceed—

(i) For a State described in paragraph (b)(1) of this section, 10 percent of the amount made available to carry out this section for the fiscal year; and

(ii) For a State described in paragraph (b)(2) of this section, 5 percent of the amount made available to carry out this section for the fiscal year.

(d) *Use of grant funds.* A State may use grant funds awarded under Section 1906 only for the costs of—

(1) Collecting and maintaining data on traffic stops;

(2) Evaluating the results of the data; and

(3) Developing and implementing programs, public outreach, and training to reduce the impact of traffic stops described in paragraph (a) of this section.

Subpart D—Administration of the Highway Safety Grants

§ 1300.30 General.

Subject to the provisions of this subpart, the requirements of 2 CFR parts 200 and 1201 govern the implementation and management of State highway safety programs and projects carried out under 23 U.S.C. Chapter 4 and Section 1906.

§ 1300.31 Equipment.

(a) *Title.* Except as provided in paragraphs (e) and (f) of this section, title to equipment acquired under 23 U.S.C. Chapter 4 and Section 1906 will vest upon acquisition in the State or its subrecipient, as appropriate, subject to the conditions in paragraphs (b) through (d) of this section.

(b) *Use.* Equipment may only be purchased if necessary to perform eligible grant activities or if specifically authorized as an allowable use of funds. All equipment shall be used for the originally authorized grant purposes for as long as needed for those purposes, as determined by the Regional Administrator, and neither the State nor any of its subrecipients or contractors shall encumber the title or interest while such need exists.

(c) *Management and disposition.* Subject to the requirements of paragraphs (b), (d), (e), and (f) of this section, States and their subrecipients and contractors shall manage and dispose of equipment acquired under 23 U.S.C. Chapter 4 and Section 1906 in accordance with State laws and procedures.

(d) *Major purchases and dispositions.* Equipment with a useful life of more than one year and an acquisition cost of $5,000 or more shall be subject to the following requirements:

(1) Purchases shall receive prior written approval from the Regional Administrator;

(2) Dispositions shall receive prior written approval from the Regional Administrator unless the equipment has exceeded its useful life as determined under State law and procedures.

(e) *Right to transfer title.* The Regional Administrator may reserve the right to transfer title to equipment acquired under this part to the Federal Government or to a third party when such third party is eligible under Federal statute. Any such transfer shall be subject to the following requirements:

(1) The equipment shall be identified in the grant or otherwise made known to the State in writing;

(2) The Regional Administrator shall issue disposition instructions within 120 calendar days after the equipment is determined to be no longer needed for highway safety purposes, in the absence of which the State shall follow the applicable procedures in 2 CFR parts 200 and 1201.

(f) *Federally-owned equipment.* In the event a State or its subrecipient is provided federally-owned equipment—

(1) Title shall remain vested in the Federal Government;

(2) Management shall be in accordance with Federal rules and procedures, and an annual inventory listing shall be submitted by the State;

(3) The State or its subrecipient shall request disposition instructions from the Regional Administrator when the item is no longer needed for highway safety purposes.

§ 1300.32 Amendments to Annual Grant Applications—approval by the Regional Administrator.

(a) During the fiscal year of the grant, States may amend the annual grant application, except performance targets, after approval under § 1300.12. States shall document changes to the annual grant application electronically.

(b) The State shall amend the annual grant application, prior to beginning project performance, to provide complete and updated information at the level of detail required by § 1300.12(b)(2), about each project agreement it enters into.

(c) Amendments and changes to the annual grant application are subject to approval by the Regional Administrator before approval of vouchers for payment. Regional Administrators will disapprove changes and projects that are inconsistent with the triennial HSP, as updated, or that do not constitute an appropriate use of highway safety grant funds. States are independently responsible to ensure that projects constitute an appropriate use of highway safety grant funds.

§ 1300.33 Vouchers and project agreements.

(a) *General.* Each State shall submit official vouchers for expenses incurred to the Regional Administrator.

(b) *Content of vouchers.* At a minimum, each voucher shall provide the following information, broken down by individual project agreement:

(1) Project agreement number for which work was performed and payment is sought;

(2) Amount of Federal funds sought, up to the amount identified in § 1300.12(b)(2);

(3) Eligible use of funds;

(4) Amount of Federal funds allocated to local benefit (provided no less than mid-year (by March 31) and with the final voucher); and

(5) Matching rate (or special matching writeoff used, *i.e.,* sliding scale rate authorized under 23 U.S.C. 120).

(c) *Project agreements.* Copies of each project agreement for which expenses are being claimed under the voucher (and supporting documentation for the vouchers) shall be made promptly available for review by the Regional Administrator upon request. Each project agreement shall bear the project agreement number to allow the Regional Administrator to match the voucher to the corresponding project.

(d) *Submission requirements.* At a minimum, vouchers shall be submitted to the Regional Administrator on a quarterly basis, no later than 15 working days after the end of each quarter, except that where a State receives funds by electronic transfer at an annualized rate of one million dollars or more, vouchers shall be submitted on a monthly basis, no later than 15 working days after the end of each month. A final voucher for the fiscal year shall be submitted to the Regional Administrator no later than 120 days after the end of the fiscal year, and all unexpended balances shall be carried forward to the next fiscal year unless they have lapsed in accordance with § 1300.41.

(e) *Payment.* (1) Failure to provide the information specified in paragraph (b) of this section shall result in rejection of the voucher.

(2) Vouchers that request payment for projects whose project agreement numbers or amounts claimed do not match the projects or exceed the estimated amount of Federal funds provided under § 1300.12 (b)(2) shall be rejected, in whole or in part, until an amended project and/or estimated amount of Federal funds is submitted to and approved by the Regional Administrator in accordance with § 1300.32.

(3) Failure to meet the deadlines specified in paragraph (d) of this section may result in delayed payment.

§ 1300.34 Program income.

(a) *Definition.* Program income means gross income earned by the State or a subrecipient that is directly generated

by a supported activity or earned as a result of the Federal award during the period of performance.

(b) *Inclusions.* Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or 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.

(c) *Exclusions.* Program income does not include interest on grant funds, rebates, credits, discounts, taxes, special assessments, levies, and fines raised by a State or a subrecipient, and interest earned on any of them.

(d) *Use of program income*—(1) *Addition.* Program income shall ordinarily be added to the funds committed to the Federal award (*i.e.,* Section 402, Section 405(b), etc.) under which it was generated. Such program income shall be used to further the objectives of the program area under which it was generated.

(2) *Cost sharing or matching.* Program income may be used to meet cost sharing or matching requirements only upon written approval of the Approving Official. Such use shall not increase the commitment of Federal funds.

§ 1300.35 Annual report.

Within 120 days after the end of the fiscal year, each State shall submit electronically an Annual Report providing—

(a) *Performance report.* (1) An assessment of the State's progress in achieving performance targets identified in the most recently submitted triennial HSP, as updated in the annual grant application, based on the most currently available data, including:

(i) An explanation of the extent to which the State's progress in achieving those targets aligns with the triennial HSP (*i.e.,* the State has (not) met or is (not) on track to meet target); and

(ii) A description of how the projects funded under the prior year annual grant application contributed to meeting the State's highway safety performance targets.

(2) An explanation of how the state plans to adjust the strategy for programming funds to achieve the performance targets, if the State has not met or is not on track to meet its performance targets; or, an explanation of why no adjustments are needed to achieve the performance targets.

(b) *Activity report.* (1) For each countermeasure strategy, a description of the projects and activities funded and implemented under the prior year annual grant application, including:

(i) The amount of Federal funds expended and the zip code(s) in which the projects were performed, or, if the project is State-wide, identification as such;

(ii) An explanation of reasons for projects that were not implemented; and

(iii) A description of how the projects were informed by meaningful public participation and engagement in the planning processes described in the State's triennial HSP.

(2) A description of the State's evidence-based enforcement program activities, including discussion of community collaboration efforts and efforts to support data collection and analysis to ensure transparency, identify disparities in traffic enforcement, and inform traffic enforcement policies, procedures, and activities; and

(3) Submission of information regarding mobilization participation (*e.g.,* participating and reporting agencies, enforcement activity, citation information, paid and earned media information).

§ 1300.36 Appeal of written decision by a Regional Administrator.

The State shall submit an appeal of any written decision by a Regional Administrator regarding the administration of the grants in writing, signed by the Governor's Representative for Highway Safety, to the Regional Administrator. The Regional Administrator shall promptly forward the appeal to the NHTSA Associate Administrator, Regional Operations and Program Delivery. The decision of the NHTSA Associate Administrator shall be final and shall be transmitted in writing to the Governor's Representative for Highway Safety through the Regional Administrator.

Subpart E—Annual Reconciliation.

§ 1300.40 Expiration of the Annual Grant Application.

(a) The State's annual grant application for a fiscal year and the State's authority to incur costs under that application shall expire on the last day of the fiscal year.

(b) Except as provided in paragraph (c) of this section, each State shall submit a final voucher which satisfies the requirements of § 1300.33(b) within 120 days after the expiration of the annual grant application. The final voucher constitutes the final financial reconciliation for each fiscal year.

(c) The Regional Administrator may extend the time period for no more than 30 days to submit a final voucher only in extraordinary circumstances, consistent with 2 CFR 200.344 and 200.345. States shall submit a written request for an extension describing the extraordinary circumstances that necessitate an extension. The approval of any such request for extension shall be in writing, shall specify the new deadline for submitting the final voucher, and shall be signed by the Regional Administrator.

§ 1300.41 Disposition of unexpended balances.

(a) *Carry-forward balances.* Except as provided in paragraph (b) of this section, grant funds that remain unexpended at the end of a fiscal year and the expiration of an annual grant application shall be credited to the State's highway safety account for the new fiscal year and made immediately available for use by the State, provided the State's new annual grant application has been approved by the Regional Administrator pursuant to § 1300.12(c), including any amendments to the annual grant application pursuant to § 1300.32.

