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Presidential Documents

Title 3—

The President

Proclamation 10447 of September 15, 2022

National POW/MIA Recognition Day, 2022

By the President of the United States of America

A Proclamation

From Belleau Wood to the Battle of the Bulge, Korea to Vietnam, Afghanistan to Iraq, and around the world, American patriots have dared all, risked all, and given all to defend our Nation and protect our liberties. Now and always, we honor their service, valor, and sacrifice. We also continue the righteous work of bringing home our heroes who remain unaccounted for.

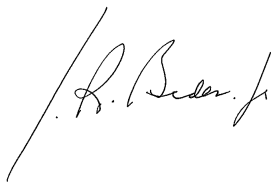
On National POW/MIA Recognition Day, we pledge to seek out answers for the families of service members still missing in action. We commit to doing all in our power to identify and recover America's missing sons and daughters. And we pay tribute to former prisoners of war—individuals who exhibited remarkable courage, love of country, and devotion to duty to protect our Nation's safety and freedoms.

Today and every day, we fly the iconic black and white flag symbolizing America's Prisoners of War and Missing in Action above the White House, at the United States Capitol, on military bases, at memorials and cemeteries, and at homes across America. It is a reminder that we have not forgotten the heroism of our POWs and MIAs and that we still hope for their return. There is no undertaking more fundamental than the rite of remembrance, and there is no act more sacred or more American than keeping the faith with those who have sacrificed so much for our Nation.

On this day of heartache and of resolve, let us offer strength to the families still waiting for the return of their loved ones. Let us extend our gratitude to Americans and international partners working tirelessly to bring home our missing service members from prior conflicts. And let us remember that freedom is never free, that democracy always requires champions, and that we owe an eternal debt to the heroes of our Armed Forces.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 16, 2022, as National POW/MIA Recognition Day. Along with my fellow Americans, I salute our former POWs who overcame unspeakable indignities to return home with honor. We will work tirelessly to provide the families of those who have not yet come home the fullest possible measure of accounting. I urge all Americans to observe this day of honor and remembrance with appropriate ceremonies and activities.

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



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Presidential Documents

Executive Order 14083 of September 15, 2022

Ensuring Robust Consideration of Evolving National Security Risks by the Committee on Foreign Investment in the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 721 of the Defense Production Act of 1950, as amended (50 U.S.C. 4565) (section 721), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* The United States welcomes and supports foreign investment, consistent with the protection of national security. The United States commitment to open investment is a cornerstone of our economic policy and provides the United States with substantial economic benefits, including ''the promotion of economic growth, productivity, competitiveness, and job creation, thereby enhancing national security,'' as the Congress recognized in section 1702(b)(1) of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) (Subtitle A of Title XVII of Public Law 115–232). Some investments in the United States by foreign persons, however, present risks to the national security of the United States, and it is for this reason that the United States maintains a robust foreign investment review process focused on identifying and addressing such risks.

It is important to ensure that the foreign investment review process remains responsive to an evolving national security landscape and the nature of the investments that pose related risks to national security, as the Congress recognized in section 1702(b)(4) of FIRRMA. One factor for the Committee on Foreign Investment in the United States (Committee) to consider, as the Congress highlighted in section 1702(c)(1) of FIRRMA, is that national security risks may arise from foreign investments involving ''a country of special concern that has a demonstrated or declared strategic goal of acquiring a type of critical technology or critical infrastructure that would affect United States leadership in areas related to national security.'' Along these lines, I previously underscored in Executive Order 14034 of June 9, 2021 (Protecting Americans' Sensitive Data From Foreign Adversaries), and emphasize in this order the risks presented by foreign adversaries' access to data of United States persons. With respect to investments directly or indirectly involving foreign adversaries or other countries of special concern, what may otherwise appear to be an economic transaction undertaken for commercial purposes may actually present an unacceptable risk to United States national security due to the legal environment, intentions, or capabilities of the foreign person, including foreign governments, involved in the transaction. It is the policy of the United States Government to continue to respond to these risks as they evolve, including through a robust review of foreign investments in United States businesses.

In light of these risks, this order provides direction to the Committee to ensure that, in reviewing transactions within its jurisdiction (covered transactions), the Committee's review remains responsive to evolving national security risks, including by elaborating and expanding on the factors identified in subsections (f)(1)–(10) of section 721. This order shall be implemented consistent with the Committee's statutory mandate to determine the effects of each covered transaction reviewed by the Committee on the national security of the United States.

Sec. 2. *Elaboration on Existing Statutory Factors.* (a) In considering the factors described in subsection (f)(3) of section 721, the Committee shall, taking into account the requirements of national security, consider the following, as appropriate:

(i) It is important to national security that the Committee continues to assess the effect of foreign investment on domestic capacity to meet national security requirements, including those requirements that fall outside of the defense industrial base. In particular, the resilience of certain critical United States supply chains may have national security implications. The United States recognizes the importance of cooperating with its allies and partners to secure supply chains; however, certain foreign investment may undermine supply chain resilience efforts and therefore national security by making the United States vulnerable to future supply disruptions. These vulnerabilities may occur if an investment shifts ownership, rights, or control with respect to certain manufacturing capabilities, services, critical mineral resources, or technologies that are fundamental to national security—including because they are critical to United States supply chain resilience—to a foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, or to other foreign persons, including foreign governments, to whom the foreign person has commercial, investment, non-economic, or other ties (relevant third-party ties) that might cause the transaction to pose a threat to national security.

(ii) The Committee shall consider, as appropriate, the covered transaction's effect on supply chain resilience and security, both within and outside of the defense industrial base, in manufacturing capabilities, services, critical mineral resources, or technologies that are fundamental to national security, including: microelectronics, artificial intelligence, biotechnology and biomanufacturing, quantum computing, advanced clean energy (such as battery storage and hydrogen), climate adaptation technologies, critical materials (such as lithium and rare earth elements), elements of the agriculture industrial base that have implications for food security, and any other sectors identified in section 3(b) or section 4(a) of Executive Order 14017 of February 24, 2021 (America's Supply Chains).

(A) The Committee shall consider, as appropriate, the degree of involvement in the United States supply chain by a foreign person who is a party to the covered transaction and who might take actions that threaten to impair the national security of the United States as a result of the transaction, or who might have relevant third-party ties that might cause the transaction to pose such a threat.

(B) The Committee shall consider, as appropriate, the United States capability with respect to manufacturing capabilities, services, critical mineral resources, or technologies, including those described in subsection (a)(ii) of this section; the degree of diversification through alternative suppliers across the supply chain, including suppliers located in allied or partner economies; whether the United States business that is party to the covered transaction supplies, directly or indirectly, the United States Government, the energy sector industrial base, or the defense industrial base; and the concentration of ownership or control by the foreign person in a given supply chain, among other factors that the Committee determines to be appropriate in considering whether the covered transaction may undermine the resilience and security of supply chains critical to national security.

(b) In considering the factors described in subsection (f)(5) of section 721, the Committee shall, taking into account the requirements of national security, consider the following, as appropriate:

(i) Although foreign investments can in many circumstances help to foster domestic innovation, it is important to protect United States technological leadership by addressing the risks posed by investments by foreign persons who might take actions that threaten to impair the national security of the United States as a result of the transaction, and by addressing whether

such persons have relevant third-party ties that might cause the transaction to pose such a threat.

(ii) The Committee shall consider, as appropriate, whether a covered transaction involves manufacturing capabilities, services, critical mineral resources, or technologies that are fundamental to United States technological leadership and therefore national security, such as microelectronics, artificial intelligence, biotechnology and biomanufacturing, quantum computing, advanced clean energy, and climate adaptation technologies. The Committee shall also consider, as appropriate, relevant third-party ties that might cause the transaction to threaten to impair the national security of the United States.

(iii) The Committee shall consider, as appropriate, whether a covered transaction could reasonably result in future advancements and applications in technology that could undermine national security.

(iv) The Office of Science and Technology Policy (OSTP), in consultation with other members of the Committee, shall periodically publish a list of technology sectors, including those technologies listed in subsection (b)(ii) of this section, that it assesses are fundamental to United States technological leadership in areas relevant to national security. OSTP shall, as appropriate, draw on the findings of other United States Government efforts to identify technology sectors that are fundamental to United States technological leadership. The Committee shall consider the list described in this subsection, as appropriate.

Sec. 3. *Additional Factors to be Considered.* (a) In addition to the factors identified in subsections (f)(1)–(10) of section 721, the Committee shall consider, in reviewing the effects of a covered transaction on the national security of the United States, the following factors relating to aggregate industry investment trends that may have consequences for an individual covered transaction's impact on national security:

(i) Incremental investments over time in a sector or technology may cede, part-by-part, domestic development or control in that sector or technology and may give a foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, or their relevant third-party ties that might cause the transaction to pose such a threat, control of or rights in United States businesses in a manner that may result in national security risk. A series of acquisitions in the same, similar, or related United States businesses involved in activities that are fundamental to national security or on terms that implicate national security may result in a particular covered transaction giving rise to a national security risk when considered in the context of transactions that preceded it. In aggregate, these transactions may facilitate harmful technology transfer in key industries or otherwise harm national security through the cumulative effect of these investments. As the Congress identified in section 1702(c)(2) of FIRRMA, the Committee may consider ''the cumulative control of, or pattern of recent transactions involving, any one type of critical infrastructure, energy asset, critical material, or critical technology by a foreign government or foreign person'' in considering national security risks. Contextualizing the Committee's review of an individual transaction in light of the aggregate or series of related transactions could reveal national security risks arising from the covered transaction that were not otherwise apparent.

(ii) The Committee shall consider, as appropriate, as part of the Committee's review of a covered transaction, the risks arising from the covered transaction in the context of multiple acquisitions or investments in a single sector or in related manufacturing capabilities, services, critical mineral resources, or technologies, by any foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, or involving relevant third-party ties that might cause the transaction to pose such a threat.

(iii) The Committee may request, as part of the Committee's review of a covered transaction, that the Department of Commerce's International Trade Administration provide the Committee an analysis of the industry or industries in which the United States business operates, and the cumulative control of, or pattern of recent transactions by, a foreign person, including, directly or indirectly, a foreign government, in that sector or industry.

(b) In addition to the factors identified in subsections (f)(1)–(10) of section 721, the Committee shall consider, in reviewing the effects of a covered transaction on the national security of the United States, the following factors relating to cybersecurity risks resulting from a covered transaction that threaten to impair national security:

(i) It is important for the United States to ensure that foreign investment in United States businesses does not erode United States cybersecurity. Investments by foreign persons with the capability and intent to conduct cyber intrusions or other malicious cyber-enabled activity—such as activity designed to affect the outcome of any election for Federal, State, Tribal, local, or territorial office; the operation of United States critical infrastructure; or the confidentiality, integrity, or availability of United States communications—may pose a risk to national security. The Congress, in section 1702(c)(6) of FIRRMA, identified ''exacerbating or creating new cybersecurity vulnerabilities'' as a relevant consideration for the Committee when considering national security risks arising from a covered transaction. Review of foreign investment is an important tool as part of broader United States efforts to ensure the cybersecurity of the United States.

(ii) The Committee shall consider, as appropriate, whether a covered transaction may provide a foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, or their relevant third-party ties that might cause the transaction to pose such a threat, with direct or indirect access to capabilities or information databases and systems on which threat actors could engage in malicious cyber-enabled activities affecting the interests of the United States or United States persons, including:

(A) activity designed to undermine the protection or integrity of data in storage or databases or systems housing sensitive data;

(B) activity designed to interfere with United States elections, United States critical infrastructure, the defense industrial base, or other cybersecurity national security priorities set forth in Executive Order 14028 of May 12, 2021 (Improving the Nation's Cybersecurity); and

(C) the sabotage of critical energy infrastructure, including smart grids.

(iii) The Committee shall also consider, as appropriate, the cybersecurity posture, practices, capabilities, and access of both the foreign person and the United States business that could allow a foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, or their relevant third-party ties that might cause the transaction to pose such a threat, to manifest cyber intrusion and other malicious cyber-enabled activity within the United States.

(c) In addition to the factors identified in subsections (f)(1)–(10) of section 721, the Committee shall consider, in reviewing the effects of a covered transaction on the national security of the United States, the following factors relating to national security concerns surrounding sensitive data:

(i) Data is an increasingly powerful tool for the surveillance, tracing, tracking, and targeting of individuals or groups of individuals, with potential adverse impacts on national security. In section 1702(c)(5) of FIRRMA, the Congress recognized that the Committee may consider whether a covered transaction may ''expose, either directly or indirectly, personally identifiable information, genetic information, or other sensitive data of United States citizens to access by a foreign government or foreign person

that may exploit that information in a manner that threatens national security.'' Moreover, advances in technology, combined with access to large data sets, increasingly enable the re-identification or de-anonymization of what once was unidentifiable data. Therefore, it is important for the United States Government to stay current with threats posed by advances in such technology, including by considering potential risks posed by foreign persons who might exploit access to certain data on United States persons to target individuals or groups within the United States to the detriment of national security. Accordingly, the Committee shall consider whether foreign investments in United States businesses that have access to or that store United States persons' sensitive data, including health and biological data, involve a foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, including whether the foreign person might have relevant third-party ties that might cause the transaction to pose such a threat.

(ii) The Committee shall consider, as appropriate, whether a covered transaction involves a United States business that:

(A) has access to United States persons' sensitive data, including United States persons' health, digital identity, or other biological data and any data that could be identifiable or de-anonymized, that could be exploited to distinguish or trace an individual's identity in a manner that threatens national security; or

(B) has access to data on sub-populations in the United States that could be used by a foreign person to target individuals or groups of individuals in the United States in a manner that threatens national security.

(iii) The Committee shall also consider, as appropriate, whether a covered transaction involves the transfer of United States persons' sensitive data to a foreign person who might take actions that threaten to impair the national security of the United States as a result of the transaction, and whether the foreign person has relevant third-party ties that have sought to exploit such information or have the ability to exploit such information to the detriment of national security, including through the use of commercial or other means.

Sec. 4. *Periodic Review.* Consistent with the policy described in section 1 of this order, it is important for the Committee, on an ongoing basis, to continue to review its processes, practices, and regulations, and to continue to make any updates as needed and appropriate to ensure that the Committee's consideration of national security risks remains robust alongside changes to the national security landscape. Accordingly, the Committee shall regularly review its processes, practices, and regulations, and shall periodically provide to the Assistant to the President for National Security Affairs a report documenting the results of its review. The report shall also include any resulting policy recommendations that the Committee considers necessary to meet the evolving set of national security risks.

Sec. 5. *Definitions.* For purposes of this order, terms shall have the same meanings ascribed to them in section 721 and regulations promulgated by the Committee under section 721.

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

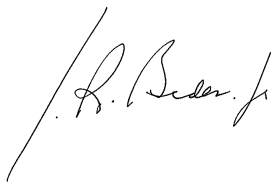
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

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

(c) This order is not intended to, and does not, affect the requirements in section 721 relating to the scope of the Committee's jurisdiction.

(d) 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 15, 2022.

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Rules and Regulations

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Consumer Financial Protection Circular 2022–05: Debt Collection and Consumer Reporting Practices Involving Invalid Nursing Home Debts

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Consumer financial protection circular.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) has issued Consumer Financial Protection Circular 2022–05, titled, ''Debt collection and consumer reporting practices involving invalid nursing home debts.'' In this circular, the Bureau responds to the question, ''Can debt collection and consumer reporting practices relating to nursing home debts that are invalid under the Nursing Home Reform Act violate the Fair Debt Collection Practices Act (FDCPA) and Fair Credit Reporting Act (FCRA)?''

DATES: The Bureau released this circular on its website on September 8, 2022.

ADDRESSES: Enforcers, and the broader public, can provide feedback and comments to *Circulars@cfpb.gov.*

FOR FURTHER INFORMATION CONTACT: Colin Reardon or Joshua Johnson, Senior Counsels, Office of Law & Policy, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Question Presented

Can debt collection and consumer reporting practices relating to nursing home debts that are invalid under the Nursing Home Reform Act violate the Fair Debt Collection Practices Act (FDCPA) and Fair Credit Reporting Act (FCRA)?

Response

Yes. Under the Nursing Home Reform Act, a nursing facility may not condition a resident's admission or continued stay on receiving a guarantee of payment from a third party, such as a relative or friend. Contractual provisions that violate that prohibition are illegal and unenforceable. As detailed in this Circular, certain practices related to the collection of nursing home debts that are invalid under the Nursing Home Reform Act and its implementing regulation violate the FDCPA and FCRA.