(b) *Deobligation of funds.* (1) Except as provided in paragraph (b)(2) of this section, unexpended grant funds shall not be available for expenditure beyond the period of three years after the last day of the fiscal year of apportionment or allocation.

(2) NHTSA shall notify States of any such unexpended grant funds no later than 180 days prior to the end of the period of availability specified in paragraph (b)(1) of this section and inform States of the deadline for commitment. States may commit such unexpended grant funds to a specific project by the specified deadline, and shall provide documentary evidence of that commitment, including a copy of an executed project agreement, to the Regional Administrator.

(3) Grant funds committed to a specific project in accordance with paragraph (b)(2) of this section shall remain committed to that project and must be expended by the end of the succeeding fiscal year. The final voucher for that project shall be submitted within 120 days after the end of that fiscal year.

(4) NHTSA shall deobligate unexpended balances at the end of the time period in paragraph (b)(1) or (3) of this section, whichever is applicable, and the funds shall lapse.

§ 1300.42 Post-grant adjustments.

The expiration of an annual grant application does not affect the ability of NHTSA to disallow costs and recover funds on the basis of a later audit or

other review or the State's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

§ 1300.43 Continuing requirements.

Notwithstanding the expiration of an annual grant application, the provisions in 2 CFR parts 200 and 1201 and 23 CFR part 1300, including but not limited to equipment and audit, continue to apply to the grant funds authorized under 23 U.S.C. Chapter 4 and Section 1906.

Subpart F—Non-Compliance.

§ 1300.50 General.

Where a State is found to be in non-compliance with the requirements of the grant programs authorized under 23 U.S.C. Chapter 4 or Section 1906, or with other applicable law, the sanctions in §§ 1300.51 and 1300.52, and any other sanctions or remedies permitted under Federal law, including the specific conditions of 2 CFR 200.208 and 200.339, may be applied as appropriate.

§ 1300.51 Sanctions—reduction of apportionment.

(a) *Determination of sanctions.* (1) The Administrator shall not apportion any funds under Section 402 to any State that does not have or is not implementing an approved highway safety program.

(2) If the Administrator has apportioned funds under Section 402 to a State and subsequently determines that the State is not implementing an approved highway safety program, the Administrator shall reduce the apportionment by an amount equal to not less than 20 percent until such time as the Administrator determines that the State is implementing an approved highway safety program. The Administrator shall consider the gravity of the State's failure to implement an approved highway safety program in determining the amount of the reduction.

(i) When the Administrator determines that a State is not implementing an approved highway safety program, the Administrator shall issue to the State an advance notice, advising the State that the Administrator expects to withhold funds from apportionment or reduce the State's apportionment under Section 402. The Administrator shall state the amount of the expected withholding or reduction.

(ii) The State may, within 30 days after its receipt of the advance notice, submit documentation demonstrating that it is implementing an approved highway safety program. Documentation shall be submitted to the NHTSA Administrator, 1200 New Jersey Avenue SE, Washington, DC 20590.

(b) *Apportionment of withheld funds.* (1) If the Administrator concludes that a State has begun implementing an approved highway safety program, the Administrator shall promptly apportion to the State the funds withheld from its apportionment, but not later than July 31 of the fiscal year for which the funds were withheld.

(2)(i) If the Administrator concludes, after reviewing all relevant documentation submitted by the State or if the State has not responded to the advance notice, that the State did not correct its failure to have or implement an approved highway safety program, the Administrator shall issue a final notice, advising the State of the funds being withheld from apportionment or of the reduction of apportionment under Section 402 by July 31 of the fiscal year for which the funds were withheld.

(ii) The Administrator shall reapportion the withheld funds to the other States, in accordance with the formula specified in 23 U.S.C. 402(c), not later than the last day of the fiscal year.

§ 1300.52 Sanctions—risk assessment and non-compliance.

(a) *Risk assessment.* (1) All States receiving funds under the grant programs authorized under 23 U.S.C. Chapter 4 and Section 1906 shall be subject to an assessment of risk by NHTSA. In evaluating risks of a State highway safety program, NHTSA may consider, but is not limited to considering, the following for each State:

(i) Financial stability;

(ii) Quality of management systems and ability to meet management standards prescribed in this part and in 2 CFR part 200;

(iii) History of performance. The applicant's record in managing funds received for grant programs under this part, including findings from Management Reviews;

(iv) Reports and findings from audits performed under 2 CFR part 200, subpart F, or from the reports and findings of any other available audits; and

(v) The State's ability to effectively implement statutory, regulatory, and other requirements imposed on non-Federal entities.

(2) If a State is determined to pose risk, NHTSA may increase monitoring activities and may impose any of the specific conditions of 2 CFR 200.208, as appropriate.

(b) *Non-compliance.* If at any time a State is found to be in non-compliance with the requirements of the grant programs under this part, the requirements of 2 CFR parts 200 and 1201, or with any other applicable law, the actions permitted under 2 CFR 200.208 and 200.339 may be applied as appropriate.

Appendix A to Part 1300—Certifications and Assurances for Highway Safety Grants

[*Each fiscal year, the Governor's Representative for Highway Safety must sign these Certifications and Assurances affirming that the State complies with all requirements, including applicable Federal statutes and regulations, that are in effect during the grant period. Requirements that also apply to subrecipients are noted under the applicable caption.*]

State: _____

Fiscal Year: _____

By submitting an application for Federal grant funds under 23 U.S.C. Chapter 4 or Section 1906, Pub. L. 109–59, as amended by Section 25024, Pub. L. 117–58, the State Highway Safety Office acknowledges and agrees to the following conditions and requirements. In my capacity as the Governor's Representative for Highway Safety, I hereby provide the following Certifications and Assurances:

GENERAL REQUIREMENTS

The State will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended
- Sec. 1906, Pub. L. 109–59, as amended by Sec. 25024, Pub. L. 117–58
- 23 CFR part 1300—Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201—Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

The State has submitted appropriate documentation for review to the single point of contact designated by the Governor to review Federal programs, as required by Executive Order 12372 (Intergovernmental Review of Federal Programs).

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The State will comply with FFATA guidance, *OMB Guidance on FFATA Subaward and Executive Compensation Reporting,* August 27, 2010, (*https://www.fsrs.gov/documents/OMB_Guidance_on_FFATA_Subaward_and_Executive_Compensation_Reporting_08272010.pdf*) by reporting to *FSRS.gov* for each sub-grant awarded:

- Name of the entity receiving the award;

- Amount of the award;
- Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;
- Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
- Unique entity identifier (generated by *SAM.gov*);
- The names and total compensation of the five most highly compensated officers of the entity if:

(i) the entity in the preceding fiscal year received—

(I) 80 percent or more of its annual gross revenues in Federal awards;

(II) $25,000,000 or more in annual gross revenues from Federal awards; and

(ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;

- Other relevant information specified by OMB guidance.

NONDISCRIMINATION

(applies to subrecipients as well as States)

The State highway safety agency [and its subrecipients] will comply with all Federal statutes and implementing regulations relating to nondiscrimination (''Federal Nondiscrimination Authorities''). These include but are not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.,* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (entitled *Non-discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964*);
- 28 CFR 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. 324 *et seq.*), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683 and 1685–1686) (prohibit discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (Pub. L. 100–209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms ''programs or activities'' to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131–12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (preventing discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (requiring that recipients of Federal financial assistance provide meaningful access for applicants and beneficiaries who have limited English proficiency (LEP));
- Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government (advancing equity across the Federal government); and
- Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (clarifying that sex discrimination includes discrimination on the grounds of gender identity or sexual orientation).

The preceding statutory and regulatory cites hereinafter are referred to as the ''Acts'' and ''Regulations,'' respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

''*No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including NHTSA.*''

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI of the Civil Rights Act of 1964 and other non-discrimination requirements (the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted Highway Safety Grant Program:

1. The Recipient agrees that each ''activity,'' ''facility,'' or ''program,'' as defined in § 21.23(b) and (e) of 49 CFR part 21 will be (with regard to an ''activity'') facilitated, or will be (with regard to a ''facility'') operated, or will be (with regard to a ''program'') conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Highway Safety Grant Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

''*The [name of Recipient], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C 2000d to 2000d–4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.*''

3. The Recipient will insert the clauses of Appendix A and E of this Assurance (also referred to as DOT Order 1050.2A) [2] in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of Appendix B of DOT Order 1050.2A, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this DOT Order 1050.2A, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and

b. for the construction or use of, or access to, space on, over, or under real property

[2] Available at *https://www.faa.gov/about/office_org/headquarters_offices/acr/com_civ_support/non_disc_pr/media/dot_order_1050_2A_standard_dot_title_vi_assurances.pdf.*

acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the State highway safety agency also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing NHTSA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by NHTSA. You must keep records, reports, and submit the material for review upon request to NHTSA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The State highway safety agency gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the Highway Safety Grant Program. This ASSURANCE is binding on the State highway safety agency, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the Highway Safety Grant Program. The person(s) signing below is/are authorized to sign this ASSURANCE on behalf of the Recipient.

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The State will provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace, and specifying the actions that will be taken against employees for violation of such prohibition;

b. Establishing a drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;

2. The grantee's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance programs;

4. The penalties that may be imposed upon employees for drug violations occurring in the workplace;

5. Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

1. Abide by the terms of the statement;

2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

d. Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction;

e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted—

1. Taking appropriate personnel action against such an employee, up to and including termination;

2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)

(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501–1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions;

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (*e.g.,* ''grassroots'') lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to subrecipients as well as States)

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and

agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.

4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded,* as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled ''Instructions for Lower Tier Participant Certification'' including the ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (*https://www.sam.gov/*).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

(1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms *covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded,* as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled ''Instructions for Lower Tier Participant Certification'' including the ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check

the System for Award Management Exclusions website (*https://www.sam.gov/*).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT

(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

CERTIFICATION ON CONFLICT OF INTEREST

(applies to subrecipients as well as States)

General Requirements

No employee, officer or agent of a State or its subrecipient who is authorized in an official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any subaward, including contracts or subcontracts, in connection with this grant shall have, directly or indirectly, any financial or personal interest in any such subaward. Such a financial or personal interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or personal interest in or a tangible personal benefit from an entity considered for a subaward. Based on this policy:

1. The recipient shall maintain a written code or standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents.

a. The code or standards shall provide that the recipient's officers, employees, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential subawardees, including contractors or parties to subcontracts.

b. The code or standards shall establish penalties, sanctions or other disciplinary actions for violations, as permitted by State or local law or regulations.

2. The recipient shall maintain responsibility to enforce the requirements of the written code or standards of conduct.

Disclosure Requirements

No State or its subrecipient, including its officers, employees or agents, shall perform or continue to perform under a grant or cooperative agreement, whose objectivity may be impaired because of any related past, present, or currently planned interest, financial or otherwise, in organizations regulated by NHTSA or in organizations whose interests may be substantially affected by NHTSA activities. Based on this policy:

1. The recipient shall disclose any conflict of interest identified as soon as reasonably possible, making an immediate and full disclosure in writing to NHTSA. The disclosure shall include a description of the action which the recipient has taken or proposes to take to avoid or mitigate such conflict.

2. NHTSA will review the disclosure and may require additional relevant information from the recipient. If a conflict of interest is found to exist, NHTSA may (a) terminate the award, or (b) determine that it is otherwise in the best interest of NHTSA to continue the award and include appropriate provisions to mitigate or avoid such conflict.

3. Conflicts of interest that require disclosure include all past, present or currently planned organizational, financial, contractual or other interest(s) with an organization regulated by NHTSA or with an organization whose interests may be substantially affected by NHTSA activities, and which are related to this award. The interest(s) that require disclosure include those of any recipient, affiliate, proposed consultant, proposed subcontractor and key personnel of any of the above. Past interest shall be limited to within one year of the date of award. Key personnel shall include any person owning more than a 20 percent interest in a recipient, and the officers, employees or agents of a recipient who are responsible for making a decision or taking an action under an award where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

(applies to subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at *www.trafficsafety.org.* The NHTSA website (*www.nhtsa.gov*) also provides information on statistics, campaigns, and program evaluations and references.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

SECTION 402 REQUIREMENTS

1. To the best of my personal knowledge, the information submitted in the annual grant application in support of the State's application for a grant under 23 U.S.C. 402 is accurate and complete.

2. The Governor is the responsible official for the administration of the State highway safety program, by appointing a Governor's Representative for Highway Safety who shall

be responsible for a State highway safety agency that has adequate powers and is suitably equipped and organized (as evidenced by appropriate oversight procedures governing such areas as procurement, financial administration, and the use, management, and disposition of equipment) to carry out the program. (23 U.S.C. 402(b)(1)(A))

3. At least 40 percent of all Federal funds apportioned to this State under 23 U.S.C. 402 for this fiscal year will be expended by or for the benefit of political subdivisions of the State in carrying out local highway safety programs (23 U.S.C. 402(b)(1)(C)) or 95 percent by and for the benefit of Indian tribes (23 U.S.C. 402(h)(2)), unless this requirement is waived in writing. (This provision is not applicable to the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.)

4. The State's highway safety program provides adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks. (23 U.S.C. 402(b)(1)(D))

5. As part of a comprehensive program, the State will support a data-based traffic safety enforcement program that fosters effective community collaboration to increase public safety, and data collection and analysis to ensure transparency, identify disparities in traffic enforcement, and inform traffic enforcement policies, procedures, and activities. (23 U.S.C. 402(b)(1)(E))

6. The State will implement activities in support of national highway safety goals to reduce motor vehicle related fatalities that also reflect the primary data-related crash factors within the State, as identified by the State highway safety planning process, including:

- Participation in the National high-visibility law enforcement mobilizations as identified annually in the NHTSA Communications Calendar, including not less than 3 mobilization campaigns in each fiscal year to—
  - Reduce alcohol-impaired or drug-impaired operation of motor vehicles; and
  - Increase use of seat belts by occupants of motor vehicles;
- Submission of information regarding mobilization participation into the HVE Database;
- Sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits;
- An annual Statewide seat belt use survey in accordance with 23 CFR part 1340 for the measurement of State seat belt use rates, except for the Secretary of Interior on behalf of Indian tribes;
- Development of Statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources;
- Coordination of Highway Safety Plan, data collection, and information systems with the State strategic highway safety plan, as defined in 23 U.S.C. 148(a); and
- Participation in the Fatality Analysis Reporting System (FARS), except for American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands. (23 U.S.C. 402(b)(1)(F))

7. The State will actively encourage all relevant law enforcement agencies in the State to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect. (23 U.S.C. 402(j))

8. The State will not expend Section 402 funds to carry out a program to purchase, operate, or maintain an automated traffic enforcement system, except in a work zone or school zone. (23 U.S.C. 402(c)(4))

I understand that my statements in support of the State's application for Federal grant funds are statements upon which the Federal Government will rely in determining qualification for grant funds, and that knowing misstatements may be subject to civil or criminal penalties under 18 U.S.C. 1001. I sign these Certifications and Assurances based on personal knowledge, and after appropriate inquiry.

Signature Governor's Representative for Highway Safety

Date

Printed name of Governor's Representative for Highway Safety

Appendix B to Part 1300—Application Requirements for Section 405 and Section 1906 Grants

BILLING CODE 4910–59–P

[*Each fiscal year, to apply for a grant under 23 U.S.C. 405 or Section 1906, Pub. L. 109-59, as amended by Section 4011, Pub. L. 114-94, the State must complete and submit all required information in this appendix, and the Governor's Representative for Highway Safety must sign the Certifications and Assurances.*]

State: _____ Fiscal Year: _____

Instructions: Check the box for each part for which the State is applying for a grant, fill in relevant blanks, and identify the attachment number or page numbers where the requested information appears in the triennial HSP or annual grant application. Attachments may be submitted electronically.

□ PART 1: OCCUPANT PROTECTION GRANTS (23 CFR 1300.21)

[*Check the box above **only** if applying for this grant.*]

All States:

[*Fill in **all** blanks below.*]

- The State's occupant protection program area plan for the upcoming fiscal year is provided in the annual grant application at _____ (location).

- The State will participate in the Click it or Ticket national mobilization in the fiscal year of the grant. The description of the State's planned participation is provided in the annual grant application at _____ (location).

- Projects demonstrating the State's active network of child restraint inspection stations are provided in the annual grant application at _____ (location). Such description includes estimates for: (1) the total number of planned inspection stations and events during the upcoming fiscal year; and (2) within that total, the number of planned inspection stations and events serving each of the following population categories: urban, rural, and at-risk. The planned inspection stations/events provided in the annual grant application are staffed with at least one current nationally Certified Child Passenger Safety Technician.

- Projects, as provided in the annual grant application at _____ (location), that include estimates of the total number of classes and total number of technicians to be trained in the upcoming fiscal year to ensure coverage of child passenger safety inspection stations and inspection events by nationally Certified Child Passenger Safety Technicians.

Lower Seat Belt Use States Only:

[*Check **at least 3 boxes** below and fill in **all** blanks under those checked boxes.*]

□ The State's **primary seat belt use law**, requiring all occupants riding in a passenger motor vehicle to be restrained in a seat belt or a child restraint, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s): _____

_____.

□ The State's **occupant protection law**, requiring occupants to be secured in a seat belt or age-appropriate child restraint while in a passenger motor vehicle and a minimum fine of $25, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Requirement for all occupants to be secured in

seat belt or age appropriate child restraint;

- _____ Coverage of all passenger motor vehicles;
- _____ Minimum fine of at least $25;
- _____ Exemptions from restraint requirements.

□ Projects demonstrating the State's **seat belt enforcement plan** are provided in the annual grant application at _____ (location).

□ The projects demonstrating the State's **high risk population countermeasure program** are provided in the annual grant application at _____ (location).

□ The State's **comprehensive occupant protection program** is provided as follows:

- Date of NHTSA-facilitated program assessment conducted within 5 years prior to the application date: _____ (date);
- Multi-year strategic plan: annual grant application or triennial HSP at _____ (location);
- The name and title of the State's designated occupant protection coordinator is _____ _____.
- List that contains the names, titles and organizations of the Statewide occupant protection task force membership: annual grant application at _____ (location).

□ The State's NHTSA-facilitated **occupant protection program assessment** of all elements of its occupant protection program was conducted on _____ (date) (within 5 years of the application due date);

□ PART 2: STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS GRANTS (23 CFR 1300.22)

[*Check the box above **only** if applying for this grant.*]

All States:

- The State has a functioning traffic records coordinating committee that meets at least 3 times each year.

- The State has designated a TRCC coordinator.

- The State has established a State traffic records strategic plan, updated annually, that has been approved by the TRCC and describes specific quantifiable and measurable improvements anticipated in the State's core safety databases, including crash, citation or adjudication, driver, emergency medical services or injury surveillance system, roadway, and vehicle databases.

[*Fill in the blank for the bullet below.*]

- Written description of the performance measure(s), and all supporting data, that the State is relying on to demonstrate achievement of the quantitative improvement in the preceding 12 months of the application due date in relation to

one or more of the significant data program attributes is provided in the annual grant application at _____ (location).