Background on the Nursing Home Reform Act

Enacted in 1987, the Nursing Home Reform Act establishes a comprehensive set of requirements that protect the health, safety, welfare, and rights of residents of nursing facilities that participate in Medicaid and Medicare.[1] The Centers for Medicare & Medicaid Services (''CMS'') and the Department of Health and Human Services (''HHS'') have issued rules implementing the Nursing Home Reform Act.[2] State agencies are responsible for surveying nursing facilities for compliance with the Nursing Home Reform Act's requirements concerning admissions agreements, and HHS and CMS are responsible for the enforcement of those requirements.[3]

Among other protections, the Nursing Home Reform Act and its implementing regulation prohibit a nursing facility that participates in Medicaid or Medicare from requesting or requiring a third-party guarantee of payment as a condition of admission, expedited admission, or continued stay in the facility.[4] As HHS has explained, this prohibition prevents a nursing facility ''from requiring a person other than the resident to assume personal responsibility for any cost of the resident's care.'' [5] The prohibition applies to all residents and prospective residents of a nursing facility, regardless of whether they are eligible for Medicare or Medicaid.[6] The Nursing Home Reform Act further provides that a nursing facility may require a resident's representative who has legal access to a resident's available income or resources to sign a contract to provide the facility payment from the resident's income or resources, so long as the representative does not incur personal financial liability.[7]

Through these provisions, Congress sought to prohibit nursing facilities ''from requiring a person, such as a relative, to accept responsibility for the charges incurred by a resident, unless that person is authorized by law to disburse the income or assets of the resident.'' [8] A nursing facility's admissions agreement may not contain terms that conflict with the Nursing Home Reform Act and its implementing regulation,[9] and courts have recognized that contract terms that conflict with the Nursing Home Reform Act and its implementing regulation are unenforceable.[10]

Some States have adopted State law analogues of the Nursing Home Reform Act that prohibit nursing facilities from requiring third-party guarantees, and admissions agreements can also be unenforceable if they violate those State law prohibitions.[11]

Violations of the FDCPA and FCRA

While the CFPB does not enforce compliance with the Nursing Home Reform Act and is generally not responsible for overseeing the activities of nursing facilities, the CFPB is

[1] *See* Public Law 100–203, tit. IV, subtit. C, 101 Stat. 1330 (1987). The Nursing Home Reform Act imposes requirements for nursing facilities that participate in Medicaid, *see* 42 U.S.C. 1396r, and for skilled nursing facilities that participate in Medicare, *see* 42 U.S.C. 1395i–3. For simplicity, and because the distinction is not relevant to the Bureau's analysis, this *Circular* refers to both nursing facilities and skilled nursing facilities as ''nursing facilities.''

[2] *See* 42 CFR 483.1 *et seq.*

[3] *See* 42 U.S.C. 1395i–3(f)(1), (g)(1)(A), (h); 42 U.S.C. 1396r(f)(1), (g)(1)(A), (h).

[4] 42 U.S.C. 1395i–3(c)(5)(A)(ii), 1396r(c)(5)(A)(ii); 42 CFR 483.1(b), 483.15(a)(3).

[5] 56 FR 48826, 48841 (Sept. 26, 1991).

[6] *See id.; see also* Centers for Medicare & Medicaid Services, State Operations Manual, Appendix PP, Guidance to § 483.15(a)(3) (Nov. 22, 2017), *available at https://www.cms.gov/files/document/appendix-pp-guidance-surveyor-long-term-care-facilities.pdf.*

[7] 42 U.S.C. 1395i–3(c)(5)(B)(ii), 1396r(c)(5)(B)(ii); *see also* 42 CFR 483.15(a)(3).

[8] 56 FR 48826, 48841 (Sept. 26, 1991).

[9] 42 CFR 483.10(g)(18)(v).

[10] *See, e.g., Manor of Lake City, Inc.* v. *Hinners,* 548 NW2d 573, 576 (Iowa 1996); *Village at the Greene* v. *Smith,* 2020-Ohio-4088, ¶ 25 (Ohio Ct. App. 2020); *Knight* v. *John Knox Manor, Inc.,* 92 So. 3d 111, 120 (Ala. Civ. App. 2012).

[11] *See, e.g.,* Ala. Admin. Code r. 560–X–10–.02(9); 410 Ind. Admin. Code 16.2–3.1–16(b); *see also* DC Mun. Regs. tit. 22, § B3200.1 (incorporating requirements of Federal regulations implementing Nursing Home Reform Act).

responsible for issuing rules regarding and enforcing compliance with the FDCPA and FCRA.[12] The FDCPA and FCRA can also be enforced by other Federal government agencies and States,[13] and through private actions brought by consumers.[14] The CFPB is issuing this Circular to emphasize that certain practices involving the collection of nursing home debts can violate the FDCPA and FCRA.[15]

Nursing facilities and their third-party debt collectors at times seek to collect residents' debts from relatives and other third parties when the resident cannot afford to pay. The nursing facilities reportedly collect unpaid balances, often after the resident's discharge or death, directly from third parties. If the third-party refuses to pay the arrears, some nursing facilities hire debt collectors to demand payment, report the debt to consumer reporting companies as the third party's personal debt, and sue the third party in court.

An amount that is owed or allegedly owed for nursing facility services is a ''debt'' under the FDCPA because it arises out of a consumer transaction.[16] When a nursing facility claims that a resident's bill has not been paid, it may engage a third-party debt collector subject to the FDCPA and Regulation F to collect the resident's debt,[17] including when the facility claims that a third party is personally financially responsible for the debt. Among other things, the FDCPA and Regulation F prohibit the use of ''any false, deceptive, or misleading representation or means in connection with the collection of any debt.'' [18] That prohibition includes, for example, using a false representation of the ''character, amount, or legal status of any debt''; a ''threat to take any action that cannot legally be taken or that is not intended to be taken''; and ''any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.'' [19]

The prohibition on misrepresentations includes misrepresenting that a consumer must pay a debt that arises from a contract provision that is illegal and unenforceable under Federal or State law. Thus, a debt collector, including a law firm in litigation,[20] that represents that a third party must personally pay a nursing facility resident's debt may violate the prohibition on misrepresentations where the debt is invalid under the Nursing Home Reform Act, its implementing regulation, or one of its State law analogues.[21]

The CFPB is also aware that debt collectors sometimes claim that a third party, such as a relative of the resident, is personally liable for the resident's debt because the third party engaged in financial wrongdoing in relation to the resident's resources. In some cases, debt collectors make such allegations in debt collection lawsuits without having any factual basis for the allegations, and the allegations prove to be false. A debt collector may violate the FDCPA's prohibition on misrepresentations by making a false, baseless allegation in a lawsuit that a third party engaged in financial wrongdoing as a means to hold them personally liable for a resident's debts.[22]

The FCRA and its implementing Regulation V impose obligations on consumer reporting companies and on debt collectors who furnish information to consumer reporting companies, including obligations relating to the accuracy of information in consumer reports. For example, a furnisher must ''establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency.'' [23] Furnishers must also investigate consumer disputes concerning the accuracy of the information furnished,[24] and are prohibited from furnishing inaccurate information to any consumer reporting company after receiving notice from a consumer that particular information is inaccurate.[25] In addition, consumer reporting companies ''shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates'' [26] and must investigate consumer disputes.[27]

It is inaccurate to report that a consumer owes a debt when the debt is based on an illegal contract term. Thus, a debt collector who furnishes information about nursing home debts, or a consumer reporting company that includes such information in a consumer report, may violate FCRA and Regulation V if those debts are invalid and unenforceable under the Nursing Home Reform Act, its implementing regulation, or one of its State law analogues. A furnisher or consumer reporting company also violates FCRA or Regulation V if it fails to meet its dispute obligations with respect to information related to such debts.

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[12] *See, e.g.,* 12 U.S.C. 5481(12)(F), (H), 5512(b), 5514(c); 15 U.S.C. 1681s(b)(1)(H), (e) (FCRA); 15 U.S.C. 1692*l*(b)(6), (d) (FDCPA).

[13] 15 U.S.C. 1681s (FCRA); 15 U.S.C. 1692*l* (FDCPA). States can directly bring actions under FCRA, *see* 12 U.S.C. 1681s(c), and can also bring actions under the Consumer Financial Protection Act (CFPA) against ''covered persons'' and ''service providers'' based upon violations of Federal consumer financial laws, including the FDCPA and FCRA, *see* Authority of States to Enforce the Consumer Financial Protection Act of 2010, 87 FR 31940 (May 26, 2022).

[14] 15 U.S.C. 1681n, 1681*o* (FCRA); 15 U.S.C. 1692k (FDCPA).

[15] The Bureau notes that practices involving the collection of invalid nursing home debts may violate other laws not discussed in this *Circular.* For example, the collection of invalid nursing home debt may violate State law analogues of the FDCPA and State laws prohibiting unfair, deceptive, or abusive acts or practices. In addition, to the extent that persons collecting nursing home debts are ''covered persons'' or ''service providers'' under the CFPA, *see* 12 U.S.C. 5481(6), (15)(A)(i), (iv), (x), (26), the collection of invalid nursing home debts would typically violate the CFPA's prohibition on engaging in any unfair, deceptive, or abusive act or practice. 12 U.S.C. 5531(a), 5536(a)(1)(B); *see also CFPB* v. *CashCall, Inc.,* 35 F.4th 734, 746 (9th Cir. 2022) (affirming ruling that defendant ''engaged in a deceptive practice by collecting payments on loans that were invalid''). Furthermore, actions taken with respect to nursing home debts may violate other provisions of the FDCPA and FCRA not specifically addressed in this *Circular.*

[16] *See* 15 U.S.C. 1692a(5) (defining ''debt'' as ''any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment''); *see also Eades* v. *Kennedy, PC Law Offices,* 799 F.3d 161, 170 (2d Cir. 2015).

[17] 15 U.S.C. 1692a(6) (defining ''debt collector''); 12 CFR 1006.2(i) (same).

[18] 15 U.S.C. 1692e; 12 CFR 1006.18(a).

[19] 15 U.S.C. 1692e(2), (5), (10); *accord* 12 CFR 1006.18(b)(2)(i), (c)(1), (d).

[20] Attorneys who regularly engage in collecting consumer debts, including through litigation, are ''debt collectors'' under the FDCPA. *See Heintz* v. *Jenkins,* 514 U.S. 291 (1995).

[21] Some nursing facilities may claim that family members are responsible for residents' costs under State filial support or necessaries statutes. *See* Katherine C. Pearson, *Filial Support Laws in the Modern Era: Domestic and International Comparison of Enforcement Practices for Laws Requiring Adult Children to Support Indigent Parents,* 20 Elder L.J. 269 (2013), *https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1034&context=fac_works.* This *Circular* does not address such claims made under State law.

[22] Attorneys collecting debts on behalf of nursing facilities may also independently violate the FDCPA's prohibition on misrepresentations if their law firm alleges that a third party owes the debt in pleadings or other communications that the firm's attorneys were not ''meaningfully involved'' in preparing. *Nielsen* v. *Dickerson,* 307 F.3d 623, 635 (7th Cir. 2002); *see also Miller* v. *Wolpoff & Abramson, L.L.P.,* 321 F.3d 292, 300–07 (2d Cir. 2003); *CFPB* v. *Frederick J. Hanna & Assocs.,* 114 F. Supp. 3d 1342, 1362–69 (N.D. Ga. 2015).

[23] 12 CFR 1022.42(a).

[24] 15 U.S.C. 1681s–2(a)(8), (b); 12 CFR 1022.43(a).

[25] 15 U.S.C. 1681s–2(a)(1)(B). The consumer must send the notice to the address specified by the furnisher for such notices. *Id.* If the furnisher has not specified such an address, then the furnisher is subject to FCRA's general prohibition against ''furnish[ing] any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate.'' 15 U.S.C. 1681s–2(a)(1)(A).

[26] 15 U.S.C. 1681e(b).

[27] 15 U.S.C. 1681i.

About Consumer Financial Protection Circulars

Consumer Financial Protection Circulars are issued to all parties with authority to enforce Federal consumer financial law. The CFPB is the principal Federal regulator responsible for administering Federal consumer financial law, *see* 12 U.S.C. 5511, including the Consumer Financial Protection Act's prohibition on unfair, deceptive, and abusive acts or practices, 12 U.S.C. 5536(a)(1)(B), and 18 other ''enumerated consumer laws,'' 12 U.S.C. 5481(12). However, these laws are also enforced by State attorneys general and State regulators, 12 U.S.C. 5552, and prudential regulators including the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration. *See, e.g.,* 12 U.S.C. 5516(d), 5581(c)(2) (exclusive enforcement authority for banks and credit unions with $10 billion or less in assets). Some Federal consumer financial laws are also enforceable by other Federal agencies, including the Department of Justice and the Federal Trade Commission, the Farm Credit Administration, the Department of Transportation, and the Department of Agriculture. In addition, some of these laws provide for private enforcement.

Consumer Financial Protection Circulars are intended to promote consistency in approach across the various enforcement agencies and parties, pursuant to the CFPB's statutory objective to ensure Federal consumer financial law is enforced consistently. 12 U.S.C. 5511(b)(4).

Consumer Financial Protection Circulars are also intended to provide transparency to partner agencies regarding the CFPB's intended approach when cooperating in enforcement actions. *See, e.g.,* 12 U.S.C. 5552(b) (consultation with CFPB by State attorneys general and regulators); 12 U.S.C. 5562(a) (joint investigatory work between CFPB and other agencies).

Consumer Financial Protection Circulars are general statements of policy under the Administrative Procedure Act. 5 U.S.C. 553(b). They provide background information about applicable law, articulate considerations relevant to the Bureau's exercise of its authorities, and, in the interest of maintaining consistency, advise other parties with authority to enforce Federal consumer financial law. They do not restrict the Bureau's exercise of its authorities, impose any legal requirements on external parties, or create or confer any rights on external parties that could be enforceable in any administrative or civil proceeding. The CFPB Director is instructing CFPB staff as described herein, and the CFPB will then make final decisions on individual matters based on an assessment of the factual record, applicable law, and factors relevant to prosecutorial discretion.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2022–20324 Filed 9–19–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0587; Project Identifier AD–2022–00394–E; Amendment 39–22170; AD 2022–19–01]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain General Electric Company (GE) GEnx-2B67/P model turbofan engines. This AD was prompted by the detection of an iron inclusion in a forging, which may reduce the fatigue life of certain low-pressure turbine rotor (LPTR) stage 4 disks and LPTR stage 6 disks. This AD requires the removal of certain LPTR stage 4 disks and LPTR stage 6 disks from service and replacement with parts eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 25, 2022.

ADDRESSES: *AD Docket:* You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–0587; 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: Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@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 GE GEnx-2B67/P model turbofan engines with an affected LPTR stage 4 disk or LPTR stage 6 disk installed, identified by part number and serial number. The NPRM published in the **Federal Register** on June 22, 2022 (87 FR 37247). The NPRM was prompted by the engine manufacturer notifying the FAA of the detection of an iron inclusion in a forging, which may reduce the fatigue life of certain LPTR stage 4 disks and LPTR stage 6 disks. The manufacturer's investigation determined that the inclusion is a melt-related defect and that, as a result of the inclusion forming in the forging, certain LPTR stage 4 disks and LPTR stage 6 disks may have reduced material properties and a lower fatigue life capability. Reduced material properties may cause premature LPTR stage 4 disk and LPTR stage 6 disk fracture, which could result in uncontained debris release. As a result of its investigation, the manufacturer published service information that specifies procedures for the removal and replacement of certain LPTR stage 4 disks and LPTR stage 6 disks installed on GEnx-2B67/P model turbofan engines. This condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the airplane. In the NPRM, the FAA proposed to require the removal of certain LPTR stage 4 disks and LPTR stage 6 disks from service and replacement with parts eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment, from The Boeing Company (Boeing). Boeing concurred with the contents of the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comment 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

The FAA reviewed GE GEnx-2B Service Bulletin (SB) 72–0448 R00, dated February 7, 2022. This SB describes procedures for removing the affected LPTR stage 4 disks and LPTR stage 6 disks from service.

Costs of Compliance

The FAA estimates that this AD affects 4 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
Replace the LPTR stage 4 disk	500 work-hours × $85 per hour = $42,500	$378,400	$420,900	$1,262,700
Replace the LPTR stage 6 disk	500 work-hours × $85 per hour = $42,500	208,900	251,400	251,400

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:

2022–19–01 General Electric Company: Amendment 39–22170; Docket No. FAA–2022–0587; Project Identifier AD–2022–00394–E.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) GEnx-2B67/P model turbofan engines with an installed:

(1) Low-pressure turbine rotor (LPTR) stage 4 disk, part number (P/N) 2440M64P01, with serial number (S/N) JHVPD762, JHVPD763, JHVPD764, or JHVPD765; or

(2) LPTR stage 6 disk, P/N 2440M66P01, with S/N JHVVD753 or JHVVD754.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by the detection of an iron inclusion in a forging, which may reduce the fatigue life of certain LPTR stage 4 disks and LPTR stage 6 disks. The FAA is issuing this AD to prevent fracture and subsequent uncontainment of the LPTR stage 4 disk and LPTR stage 6 disk. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Before the affected LPTR stage 4 disk exceeds 3,000 cycles since new (CSN), remove the affected LPTR stage 4 disk from service and replace with an LPTR stage 4 disk eligible for installation.

(2) Before the affected LPTR stage 6 disk exceeds 5,000 CSN, remove the affected LPTR stage 6 disk from service and replace with an LPTR stage 6 disk eligible for installation.

(h) Definitions

(1) For the purpose of this AD, an ''LPTR stage 4 disk eligible for installation'' is an LPTR stage 4 disk that does not have P/N 2440M64P01, with S/N JHVPD762, JHVPD763, JHVPD764, or JHVPD765.

(2) For the purpose of this AD, an ''LPTR stage 6 disk eligible for installation'' is an LPTR stage 6 disk that does not have P/N 2440M66P01, with S/N JHVVD753 or JHVVD754.

(i) 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 (j) 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.

(j) Related Information

For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on August 29, 2022.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–20289 Filed 9–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0827; Airspace Docket No. 21–AEA–12]

RIN 2120–AA66

Amendment and Revocation of Air Traffic Service (ATS) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published by the FAA in the **Federal Register** on September 8, 2022, that amended jet routes J–14, J–24, J–52, and J–68; and removed jet routes J–165, J–207, J–506, J–561, J–563, J–573, J–582, and J–585. The final rule inadvertently re-inserted a segment in J–52 that had been removed by a previous rulemaking action. This action makes an editorial correction to the description of J–52 to remove the incorrect route segment.

DATES: Effective date 0901 UTC, November 3, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule (87 FR 54880; September 8, 2022) effective on November 3, 2022, that included an amendment of jet route J–52. The rule inadvertently re-inserted the route segment ''Liberal, KS, INT Liberal 137° and Ardmore, OK 309° radials'' in the J–52 description that had been removed as published in an earlier action (87 FR 38916; June 30, 2022) which became effective on September 8, 2022.

This rule corrects that error by removing the route segment and editing the J–52 route description accordingly.

Jet routes are published in paragraph 2004 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 which is incorporated by reference in 14 CFR 71.1. The ATS route listed in this document will be published subsequently in FAA Order JO 7400.11.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the description of jet route J–52, published in the **Federal Register** of September 8, 2022 (87 FR 54880), FR Doc. 2022–19287, is corrected as follows:

■ 1. On page 54882, in the first column, correct the description of J–52 to read as follows:

J–52 [Corrected]

From Vancouver, BC, Canada; via Spokane, WA; Salmon, ID; Dubois, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; to Lamar, CO. From Ardmore, OK; Texarkana, AR; to Sidon, MS. The portion within Canada is excluded.

Issued in Washington, DC, on September 13, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–20202 Filed 9–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2020–0874; Amdt. No. 91–359A]

RIN 2120–AL75

Extension of the Prohibition Against Certain Flights in the Tehran Flight Information Region (FIR) (OIIX)

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

ACTION: Final rule.

SUMMARY: This action extends, for an additional two years, the prohibition against certain flight operations in the Tehran Flight Information Region (FIR) (OIIX) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. The FAA finds this action to be necessary to address continuing hazards to persons and aircraft engaged in such flight operations. The FAA also republishes, with minor administrative revisions, the approval process and exemption information for this Special Federal Aviation Regulation (SFAR), consistent with other recently published flight prohibition SFARs.

DATES: This final rule is effective on September 20, 2022.

FOR FURTHER INFORMATION CONTACT: Bill Petrak, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone 202–267–8166; email: *bill.petrak@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action extends the expiration date of Special Federal Aviation Regulation (SFAR) No. 117, title 14 Code of Federal Regulations (CFR), 91.1617, from October 31, 2022, until October 31, 2024. SFAR No. 117, 14 CFR 91.1617, prohibits certain flight operations in the Tehran FIR (OIIX) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. Consistent with other recently published flight prohibition SFARs, this action also republishes, with minor administrative revisions, the approval process and exemption information for this SFAR for consistency with other recently-published flight prohibition SFARs.

II. Authority and Good Cause

A. Authority

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. Sections 106(f) and (g) of title 49, U.S. Code (U.S.C.), subtitle I, establish the FAA Administrator's authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters,

assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

The FAA is promulgating this rule under the authority described in 49 U.S.C. 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of the FAA's authority because it continues to prohibit the persons described in paragraph (a) of SFAR No. 117, § 91.1617, from conducting flight operations in the Tehran FIR (OIIX) due to the continuing hazards to the safety of U.S. civil flight operations, as described in the preamble to this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, 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.'' Also, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. In this instance, the FAA finds good cause to forgo notice and comment because notice and comment would be impracticable and contrary to the public interest. In addition, it is contrary to the public interest to allow this SFAR to expire.

The risk environment for U.S. civil aviation in airspace managed by other countries with respect to safety of flight is fluid in circumstances involving weapons capable of targeting or otherwise negatively affecting U.S. civil aviation, as well as other hazards to U.S. civil aviation associated with fighting, extremist or militant activity, or heightened tensions. This fluidity and the need for the FAA to rely upon classified information in assessing these risks makes providing notice and opportunity to comment impracticable and contrary to the public interest. The potential for rapid changes in the risks to U.S. civil aviation significantly limits how far in advance of a new or amended flight prohibition the FAA can usefully assess the risk environment. Furthermore, to the extent that these rules and any amendments are based upon classified information, the FAA cannot share such information with the general public. As a result, engaging in notice and comment would be impracticable.

Additionally, it is crucial that the FAA's flight prohibitions, and any amendments thereto, reflect the agency's current understanding of the risk environment for U.S. civil aviation. This allows the FAA to protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting U.S. operators' routing options. The delay that would be occasioned by providing an opportunity to comment on this action would mean that the resulting final action would not be based on the latest information about aviation risk in a fluid environment.

As described in the preamble to this rule, extending the flight prohibition for U.S. civil aviation operations in the Tehran FIR (OIIX) is necessary due to continuing safety-of-flight hazards associated with the ongoing risk of misidentification of civil aircraft in an environment of continued heightened tensions in the region, as well as the risks to civil aircraft from unannounced military activities, including ballistic missile launches and unmanned aircraft systems (UAS) operations, in the region.

Accordingly, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule.

III. Background and Discussion of the Final Rule

The FAA originally issued SFAR No. 117, 14 CFR 91.1617, after Iran conducted retaliatory ballistic missile strikes targeting U.S. air bases in Iraq on January 7, 2020, following the death of Iranian Revolutionary Guard Corps (IRGC) Quds Force Commander Qassem Soleimani in a U.S. airstrike.[1] Due to the heightened military activities in the region at that time, including the heightened alert status of Iranian military forces, and elevated political tensions in the Middle East, which included the potential for further escalation, the FAA determined an unacceptable risk to U.S. civil aviation existed in the Baghdad FIR (ORBB), the Tehran FIR (OIIX), and the overwater areas of the Persian Gulf and the Gulf of Oman due to the potential for miscalculation or misidentification.

To address these immediate safety-of-flight hazards, on January 7, 2020, UTC, the FAA issued Notices-to-Airmen (NOTAMs) KICZ A0001/20, A0002/20, and A0003/20, which prohibited U.S. civil flight operations in the Baghdad FIR (ORBB), the Tehran FIR (OIIX), and the overwater airspace above the Persian Gulf and the Gulf of Oman, respectively.[2] Unfortunately, within hours after the FAA issued NOTAM KICZ A0002/20, Iranian air defense forces accidentally shot down Ukraine International Airlines Flight 752 (PS 752), shortly after its departure from Tehran Imam Khomeini International Airport (OIIE). These forces apparently misidentified the aircraft, which was conducting a regularly scheduled passenger flight, as a missile threat. There were no survivors out of the 176 passengers and crew.

Following this tragedy, there was uncertainty about how long the hazards to civil aviation in the Tehran FIR (OIIX) would persist; whether Iran would be transparent in its investigation into the downing of PS 752; and whether Iran would implement changes in its air defense command and control procedures, airspace de-confliction processes, and rules of engagement for air defense engagements to reduce the risk of further tragedies sufficiently to allow for safe U.S. civil aviation operations in the Tehran FIR (OIIX).

The FAA continues to assess the situation in the Tehran FIR (OIIX) as presenting an unacceptable risk to the safety of U.S. civil aviation. Heightened regional tensions remain. The FAA has received no information indicating that Iran has implemented changes to its air defense command and control procedures, airspace de-confliction procedures, and rules of engagement that sufficiently diminish the risk of another accidental shoot down of a civil aircraft by Iranian air defense units in the Tehran FIR (OIIX) during the current or future periods of heightened tensions for U.S. civil aviation operations to resume safely.

Additionally, when the FAA initially issued SFAR No. 117, § 91.1617, the agency was also concerned about the wide array of military activities occurring in, emanating from, or transiting the Tehran FIR (OIIX), in an environment of heightened regional tensions. There was the potential for Iranian ballistic missile fire from western Iran targeting Islamic State of Iraq and ash-Sham (ISIS) and Kurdish opposition groups located in the region, as had occurred in September 2018 and June 2017. Iran had also conducted

[1] See *Prohibition Against Certain Flights in the Tehran Flight Information Region (FIR) (OIIX)* final rule, 85 FR 68435, Oct. 29, 2020.

[2] SFAR No. 117, 14 CFR 91.1617, and this rulemaking action are limited in scope to the Tehran FIR (OIIX).

multiple ballistic missile test launches in the Tehran FIR (OIIX). To the FAA's knowledge, Iran had not issued a NOTAM or other aeronautical information to warn civil aircraft operators of the potential hazard to their operations prior to these missile launches. Additionally, the FAA assessed a potential inadvertent risk to U.S. civil aviation operations in the Tehran FIR (OIIX) from Iranian-fielded Global Positioning System (GPS) and communication jammers continued to exist. These circumstances further contributed to the unacceptable risk environment for U.S. civil aviation in the Tehran FIR (OIIX).

The FAA has continued concerns regarding the potential for unannounced Iranian ballistic missile fire, as well as UAS activity, originating from western Iran and targeting sites in the region. Such activity presents safety-of-flight hazards to civil aviation and airspace de-confliction challenges. On March 12, 2022, up to twelve Fateh-110 surface-to-surface ballistic missiles launched from western Iran and impacted near the construction site of the new U.S. consulate in Erbil, Iraq, and Erbil International Airport (ORER). Iranian officials claimed responsibility for the ballistic missile attack, allegedly carried out in response to the loss of two IRGC officials in an alleged third-party airstrike in Syria. Nearly 48 hours after the March 12, 2022 missile strikes on targets in Erbil, Iran issued a NOTAM, OIIX A0961/22, which stated ''All military activity will perform with close cooperation by civil authorities and according to risk analysis results, the launch site and its related activities are clear and with the safe distance from all ATS route, CTR, TMA and CTA.'' [3] The timing of this NOTAM, following closely after the missile launches, raises concerns that its issuance may have been an attempt to allay the safety concerns of the international civil aviation community and may not accurately reflect Iran's processes and procedures for safeguarding civil aviation operations during military activities, such as missile launches.

Therefore, as a result of the significant, continuing risks to the safety of U.S. civil aviation operations in the Tehran FIR (OIIX), the FAA extends the expiration date of SFAR No. 117, § 91.1617, from October 31, 2022, until October 31, 2024.

Further amendments to SFAR No. 117, § 91.1617, might be appropriate if the risk to U.S. civil aviation safety and security changes. In this regard, the FAA will continue to monitor the situation and evaluate the extent to which persons described in paragraph (a) of SFAR No. 117, § 91.1617, might be able to operate safely in the Tehran FIR (OIIX).

The FAA also republishes the details concerning the approval and exemption processes in Sections IV and V of this preamble, consistent with other recently published flight prohibition SFARs, to enable interested persons to refer to this final rule for comprehensive information about requesting relief from the FAA from the provisions of SFAR No. 117, § 91.1617.

IV. Approval Process Based on a Request From a Department, Agency, or Instrumentality of the United States Government

A. Approval Process Based on an Authorization Request From a Department, Agency, or Instrumentality of the United States Government

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the Tehran FIR (OIIX). If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person described in paragraph (a) of SFAR No. 117, § 91.1617, including a U.S. air carrier or commercial operator, to transport civilian or military passengers or cargo or conduct other operations in the Tehran FIR (OIIX), that department, agency, or instrumentality may request the FAA to approve persons described in paragraph (a) of SFAR No. 117, § 91.1617, to conduct such operations.

The requesting U.S. Government department, agency, or instrumentality must submit the request for approval to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality.[4] The FAA will not accept or consider requests for approval from anyone other than the requesting U.S. Government department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval must be sufficiently positioned within the requesting department, agency, or instrumentality to demonstrate that the organization's senior leadership supports the request for approval and is committed to taking all necessary steps to minimize aviation safety and security risks to the proposed flights. The senior official must also be in a position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval, and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requesting U.S. Government departments, agencies, or instrumentalities must submit requests for approval to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the operator(s) to commence the proposed operation(s).

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the FAA grants the request for approval. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267–8166, to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons described in SFAR No. 117, § 91.1617, or for multiple flight operations. To the extent known, the letter must identify the person(s) the requester expects the SFAR to cover on whose behalf the U.S. Government department, agency, or instrumentality seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the Tehran FIR (OIIX) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Tehran FIR (OIIX) and the airports, airfields, or landing zones at which the aircraft will take off and land; and

[3] The following acronyms used in the Iranian NOTAM are common International Civil Aviation Organization (ICAO) acronyms that refer to aspects of airspace structure:

''ATS'' means ''air traffic service,''

''CTR'' means ''control traffic region,''

''TMA'' means ''traffic management area,'' and

''CTA'' means ''control area.''

[4] This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate in the area in which this SFAR would prohibit their operations in the absence of specific FAA approval.

• The method by which the requesting department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (*i.e.,* the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the Tehran FIR (OIIX). The requestor may identify additional operators to the FAA at any time after the FAA issues its approval. Neither the operators listed in the original request, nor any operators the requestor subsequently seeks to add to the approval, may commence operations under the approval until the FAA issues them an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, for operations in the Tehran FIR (OIIX). The approval conditions discussed below apply to all operators. Requestors should send updated lists to the email address they obtain from the Air Transportation Division by calling (202) 267–8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information appears in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

FAA approval of an operation under SFAR No. 117, § 91.1617, does not relieve persons subject to this SFAR of the responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificates, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of other U.S. Government departments, agencies, or instrumentalities that may apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

B. Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety organization will send an approval letter to the requesting U.S. Government department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Tehran FIR (OIIX); and

(b) The operator's written agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Tehran FIR (OIIX).

(3) Other conditions the FAA may specify, including those the FAA might impose in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy the FAA issues under chapter 443 of title 49, U.S. Code.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or LOA, as applicable, to the operator(s) identified in the original request and any operators the requestor subsequently adds to the approval, authorizing them to conduct the approved operation(s). In addition, as stated in paragraph (3) of this section IV.B, the FAA notes that it may include additional conditions beyond those contained in the approval letter in any OpSpec or LOA associated with a particular operator operating under this approval, as necessary in the interests of aviation safety. U.S. Government departments, agencies, and instrumentalities requesting FAA approval on behalf of entities with which they have a contract or subcontract, grant, or cooperative agreement should request a copy of the relevant OpSpec or LOA directly from the entity with which they have any of the foregoing types of arrangements, if desired.

V. Information Regarding Petitions for Exemption

Any operations not conducted under an approval the FAA issues through the approval process set forth previously may only occur in accordance with an exemption from SFAR No. 117, § 91.1617. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those described in the approval process in the previous section. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standard of 14 CFR 11.81, the FAA consistently finds necessary the following information:

• The proposed operation(s), including the nature of the operation;

• The service the person(s) covered by the SFAR will provide;

• The specific locations in the Tehran FIR (OIIX) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Tehran FIR (OIIX) and the airports, airfields, or landing zones at which the aircraft will take off and land;

• The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (*i.e.,* the pre-mission planning and briefing, in-flight, and post-flight phases); and

• The plans and procedures the operator will use to minimize the risks identified in this preamble to the proposed operations, to support the relief sought and demonstrate that granting such relief would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

The FAA includes, as a condition of each such exemption it issues, a release and agreement to indemnify, as described previously.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that may be affected by SFAR No. 117, § 91.1617. While the FAA will not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and in accordance with the order of preference set forth in paragraph (c) of SFAR No. 117, § 91.1617.

If a petition for exemption includes information that is sensitive for security reasons or proprietary information, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

VI. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603 *et seq.,* requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39), as codified in 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. Chapter 25, 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 the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive order. As 5 U.S.C. 553 does not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, by exceeding the threshold identified previously.

A. Regulatory Evaluation

This rule prohibits U.S. civil flights in the Tehran FIR (OIIX) due to the significant hazards to U.S. civil aviation described in this preamble. The alternative flight routes result in some additional fuel and operations costs to the operators, as well as some costs attributed to passenger time. Accordingly, the incremental costs of the extension of this SFAR are minimal. By continuing to prohibit unsafe flights, the benefits of this rule will exceed the minimal flight deviation costs. Therefore, the FAA finds that the incremental costs of extending SFAR No. 117, 14 CFR 91.1617, will be minimal and are exceeded by the benefits of avoided risk of deaths, injuries, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the Tehran FIR (OIIX).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from risks to their operations in the Tehran FIR (OIIX), a location outside the U.S. Therefore, the rule complies with the Trade Agreements Act of 1979.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $165 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens it imposes on the public. The FAA has determined no new requirement for information collection is associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA's policy is to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to this regulation. The FAA finds this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure the FAA exercises its duties consistently with the obligations of the United States under international agreements.

While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition for U.S. civil aviation. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised or directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition for U.S. civil aviation.

G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed

of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined this action is exempt pursuant to Section 2–5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8–6(c), the FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

VII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132. The agency has determined this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a ''significant energy action'' under the executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

VIII. Additional Information

A. Electronic Access

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the docket for this rulemaking.