□ PART 3: IMPAIRED DRIVING COUNTERMEASURES

(23 CFR 1300.23(D)-(F))

[*Check the box above **only** if applying for this grant.*]

All States:

- The State will use the funds awarded under 23 U.S.C. 405(d) only for the implementation of programs as provided in 23 CFR 1300.23(j).

Mid-Range State Only:

[*Check **one box** below and fill in **all** blanks under that checked box.*]

□ The State submits its Statewide impaired driving plan approved by a Statewide impaired driving task force on _____ (date). Specifically –

- Annual grant application at _____ (location) describes the authority and basis for operation of the Statewide impaired driving task force;

- Annual grant application at _____ (location) contains the list of names, titles and organizations of all task force members;
- Annual grant application at _____ (location) contains the strategic plan based on Highway Safety Guideline No. 8 – Impaired Driving.

□ The State has previously submitted a Statewide impaired driving plan approved by a Statewide impaired driving task force on _____ (date) and continues to use this plan.

[*For fiscal year 2024 grant applications, only*]

□ The State will convene a Statewide impaired driving task force to develop a Statewide impaired driving plan, and will submit that plan by August 1 of the grant year.

High-Range State Only:

[*Check **one box** below and fill in **all** blanks under that checked box.*]

□ The State submits its Statewide impaired driving plan approved by a Statewide impaired driving task force on _____ (date) that includes a review of a NHTSA-facilitated assessment of the State's impaired driving program conducted on _____ (date). Specifically, –

- Annual grant application at _____ (location) describes the authority and basis for operation of the Statewide impaired driving task force;

- Annual grant application at _____ (location) contains the list of names, titles and organizations of all task force members;
- Annual grant application at _____ (location) contains the strategic plan based on Highway Safety Guideline No. 8 – Impaired Driving;
- Annual grant application at_____ (location) addresses any related recommendations from the assessment of the State's impaired driving program;
- Annual grant application at _____ (location) contains the projects, in detail, for spending grant funds;
- Annual grant application at _____ (location) describes how the spending supports the State's impaired driving program and achievement of its performance targets.

□ The State submits an updated Statewide impaired driving plan approved by a Statewide impaired driving task force on _____ (date) and updates its assessment review and spending plan provided in the HSP at _____ (location).

[*For fiscal year 2024 grant applications, only*]

□ The State's NHTSA-facilitated assessment was conducted on _____ (date) (within 3 years of the application due date); OR

□ The State will conduct a NHTSA-facilitated assessment during the grant year; AND

□ The State will convene a Statewide impaired driving task force to develop a Statewide impaired driving plan and will submit that plan by August 1 of the grant year.

□ PART 4: ALCOHOL-IGNITION INTERLOCK LAWS (23 CFR 1300.23(G))

[*Check the box above **only** if applying for this grant.*]

[*Check **one box** below and fill in **all** blanks under that checked box]*

□ The State's **alcohol-ignition interlock law**, requiring all individuals convicted of driving under the influence or of driving while intoxicated to drive only motor vehicles with alcohol-ignition interlocks for a period of not less than 180 days, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Requirement for alcohol-ignition interlocks for all DUI offenders for not less than 180 days;
- _____ Identify all alcohol-ignition interlock use exceptions.

□ The State's **alcohol-ignition interlock law**, requiring an individual convicted of driving under the influence of alcohol or of driving while intoxicated, and who has been ordered to use an alcohol-ignition interlock, and does not permit the individual to receive any driving privilege or driver's license unless the individual installs on each motor vehicle registered, owned, or leased by the individual an alcohol-ignition interlock for a period of not less than 180 days, was enacted on _____ (date) and last amended

on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Requirement for installation of alcohol ignition-interlocks for DUI offenders for not less than 180 days;
- _____ Identify all alcohol-ignition interlock use exceptions.

□ The State's **alcohol-ignition interlock law**, requiring an individual convicted of, or the driving privilege of whom is revoked or denied, for refusing to submit to a chemical or other appropriate test for the purpose of determining the presence or concentration of any intoxicating substance, and who has been ordered to use an alcohol-ignition interlock, requires the individual to install on each motor vehicle to be operated by the individual an alcohol-ignition interlock for a period of not less than 180 days, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant; and

The State's **compliance-based removal program**, requiring an individual convicted of driving under the influence of alcohol or of driving while intoxicated, and who has been ordered to use an alcohol-ignition interlock, requires the individual to install on each motor vehicle to be operated by the individual an alcohol-ignition interlock for a period of not less than 180 days, was enacted (if a law) or implemented (if a program) on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant; and

The State's **compliance-based removal program**, requiring completion of a minimum consecutive period of not less than 40 percent of the required period of alcohol-ignition interlock installation immediately prior to the end of the individual's installation requirement, without a confirmed violation of the State's alcohol-ignition interlock program use requirements, was enacted (if a law) or implemented (if a program) on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant .

Legal citations:

- _____ Requirement for installation of alcohol-ignition interlocks for refusal to submit to a test for 180 days;
- _____ Requirement for installation of alcohol ignition-interlocks for DUI offenders for not less than 180 days;
- _____ Requirement for completion of minimum consecutive period of not less than 40 percent of the required period of alcohol-interlock use;
- _____ Identify list of alcohol-ignition interlock program use violations;
- _____ Identify all alcohol-ignition interlock use exceptions.

□ PART 5: 24-7 SOBRIETY PROGRAMS (23 CFR 1300.23(H))

[*Check the box above **only** if applying for this grant.*]

[*Fill in **all** blanks.*]

The State provides citations to a law that requires all individuals convicted of driving under the influence or of driving while intoxicated to receive a restriction on driving privileges that was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant. **Legal citation(s):**

_____

_____.

[*Check **at least one of the boxes** below and fill in **all** blanks under that checked box.*]

□ *Law citation.* The State provides citations to a law that authorizes a Statewide 24-7 sobriety program that was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant. **Legal citation(s):** _____

_____.

□ *Program information.* The State provides program information that authorizes a Statewide 24-7 sobriety program. The program information is provided in the annual grant application at _____ (location).

□ PART 6: DISTRACTED DRIVING GRANTS (23 CFR 1300.24)

[*Check the box above **only** if applying for this grant and check the box(es) below for each grant for which you wish to apply.*]

□ The State has conformed its distracted driving data to the most recent Model Minimum Uniform Crash Criteria (MMUCC) and will provide supporting data (i.e., the State's most recent crash report with distracted driving data element(s)) within 30 days after notification of award.

□ **Distracted Driving Awareness Grant**

- The State provides sample distracted driving questions from the State's driver's license examination in the annual grant application at _____ (location).

Distracted Driving Law Grants

*[Check at least 1 box below and fill in **all** blanks under that checked box.]*

□ **Prohibition on Texting While Driving**

The State's texting ban statute, prohibiting texting while driving and requiring a fine, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Prohibition on texting while driving;
- _____ Definition of covered wireless communication devices;
- _____ Fine for an offense;
- _____ Exemptions from texting ban.

□ **Prohibition on Handheld Phone Use While Driving**

The State's handheld phone use ban statute, prohibiting a driver from holding a personal wireless communications device while driving and requiring a fine for violation of the law, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Prohibition on handheld phone use;
- _____ Definition of covered wireless communication devices;
- _____ Fine for an offense;
- _____ Exemptions from handheld phone use ban.

□ **Prohibition on Youth Cell Phone Use While Driving**

The State's youth cell phone use ban statute, prohibiting youth cell phone use while driving, and requiring a fine, was enacted on _____ (date) and last amended on

_____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Prohibition on youth cell phone use while driving;
- _____ Definition of covered wireless communication devices;
- _____ Fine for an offense;
- _____ Exemptions from youth cell phone use ban.

□ **Prohibition on Viewing Devices While Driving**

The State's viewing devices ban statute, prohibiting driver's from viewing a device while driving, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Prohibition on viewing devices use while driving;
- _____ Definition of covered wireless communication devices;
- _____ Exemptions from device viewing ban.

□ PART 7: MOTORCYCLIST SAFETY GRANTS (23 CFR 1300.25)

[*Check the box above **only** if applying for this grant.*]

[*Check **at least 2 boxes** below and fill in **all** blanks under those checked boxes **only**.*]

□ Motorcycle rider training course:

- The name and organization of the head of the designated State authority over motorcyclist safety issues is _____.

- The head of the designated State authority over motorcyclist safety issues has approved and the State has adopted one of the following introductory rider curricula: [*Check at least one of the following boxes below and fill in any blanks.*]

□ Motorcycle Safety Foundation Basic Rider Course;

□ TEAM OREGON Basic Rider Training;

□ Idaho STAR Basic I;

□ California Motorcyclist Safety Program Motorcyclist Training Course;

□ Other curriculum that meets NHTSA's Model National Standards for Entry-Level Motorcycle Rider Training and that has been approved by NHTSA.

- In the annual grant application at _____ (location), a list of counties or political subdivisions in the State where motorcycle rider training courses will be conducted during the fiscal year of the grant AND number of registered motorcycles in each such county or political subdivision according to official State motor vehicle records.

□ **Motorcyclist awareness program:**

- The name and organization of the head of the designated State authority over motorcyclist safety issues is _____.

- The State's motorcyclist awareness program was developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues.

- In the annual grant application at _____ (location), performance measures and corresponding performance targets developed for motorcycle awareness that identify, using State crash data, the counties or political subdivisions within the State with the highest number of motorcycle crashes involving a motorcycle and another motor vehicle.

- In the annual grant application at _____ (location), the projects demonstrating that the State will implement data-driven programs in a majority of counties or political subdivisions where the incidence of crashes involving a motorcycle and another motor vehicle is highest, and a list that identifies, using

State crash data, the counties or political subdivisions within the State ranked in order of the highest to lowest number of crashes involving a motorcycle and another motor vehicle per county or political subdivision.