Those documents may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Interested persons must identify the docket or amendment number of this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) (set forth as a note to 5 U.S.C. 601) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Iran.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.1617 by revising paragraph (e) to read as follows:

§ 91.1617 Special Federal Aviation Regulation No. 117—Prohibition Against Certain Flights in the Tehran Flight Information Region (FIR) (OIIX).

* * * * *

(e) *Expiration.* This SFAR will remain in effect until October 31, 2024. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on or about September 19, 2022.

Billy Nolen,

Acting Administrator.

[FR Doc. 2022–20316 Filed 9–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2018–0927; Amdt. No. 91–353B]

RIN 2120–AL76

Extension of the Prohibition Against Certain Flights in the Baghdad Flight Information Region (FIR) (ORBB)

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

ACTION: Final rule.

SUMMARY: This action extends, for an additional two years, the prohibition against certain flight operations in the Baghdad FIR (ORBB) at altitudes below Flight Level 320 (FL320) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. The FAA finds this action necessary to address continuing hazards to persons and aircraft engaged in such flight operations due to the complex security environment that currently exists in the Baghdad FIR (ORBB) and the associated safety-of-flight hazards, as described in the preamble to this final rule. The FAA also republishes, with minor administrative revisions, the approval process and exemption information for this Special Federal Aviation Regulation

(SFAR), consistent with other recently published flight prohibition SFARs.

DATES: This final rule is effective on September 20, 2022.

FOR FURTHER INFORMATION CONTACT: Bill Petrak, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone 202–267–8166; email *bill.petrak@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action extends the expiration date of SFAR No. 77, title 14 Code of Federal Regulations (CFR), 91.1605, from October 26, 2022, until October 26, 2024. SFAR No. 77 prohibits certain flight operations in the Baghdad FIR (ORBB) at altitudes below Flight Level (FL) 320 by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. Consistent with other recently published flight prohibition SFARs, this action also republishes, with minor administrative revisions, the approval process and exemption information for this flight prohibition SFAR.

II. Authority and Good Cause

A. Authority

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. Sections 106(f) and (g) of title 49, U.S. Code (U.S.C.), subtitle I, establish the FAA Administrator's authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

The FAA is promulgating this rule under the authority described in 49 U.S.C. 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of the FAA's authority because it continues to prohibit the persons described in paragraph (a) of SFAR No. 77, § 91.1605, from conducting flight operations in the Baghdad FIR (ORBB) at altitudes below FL320 due to the continuing hazards to the safety of U.S. civil flight operations, as described in the preamble to this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(B) of title 5, U.S. Code, 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.'' Also, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. In this instance, the FAA finds good cause to forgo notice and comment because notice and comment would be impracticable and contrary to the public interest. In addition, it is contrary to the public interest to allow this SFAR to expire.

The risk environment for U.S. civil aviation in airspace managed by other countries with respect to safety of flight is fluid in circumstances involving weapons capable of targeting or otherwise negatively affecting U.S. civil aviation, as well as other hazards to U.S. civil aviation associated with fighting, extremist and militant activity, or heightened tensions. This fluidity and the need for the FAA to rely upon classified information in assessing these risks makes providing notice and opportunity to comment impracticable and contrary to the public interest. The potential for rapid changes in the risks to U.S. civil aviation significantly limits how far in advance of a new or amended flight prohibition the FAA can usefully assess the risk environment. Furthermore, to the extent that these rules and any amendments are based upon classified information, the FAA cannot share such information with the general public. As a result, engaging in notice and comment would be impracticable.

Additionally, it is crucial that the FAA's flight prohibitions, and any amendments thereto, reflect the agency's current understanding of the risk environment for U.S. civil aviation. This allows the FAA to protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting U.S. operators' routing options. The delay that would be occasioned by providing an opportunity to comment on this action would mean that the resulting final action would not be based on the latest information about aviation risk in a fluid environment.

As described in the preamble to this rule, extending the flight prohibition for U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320 is necessary due to continuing safety-of-flight hazards associated with multiple state and non-state actors conducting attacks in the Baghdad FIR (ORBB) in pursuit of various objectives. These attacks include military activity by state actors, as well as ongoing militia and terrorist attacks against the Government of Iraq and against U.S. and coalition interests co-located with civilian airports. Accordingly, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule.

III. Background

On October 16, 2020, due to the complex security environment that existed in Iraq, the FAA published a final rule amending SFAR No. 77, § 91.1605, to prohibit U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320.[1] Additionally, given that the security environment in Iraq remained fluid and tense, the FAA was concerned about the safety of U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes at and above FL320. As a result, NOTAM KICZ A0036/20, which prohibited U.S. civil aviation operations in the Baghdad FIR (ORBB) at all altitudes remained in effect following publication of the October 16, 2020 final rule. This approach maintained flexibility for the FAA to revisit the all-altitude flight prohibition as necessary to determine whether U.S. civil aviation operations could occur safely in the Baghdad FIR (ORBB) at altitudes at or above FL320.

The FAA continued to monitor the security environment in the Baghdad FIR (ORBB) and associated risks to civil aviation safety. By October 2021, the FAA assessed the safety risks to U.S. civil aviation in the Baghdad FIR (ORBB) at altitudes at or above FL320 had diminished sufficiently that U.S. civil aviation could safely resume operations at those altitudes. Since the FAA issued NOTAM KICZ A0036/20 in March 2020, there had been no known

[1] *See* Prohibition Against Certain Flights in the Baghdad Flight Information Region (FIR) (ORBB) final rule, 85 FR 65686, Oct. 16, 2020, for an in-depth discussion of the security environment in the Baghdad FIR (ORBB) at that time and the FAA's analysis of the associated risks to U.S. civil aviation operations.

threats or attempted attacks against aircraft operating at altitudes at or above FL320. Although ground-based attacks against U.S. and coalition forces in Iraq continued, and incidents involving weaponized unmanned aircraft systems (UAS) had risen significantly, those attacks posed no direct threat to civil aircraft overflying the Baghdad FIR (ORBB) at altitudes at or above FL320. Therefore, on October 22, 2021, the FAA rescinded NOTAM KICZ A0036/20. SFAR No. 77, 14 CFR 91.1605, remained in effect and continued to prohibit U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320 due to the continued unacceptable risk to the safety of U.S. civil aviation operations at those altitudes.

IV. Discussion of the Final Rule

The FAA continues to assess the situation in the Baghdad FIR (ORBB) at altitudes below FL320 as presenting an unacceptable risk to the safety of U.S. civil aviation. Iranian-aligned militia groups (IAMGs) publicly threatened to attack coalition forces remaining in Iraq after December 31, 2020, and continue to demonstrate their capability and intent to attack U.S. and international interests in Iraq, as well as selected Iraqi government targets. On November 7, 2021, militants conducted a weaponized UAS attack against Iraqi Prime Minister Mustafa al-Kadhimi's residence in Baghdad. In January 2022, IAMGs conducted a series of attempted attacks that were likely intended to commemorate the second anniversary of the deaths of Iranian Revolutionary Guard Corps (IRGC) Quds Forces Commander Qassem Soleimani and Iraqi Popular Mobilization Units Deputy Head Abu Mahdi al-Muhandis in a U.S. airstrike in January 2020. On January 3, 2022, IAMGs attempted to attack U.S. interests co-located with Baghdad International Airport (ORBI) with two weaponized UAS. Defensive counter-rocket, artillery, and mortar (C–RAM) systems thwarted the attack, with no reported casualties or damage. On January 4, 2022, militants unsuccessfully attempted an attack with two weaponized UAS against Ayn Al Asad Air Base (ORAA). On January 5, 2022, indirect rocket fire impacted the runway at Baghdad International Airport (ORBI) but did not cause any casualties.

IAMGs have access to UAS and anti-aircraft capable weapons systems, including the Iranian-produced 358 loitering hybrid surface-to-air missile (SAM)/UAS system, which present inadvertent risks to the safety of U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320 and at potentially targeted airports. IAMGs likely lack the ability to conduct effective target identification and airspace de-confliction, increasing the risk of an accidental shoot down of a civil aircraft due to misidentification or misperception.

In addition, the FAA remains concerned about cross-border military activity. Both Iran and Turkey have previously conducted various no-notice, cross-border operations striking targets in northern Iraq using a variety of weapons, including short-range ballistic missiles, rockets, and weaponized UAS. In a recent example, on March 12, 2022, up to twelve Fateh-110 surface-to-surface ballistic missiles launched from western Iran and impacted near the construction site of the new U.S. consulate in Erbil, Iraq, and Erbil International Airport (ORER). Iranian officials claimed responsibility for the ballistic missile attack, allegedly carried out in response to the loss of two IRGC officials in an alleged third-party airstrike in Syria. The missile attack damaged surrounding buildings, but there were no reported casualties, according to the Kurdish Interior Ministry. The assessed points of impact were approximately 14km east/northeast of Erbil International Airport (ORER), based on available open-source reporting.

While this attack did not pose a direct threat to the airport, the missile trajectories possibly presented an inadvertent risk to aircraft in flight that might have been operating at low altitude in the vicinity of Erbil International Airport (ORER) during the time of the attack. In general, unannounced third-party cross-border operations in the Baghdad FIR (ORBB) present a low altitude safety-of-flight risk for aircraft flying in the vicinity of the targeted location(s) and for aircraft on the ground at airports co-located with, or in close proximity to, the intended targets. These activities also pose an airspace de-confliction challenge. Additionally, there continues to be an inadvertent risk to civil aviation operations in the Baghdad FIR (ORBB) from global positioning system (GPS) jammers.

Therefore, as a result of the significant, continuing risks to the safety of U.S. civil aviation operations in the Baghdad FIR (ORBB) at altitudes below FL320, the FAA extends the expiration date of SFAR No. 77, § 91.1605, from October 26, 2022, until October 26, 2024.

Further amendments to SFAR No. 77, § 91.1605, might be appropriate if the risk to U.S. civil aviation safety and security changes. In this regard, the FAA will continue to monitor the situation and evaluate the extent to which persons described in paragraph (a) of this rule might be able to operate safely in the Baghdad FIR (ORBB) at altitudes below FL320.

The FAA also republishes the details concerning the approval and exemption processes in Sections V and VI of this preamble, consistent with other recently published flight prohibition SFARs, to enable interested persons to refer to this final rule for comprehensive information about requesting relief from the FAA from the provisions of SFAR No. 77, § 91.1605.

V. Approval Process Based on a Request From a Department, Agency, or Instrumentality of the United States Government

A. Approval Process Based on an Authorization Request From a Department, Agency, or Instrumentality of the United States Government

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the Baghdad FIR (ORBB) at altitudes below FL320. If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person described in paragraph (a) of SFAR No. 77, § 91.1605, including a U.S. air carrier or commercial operator, to transport civilian or military passengers or cargo or conduct other operations in the Baghdad FIR (ORBB) at altitudes below FL320, that department, agency, or instrumentality may request the FAA to approve persons described in paragraph (a) of SFAR No. 77, § 91.1605, to conduct such operations.

The requesting U.S. Government department, agency, or instrumentality must submit the request for approval to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality.[2] The FAA will not accept or consider requests for approval from anyone other than the requesting U.S. Government department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval must be sufficiently

[2] This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate in the area in which this SFAR would prohibit their operations in the absence of specific FAA approval.

positioned within the requesting department, agency, or instrumentality to demonstrate that the organization's senior leadership supports the request for approval and is committed to taking all necessary steps to minimize aviation safety and security risks to the proposed flights. The senior official must also be in a position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval, and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requesting U.S. Government departments, agencies, or instrumentalities must submit requests for approval to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the operator(s) to commence the proposed operation(s).

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the FAA grants the request for approval. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267–8166, to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons described in SFAR No. 77, § 91.1605, or for multiple flight operations. To the extent known, the letter must identify the person(s) the requester expects the SFAR to cover on whose behalf the U.S. Government department, agency, or instrumentality seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the Baghdad FIR (ORBB) at altitudes below FL320 where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Baghdad FIR (ORBB) at altitudes below FL320 and the airports, airfields, or landing zones at which the aircraft will take off and land; and
- The method by which the requesting department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (*i.e.,* the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the Baghdad FIR (ORBB) at altitudes below FL320. The requestor may identify additional operators to the FAA at any time after the FAA issues its approval. Neither the operators listed in the original request, nor any operators the requestor subsequently seeks to add to the approval, may commence operations under the approval until the FAA issues them an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, for operations in the Baghdad FIR (ORBB) at altitudes below FL320. The approval conditions discussed below apply to all operators. Requestors should send updated lists to the email address they obtain from the Air Transportation Division by calling (202) 267–8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information appears in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

FAA approval of an operation under SFAR No. 77, § 91.1605, does not relieve persons subject to this SFAR of the responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificates, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of other U.S. Government departments, agencies, or instrumentalities that may apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

B. Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety organization will send an approval letter to the requesting U.S. Government department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Baghdad FIR (ORBB) at altitudes below FL320; and

(b) The operator's written agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the Baghdad FIR (ORBB) at altitudes below FL320.

(3) Other conditions the FAA may specify, including those the FAA might impose in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy the FAA issues under chapter 443 of title 49, U.S. Code.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or LOA, as applicable, to the operator(s) identified in the original request and any operators the requestor subsequently adds to the approval, authorizing them to conduct the approved operation(s). In addition, as stated in paragraph (3) of this section V.B., the FAA notes that it may include additional conditions beyond those contained in the approval letter in any OpSpec or LOA associated with a particular operator operating under this approval, as necessary in the interests of aviation safety. U.S. Government departments, agencies, and instrumentalities requesting FAA approval on behalf of entities with which they have a contract or subcontract, grant, or cooperative agreement should request a copy of the relevant OpSpec or LOA directly from the entity with which they have any of the foregoing types of arrangements, if desired.

VI. Information Regarding Petitions for Exemption

Any operations not conducted under an approval the FAA issues through the approval process set forth previously may only occur in accordance with an exemption from SFAR No. 77, § 91.1605. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those

described in the approval process in the previous section. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standard of 14 CFR 11.81, the FAA consistently finds necessary the following information:

- The proposed operation(s), including the nature of the operation;
- The service the person(s) covered by the SFAR will provide;
- The specific locations in the Baghdad FIR (ORBB) at altitudes below FL320 where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Baghdad FIR (ORBB) at altitudes below FL320 and the airports, airfields, or landing zones at which the aircraft will take off and land;
- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (*i.e.,* the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures the operator will use to minimize the risks identified in this preamble to the proposed operations, to support the relief sought and demonstrate that granting such relief would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

The FAA includes, as a condition of each such exemption it issues, a release and agreement to indemnify, as described previously.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that may be affected by SFAR No. 77, § 91.1605. While the FAA will not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and in accordance with the order of preference set forth in paragraph (c) of SFAR No. 77, § 91.1605.

If a petition for exemption includes information that is sensitive for security reasons or proprietary information, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

VII. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603 *et seq.,* requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39), as codified in 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. Chapter 25, 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 the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive order. As 5 U.S.C. 553 does not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, by exceeding the threshold identified previously.

A. Regulatory Evaluation

This rule prohibits U.S. civil flights in the Baghdad FIR (ORBB) at altitudes below FL320, due to the significant, continuing hazards to U.S. civil aviation detailed in the preamble of this final rule. This action also extends the expiration date of this rule for an additional two years.

The FAA acknowledges this flight prohibition might result in additional costs to some U.S. operators, such as increased fuel costs and other operational-related costs. However, the FAA expects the benefits of this action exceed the costs because it will result in the avoidance of risks of fatalities, injuries, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the Baghdad FIR (ORBB) at altitudes below FL320.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from risks to their operations in the Baghdad FIR (ORBB) at altitudes below FL320, a location outside the U.S. Therefore, the rule complies with the Trade Agreements Act of 1979.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens it imposes on the public. The FAA has determined no new requirement for information collection is associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA's policy is to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to this regulation. The FAA finds this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure the FAA exercises its duties consistently with the obligations of the United States under international agreements.

While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition for U.S. civil aviation. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised or directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition for U.S. civil aviation.

G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined this action is exempt pursuant to Section 2–5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8–6(c), the FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

VIII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132. The agency has determined this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a ''significant energy action'' under the executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

IX. Additional Information

A. Electronic Access

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the docket for this rulemaking.

Those documents may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Interested persons must identify the docket or amendment number of this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) (set forth as a note to 5 U.S.C. 601) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Iraq.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–

47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.1605 by revising paragraph (e) to read as follows:

§ 91.1605 Special Federal Aviation Regulation No. 77—Prohibition Against Certain Flights in the Baghdad Flight Information Region (FIR) (ORBB).

* * * * *

(e) *Expiration.* This SFAR will remain in effect until October 26, 2024. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on or about September 22, 2022.

Billy Nolen,

Acting Administrator.

[FR Doc. 2022–20318 Filed 9–19–22; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1223

[Docket No. CPSC–2013–0025]

Safety Standard for Infant Swings

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In November 2012, the U.S. Consumer Product Safety Commission (CPSC) published a consumer product safety standard for infant swings with modifications to make the standard more stringent under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference the 2012 voluntary standard for infant swings that was in effect at the time. The CPSIA sets forth a process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard when the voluntary standards organization revises the standard, unless the Commission determines the revision does not improve the safety of the consumer product. Consistent with the CPSIA's update process, the Commission issued direct final rules in June 2013, January 2021, and October 2021, each time to update the incorporation by reference for the mandatory standard to reflect ASTM's revision of the voluntary standard. In May 2022, ASTM approved another revision to the voluntary standard for infant swings, ASTM F2088–22. ASTM notified CPSC of this revision on July 5, 2022. Consistent with the CPSIA's process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard, when the voluntary standards organization revises the standard, this direct final rule updates the mandatory standard for infant swings to incorporate by reference ASTM's 2022 version of the voluntary standard.

DATES: The rule is effective on January 1, 2023, unless CPSC receives a significant adverse comment by October 20, 2022. If CPSC receives such a comment, it will publish a document in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of January 1, 2023.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2013–0025, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2013–0025, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Carlos Torres, Project Manager, Division of Mechanical and Combustion Engineering, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2504; email: *ctorres@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Authority

Section 104(b)(1) of the CPSIA requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products and to adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). A mandatory standard must be ''substantially the same as'' the corresponding voluntary standard, or it may be ''more stringent than'' the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.*

Section 104(b)(4)(B) of the CPSIA specifies a process for updating the Commission's rules when a voluntary standards organization revises a standard that the Commission previously incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. The Commission may reject the revised standard by notifying the voluntary standards organization, within 90 days of receiving notice of the revision, that it has determined that the revised standard does not improve the safety of the consumer product and that it is retaining the existing standard. If the Commission does not take this action to reject the revised standard, the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision or on a later date specified by the Commission in the **Federal Register**. 15 U.S.C. 2056a(b)(4)(B).

2. Safety Standard for Infant Swings

Under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for infant swings, codified in 16 CFR part 1223. The rule incorporated by reference ASTM F2088–12a, *Standard*

Consumer Safety Specification for Infant Swings with modifications to make the standard more stringent. 77 FR 66703 (Nov. 7, 2012). The mandatory standard included performance requirements and test methods, as well as requirements for warning labels and instructions, to address hazards to children.

In 2013, ASTM notified CPSC that it had issued a revised standard for infant swings, ASTM F2088–13, and the Commission published a direct final rule incorporating by reference ASTM F2088–13, with no modifications. 78 FR 37706 (June 24, 2013). After the Commission issued the revised mandatory standard in 2013, ASTM approved two more revisions to the infant swing standard: ASTM F2088–15 and ASTM F2088–19. However, ASTM did not notify CPSC of these revisions under CPSIA section 104(b)(4)(B). In October 2020, ASTM notified CPSC that it had revised the voluntary standard for infant swings, ASTM F2088–20, and the Commission published a direct final rule incorporating by reference ASTM 2088–20, with no modifications. 86 FR 4961 (January 19, 2021).[1] In August 2021, ASTM notified CPSC that it had issued a revised standard for infant swings, ASTM F2088–21, and the Commission published a direct final rule incorporating by reference ASTM F2088–21, with no modifications. 86 FR 59609 (October 28, 2021).

In May 2022, ASTM published a revised version of the incorporated voluntary standard. On July 5, 2022, ASTM notified the Commission that it had approved and published the revised version of the voluntary standard. On July 14, 2022, the Commission provided notice in the **Federal Register** of the availability of the revised standard and sought comment on the effect of the revisions on the safety standard for infant swings. (87 FR 42117). No comments were received.

As discussed in section B. Revisions to ASTM F2088, based on CPSC staff's review of ASTM F2088–22,[2] the Commission will allow the revised voluntary standard to become the mandatory standard.[3] Accordingly, by operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F2088–22 will become the mandatory consumer product safety standard for infant swings on January 1, 2023. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates 16 CFR part 1223 to incorporate by reference the revised voluntary standard, ASTM F2088–22.

B. Revisions to ASTM F2088

The ASTM standard for infant swings includes performance requirements, test methods, and requirements for marking, labeling, and instructional literature, to address hazards to children associated with infant swings. ASTM F2088 applies to swings with a powered mechanism used to provide a swinging or gliding seat/cradle in any direction relative to the frame. The swinging or gliding mechanism can be powered by batteries, AC adapter, wind-up mechanism, or other means. A cradle swing allows the infant to swing while lying flat. The cradle swing is intended for children from birth until the infant begins to push up on hands and knees (approximately 5 months). An infant swing enables the infant to swing in a seated position and is intended for children from birth until the infant attempts to climb out of the product (approximately 9 months).

ASTM F2088–22 contains substantive changes to the specified warning statement for infant swings in Section 8.6 *Warning Statements.* Specifically, in Section 8.6.1 *Infant Swing,* the revised standard changes the wording in the last warning bullet, as follows (changes are highlighted in italics):

- ASTM F2088–21: Stay near and watch infant during use. This product is not safe for unsupervised use or unattended sleep.
- ASTM F2088–22: Stay near and watch *baby* during use. This product is not safe *for sleep or unsupervised use. If baby falls asleep, remove baby as soon as possible and place baby on a firm, flat sleep surface such as a crib or bassinet.*

Thus, the word ''infant'' is replaced with ''baby'' in the first sentence. The order of the warnings is switched in the second sentence, first to warn that the product is not safe for sleep, and then to warn against unsupervised use.

Lastly, a third new sentence provides guidance advising caregivers to remove a baby who has fallen asleep to a product that is safe for sleep.

The Commission assesses that the change from ''infant'' to ''baby'' makes the warning more personal to the parent or caregiver. Typically, parents or caregivers identify the occupant of the swing as ''my baby'' or ''the baby,'' as opposed to the more impersonal, more clinical, and generic term ''infant.'' The use of the term ''baby'' rather than ''infant'' also aligns with the Ad Hoc Working Task Group's wording developed in late 2014.[4]

The Commission assesses that the change from ''*This product is not safe for unsupervised use or unattended sleep*'' to ''*This product is not safe for sleep or unsupervised use*'' is an improvement in safety. The statement ''*. . . not safe for unsupervised use or unattended sleep*'' requires consumers to infer what is meant by ''unattended.'' [5] Furthermore, consumers are likely to understand and comply with a message directly instructing them on how to avoid the hazard.[6] [7]

The Commission assesses that the addition of new language stating: ''If baby falls asleep, remove baby as soon as possible and place baby on a firm, flat sleep surface such as a crib or bassinet'' is an improvement in safety. The basis for this addition is the American Academy of Pediatrics guidance on safe sleep, which states: ''If your baby falls asleep in a car seat, stroller, *swing,* infant carrier or sling, you should move

[1] One revision to ASTM F2088–20 was to change the title for the standard from ''*Standard Consumer Safety Specification for Infant Swings*'' to ''*Standard Consumer Safety Specification for Infant and Cradle Swings.*'' The change to the title did not alter the scope of the standard; performance requirements and test methods for cradle swings had been in the scope of the standard since ASTM first adopted it. The revision was a clarifying change to the title to make it clear that the standard also applied to cradle swings.

[2] CPSC staff's briefing package regarding ASTM F2088–22 is available at: *http://www.cpsc.gov/s3fs-public/ASTMs-Revised-Safety-Standard-for-Infant-Swings_0.pdf?VersionId=1v3bF7g15OKsR.m3CMjqOAgCBamFKZO9.*

[3] The Commission voted 4–1 to approve this rule. Chair Hoehn-Saric and Commissioners Baiocco, Feldman and Boyle voted to approve publication of the rule as drafted. Commissioner Trumka voted to determine that the proposed revision does not improve the safety of infant swings and therefore not approve publication of the rule in the **Federal Register**. Commissioner Trumka issued a statement in connection with his vote.

[4] The ASTM Ad Hoc Language Task Group (Ad Hoc TG) is made up of members of the various durable nursery products voluntary standards committees, including CPSC staff. The Ad Hoc TG was formed to harmonize the wording of common provisions (*e.g.,* introduction, scope, protective components), as well as the warning label requirements, across durable infant and toddler product voluntary standards.

[5] Smith, T.P. (2018). Human Factors Staff Response to NPR Comments, and Revised Warning Requirements for High Chairs (CPSIA Section 104). CPSC Memorandum to Stefanie C. Marques, Project Manager, High Chairs Rulemaking, U.S. Consumer Product Safety Commission, Rockville, MD. Accessed at: *https://cpsc.gov/s3fs-public/Final%20Rule%20-%20Safety%20Standard%20for%20High%20Chairs%20-%20May%2030%202018.pdf?mBuoGQbhxpGcMFyO6it0gNeBOOFZrTA9.*

[6] Fors Marsh Group (2022). ''Consumer Product Safety Commission (CPSC): Sleep Warnings Final Report'' U.S. Consumer Product Safety Commission, Rockville, MD. (Task Order: 61320619F1101) Accessed at: *https://cpsc.gov/s3fs-public/Consumer-Product-Safety-Commission%E2%80%93Sleep-Warnings-Final-Report.pdf?VersionId=MfJcAAip4YNWVf.RllvXQtwNN7chjHyt.*

[7] Wogalter, M.S.; Godfrey, S.S.; Fontenelle, G.A.; DeSaulniers, D.R.; Rothstein, P.R.; and Laughery, K.R. (1987). Effectiveness of Warnings. Human Factors, 29(5), 599–612.

them to a firm sleep surface on their back as soon as possible.'' [8] (Emphasis added). The new language clearly states that a swing is not safe for sleep. The new warning language instructs that in the case that the baby falls asleep, caregivers should move the baby to a firm, flat sleep surface. The new language provides tangible examples that consumers can refer to as safe sleep surfaces, such as a crib and a bassinet. In addition, CPSC staff contracted a focus group study [9] including contextual interviews to gather caregivers' perspectives regarding products in which infants may fall asleep, that the manufacturer asserts are not intended for infant sleep. This study sought to capture caregivers' beliefs about the safety, utility, and risks of infants falling asleep in seated products, their reaction to labels designed to warn against unsupervised sleep, and their ability to discern how those labels influence caregiver behavior. Caregivers evaluated specific language, which states: ''If baby falls asleep, move baby as soon as possible to a firm, flat sleep surface such as a crib or bassinet.'' Overall, the phrase was well received and met parents and caregivers' request for clear guidance on what to do if their child falls asleep in one of these products.

In summary, the revised warning statement provides concise guidance to parents and caregivers that infant swings are not safe for sleep and provides guidance that is consistent with CPSC messaging about the importance of placing sleeping babies on firm, flat sleep surfaces. In addition, the revised warning statement adopts a more personal tone with use of the word ''baby'' instead of ''infant.'' The Commission concludes that these changes to the warning statement improve the safety of infant swings.

C. Incorporation by Reference

Section 1223.2 of the direct final rule incorporates by reference ASTM F2088–22. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section B. Revisions to ASTM F2088 of this preamble summarizes the major provisions of ASTM F2088–22 that the Commission incorporates by reference into 16 CFR part 1223. The standard itself is reasonably available to interested parties. Until the direct final rule takes effect, a read-only copy of ASTM F2088–22 is available for viewing, at no cost, on ASTM's website at: *https://www.astm.org/CPSC.htm.* Once the rule takes effect, a read-only copy of the standard will be available for viewing, at no cost, on the ASTM website at: *https://www.astm.org/READINGLIBRARY/.* Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone: (301) 504–7479; email: *cpsc-os@cpsc.gov.* Interested parties can purchase a copy of ASTM F2088–22 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; telephone: (610) 832–9585; *www.astm.org.*

D. Certification

Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051–2089) requires manufacturers of products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or for children's products, on tests of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are ''consumer product safety standards.'' Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because infant swings are children's products, a CPSC-accepted third party conformity assessment body must test samples of the products. Products subject to part 1223 also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,[10] the tracking label requirements in section 14(a)(5) of the CPSA,[11] and the consumer registration form requirements in section 104(d) of the CPSIA.[12] ASTM F2088–22 makes no changes that would impact any of these existing requirements.

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing infant swings. 78 FR 15836 (March 12, 2013). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing infant swings to 16 CFR part 1223. The NORs for all mandatory standards for durable infant or toddler products are listed in the Commission's rule, ''Requirements Pertaining to Third Party Conformity Assessment Bodies,'' codified in 16 CFR part 1112. *Id.*

ASTM F2088–22 did not change the testing requirements, testing equipment, or testing protocols for infant swings. Accordingly, the revisions do not change the way that third party conformity assessment bodies test these products for compliance with the safety standard for infant swings. Testing laboratories that have demonstrated competence for testing in accordance with ASTM F2088–21 are competent to test in accordance with the revised standard ASTM F2088–22. Laboratories will begin testing to the new standard when ASTM F2088–22 goes into effect, and the existing accreditations that the Commission has accepted for testing to this standard will cover testing to the revised standard. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2088–21 to be capable of testing to ASTM F2088–22 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditations to reflect the revised standard in the normal course of renewing their accreditations.

F. Direct Final Rule Process

On July 14, 2022, the Commission provided notice in the **Federal Register** of the revision to the standard and

[8] *https://www.healthychildren.org/English/ages-stages/baby/sleep/Pages/A-Parents-Guide-to-Safe-Sleep.aspx#:~:text=If%20your%20baby%20falls%20asleep,specifically%20marketed%20for%20infant%20sleep.*

[9] Fors Marsh Group (2022). ''Refining Sleep Messaging for Seated/Non-Sleep Products Focus Group Study'' U.S. Consumer Product Safety Commission, Rockville, MD. (Task Order: 61320621F1006) Accessed at: *https://cpsc.gov/s3fs-public/Refining-Sleep-Messaging-for-Seated-Non-Sleep-Products-Focus-Group-Study-4-15-22.pdf?VersionId=aEey8C2nwBfXGrmCEYcLr7QEXexqZMmg.*

[10] 15 U.S.C. 1278a.

[11] 15 U.S.C. 2063(a)(5).

[12] 15 U.S.C. 2056a(d).

requested comment on whether the revision improves the safety of infant swings covered by the standard. 87 FR 42117. No comments were submitted. Now, the Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency ''for good cause finds'' that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' *Id.* 553(b)(B). The Commission concludes that when it updates a reference to an ASTM standard that the Commission incorporated by reference under section 104(b) of the CPSIA, further notice and comment are unnecessary.

Specifically, under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM notifies CPSC that it has revised a standard that the Commission has previously incorporated by reference under section 104(b)(1)(B) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM's revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC's standard by operation of law. The Commission is allowing ASTM F2088–22 to become CPSC's new standard because its provisions improve the safety of the product. The purpose of this direct final rule is to update the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the CPSIA, ASTM F2088–22 takes effect as the new CPSC standard for infant swings, even if the Commission does not issue this rule. Thus, public comments would not alter substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, further notice and comment are unnecessary.

In Recommendation 95–4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the ''unnecessary'' prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on January 1, 2023. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be ''one where the commenter explains why the rule would be inappropriate,'' including an assertion challenging ''the rule's underlying premise or approach,'' or a claim that the rule ''would be ineffective or unacceptable without a change.'' 60 FR 43108, 43111 (Aug. 18, 1995). As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute, and public comments should address this specific action.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section F. Direct Final Rule Process of this preamble, the Commission has determined that further notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

H. Paperwork Reduction Act

The current mandatory standard for infant swings includes requirements for marking, labeling, and instructional literature that constitute a ''collection of information,'' as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501–3521). While the revised mandatory standard revises the labeling language for infant swings, the revised language would not add to the burden hours because the products already require marking, labeling, and instructional literature under the current standard. The revised labeling provisions merely require different language to that already required by the standard, which would impose minimal if any additional burden because the firm is already required to put labels on the product. The Commission took the steps required by the PRA for information collections when it promulgated 16 CFR part 1223, and the marking, labeling, and instructional literature for infant swings are currently approved under OMB Control Number 3041–0159. Because the information collection burden is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

I. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement where they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

J. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued under that provision ''consumer product safety standards.'' Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

K. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard within 180 days of notification to the

Commission, unless the Commission timely notifies the standards organization that it has determined that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the standard for infant swings. Therefore, ASTM F2088–22 will take effect as the new mandatory standard for infant swings on January 1, 2023, 180 days after July 5, 2022, when the Commission received notice of the revision.

L. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs determines whether a rule qualifies as a ''major rule.''

Pursuant to the CRA, this rule does not qualify as a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1223

Consumer protection, Imports, Incorporation by reference, Infants and children, Law enforcement, Safety.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1223—SAFETY STANDARD FOR INFANT SWINGS

■ 1. The authority citation for part 1223.2 continues to read as follows:

Authority: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec 3, Pub. L. 112–28, 125 Stat. 273.

■ 2. Revise § 1223.2 to read as follows:

§ 1223.2 Requirements for Infant Swings.

Each infant swing must comply with all applicable provisions of ASTM F2088–22, *Standard Consumer Safety Specification for Infant and Cradle Swings,* approved on May 1, 2022. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A read-only copy of the standard is available for viewing on the ASTM website at *https://www.astm.org/READINGLIBRARY/.* You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; telephone (610) 832–9585; *www.astm.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email *cpsc-os@cpsc.gov,* or 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.*

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–20246 Filed 9–19–22; 8:45 am]

BILLING CODE 6355–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 227, 230, 239, and 240

[Release Nos. 33–11098; 34–95715]

Inflation Adjustments Under Titles I and III of the JOBS Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: To effectuate inflation adjustments required under Title I and Title III of the Jumpstart Our Business Startups Act (''JOBS Act''), we are adopting amendments to adjust the thresholds in the definition of ''emerging growth company'' as well as dollar amounts in Regulation Crowdfunding.