□ **Helmet Law:**

The State's motorcycle helmet law, requiring the use of a helmet for each motorcycle rider under the age of 18, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s):_____ _____

_____.

□ **Reduction of fatalities and crashes involving motorcycles:**

- Data showing the total number of motor vehicle crashes involving motorcycles is provided in the annual grant application at _____ (location).

- Description of the State's methods for collecting and analyzing data is provided in the annual grant application at _____ (location).

□ **Impaired motorcycle driving program:**

- In the annual grant application or triennial HSP at _____ (location), performance measures and corresponding performance targets developed to reduce impaired motorcycle operation.

- In the annual grant application at _____ (location), countermeasure strategies and projects demonstrating that the State will implement data-driven programs designed to reach motorcyclists and motorists in those jurisdictions where the incidence of motorcycle crashes involving an impaired operator is highest (i.e., the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes involving an impaired operator) based upon State data.

□ **Reduction of fatalities and crashes involving impaired motorcyclists:**

- Data showing the total number of reported crashes involving alcohol-impaired and drug-impaired motorcycle operators are provided in the annual grant application at _____ (location).

- Description of the State's methods for collecting and analyzing data is provided in the annual grant application at _____ (location).

□ **Use of fees collected from motorcyclists for motorcycle programs:**

[*Check **one box only** below and fill in **all** blanks under the checked box **only**.*]

□ Applying as a Law State –

- The State law or regulation requires all fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs. **Legal citation(s):**_____

_____

_____.

AND

- The State's law appropriating funds for FY ____ demonstrates that all fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs are spent on motorcycle training and safety programs. **Legal citation(s):**_____

_____

_____.

□ Applying as a Data State –

- Data and/or documentation from official State records from the previous fiscal year showing that **all** fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs were used for motorcycle training and safety programs is provided in the annual grant application at _____ (location).

□ PART 8: NONMOTORIZED SAFETY GRANTS (23 CFR 1300.26)

[*Check the box above **only** if applying for this grant and **only** if NHTSA has identified the State as eligible because the State annual combined nonmotorized road user fatalities exceed 15 percent of the State's total annual crash fatalities based on the most recent calendar year final FARS data.*]

[*Fill in **all** applicable blanks below.*]

- The list of **project(s) and subrecipient(s) information** that the State plans to conduct under this program is provided in the annual grant application at _____ (location(s)).

□ PART 9: PREVENTING ROADSIDE DEATHS GRANTS (23 CFR 1300.27)

[*Check the box above **only** if applying for this grant.*]

□ The State's plan describing the method by which the State will use grant funds is provided in the annual grant application at _____ (location(s)).

□ PART 10: DRIVER AND OFFICER SAFETY EDUCATION GRANTS (23 CFR 1300.28)

[*Check the box above **only** if applying for this grant.*]

[*Check one box **only** below and fill in **required** blanks under the checked box **only**.*]

□ Driver Education and Driving Safety Courses:

[*Check **one box only** below and fill in **all** blanks under the checked box **only**.*]

□ Applying as a law State –

The State law requiring that driver education and driver safety courses include instruction and testing related to law enforcement practices during traffic stops was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s):_____ _____ _____.

□ Applying as a documentation State –

- The State has developed and is implementing a driver education and driving safety course throughout the State that require driver education

and driver safety courses to include instruction and testing related to law enforcement practices during traffic stops.

- Curriculum or course materials, and citations to grant required topics within, are provided in the annual grant application at _____ (location).

□ **Peace Officer Training Programs:**

[*Check **one box only** below and fill in **all** blanks under the checked box **only**.*]

□ Applying as a law State –

The State law requiring that the State has developed and implemented a training program for peace officers and reserve law enforcement officers with respect to proper interaction with civilians during traffic stops was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s):_____ _____

_____.

□ Applying as a documentation State –

- The State has developed and is implementing a training program for peach officers and reserve law enforcement officers with respect to proper interaction with civilians during traffic stops.

- Curriculum or course materials, and citations to grant required topics within, are provided in the annual grant application at _____ (location).

□ **Application as a Qualifying State:**

- A proposed bill or planning or strategy documents that identify **meaningful actions** that the State has taken and plans to take to develop and implement a qualifying law or program is provided in the annual grant application at _____ (location).

- A timetable for implementation of a qualifying law or program within 5 years of initial application for a grant under this section is provided in the annual grant application at _____ (location).

□ PART 11: RACIAL PROFILING DATA COLLECTION GRANTS (23 CFR 1300.29)

[*Check the box above **only** if applying for this grant.*]

[*Check one box **only** below and fill in **all** blanks under the checked box **only**.*]

□ The official document(s) (i.e., a law, regulation, binding policy directive, letter from the Governor or court order) demonstrates that the State maintains and allows public

inspection of statistical information on the race and ethnicity of the driver for each motor vehicle stop made by a law enforcement officer on all public roads except those classified as local or minor rural roads are provided in the annual grant application at _____ (location).

□ The projects that the State will undertake during the fiscal year of the grant to maintain and allow public inspection of statistical information on the race and ethnicity of the driver for each motor vehicle stop made by a law enforcement officer on all public roads except those classified as local or minor rural roads are provided in the annual grant application at _____ (location).

In my capacity as the Governor's Representative for Highway Safety, I hereby provide the following certifications and assurances –

- I have reviewed the above information in support of the State's application for 23 U.S.C. 405 and Section 1906 grants, and based on my review, the information is accurate and complete to the best of my personal knowledge.

- As condition of each grant awarded, the State will use these grant funds in accordance with the specific statutory and regulatory requirements of that grant, and will comply with all applicable laws, regulations, and financial and programmatic requirements for Federal grants.

- I understand and accept that incorrect, incomplete, or untimely information submitted in support of the State's application may result in the denial of a grant award.

I understand that my statements in support of the State's application for Federal grant funds are statements upon which the Federal Government will rely in determining qualification for grant funds, and that knowing misstatements may be subject to civil or criminal penalties under 18 U.S.C. 1001. I sign these Certifications and Assurances based on personal knowledge, and after appropriate inquiry.

_____ _____

Signature Governor's Representative for Highway Safety Date

_____

Printed name of Governor's Representative for Highway Safety

Issued in Washington, DC, under authority delegated in 49 CFR 1.95.

Steven S. Cliff,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 2022–18995 Filed 9–14–22; 8:45 am]

BILLING CODE 4910–59–C

FEDERAL REGISTER

Vol. 87 Thursday,

No. 178 September 15, 2022

Part III

The President

Executive Order 14081—Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy

Federal Register
Vol. 87, No. 178
Thursday, September 15, 2022

Presidential Documents

Title 3—

The President

Executive Order 14081 of September 12, 2022

Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of my Administration to coordinate a whole-of-government approach to advance biotechnology and biomanufacturing towards innovative solutions in health, climate change, energy, food security, agriculture, supply chain resilience, and national and economic security. Central to this policy and its outcomes are principles of equity, ethics, safety, and security that enable access to technologies, processes, and products in a manner that benefits all Americans and the global community and that maintains United States technological leadership and economic competitiveness.

Biotechnology harnesses the power of biology to create new services and products, which provide opportunities to grow the United States economy and workforce and improve the quality of our lives and the environment. The economic activity derived from biotechnology and biomanufacturing is referred to as ''the bioeconomy.'' The COVID–19 pandemic has demonstrated the vital role of biotechnology and biomanufacturing in developing and producing life-saving diagnostics, therapeutics, and vaccines that protect Americans and the world. Although the power of these technologies is most vivid at the moment in the context of human health, biotechnology and biomanufacturing can also be used to achieve our climate and energy goals, improve food security and sustainability, secure our supply chains, and grow the economy across all of America.

For biotechnology and biomanufacturing to help us achieve our societal goals, the United States needs to invest in foundational scientific capabilities. We need to develop genetic engineering technologies and techniques to be able to write circuitry for cells and predictably program biology in the same way in which we write software and program computers; unlock the power of biological data, including through computing tools and artificial intelligence; and advance the science of scale-up production while reducing the obstacles for commercialization so that innovative technologies and products can reach markets faster.

Simultaneously, we must take concrete steps to reduce biological risks associated with advances in biotechnology. We need to invest in and promote biosafety and biosecurity to ensure that biotechnology is developed and deployed in ways that align with United States principles and values and international best practices, and not in ways that lead to accidental or deliberate harm to people, animals, or the environment. In addition, we must safeguard the United States bioeconomy, as foreign adversaries and strategic competitors alike use legal and illegal means to acquire United States technologies and data, including biological data, and proprietary or precompetitive information, which threatens United States economic competitiveness and national security.

We also must ensure that uses of biotechnology and biomanufacturing are ethical and responsible; are centered on a foundation of equity and public good, consistent with Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government); and are consistent with respect for human rights. Resources

should be invested justly and equitably so that biotechnology and biomanufacturing technologies benefit all Americans, especially those in underserved communities, as well as the broader global community.