DATES: Effective September 20, 2022.

FOR FURTHER INFORMATION CONTACT: Charlie Guidry, Special Counsel, Office of Small Business Policy, at (202) 551–3460, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to 17 CFR 227.100(a)(2) (''Rule 100(a)(2)'') and 17 CFR 227.201(t) (''Rule 201(t)'') of 17 CFR 227.100 *et seq.* (''Regulation Crowdfunding''); 17 CFR 230.405 (''Rule 405'') and 17 CFR 239.900 (''Form C'') under the Securities Act of 1933 (''Securities Act''); and 17 CFR 240.12b–2 (''Rule 12b–2'') under the Exchange Act of 1934 (''Exchange Act'').

I. Introduction

Title I of the JOBS Act [1] added Securities Act Section 2(a)(19) and Exchange Act Section 3(a)(80) to define the term ''emerging growth company'' [2] (''EGC''). Pursuant to the statutory definition, the Commission is required every five years to index to inflation the annual gross revenue amount used to determine EGC status to reflect the change in the Consumer Price Index for All Urban Consumers (''CPI–U'') published by the Bureau of Labor Statistics (''BLS'').[3] In 2017, the Commission increased the annual gross revenue amount from $1,000,000,000 to $1,070,000,000.[4] We are adopting amendments to our rules to reflect the next statutorily required inflation adjustment to the annual gross revenue amount.

Title III of the JOBS Act added Securities Act Section 4(a)(6),[5]≤ which provides an exemption from the registration requirements of Securities Act Section 5 [6] for certain crowdfunding transactions, and the Commission promulgated Regulation Crowdfunding [7]

[1] Public Law 112–106, 126 Stat. 306 (2012).

[2] Section 101(a) of the JOBS Act amended Section 2(a) of the Securities Act [15 U.S.C. 77b(a)] and Section 3(a) of the Exchange Act [15 U.S.C. 78c(a)] to define an ''emerging growth company'' as an issuer with less than $1 billion in total annual gross revenues during its most recently completed fiscal year. If an issuer qualifies as an EGC on the first day of its fiscal year, it maintains that status until the earliest of (1) the last day of the fiscal year of the issuer during which it has total annual gross revenues of $1 billion or more; (2) the last day of its fiscal year following the fifth anniversary of the first sale of its common equity securities pursuant to an effective registration statement; (3) the date on which the issuer has, during the previous three-year period, issued more than $1 billion in non-convertible debt; or (4) the date on which the issuer is deemed to be a ''large accelerated filer'' (as defined in Exchange Act Rule 12b–2). *See* Section 2(a)(19) of the Securities Act [15 U.S.C. 77b(a)(19)] and Section 3(a)(80) of the Exchange Act [15 U.S.C. 78c(a)(80)]. A ''large accelerated filer'' is an issuer that, as of the end of its fiscal year, has an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of $700 million or more, as measured on the last business day of the issuer's most recently completed second fiscal quarter; has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months; has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the ''smaller reporting company'' definition. *See* Exchange Act Rule 12b–2.

[3] The CPI–U is the statistical metric developed by the BLS to monitor the change in the price of a set list of products. The CPI–U represents changes in prices of all goods and services purchased for consumption by urban households. *See* ''Consumer Price Index'' available at *https://www.bls.gov/cpi.*

[4] *See* Inflation Adjustments and Other Technical Amendments Under Titles I and III of the Jobs Act, Release Nos. 33–10332; 34–80355 (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)] (''2017 Release'').

[5] 15 U.S.C. 77d(a)(6).

[6] 15 U.S.C. 77e.

[7] 17 CFR 227.100 *et seq.; see also* Crowdfunding, Release No. 33–9974 (Oct. 30, 2015) [80 FR 71388] (''Crowdfunding Release'').

to implement that exemption. Sections 4(a)(6) and 4A [8] of the Securities Act set forth dollar amounts used in connection with the crowdfunding exemption, and Section 4A(h)(1) [9] states that such dollar amounts shall be adjusted by the Commission not less frequently than once every five years to reflect the change in the CPI–U published by the BLS. Pursuant to this directive, the Commission adjusted the amounts for inflation in the 2017 Release. We are amending Regulation Crowdfunding to again adjust those dollar amounts for inflation pursuant to the statutory requirement.

II. Inflation Adjustments to the Definition of ''Emerging Growth Company''

JOBS Act Section 101 amended Section 2(a)(19) of the Securities Act and Section 3(a)(80) of the Exchange Act to define ''emerging growth company'' to mean an issuer that had total annual gross revenues of less than $1 billion, as such amount is indexed for inflation every five years by the Commission to reflect the change in the CPI–U during its most recently completed fiscal year. By statute, the adjusted gross revenue threshold must be set to the nearest $1,000,000. Pursuant to this directive, the Commission, in the 2017 Release, adjusted the threshold from $1,000,000,000 to $1,070,000,000. Today, we are adopting an amendment to Rule 405 and to Rule 12b–2 to again index the annual gross revenue amounts included in the definition of ''emerging growth company'' for inflation to reflect the change in the CPI–U as required by statute.

To determine the new EGC gross revenue threshold to be included in the amendments, we use the same baseline thresholds and CPI–U and the same methodology that the Commission used in the 2017 Release. First, we determine the appropriate CPI–U for December of the calendar year preceding the year of adjustment. Because we are making the inflation adjustment for the definition of EGC in 2022, we use the CPI–U for December 2021, which was 278.802 (''2021 CPI–U''). Consistent with the 2017 Release, we then use the CPI–U for December of 2011, the calendar year before the EGC definition was established by the JOBS Act, which was 225.672 (''2011 CPI–U'').

Second, we calculate the cost-of-living adjustment or inflation factor. To do this, we divide the 2021 CPI–U by the 2011 CPI–U. The resulting inflation factor is 1.23543.[10]

Third, we calculate the raw inflation adjustment, which is the inflation adjustment before rounding. To do this, we multiply the initial EGC gross revenue threshold, $1,000,000,000, by the inflation factor 1.23543, the product of which is $1,235,430,000.

Fourth, we round the raw inflation amounts according to the convention set forth in the statutory definition.[11] Because we round only the increased amount, we calculate the increased amount by subtracting the initial EGC gross revenue threshold from the raw maximum inflation adjustment. Accordingly, the increase in the EGC gross revenue threshold from the initial threshold is $235,430,000 (*i.e.,* $1,235,430,000 less $1,000,000,000), which is rounded to $235,000,000 under the statutory rounding convention.

Finally, we add the rounded increase, $235,000,000, to the initial EGC revenue threshold, $1,000,000,000, which yields an inflation-adjusted EGC revenue threshold of $1,235,000,000. The amendments to the ''emerging growth company'' definitions in Securities Act Rule 405 and Exchange Act Rule 12b–2 we are adopting reflect this adjusted threshold.

III. Inflation Adjustments to Regulation Crowdfunding Thresholds

Title III of the JOBS Act amended the Securities Act to add Section 4(a)(6), which provides an exemption from the registration requirements of Section 5 of the Securities Act for certain crowdfunding transactions. In 2015, the Commission adopted Regulation Crowdfunding to implement that exemption.[12] Sections 4(a)(6) and 4A of the Securities Act set forth dollar amounts used in connection with the crowdfunding exemption,[13] and Section 4A(h)(1) [14] states that those dollar amounts shall be adjusted by the Commission not less frequently than once every five years to reflect any changes in the CPI–U. Pursuant to this directive, the Commission, in the 2017 Release, adjusted those dollar amounts to reflect the inflation adjustment for the prior five-year period from December 2011 until December 2016, and we are again amending Rules 100(a)(2) and 201(t) and Form C to adjust for inflation the dollar amounts set forth in these rules and in the form as required by the statute.

To determine the adjusted dollar amounts for Rule 100(a)(2) and Rule 201(t), we use the same process as described above in connection with the EGC adjustment to determine the raw inflation amounts.[15] Then we round the raw inflation amounts to the nearest $100 for amounts under $100,000 and to the nearest $1,000 for amounts that equal or exceed $100,000. The rounded inflation amounts are then added to the initial inflation amounts to yield the inflation-adjusted amounts. Tables 1 and 2 show the current amounts, initial amounts, rounded inflation amounts, and inflation-adjusted amounts for Rules 100(a)(2) and 201(t).[16]

[8] 15 U.S.C. 77d–1.

[9] 15 U.S.C. 77d–1(h)(1).

[10] As in the 2017 Release, we round the inflation factor to the nearest hundred thousandth.

[11] *See* Section 2(a)(19) of the Securities Act and Section 3(a)(80) of the Exchange Act, which require the amount to be set to the nearest $1,000,000.

[12] *See* Crowdfunding Release.

[13] Section 4(a)(6)(A) sets forth the maximum amount an issuer may sell in reliance on the crowdfunding exemption in a 12-month period, and Section 4(a)(6)(B) sets limits on the dollar amount that may be sold to any investor by an issuer in reliance on the crowdfunding exemption. These amounts, as adjusted in the 2017 Release, are reflected in 17 CFR 227.100. Section 4A(b)(1)(D) sets forth thresholds for determining the level of financial statements required, and those thresholds, as adjusted in the 2017 Release, are reflected in Rule 201(t).

[14] 15 U.S.C. 77d–1(h)(1).

[15] The 2021 CPI–U is divided by the 2011 CPI–U to derive the inflation factor of 1.23543. Each dollar amount is then multiplied by the inflation factor to determine the raw inflation adjusted amount. Then, to derive the Rounded Inflation Amount in the charts, we subtract that product by the original dollar amount and apply the rounding convention. The Inflation-Adjusted Amount is the sum of the Initial Amount and Rounded Inflation Amount.

[16] We have reflected the adjusted amounts for the financial statement thresholds where those are referenced in Question 29 of the ''Optional Question & Answer Format'' portion of Form C.

TABLE 1—INFLATION-ADJUSTED AMOUNTS IN RULE 100(a)(2) OF REGULATION CROWDFUNDING

[Investment limits]

Regulation crowdfunding rule	Current amount	Initial amount	Rounded inflation amount	Inflation-adjusted amount
Threshold for assessing investor's annual income or net worth to determine investment limits (17 CFR 227.100(a)(2)(i) (''Rule 100(a)(2)(i)'') and 17 CFR 227.100(a)(2)(ii) (''Rule 100(a)(2)(ii)'')	$107,000	$100,000	$24,000	$124,000
Lower threshold of Regulation Crowdfunding securities permitted to be sold to an investor if annual income or net worth is less than $124,000 (Rule 100(a)(2)(i))	2,200	2,000	500	2,500
Maximum amount that can be sold to an investor under Regulation Crowdfunding in a 12-month period (Rule 100(a)(2)(ii))	107,000	100,000	24,000	124,000

TABLE 2—INFLATION-ADJUSTED AMOUNTS IN RULE 201(t) OF REGULATION CROWDFUNDING

[Financial statement requirements]

Regulation crowdfunding rule	Current offering threshold amount	Initial offering threshold amount	Rounded inflation amount	Inflation-adjusted amount
17 CFR 227.201(t)(1)	$107,000	$100,000	$24,000	$124,000
17 CFR 227.201(t)(2)	535,000	500,000	118,000	618,000
17 CFR 227.201(t)(3)	1,070,000	1,000,000	235,000	1,235,000

When the Commission adjusted the Regulation Crowdfunding dollar amounts in April 2017 for inflation pursuant to the statutory directive, those adjustments included setting the offering limit in 17 CFR 227.100(a)(1) (''Rule 100(a)(1)'') at $1,070,000. Adjusting the offering limit amount for inflation using the same method we use for the adjustments in Rules 100(a)(2) and 201(t) would result in an offering limit of $1,235,000 ($1,000,000 baseline plus $235,000 inflation adjustment). However, effective March 2021, the Commission increased the Rule 100(a)(1) threshold by $3,930,000 (from $1,070,000 to $5,000,000).[17] Accordingly, we consider the current Rule 100(a)(1) offering limit to more than account for inflation and are making zero further inflation adjustments to this threshold at this time.[18]

IV. Procedural and Other Matters

The Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a rulemaking in the **Federal Register** and provide an opportunity for public comment. This requirement does not apply, however, if the agency ''for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.'' [19]

The implementation of statutory inflation adjustments pursuant to Title I and Title III of the JOBS Act do not impose any new substantive regulatory requirements on any person. The amendments to implement the statutory inflation adjustments will effectuate the adjusted dollar amount thresholds mandated by the JOBS Act and involve minimal discretion. For these reasons, for good cause, we find that it is unnecessary to publish notice of these amendments in the **Federal Register** and solicit public comment thereon.[20]

For similar reasons, although the APA generally requires publication of a rule at least 30 days before its effective date, we find there is good cause for the amendments to take effect on September 20, 2022.[21]

If any of the provisions of these amendments, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these amendments not a ''major rule,'' as defined by 5 U.S.C. 804(2).

V. Economic Analysis

We are mindful of the costs imposed by, and the benefits to be obtained from, our rules. Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[22] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[23] Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[24] Below we address the costs and benefits, as well as the potential effects on efficiency, competition, and capital formation, of the various amendments being adopted in this release. Because

[17] *See* Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Release Nos. 33–10884; 34–90300; IC–34082 (Nov. 2, 2020) [86 FR 3496 (Jan. 14, 2021)] (''2020 Release'').

[18] For the next statutorily-required adjustment, we expect that the Commission will use $5 million as the baseline from which the adjustment will be calculated.

[19] 5 U.S.C. 553(b)(3)(B).

[20] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the amendments to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are impractical, unnecessary or contrary to the public interest, a rule shall take effect at such time as the federal agency promulgating the rule determines). The amendments also do not require analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 604(a) (requiring a final regulatory flexibility analysis only for rules required by the APA or other law to undergo notice and comment).

[21] *See* 5 U.S.C. 553(d)(3).

[22] *See* 15 U.S.C. 77b(b) and 15 U.S.C. 78c(f).

[23] *See* 15 U.S.C. 78w(a)(2).

[24] *Id.*

the amendments merely implement the statutory inflation adjustments mandated by the JOBS Act, we do not believe there are reasonable alternatives to the amendments discussed in this analysis.

To comply with the inflation adjustments required under the JOBS Act, we are adopting amendments that include an inflation-adjusted threshold in the definition of the term ''emerging growth company.'' These amendments adjust the total annual gross revenue threshold for EGCs in accordance with inflation as required by the JOBS Act. The amendments will increase the number of eligible filers that may qualify for scaled disclosure, thereby reducing disclosure costs in the aggregate, to the extent that eligible filers take advantage of the EGC accommodations.

We note that this inflation adjustment affects both domestic issuers and foreign private issuers. We estimate that during calendar year 2021 approximately 7,199 issuers filed annual reports [25] (excluding asset-backed securities issuers and registered investment companies, which are ineligible for the EGC status). We estimate that approximately 1,704 (23.7%) of those filers were EGCs and 5,495 (76.3%) were non-EGCs.[26] In addition, we estimate that among those filers, approximately 6,232 filed on domestic forms (of which approximately 1,391 (22.3%) were EGCs) and 967 were foreign private issuers that filed on Forms 20–F and 40–F (of which approximately 313 (32.4%) were EGCs).

The inflation adjustment to the total annual gross revenue threshold for EGCs is designed to maintain the scope of registrants that may qualify as an EGC, preserving the economic effects associated with the option to claim EGC status. It does so by not allowing the level of revenue, in real terms, that determines the eligibility for EGC status to be diminished by inflation. The inflation adjustment amendment may marginally expand the number of issuers that may claim EGC status, thus extending the economic effects, including impacts on efficiency, competition, and capital formation, of the option to claim this status to issuers that fall between the current $1,070,000,000 gross revenue threshold and the $1,235,000,000 gross revenue threshold that will define EGC eligibility under the amendments. Using the number of filers and the distribution of filer revenues in calendar year 2021, we estimate that the inflation adjustment of the EGC revenue threshold will increase the overall number of EGCs by 51, from approximately 1,704 (23.7% of the total number of filers (7,199)) to approximately 1,755 (24.4% of the total number of filers (7,199)); among them, the number of domestic issuers that qualify as EGCs would increase by 45, from approximately 1,391 (22.3% of the total number of domestic-form filers (6,232)) to approximately 1,436 (23.0% of the total number of domestic-form filers (6,232)), while the number of foreign private issuers that qualify as EGCs will increase by 6, from approximately 313 (32.4% of the total number of Form 20–F and 40–F filers (967)) to approximately 319 (33.0% of the total number of Form 20–F and 40–F filers (967)).[27]

For the purposes of analyzing the economic effects of the amendments to Regulation Crowdfunding, we use as our baseline the regulatory framework established by Regulation Crowdfunding as adopted in 2015 (and amended in 2017 and 2020).[28] The amendments to Regulation Crowdfunding adjust the thresholds in Rules 100(a)(2) and 201(t) in accordance with inflation as required by Section 4A(h) of the Securities Act and are not expected to increase disclosure or compliance costs incurred by an issuer. The adjustment will cause some issuers to become subject to less extensive financial statement requirements and may lower disclosure or compliance costs for these issuers.[29] The adjustment will also increase the amounts of securities that may be sold to a given investor, which may expand some issuers' ability to raise capital and some investors' ability to gain exposure to Regulation Crowdfunding investment opportunities.