To achieve these objectives, it is the policy of my Administration to:

(a) bolster and coordinate Federal investment in key research and development (R&D) areas of biotechnology and biomanufacturing in order to further societal goals;

(b) foster a biological data ecosystem that advances biotechnology and biomanufacturing innovation, while adhering to principles of security, privacy, and responsible conduct of research;

(c) improve and expand domestic biomanufacturing production capacity and processes, while also increasing piloting and prototyping efforts in biotechnology and biomanufacturing to accelerate the translation of basic research results into practice;

(d) boost sustainable biomass production and create climate-smart incentives for American agricultural producers and forest landowners;

(e) expand market opportunities for bioenergy and biobased products and services;

(f) train and support a diverse, skilled workforce and a next generation of leaders from diverse groups to advance biotechnology and biomanufacturing;

(g) clarify and streamline regulations in service of a science- and risk-based, predictable, efficient, and transparent system to support the safe use of products of biotechnology;

(h) elevate biological risk management as a cornerstone of the life cycle of biotechnology and biomanufacturing R&D, including by providing for research and investment in applied biosafety and biosecurity innovation;

(i) promote standards, establish metrics, and develop systems to grow and assess the state of the bioeconomy; to better inform policy, decision-making, and investments in the bioeconomy; and to ensure equitable and ethical development of the bioeconomy;

(j) secure and protect the United States bioeconomy by adopting a forward-looking, proactive approach to assessing and anticipating threats, risks, and potential vulnerabilities (including digital intrusion, manipulation, and exfiltration efforts by foreign adversaries), and by partnering with the private sector and other relevant stakeholders to jointly mitigate risks to protect technology leadership and economic competitiveness; and

(k) engage the international community to enhance biotechnology R&D cooperation in a way that is consistent with United States principles and values and that promotes best practices for safe and secure biotechnology and biomanufacturing research, innovation, and product development and use.

The efforts undertaken pursuant to this order to further these policies shall be referred to collectively as the National Biotechnology and Biomanufacturing Initiative.

Sec. 2. *Coordination.* The Assistant to the President for National Security Affairs (APNSA), in consultation with the Assistant to the President for Economic Policy (APEP) and the Director of the Office of Science and Technology Policy (OSTP), shall coordinate the executive branch actions necessary to implement this order through the interagency process described in National Security Memorandum 2 of February 4, 2021 (Renewing the National Security Council System) (NSM–2 process). In implementing this order, heads of agencies (as defined in section 13 of this order) shall, as appropriate and consistent with applicable law, consult outside stakeholders, such as those in industry; academia; nongovernmental organizations; communities; labor unions; and State, local, Tribal, and territorial governments to advance the policies described in section 1 of this order.

Sec. 3. *Harnessing Biotechnology and Biomanufacturing R&D to Further Societal Goals.* (a) Within 180 days of the date of this order, the heads of agencies specified in subsections (a)(i)–(v) of this section shall submit the following reports on biotechnology and biomanufacturing to further societal goals related to health, climate change and energy, food and agricultural innovation, resilient supply chains, and cross-cutting scientific advances. The reports shall be submitted to the President through the APNSA, in coordination with the Director of the Office of Management and Budget (OMB), the APEP, the Assistant to the President for Domestic Policy (APDP), and the Director of OSTP.

(i) The Secretary of Health and Human Services (HHS), in consultation with the heads of appropriate agencies as determined by the Secretary, shall submit a report assessing how to use biotechnology and biomanufacturing to achieve medical breakthroughs, reduce the overall burden of disease, and improve health outcomes.

(ii) The Secretary of Energy, in consultation with the heads of appropriate agencies as determined by the Secretary, shall submit a report assessing how to use biotechnology, biomanufacturing, bioenergy, and biobased products to address the causes and adapt to and mitigate the impacts of climate change, including by sequestering carbon and reducing greenhouse gas emissions.

(iii) The Secretary of Agriculture, in consultation with the heads of appropriate agencies as determined by the Secretary, shall submit a report assessing how to use biotechnology and biomanufacturing for food and agriculture innovation, including by improving sustainability and land conservation; increasing food quality and nutrition; increasing and protecting agricultural yields; protecting against plant and animal pests and diseases; and cultivating alternative food sources.

(iv) The Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of HHS, and the heads of other appropriate agencies as determined by the Secretary of Commerce, shall submit a report assessing how to use biotechnology and biomanufacturing to strengthen the resilience of United States supply chains.

(v) The Director of the National Science Foundation (NSF), in consultation with the heads of appropriate agencies as determined by the Director, shall submit a report identifying high-priority fundamental and use-inspired basic research goals to advance biotechnology and biomanufacturing and to address the societal goals identified in this section.

(b) Each report specified in subsection (a) of this section shall identify high-priority basic research and technology development needs to achieve the overall objectives described in subsection (a) of this section, as well as opportunities for public-private collaboration. Each of these reports shall also include recommendations for actions to enhance biosafety and biosecurity to reduce risk throughout the biotechnology R&D and biomanufacturing lifecycles.

(c) Within 100 days of receiving the reports required under subsection (a) of this section, the Director of OSTP, in coordination with the Director of OMB, the APNSA, the APEP, the APDP, and the heads of appropriate agencies as determined through the NSM–2 process, shall develop a plan (implementation plan) to implement the recommendations in the reports. The development of this implementation plan shall also include the solicitation of input from external experts regarding potential ethical implications or other societal impacts, including environmental sustainability and environmental justice, of the recommendations contained in the reports required under subsection (a) of this section. The implementation plan shall include assessments and make recommendations regarding any such implications or impacts.

(d) Within 90 days of the date of this order, the Director of OMB, in consultation with the heads of appropriate agencies as determined through

the NSM–2 process, shall perform a budget crosscut to identify existing levels of agency spending on biotechnology- and biomanufacturing-related activities to inform the development of the implementation plan described in subsection (c) of this section.

(e) The APNSA, in coordination with the Director of OMB, the APEP, the APDP, and the Director of OSTP, shall review the reports required under subsection (a) of this section and shall submit the reports to the President in an unclassified form, but may include a classified annex.

(f) The APNSA, in coordination with the Director of OMB, the APEP, the APDP, and the Director of OSTP, shall include a cover memorandum for the reports submitted pursuant to subsection (a) of this section, along with the implementation plan required under subsection (c) of this section, in which they make any additional overall recommendations for advancing biotechnology and biomanufacturing.

(g) Within 2 years of the date of this order, agencies at which recommendations are directed in the implementation plan required under subsection (c) of this section shall report to the Director of OMB, the APNSA, the APEP, the APDP, and the Director of OSTP on measures taken and resources allocated to enhance biotechnology and biomanufacturing, consistent with the implementation plan described in subsection (c) of this section.

(h) Within 180 days of the date of this order, the President's Council of Advisors on Science and Technology shall submit to the President and make publicly available a report on the bioeconomy that provides recommendations on how to maintain United States competitiveness in the global bioeconomy.

Sec. 4. *Data for the Bioeconomy.* (a) In order to facilitate development of the United States bioeconomy, my Administration shall establish a Data for the Bioeconomy Initiative (Data Initiative) that will ensure that high-quality, wide-ranging, easily accessible, and secure biological data sets can drive breakthroughs for the United States bioeconomy. To assist in the development of the Data Initiative, the Director of OSTP, in coordination with the Director of OMB and the heads of appropriate agencies as determined by the Director of OSTP, and in consultation with external stakeholders, shall issue a report within 240 days of the date of this order that:

(i) identifies the data types and sources, to include genomic and multiomic information, that are most critical to drive advances in health, climate, energy, food, agriculture, and biomanufacturing, as well as other bioeconomy-related R&D, along with any data gaps;

(ii) sets forth a plan to fill any data gaps and make new and existing public data findable, accessible, interoperable, and reusable in ways that are equitable, standardized, secure, and transparent, and that are integrated with platforms that enable the use of advanced computing tools;

(iii) identifies—based on the data types and sources described in subsection (a)(i) of this section—security, privacy, and other risks (such as malicious misuses, manipulation, exfiltration, and deletion), and provides a data-protection plan to mitigate these risks; and

(iv) outlines the Federal resources, legal authorities, and actions needed to support the Data Initiative and achieve the goals outlined in this subsection, with a timeline for action.

(b) The Secretary of Homeland Security, in coordination with the Secretary of Defense, the Secretary of Agriculture, the Secretary of Commerce (acting through the Director of the National Institute of Standards and Technology (NIST)), the Secretary of HHS, the Secretary of Energy, and the Director of OMB, shall identify and recommend relevant cybersecurity best practices for biological data stored on Federal Government information systems, consistent with applicable law and Executive Order 14028 of May 12, 2021 (Improving the Nation's Cybersecurity).

(c) The Secretary of Commerce, acting through the Director of NIST and in coordination with the Secretary of HHS, shall consider bio-related software, including software for laboratory equipment, instrumentation, and data management, in establishing baseline security standards for the development of software sold to the United States Government, consistent with section 4 of Executive Order 14028.

Sec. 5. *Building a Vibrant Domestic Biomanufacturing Ecosystem.* (a) Within 180 days of the date of this order, the APNSA and the APEP, in coordination with the Secretary of Defense, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of HHS, the Secretary of Energy, the Director of NSF, and the Administrator of the National Aeronautics and Space Administration (NASA), shall develop a strategy that identifies policy recommendations to expand domestic biomanufacturing capacity for products spanning the health, energy, agriculture, and industrial sectors, with a focus on advancing equity, improving biomanufacturing processes, and connecting relevant infrastructure. Additionally, this strategy shall identify actions to mitigate risks posed by foreign adversary involvement in the biomanufacturing supply chain and to enhance biosafety, biosecurity, and cybersecurity in new and existing infrastructure.

(b) Agencies identified in subsections (b)(i)–(iv) of this section shall direct resources, as appropriate and consistent with applicable law, towards the creation or expansion of programs that support a vibrant domestic biomanufacturing ecosystem, as informed by the strategy developed pursuant to subsection (a) of this section:

(i) the NSF shall expand its existing Regional Innovation Engine program to advance emerging technologies, including biotechnology;

(ii) the Department of Commerce shall address challenges in biomanufacturing supply chains and related biotechnology development infrastructure;

(iii) the Department of Defense shall incentivize the expansion of domestic, flexible industrial biomanufacturing capacity for a wide range of materials that can be used to make a diversity of products for the defense supply chain; and

(iv) the Department of Energy shall support research to accelerate bioenergy and bioproduct science advances, to accelerate biotechnology and bioinformatics tool development, and to reduce the hurdles to commercialization, including through incentivizing the engineering scale-up of promising biotechnologies and the expansion of biomanufacturing capacity.