The inflation adjustment to the thresholds in Rules 100(a)(2) and 201(t) is intended to allow these thresholds to keep pace with inflation, preserving the economic effects of Regulation Crowdfunding in real terms.[30] For example, the inflation adjustments to the financial statement thresholds in Rule 201(t) will ensure that issuers can continue to utilize higher offering amounts without incurring the increased cost of complying with the higher tier of financial statement requirements that would apply absent the amendments.

Substantively, the inflation adjustments to Rule 100(a)(2) and Rule 201(t) marginally affect the amount of capital that issuers may raise in reliance on Regulation Crowdfunding without incurring the costs of compliance with a higher tier of financial statement requirements, the number of investors who may participate in crowdfunding offerings, and the amounts that investors may invest in crowdfunding offerings.

Because we believe the substantive impact of these amendments to our rules and forms is likely to be marginal, we do not believe that they will substantially impact efficiency, competition, and capital formation.

VI. Paperwork Reduction Act

The amendments effecting the statutory inflation adjustments do not make any substantive modifications to any existing collection of information requirements or impose any new substantive recordkeeping or information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[31] Accordingly, we are not revising any burden and cost estimates in connection with these amendments.

Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in Sections 2, 4(a)(6),

[25] This estimate is based on the number of filers, by unique Central Index Key, with at least one periodic report on Form 10–K, Form 20–F, Form 40–F, or an amendment thereto, filed between January 1 and December 31, 2021.

[26] EGC status data was obtained from Ives Group's Audit Analytics (''Audit Analytics'') and staff review of EDGAR filings.

[27] The estimates of filers newly eligible as EGCs under the amendments are based on the number of calendar year non-EGC filers, excluding asset-backed securities issuers and registered investment companies (which are ineligible as EGCs) and excluding large accelerated filers (which also are ineligible as EGCs), with nonmissing revenue data in Audit Analytics (most recent revenues as of the end of calendar year 2021) that exceed the existing revenue threshold but do not exceed the inflation-adjusted revenue threshold, where revenue data is available. Revenue data is unavailable for approximately 1.5% of non-EGCs, which may result in a slight underestimate of the number of newly eligible EGCs. As a caveat, it is possible that some companies included in the above estimates would be ineligible as EGCs for reasons not captured in the estimate, for example, because they were previously EGCs and have ''aged out'' of the status or exceeded the non-convertible debt threshold, which may result in a slight overestimate of the number of newly eligible EGCs. Finally, the estimates are based on the universe of registrants from calendar year 2021. Future changes to the number and characteristics of new entrants and deregistering companies would also affect these projections.

[28] *See* Crowdfunding Release; *see also* 2017 Release and 2020 Release.

[29] *See* Crowdfunding Release at 71497.

[30] *Id.* at 71482.

[31] 44 U.S.C. 3501 *et seq.* The amendments to reflect the statutory inflation adjustments to certain dollar amount thresholds in Titles I and III of the JOBS Act will have only marginal effects on the application of these thresholds for eligibility and reporting purposes and therefore are not expected to affect the overall burden estimates for affected forms. *See* Section V above.

4A, and 19(a) of the Securities Act; Sections 3 and 23(a) of the Exchange Act; and Sections 102, 103, and 107 of the JOBS Act.

List of Subjects

17 CFR Part 227

Crowdfunding, Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Advertising, Administrative practice and procedure, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

Text of the Final Rule and Form Amendments

For the reasons set out in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 227—REGULATION CROWDFUNDING, GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 227 continues to read as follows:

Authority: 15 U.S.C. 77d, 77d–1, 77s, 77z–3, 78c, 78o, 78q, 78w, 78mm, and Pub. L. 112–106, secs. 301–305, 126 Stat. 306 (2012).

■ 2. Amend § 227.100 by:

■ a. In paragraph (a)(2)(i), removing reference to ''$2,200'' and adding in its place ''$2,500''; and removing ''$107,000'' and adding in its place ''$124,000''; and

■ b. In paragraph (a)(2)(ii), removing the two references to ''$107,000'' and adding in their place ''$124,000.''

■ 3. Amend § 227.201 by:

■ a. In paragraph (t)(1), removing reference to ''$107,000'' and adding in its place ''$124,000'';

■ b. In paragraph (t)(2), removing reference to ''$107,000'' and adding in its place ''$124,000''; and removing reference to ''$535,000'' and adding in its place ''$618,000''; and

■ c. In paragraph (t)(3), removing the two references to ''$535,000'' and adding in their place ''$618,000''; and removing reference to ''$1,070,000'' and adding in its place ''$1,235,000.''

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 4. The authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78*o,* 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 5. In § 230.405, amend the definition ''Emerging growth company'' by:

■ a. In paragraph (1), removing reference to ''$1,070,000,000'' and adding in its place ''$1,235,000,000''; and

■ b. In paragraph (2)(i), removing reference to ''$1,070,000,000'' and adding in its place ''$1,235,000,000.''

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 6. The authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78*o*(d), 78*o*–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

■ 7. Amend Form C (referenced in Section 239.900) by revising the dollar amounts in Question 29 of the ''OPTIONAL QUESTION & ANSWER FORMAT FOR AN OFFERING STATEMENT'' as follows:

Note: The text of Form C does not, and this amendment will not, appear in the Code of Federal Regulations.

■ a. Removing all references to ''$107,000'' and adding in their place ''$124,000''; and

■ b. Removing all references to ''$535,000'' and adding in their place ''$618,000''; and

■ c. Removing reference to ''$1,070,000'' and adding in its place ''$1,235,000.''

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 8. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.;* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376, (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

■ 9. In § 240.12b–2, amend the definition ''Emerging growth company'' by:

■ a. In paragraph (1), removing reference to ''$1,070,000,000'' and adding in its place ''$1,235,000,000''; and

■ b. In paragraph (2)(i), removing reference to ''$1,070,000,000'' and adding in its place ''$1,235,000,000.''

By the Commission.

Dated: September 9, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–19867 Filed 9–19–22; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0638]

RIN 1625–AA00

Safety Zone; Cumberland River, Nashville, TN

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone from mile marker (MM) 191.1 to 191.5 of the Cumberland River. This action is necessary to provide for the safety of life on these navigable waters near Korean Veterans Bridge, Nashville, TN, during Pro Wakeboard Tour on September 23, 2022. This rule prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective on September 23, 2022, from 9 a.m. until 9 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0638 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Petty Officer Third Class Benjamin Gardner and Marine Safety Detachment Nashville, U.S. Coast

Guard; telephone 615–736–5421, email *Benjamin.t.gardner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
MM Mile marker
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard was notified by Pro Wakeboard of a racing event that occurs on the Cumberland River. The event will take place on September 23, 2022, from 9 a.m. until 9 p.m. The Captain of the Port Sector Ohio Valley (COTP) has determined that there is a need to protect the river users while the wakeboarders are competing between MM 191.1 and MM 191.5 on the Cumberland River. In response, on August 5, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Cumberland River, Nashville, TN'' (87 FR 47949). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this wakeboarding event. During the comment period that ended August 19, 2022, we did not receive any comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because we must establish the safety zone by September 23, 2022, to respond to the potential safety hazards associated with this wakeboarding event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the wakeboarding competition will be a safety concern for anyone within a 0.4 mile radius of the Korean Veterans Bridge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published August 5, 2022.

This rule establishes a safety zone from that will be enforced from 9 a.m. to 9 p.m. on September 23, 2022. The safety zone will cover all navigable waters within 0.4 miles of the Korean Veterans Bridge on the Cumberland River in Nashville, TN. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled wakeboarding competition. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone will be 12 hours spread over the course of 1 day in Nashville, TN. The safety zone will only encompass 0.4 miles of the Cumberland River. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Cumberland River before or after the time of the events on each day. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rulemaking would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves 1 safety zone over the course of 1 day that in total will last for 12 hours. It is categorically excluded from further review under paragraph L[60](a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0638 to read as follows:

§ 165.T08–0638 Safety Zone; Cumberland River, Nashville, TN.

(a) *Location.* The following area is a safety zone: all navigable waters of the Cumberland River, from Mile Marker 191.1 to Mile Marker 191.5, extending the entire width of the river.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Ohio Valley (COTP) in the enforcement o the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced on September 23, 2022, from 9 a.m. to 9 p.m.

Dated: September 7, 2022.

H.R. Mattern,

Captain, U.S. Coast Guard,Captain of the Port Sector Ohio Valley.

[FR Doc. 2022–20290 Filed 9–19–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2022–0284; FRL–9698–02–R3]

Approval and Promulgation of Air Quality Plans; Pennsylvania; Reasonably Available Control Technology (RACT) Determinations for Hydro Carbide Tool Company's Case-by-Case Sources Under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for sources at Hydro Carbide Tool Company (Hydro Carbide), a major source of volatile organic compounds (VOC), pursuant to the Commonwealth of Pennsylvania's conditionally approved RACT regulations. In this rule action, EPA is approving source-specific RACT determinations (also referred to as case-by-case or CbC) submitted by PADEP for certain VOC sources at Hydro Carbide, a facility in Westmoreland County. The RACT evaluation was submitted to meet RACT requirements for the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS). EPA is approving this revision to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA) and EPA's implementing regulations.

DATES: This final rule is effective on October 20, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2022–0284. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Mr. Riley Burger, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2217. Mr. Burger can also be reached via electronic mail at *burger.riley@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 6, 2022, EPA published a notice of proposed rulemaking (NPRM). 87 FR 19824. In the NPRM, EPA proposed approval of case-by-case VOC RACT determinations for emission units at Hydro Carbide,[1] as EPA found that the RACT controls for these sources met the CAA RACT requirements for the 1997 and 2008 8-hour ozone NAAQS. The case-by-case RACT determinations for sources at these facilities were included in PADEP's May 7, 2020 SIP submission.

As more fully explained in the NPRM, under certain circumstances, states are required to submit SIP revisions to address RACT requirements for both major sources of nitrogen oxides (NO_X) and VOC and any source covered by control technique guidelines (CTG), for each ozone NAAQS. Which NO_X and VOC sources in Pennsylvania are considered ''major,'' and are therefore subject to RACT, is dependent on the location of each source within the Commonwealth. NO_X sources in Pennsylvania located in any ozone attainment areas or in any nonattainment areas designated moderate or below are subject to a major source threshold of 100 tons per year (tpy) because of the Ozone Transport Region (OTR) requirements in CAA section 182(f)(1). See definition of ''Major NO_X emitting facility'' at 25 Pennsylvania Code 121.1 and 40 CFR 52.2020(c)(1). Similarly, VOC sources located in any ozone attainment areas or in any nonattainment areas designated serious or below are subject to a major source threshold of 50 tpy because of the OTR requirements in CAA section 184(b)(2). See definition of ''Major VOC emitting facility'' at 25 Pa. Code 121.1 and 40 CFR 52.2020(c)(1).

On May 16, 2016, PADEP submitted a SIP revision addressing RACT for both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP's May 16, 2016 SIP revision intended to address certain outstanding non-CTG VOC RACT, VOC CTG RACT, and major source VOC and NO_X RACT requirements for both standards. The SIP revision requested approval of Pennsylvania's 25 Pa. Code 129.96–100, *Additional RACT Requirements for Major Sources of NO_X and VOCs* (the ''presumptive'' RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO_X and VOC control measures in 25 Pa. Code 129.92–95, *Stationary Sources of NO_X and VOCs,* (the RACT I rule) to meet RACT for non-CTG major VOC sources and major NO_X sources. The requirements of the RACT I rule remain as previously approved in Pennsylvania's SIP and continue to be implemented as RACT.[2] On September 26, 2017, PADEP submitted a supplemental SIP revision including a letter, dated September 22, 2017, which committed to address various deficiencies identified by EPA in PADEP's original May 16, 2016 ''presumptive'' RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on the commitments PADEP made in its September 22, 2017 letter.[3] 84 FR 20274. In EPA's final conditional approval, EPA established conditions requiring PADEP submit, for EPA's approval, SIP revisions to address any facility-wide or system-wide NO_X emissions averaging plans approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval (*i.e.,* by May 9, 2020). Through multiple submissions between 2017 and 2020, PADEP submitted to EPA for approval the various SIP submissions to implement its RACT II case-by-case determinations and alternative NO_X and VOC emissions limits. This rule takes final action on a SIP revision for VOC sources at Hydro Carbide, based on EPA's review.

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revisions

To satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP submitted to EPA SIP revisions addressing alternative NO_X and VOC emissions limits and/or case-by-case RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code 129.98 or 129.99. PADEP's submission included a SIP revision pertaining to case-by-case RACT determinations for the existing VOC emissions units at Hydro Carbide that required a case-by-case RACT determination.[4]

In the case-by-case RACT determinations submitted by PADEP, an evaluation was completed to determine if previously SIP-approved, case-by-case RACT emissions limits or operational controls (herein referred to as RACT I and contained in RACT I permits) were more stringent than the RACT II presumptive or case-by-case requirements new to the SIP. If more stringent, the RACT I requirements would continue to apply to the applicable source. If case-by-case RACT II requirements that are new to the SIP are more stringent than the RACT I requirements, then the RACT II requirements would supersede the prior RACT I requirements.[5]

Here, EPA is approving SIP revisions pertaining to case-by-case RACT requirements for certain VOC sources at Hydro Carbide. Hydro Carbide is a major source of VOCs and was subject to RACT I under the name Fansteel Hydro Carbide. The case-by-case RACT determinations submitted by PADEP, consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a determination of what specific emissions limit or control measures satisfy RACT for that particular unit. The adoption of additional emissions limits or control measures to existing SIP-approved RACT I requirements were specified as

[1] Within the material submitted by PADEP, this company is sometimes referred to as Hydro Carbide Inc.

[2] The EPA granted conditional limited approval of Pennsylvania's case-by-case RACT I rule on March 23, 1998 pending Pennsylvania's submission of and EPA's determination on proposals for facilities subject to case-by-case (source-specific) RACT requirements. 63 FR 13789. On May 3, 2001, EPA removed the conditional status of its 1998 approval once the state certified that it had submitted case-by-case RACT I proposals for sources subject to the RACT requirements but retained the limited nature of the approval. 66 FR 22123. EPA granted full approval on October 22, 2008 once it approved all case-by-case RACT I proposals submitted by Pennsylvania. 73 FR 62891. Through this RACT II rule, certain source-specific RACT I requirements will be superseded by more stringent requirements. See Section II of the preamble to this final rule.

[3] On August 27, 2020, the Third Circuit Court of Appeals issued a decision vacating EPA's approval of three provisions of Pennsylvania's presumptive RACT II rule applicable to certain coal-fired power plants. *Sierra Club* v. *EPA,* 972 F.3d 290 (3d Cir. 2020). None of the sources in this final rule are subject to the presumptive RACT II provisions at issue in that *Sierra Club* decision.

[4] Hydro Carbide, which currently operates under the major source threshold via a facility-wide VOC cap, is subject to 25 Pa. Code 129.99 under the applicability provisions of 25 Pa. Code 129.96, as the facility was a major source in existence on or before July 20, 2012.

[5] Hydro Carbide's prior SIP-approved RACT I permit will remain part of the SIP, and this RACT II rule will incorporate by reference the additional RACT II requirements through the RACT II permit.

requirements in a revised federally enforceable permit (hereafter RACT II permit) issued by PADEP to Hydro Carbide. The RACT II permit was submitted as part of the Pennsylvania RACT SIP revision for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permit being approved in this action for Hydro Carbide (formerly Fansteel Hydro Carbide) is permit number 65–00860, effective November 15, 2019, and is part of the docket for this rulemaking, which is available online at *www.regulations.gov,* Docket No. EPA–R03–OAR–2022–0284.[6] For certain VOC sources at Hydro Carbide, EPA is incorporating by reference in the Pennsylvania SIP the source-specific emissions limits and control measures in the RACT II permit, and is determining that these provisions satisfy the RACT requirement under the 1997 and 2008 8-hour ozone NAAQS.

B. EPA's Final Action

This CbC RACT SIP revision incorporates determinations by PADEP of source-specific RACT II controls for individual VOC emission units at Hydro Carbide, where those units are not covered by or cannot meet Pennsylvania's presumptive RACT regulation. After thorough review and evaluation of the information submitted to EPA by PADEP, in its SIP revision submittals for sources at Hydro Carbide, EPA found that: (1) PADEP's case-by-case RACT determinations and conclusions establish limits and/or controls on individual sources that are reasonable and appropriately considered technically and economically feasible controls; and (2) PADEP's determinations are consistent with the CAA, EPA regulations, and applicable EPA guidance.

EPA proposed to find that all the proposed revisions for Hydro Carbide would result in equivalent or additional reductions of VOC emissions. Consistent with section 110(l) of the CAA the proposed revisions will not result in additional VOC emissions and thus should not interfere with any applicable requirement concerning attainment.

Other specific requirements of the 1997 and 2008 8-hour ozone NAAQS case-by-case RACT determinations and the rationale for EPA's proposed action are explained more thoroughly in the NPRM, and its associated technical support document (TSD), and will not be restated here.