(c) Within 1 year of the date of this order, the Secretary of Agriculture, in consultation with the heads of appropriate agencies as determined by the Secretary, shall submit a plan to the President, through the APNSA and the APEP, to support the resilience of the United States biomass supply chain for domestic biomanufacturing and biobased product manufacturing, while also advancing food security, environmental sustainability, and the needs of underserved communities. This plan shall include programs to encourage climate-smart production and use of domestic biomass, along with budget estimates, including accounting for funds appropriated for Fiscal Year (FY) 2022 and proposed in the President's FY 2023 Budget.

(d) Within 180 days of the date of this order, the Secretary of Homeland Security, in coordination with the heads of appropriate agencies as determined by the Secretary, shall:

(i) provide the APNSA with vulnerability assessments of the critical infrastructure and national critical functions associated with the bioeconomy, including cyber, physical, and systemic risks, and recommendations to secure and make resilient these components of our infrastructure and economy; and

(ii) enhance coordination with industry on threat information sharing, vulnerability disclosure, and risk mitigation for cybersecurity and infrastructure risks to the United States bioeconomy, including risks to biological data and related physical and digital infrastructure and devices. This

coordination shall be informed in part by the assessments described in subsection (d)(i) of this section.

Sec. 6. *Biobased Products Procurement.* (a) Consistent with the requirements of 7 U.S.C. 8102, within 1 year of the date of this order, procuring agencies as defined in 7 U.S.C. 8102(a)(1)(A) that have not yet established a biobased procurement program as described in 7 U.S.C. 8102(a)(2) shall establish such a program.

(b) Procuring agencies shall require that, within 2 years of the date of this order, all appropriate staff (including contracting officers, purchase card managers, and purchase card holders) complete training on biobased product purchasing. The Office of Federal Procurement Policy, within OMB, in cooperation with the Secretary of Agriculture, shall provide training materials for procuring agencies.

(c) Within 180 days of the date of this order and annually thereafter, procuring agencies shall report previous fiscal year spending to the Director of OMB on the following:

(i) the number and dollar value of contracts entered into during the previous fiscal year that include the direct procurement of biobased products;

(ii) the number of service and construction (including renovations) contracts entered into during the previous fiscal year that include language on the use of biobased products; and

(iii) the types and dollar values of biobased products actually used by contractors in carrying out service and construction (including renovations) contracts during the previous fiscal year.

(d) The requirements in subsection (c) of this section shall not apply to purchase card transactions and other ''[a]ctions not reported'' to the Federal Procurement Data System pursuant to 48 CFR 4.606(c).

(e) Within 1 year of the date of this order and annually thereafter, the Director of OMB shall publish information on biobased procurement resulting from the data collected under subsection (c) of this section and information reported under 7 U.S.C. 8102, along with other related information, and shall use scorecards or similar systems to encourage increased biobased purchasing.

(f) Within 1 year of the date of this order and annually thereafter, procuring agencies shall report to the Secretary of Agriculture specific categories of biobased products that are unavailable to meet their procurement needs, along with desired performance standards for currently unavailable products and other relevant specifications. The Secretary of Agriculture shall publish this information annually. When new categories of biobased products become commercially available, the Secretary of Agriculture shall designate new product categories for preferred Federal procurement, as prescribed by 7 U.S.C. 8102.

(g) Procuring agencies shall strive to increase by 2025 the amount of biobased product obligations or the number or dollar value of biobased-only contracts, as reflected in the information described in subsection (c) of this section, and as appropriate and consistent with applicable law.

Sec. 7. *Biotechnology and Biomanufacturing Workforce.* (a) The United States Government shall expand training and education opportunities for all Americans in biotechnology and biomanufacturing. To support this objective, within 200 days of the date of this order, the Secretary of Commerce, the Secretary of Labor, the Secretary of Education, the APDP, the Director of OSTP, and the Director of NSF shall produce and make publicly available a plan to coordinate and use relevant Federal education and training programs, while also recommending new efforts to promote multi-disciplinary education programs. This plan shall promote the implementation of formal and informal education and training (such as opportunities at technical schools and certificate programs), career and technical education, and expanded career pathways into existing degree programs for biotechnology

and biomanufacturing. This plan shall also include a focused discussion of Historically Black Colleges and Universities, Tribal Colleges and Universities, and Minority Serving Institutions and the extent to which agencies can use existing statutory authorities to promote racial and gender equity and support underserved communities, consistent with the policy established in Executive Order 13985. Finally, this plan shall account for funds appropriated for FY 2022 and proposed in the President's FY 2023 Budget.

(b) Within 2 years of the date of this order, agencies that support relevant Federal education and training programs as described in subsection (a) of this section shall report to the President through the APNSA, in coordination with the Director of OMB, the ADPD, and the Director of OSTP, on measures taken and resources allocated to enhance workforce development pursuant to the plan described in subsection (a) of this section.

Sec. 8. *Biotechnology Regulation Clarity and Efficiency*. Advances in biotechnology are rapidly altering the product landscape. The complexity of the current regulatory system for biotechnology products can be confusing and create challenges for businesses to navigate. To improve the clarity and efficiency of the regulatory process for biotechnology products, and to enable products that further the societal goals identified in section 3 of this order, the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, and the Commissioner of Food and Drugs, in coordination with the Director of OMB, the ADPD, and the Director of OSTP, shall:

(a) within 180 days of the date of this order, identify areas of ambiguity, gaps, or uncertainties in the January 2017 Update to the Coordinated Framework for the Regulation of Biotechnology or in the policy changes made pursuant to Executive Order 13874 of June 11, 2019 (Modernizing the Regulatory Framework for Agricultural Biotechnology Products), including by engaging with developers and external stakeholders, and through horizon scanning for novel products of biotechnology;

(b) within 100 days of completing the task in subsection (a) of this section, provide to the general public plain-language information regarding the regulatory roles, responsibilities, and processes of each agency, including which agency or agencies are responsible for oversight of different types of products developed with biotechnology, with case studies, as appropriate;

(c) within 280 days of the date of this order, provide a plan to the Director of OMB, the ADPD, and the Director of OSTP with processes and timelines to implement regulatory reform, including identification of the regulations and guidance documents that can be updated, streamlined, or clarified; and identification of potential new guidance or regulations, where needed;

(d) within 1 year of the date of this order, build on the Unified website for Biotechnology Regulation developed pursuant to Executive Order 13874 by including on the website the information developed under subsection (b) of this section, and by enabling developers of biotechnology products to submit inquiries about a particular product and promptly receive a single, coordinated response that provides, to the extent practicable, information and, when appropriate, informal guidance regarding the process that the developers must follow for Federal regulatory review; and

(e) within 1 year of the date of this order, and annually thereafter for a period of 3 years, provide an update regarding progress in implementing this section to the Director of OMB, the United States Trade Representative (USTR), the APNSA, the ADPD, and the Director of OSTP. Each 1-year update shall identify any gaps in statutory authority that should be addressed to improve the clarity and efficiency of the regulatory process for biotechnology products, and shall recommend additional executive actions and legislative proposals to achieve such goals.

Sec. 9. *Reducing Risk by Advancing Biosafety and Biosecurity.* (a) The United States Government shall launch a Biosafety and Biosecurity Innovation Initiative, which shall seek to reduce biological risks associated with

advances in biotechnology, biomanufacturing, and the bioeconomy. Through the Biosafety and Biosecurity Innovation Initiative—which shall be established by the Secretary of HHS, in coordination with the heads of other relevant agencies as determined by the Secretary—agencies that fund, conduct, or sponsor life sciences research shall implement the following actions, as appropriate and consistent with applicable law:

(i) support, as a priority, investments in applied biosafety research and innovations in biosecurity to reduce biological risk throughout the biotechnology R&D and biomanufacturing lifecycles; and

(ii) use Federal investments in biotechnology and biomanufacturing to incentivize and enhance biosafety and biosecurity practices and best practices throughout the United States and international research enterprises.

(b) Within 180 days of the date of this order, the Secretary of HHS and the Secretary of Homeland Security, in coordination with agencies that fund, conduct, or sponsor life sciences research, shall produce a plan for biosafety and biosecurity for the bioeconomy, including recommendations to:

(i) enhance applied biosafety research and bolster innovations in biosecurity to reduce risk throughout the biotechnology R&D and biomanufacturing lifecycles; and

(ii) use Federal investments in biological sciences, biotechnology, and biomanufacturing to enhance biosafety and biosecurity best practices throughout the bioeconomy R&D enterprise.

(c) Within 1 year of the date of this order, agencies that fund, conduct, or sponsor life sciences research shall report to the APNSA, through the Assistant to the President and Homeland Security Advisor, on efforts to achieve the objectives described in subsection (a) of this section.

Sec. 10. *Measuring the Bioeconomy.* (a) Within 90 days of the date of this order, the Secretary of Commerce, through the Director of NIST, shall, in consultation with other agencies as determined by the Director, industry, and other stakeholders, as appropriate, create and make publicly available a lexicon for the bioeconomy, with consideration of relevant domestic and international definitions and with the goal of assisting in the development of measurements and measurement methods for the bioeconomy that support uses such as economic measurement, risk assessments, and the application of machine learning and other artificial intelligence tools.

(b) The Chief Statistician of the United States, in coordination with the Secretary of Agriculture, the Secretary of Commerce, the Director of NSF, and the heads of other appropriate agencies as determined by the Chief Statistician, shall improve and enhance Federal statistical data collection designed to characterize the economic value of the United States bioeconomy, with a focus on the contribution of biotechnology to the bioeconomy. This effort shall include:

(i) within 180 days of the date of this order, assessing, through the Department of Commerce's Bureau of Economic Analysis, the feasibility, scope, and costs of developing a national measurement of the economic contributions of the bioeconomy, and, in particular, the contributions of biotechnology to the bioeconomy, including recommendations and a plan for next steps regarding whether development of such a measurement should be pursued; and

(ii) within 120 days of the date of this order, establishing an Interagency Technical Working Group (ITWG), chaired by the Chief Statistician of the United States, which shall include representatives of the Department of Agriculture, the Department of Commerce, OSTP, the NSF, and other appropriate agencies as determined by the Chief Statistician of the United States.

(A) Within 1 year of the date of this order, the ITWG shall recommend bioeconomy-related revisions to the North American Industry Classification System (NAICS) and the North American Product Classification System

(NAPCS) to the Economic Classification Policy Committee. In 2026, the ITWG shall initiate a review process of the 2023 recommendations and update the recommendations, as appropriate, to provide input to the 2027 NAICS and NAPCS revision processes.

(B) Within 18 months of the date of this order, the ITWG shall provide a report to the Chief Statistician of the United States describing the Federal statistical collections of information that take advantage of bioeconomy-related NAICS and NAPCS codes, and shall include recommendations to implement any bioeconomy-related changes as part of the 2022 revisions of the NAICS and NAPCS. As part of its work, the ITWG shall consult with external stakeholders.

Sec. 11. *Assessing Threats to the United States Bioeconomy*. (a) The Director of National Intelligence (DNI) shall lead a comprehensive interagency assessment of ongoing, emerging, and future threats to United States national security from foreign adversaries against the bioeconomy and from foreign adversary development and application of biotechnology and biomanufacturing, including acquisition of United States capabilities, technologies, and biological data. As part of this effort, the DNI shall work closely with the Department of Defense to assess technical applications of biotechnology and biomanufacturing that could be misused by a foreign adversary for military purposes or that could otherwise pose a risk to the United States. In support of these objectives, the DNI shall identify elements of the bioeconomy of highest concern and establish processes to support ongoing threat identification and impact assessments.

(b) Within 240 days of the date of this order, the DNI shall provide classified assessments to the APNSA related to:

(i) threats to United States national and economic security posed by foreign adversary development and application of biomanufacturing; and

(ii) foreign adversary means of, and intended usages related to, acquisition of United States biotechnologies, biological data, and proprietary or precompetitive information.

(c) Within 120 days of receiving the DNI's assessments, the APNSA shall coordinate with the heads of relevant agencies as determined through the NSM–2 process to develop and finalize a plan to mitigate risks to the United States bioeconomy, based upon the threat identification and impact assessments described in subsection (a) of this section, the vulnerability assessments described in section 5(d) of this order, and other relevant assessments or information. The plan shall identify where executive action, regulatory action, technology protection, or statutory authorities are needed to mitigate these risks in order to support the technology leadership and economic competitiveness of the United States bioeconomy.

(d) The United States Government contracts with a variety of providers to support its functioning, including by contracting for services related to the bioeconomy. It is important that these contracts are awarded according to full and open competition, as consistent with the Competition in Contracting Act of 1984 (Public Law 98–369, 98 Stat. 1175). In accordance with these objectives, and within 1 year of the date of this order, the Director of OSTP, in coordination with the Secretary of Defense, the Attorney General, the Secretary of HHS, the Secretary of Energy, the Secretary of Homeland Security, the DNI, the Administrator of NASA, and the Administrator of General Services, shall review the national security implications of existing requirements related to Federal procurement—including requirements contained in the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement—and shall recommend updates to those requirements to the FAR Council, the Director of OMB, and the heads of other appropriate agencies as determined through the NSM–2 process. The recommendations shall aim to standardize pre-award data collection to enable due diligence review of conflict of interest; conflict of commitment; foreign ownership, control, or influence; or other potential national security

concerns. The recommendations shall also include legislative proposals, as relevant.

(e) The Director of OMB shall issue a management memorandum to agencies, or take other appropriate action, to provide generalized guidance based on the recommendations received pursuant to subsection (d) of this section.

Sec. 12. *International Engagement.* (a) The Department of State and other agencies that engage with international partners as part of their missions shall undertake the following actions with foreign partners, as appropriate and consistent with applicable law—with a specific focus on developing countries, international organizations, and nongovernmental entities—to promote and protect both the United States and global bioeconomies:

(i) enhance cooperation, including joint research projects and expert exchanges, on biotechnology R&D, especially in genomics;

(ii) encourage regulatory cooperation and the adoption of best practices to evaluate and promote innovative products, with an emphasis on those practices and products that support sustainability and climate objectives;

(iii) develop joint training arrangements and initiatives to support bioeconomy jobs in the United States;

(iv) work to promote the open sharing of scientific data, including genetic sequence data, to the greatest extent possible in accordance with applicable law and policy, while seeking to ensure that any applicable access and benefit-sharing mechanisms do not hinder the rapid and sustainable development of innovative products and biotechnologies;

(v) conduct horizon scanning to anticipate threats to the global bioeconomy, including national security threats from foreign adversaries acquiring sensitive technologies or data, or disrupting essential bio-related supply chains, and to identify opportunities to address those threats;

(vi) engage allies and partners to address shared national security threats;

(vii) develop, and work to promote and implement, biosafety and biosecurity best practices, tools, and resources bilaterally and multilaterally to facilitate appropriate oversight for life sciences, dual-use research of concern, and research involving potentially pandemic and other high-consequence pathogens, and to enhance sound risk management of biotechnology- and biomanufacturing-related R&D globally; and

(viii) explore how to align international classifications of biomanufactured products, as appropriate, to measure the value of those products to both the United States and global bioeconomies.

(b) Within 180 days of the date of this order, the Secretary of State, in coordination with the USTR and the heads of other agencies as determined by the Secretary, as appropriate, shall submit to the APNSA a plan to support the objectives described in subsection (a) of this section with foreign partners, international organizations, and nongovernmental entities.

Sec. 13. *Definitions.* For purposes of this order:

(a) The term ''agency'' has the meaning given that term by 44 U.S.C. 3502(1).

(b) The term ''biotechnology'' means technology that applies to or is enabled by life sciences innovation or product development.

(c) The term ''biomanufacturing'' means the use of biological systems to develop products, tools, and processes at commercial scale.

(d) The term ''bioeconomy'' means economic activity derived from the life sciences, particularly in the areas of biotechnology and biomanufacturing, and includes industries, products, services, and the workforce.

(e) The term ''biological data'' means the information, including associated descriptors, derived from the structure, function, or process of a biological system(s) that is measured, collected, or aggregated for analysis.

(f) The term ''biomass'' means any material of biological origin that is available on a renewable or recurring basis. Examples of biomass include plants, trees, algae, and waste material such as crop residue, wood waste, animal waste and byproducts, food waste, and yard waste.

(g) The term ''biobased product'' has the meaning given that term in 7 U.S.C. 8101(4).

(h) The term ''bioenergy'' means energy derived in whole or in significant part from biomass.

(i) The term ''multiomic information'' refers to combined information derived from data, analysis, and interpretation of multiple omics measurement technologies to identify or analyze the roles, relationships, and functions of biomolecules (including nucleic acids, proteins, and metabolites) that make up a cell or cellular system. Omics are disciplines in biology that include genomics, transcriptomics, proteomics, and metabolomics.

(j) The term ''key R&D areas'' includes fundamental R&D of emerging biotechnologies, including engineering biology; predictive engineering of complex biological systems, including the designing, building, testing, and modeling of entire living cells, cell components, or cellular systems; quantitative and theory-driven multi-disciplinary research to maximize convergence with other enabling technologies; and regulatory science, including the development of new information, criteria, tools, models, and approaches to inform and assist regulatory decision-making. These R&D priorities should be coupled with advances in predictive modeling, data analytics, artificial intelligence, bioinformatics, high-performance and other advanced computing systems, metrology and data-driven standards, and other non-life science enabling technologies.

(k) The terms ''equity'' and ''underserved communities'' have the meanings given those terms by sections 2(a) and 2(b) of Executive Order 13985.

(l) The term ''Tribal Colleges and Universities'' has the meaning given that term by section 5(e) of Executive Order 14049 of October 11, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities).

(m) The term ''Historically Black Colleges and Universities'' has the meaning given that term by section 4(b) of Executive Order 14041 of September 3, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Historically Black Colleges and Universities).

(n) The term ''minority serving institution'' has the meaning given that term by 38 U.S.C. 3698(f)(4).

(o) The term ''foreign adversary'' has the meaning given that term by section 3(b) of Executive Order 14034 of June 9, 2021 (Protecting Americans' Sensitive Data From Foreign Adversaries).

(p) The term ''life sciences'' means all sciences that study or use living organisms, viruses, or their products, including all disciplines of biology and all applications of the biological sciences (including biotechnology, genomics, proteomics, bioinformatics, and pharmaceutical and biomedical research and techniques), but excluding scientific studies associated with radioactive materials or toxic chemicals that are not of biological origin or synthetic analogues of toxins.

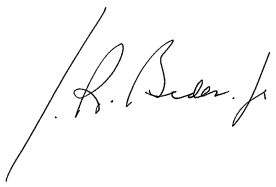
Sec. 14. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

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

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



THE WHITE HOUSE,
September 12, 2022.

[FR Doc. 2022–20167
Filed 9–14–22; 11:15 am]
Billing code 3395–F2–P

Reader Aids

Federal Register

Vol. 87, No. 178

Thursday, September 15, 2022

CUSTOMER SERVICE AND INFORMATION

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

CFR PARTS AFFECTED DURING SEPTEMBER

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.

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

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/—layouts/PG/register.aspx*

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.