III. Public Comments

EPA received two sets of comments on the April 6, 2022 NPRM. 87 FR 19824. One set of comments expresses support for this SIP revision, and thus no response is necessary. The second set of comments raises general policy considerations not directly relevant to the SIP revision, does not identify any defects, and does not raise any issues concerning the SIP revision's consistency with the CAA with sufficient specificity to determine its relevance to this action. Thus, no response is necessary. A copy of the comments can be found in the docket for this rule action.

IV. Final Action

EPA is approving case-by-case RACT determinations for certain VOC sources at Hydro Carbide, as required to meet obligations pursuant to the 1997 and 2008 8-hour ozone NAAQS, as revisions to the Pennsylvania SIP.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of source-specific RACT determinations under the 1997 and 2008 8-hour ozone NAAQS for certain VOC emission sources at one facility in Pennsylvania, as discussed in Section II. of this preamble. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[7]

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

[6] The RACT II permit included in the docket for this rule is a redacted version of the facilities' federally enforceable permit. It reflects the specific RACT requirements being approved into the Pennsylvania SIP via this final action.

[7] 62 FR 27968 (May 22, 1997).

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action approving Pennsylvania's VOC RACT requirements for one facility for the 1997 and 2008 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

For the reasons set out in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by:

■ a. Revising the entry ''Fansteel Hydro Carbide''; and

■ b. Adding an entry at the end of the table for ''Hydro Carbide Tool Company (formerly referenced as Fansteel Hydro Carbide)''.

The revision and addition read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations/ §§ 52.2063 and 52.2064 citations [1]
*	*	*	*	*	*
Fansteel Hydro Carbide	(OP)65–000–860	Westmoreland ..	12/12/97	10/17/01, 66 FR 52700	See also 52.2064(k)(1).
*	*	*	*	*	*
Hydro Carbide Tool Company (formerly referenced as Fansteel Hydro Carbide).	65–00860	Westmoreland ..	11/15/19	9/20/22, [INSERT **Federal Register** CITATION].	52.2064(k)(1).

[1] The cross-references that are not § 52.2064 are to material that pre-date the notebook format. For more information, see § 52.2063.

* * * * *

■ 3. Amend § 52.2064 by adding paragraph (k) to read as follows:

§ 52.2064 EPA-approved Source Specific Reasonably Available Control Technology (RACT) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X).

* * * * *

(k) Approval of source-specific RACT requirements for 1997 and 2008 8-hour ozone national ambient air quality standards for Hydro Carbide Tool Company is incorporated as specified. (Rulemaking Docket No. EPA–OAR–2022–0284.)

(1) Hydro Carbide Tool Company—Incorporating by reference Permit No. 65–00860, effective November 15, 2019, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. OP–65–000–860, effective December 12, 1997, remain as RACT requirements. See also § 52.2063(c)(178)(i)(B)(*7*), for prior RACT approval.

(2) [Reserved]

[FR Doc. 2022–20107 Filed 9–19–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 19–38; FCC 22–53; FR ID 99881]

Partition, Disaggregation, and Leasing of Spectrum

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission modifies partitioning, disaggregation, and leasing rules to provide specific incentives for small carriers and Tribal Nations, and entities in rural areas, to voluntarily participate in the Enhanced Competition Incentive Program (ECIP). The ECIP proceeding is in response to Congressional direction in the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (MOBILE NOW Act) to consider steps to increase the diversity of spectrum access and the availability of advanced telecommunications services in rural areas. The ECIP will promote greater competition in the provision of wireless services, facilitate increased availability of advanced wireless services in rural areas, facilitate new opportunities for small carriers and Tribal Nations to increase access to spectrum, and bring more advanced wireless service including 5G to underserved communities. This document also provides for reaggregation of previously partitioned and disaggregated licenses up to the original license size, while adopting appropriate safeguards, which will reduce regulatory and administrative burdens on licensees.

DATES: This final rule is effective October 20, 2022, except for amendatory instructions 2 (§ 1.929), 4 (§ 1.950), and 8 (§§ 1.60001 through 1.60007), which are delayed. The Commission will publish a document in the **Federal Register** announcing the effective date for the amendatory instructions.

FOR FURTHER INFORMATION CONTACT: Katherine Patsas Nevitt of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418–0638 or *Katherine.Nevitt@fcc.gov.* For information concerning the Paperwork Reduction Act of 1995 (PRA) information collection requirements contained in this final rule, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *Cathy.Williams@fcc.gov* or email *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in WT Docket No. 19–38, FCC 22–53, adopted on July 14, 2022 and released on July 18, 2022. The full text of the *Report and Order,* including all Appendices, is available for inspection and viewing via the Commission's website by entering the docket number, WT Docket No. 19–38. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this final rule on small entities. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* (*FNPRM*) released in November 2022 in this proceeding (86 FR 74024, Nov. 19, 2022). The Commission sought written public comment on the proposals in the *FNPRM,* including comments on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Paperwork Reduction Act

The requirements in §§ 1.929; 1.950; and 1.60001 through 1.60007 may constitute new or modified collections subject the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. They will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes more businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis.

Congressional Review Act

The Commission will send a copy of the *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Synopsis

A. Statutory Requirement

Section 616 of the MOBILE NOW Act required that, within a year of its enactment, the Commission initiate a rulemaking proceeding to assess whether to establish a program, or modify an existing program, under which a licensee that receives a license for exclusive use of spectrum in a specific geographic area under section 301 of the Communications Act of 1934 may partition or disaggregate the license by sale or long-term lease in order to, inter alia, make unused spectrum available to an unaffiliated covered small carrier or an unaffiliated carrier to serve a rural area. Section 616 required the Commission to consider four questions in conducting an assessment of whether to establish a new program or modify an existing program to achieve the stated goals. MOBILE NOW Act, section 616(b)(2)(A)–(D) (codified at 47 U.S.C. 1506(b)(2)(A)–(D). Section 616 provided that the Commission may offer incentives or reduced performance requirements only if it finds that doing so would likely result in increased availability of advanced telecommunications services in a rural area and directed that if a party fails to meet any build out requirements for any spectrum sold or leased under this section, the right to the spectrum shall be forfeited to the Commission unless the Commission finds that there is good cause for the failure. Id. section 616(b)(3)–(4) (codified at 47 U.S.C. 1506(b)(3)–(4)).

B. Establishment of the Enhanced Competition Incentive Program

In this final rule, we establish the ECIP largely as proposed in the FNPRM, as an initial measure to facilitate competition and increase spectrum access and rural service through transactions that meet the qualifying requirements.

C. Enhanced Competition Incentive Program Structure

We establish ECIP eligibility through participation in a transaction involving partitioning and/or disaggregation, leasing, or full assignment of spectrum that meets the qualification requirements discussed below (Qualifying Transaction). Any covered geographic licensee may offer spectrum to an unaffiliated eligible entity through a partition and/or disaggregation, and any covered geographic licensee eligible to lease in an ''included service,'' as listed in 47 CFR 1.9005 of our rules, may offer spectrum to an unaffiliated eligible entity through a long-term leasing arrangement. Covered geographic licensees consist of specified wireless radio services (WRS) for which the Commission has auctioned exclusive spectrum rights in defined geographic areas. *See* 47 CFR 1.907. To ensure that appropriate incentives and benefits are afforded consistently across a variety of transaction types, we permit a covered geographic licensee to assign its entire authorization.

We note that in the *FNPRM,* we proposed that all WRS licensees in ''included services'' would be permitted to lease spectrum and participate in ECIP. The MOBILE NOW Act, however, requires that we assess the administrative feasibility of adopting program features. We thus modify our proposed approach towards leasing eligibility for lessors to ensure that all ECIP participants can accept responsibility for program obligations and realize program benefits.

Accordingly, we do not include all WRS licensees in ''included services'' as eligible lessors within ECIP, as many of the program obligations and benefits are inapplicable to site-based wireless licensees that are generally permitted to lease; we do, however, permit any covered geographic licensees in ''included services'' to participate as lessors in the ECIP program. Similarly, we exclude light-touch leasing spectrum manager leases of 3.5 GHz Priority Access Licenses (PALs) in the Citizens Band Radio Service, because we do not believe the light-touch leasing model allows for the level of Commission oversight necessary to practically administer ECIP and avoid potential waste, fraud, and abuse. *See* 47 CFR 1.9046, 96.32(c), 96.66. We nonetheless permit prospective ECIP participants in the Citizens Band Radio Service to enter into *de facto* transfer leases or general 21-day notification spectrum manager leases for PALs in order to access spectrum and fully receive the program's benefits.

Some spectrum manager leases of these 3.5 GHz Priority Access Licenses (PALs) in the Citizen's Band Radio Service are governed by the Commission's ''light-touch leasing'' rules, a process that builds upon and incorporates our traditional spectrum manager leasing approval process. Lessees seeking to engage in light-touch leasing pre-certify with the FCC that they meet the non-lease-specific eligibility and qualification criteria for 3.5 GHz light-touch leasing. Rather than being approved for a lease by the Commission after an application is filed in the Universal Licensing System (ULS), light-touch leases are managed and monitored by a third-party automated frequency coordinator, known as a Spectrum Access System (SAS). The SAS administrator confirms the PALs and lessees meet the light-touch leasing criteria in their pre-certification filings and the lease-specific eligibility requirements. After SAS confirmation, the lessees may immediately begin exercising the leased spectrum usage rights under the light-touch leasing arrangements. On a daily basis, the SAS administrators provide the FCC with an electronic report of the light-touch leasing notifications. The light-touch leases appear on our regularly issued Accepted for Filing Public Notices. *See* 47 CFR 1.9046, 96.32(c), 96.66; *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550–3650 MHz Band,* GN Docket No. 12–354, Order on Reconsideration and Second Report and Order, 81 FR 49024 (July 26, 2016), 31 FCC Rcd 5011, 5068–74, paras. 204–23 (2016) (*2016 3.5 GHz Second R&O*); *see also Promoting Investment in the 3550–3700 MHz Band,* GN Docket No. 17–258, Report and Order, 83 FR 63076 (Dec. 7, 2018), 33 FCC Rcd 10598 (2018). The light-touch leasing process substituted only the immediate processing procedure of spectrum management leases under § 1.9020(e)(2), allowing PAL licensees and lessees to enter into spectrum manager leases under the general 21-day notification procedure in § 1.9020(e)(1) with a notification to the SAS prior to operation pursuant to § 1.9046(c). *See 2016 3.5 GHz Second R&O,* 31 FCC Rcd at 5071, para. 213 & n.485 and 5074, para. 220. The Commission adopted the light-touch leasing approach because the procedures under which we normally process spectrum manager leases in other exclusive-use wireless bands would be impractical in many cases for PALs, given that a significant percentage of these light-touch leases may cover a short period of time or perhaps a single event. *See* 47 CFR 1.9010, 1.9020(e)(1), 1.9030, 1.9035, 96.32(a).

As specified in the MOBILE NOW Act, we require that each party to a Qualifying Transaction be unaffiliated. We find it in the public interest to apply the Commission's current definition of affiliate from our designated entity rules, which is a person holding an attributable interest in an applicant if such individual or entity directly or indirectly controls or has the power to control the applicant; or is directly or indirectly controlled by the applicant; or is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant; or has an ''identity of interest'' with the applicant. *See* 47 CFR 1.2110(c)(2), (5). We find this eligibility restriction necessary to meet the intent of Congress and ensure that the parties to a Qualifying Transaction, and therefore intended beneficiaries of ECIP benefits, are unaffiliated to prevent gaming of the program. As such, we require applicants to identify their affiliates as part of their ECIP application in a Qualifying Transaction through the filing of a new FCC Form 602, or the filing of an updated FCC Form 602 if the ownership information on a previously filed version is not current.

We adopt two types of ECIP Qualifying Transactions: those that focus on small carriers and Tribal Nations gaining spectrum access to increase competition, in any location, whether urban, suburban or rural; and those that involve any interested party that commits to operating in, or providing service to, rural areas. In general, both assignments and leases will qualify for ECIP, if they satisfy the other program criteria.

The *FNPRM* sought comment on whether we should permit full license assignments within the ECIP and, if so, how we should implement these types of transactions. Although many of the proposed ECIP benefits would be applicable to both parties to a transaction involving partition, disaggregation (or to the lessor, in the case of leasing arrangements), they would only be available to the assignee in a full license assignment scenario because the assignor would no longer be licensed for that spectrum after consummation of the assignment. We find it inequitable to bar these types of transactions from ECIP, particularly where transactions involving partitioning and/or disaggregation of the same license the parties might seek to fully assign would be eligible. To increase program flexibility, we therefore permit transactions for full assignments of covered geographic licenses where either of the below prongs are met. We also sought comment on whether the Commission's rules permitting the sharing of performance requirements in the partitioning and/or disaggregation context runs counter to the ECIP framework as proposed in the *FNPRM.* We find that the program benefits, obligations and penalties cannot be applied equitability in a shared construction obligation scenario, and that it would not be administratively feasible to implement. Therefore, we preclude any license with an existing shared performance obligation from participation in the program, and we will not accept in the ECIP any application with an election from the parties to share performance obligations.

1. Small Carrier or Tribal Nation Transaction Prong

a. Eligible Entities

We determine that any covered geographic licensee is eligible to participate as an assignor and any covered geographic licensee in an ''included service'' is eligible to participate as a lessor, and two types of entities are eligible as assignees or lessees in a Qualifying Transaction under this first prong: either small carriers or Tribal Nations. Consistent with the MOBILE NOW Act, each party to a Qualifying Transaction must be unaffiliated.

Small Carriers. Section 616 of the MOBILE NOW Act defined ''Covered

small carrier'' as a carrier that ''has not more than 1,500 employees (as determined under section 121.106 of title 13, Code of Federal Regulations, or any successor thereto)'' and ''offers services using the facilities of the carrier.'' MOBILE NOW Act section 616(a)(1), (codified at 47 U.S.C. 1506(a)(1)). The MOBILE NOW Act also applied the definition of ''carrier,'' as set forth in section 3 of the Communications Act of 1934, as ''any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy.'' *Id.* In the *FNPRM,* we proposed to apply the statutory definition of covered small carriers and sought comment on alternatives. We decline at this time to expand our proposed definition of covered small carriers in establishing eligibility for this prong. We note that Congress' directive in the MOBILE NOW Act focused specifically on making unused spectrum available to covered small carriers and promoting service to rural areas, and the current record in this proceeding has not been sufficiently developed to determine whether to extend the additional incentives of the small carrier prong of ECIP beyond those entities specifically contemplated by Congress.

For purposes of this program, we therefore adopt the above statutory definition of ''Covered Small Carrier'' and designate them as an eligible beneficiary as a ''small carrier'' under this transaction prong. For ease of reference, we use the term ''small carrier'' rather than ''covered small carrier'' used in the MOBILE NOW Act, though we incorporate into our rules the specific language of the statutory definition.

Tribal Nations. We include Tribal Nations as an additional eligible beneficiary in this transaction prong, independent of whether they qualify as a small carrier. We recognize the acute connectivity challenges that Tribal Nations face and believe that inclusion in the ECIP program will facilitate spectrum access by Tribal Nations in both rural and non-rural areas to help meet their communications needs. We therefore adopt our proposed definition of Tribal Nation as any federally-recognized American Indian Tribe and Alaska Native Village, the consortia of federally recognized Tribes and/or Native Villages, and other entities controlled and majority-owned by such Tribes or consortia. In the *FNPRM,* we sought comment on how we should facilitate transactions involving entities seeking to serve native Hawaiian Homelands given there are no federally recognized Tribal Nations in Hawaii. In the absence of responsive comments on this issue, we will consider future waiver requests for ECIP program eligibility on behalf of appropriate entities that manage or administer resources on behalf of Native Hawaiians or Hawaiian Homelands. We believe the inclusion of Tribal Nations in ECIP is an important step to facilitate increased spectrum access, and the Commission is committed to working with Tribal Nations to ensure that the benefits afforded through ECIP participation are fully realized.

b. Minimum Spectrum Threshold

As proposed, we adopt a minimum spectrum threshold for a qualifying transaction. Specifically, we require that, for licenses included in an ECIP transaction involving a disaggregation, partition/disaggregation in combination, or a lease, the assignor or lessor must include a minimum of 50% of the licensed spectrum, and must demonstrate that it meets the minimum spectrum threshold at every point in the transaction area (where the percentage is calculated at any point as the amount of spectrum being assigned/leased (in megahertz)/total spectrum held under the license (in megahertz)). As an example, we will not permit an assignor participating in ECIP to engage in a transaction whereby it partitions an area and disaggregates spectrum in combination, but seeks to include 75% of its spectrum in the western part of the partitioned area, and 25% of its spectrum in the eastern part of the partitioned area, in an attempt to meet the 50% minimum spectrum threshold through some form of averaging. We believe that this minimum spectrum threshold will provide stakeholders flexibility in structuring transactions to facilitate sufficient spectrum availability for the underlying intended service, while simultaneously preventing transactions involving *de minimis* spectrum amounts that are potentially entered into solely to obtain ECIP benefits.

We anticipate that secondary market transactions negotiated at arm's length will result in parties acquiring sufficient spectrum to meet their communications needs. We find that requiring minimum spectrum amounts in megahertz to ensure that a current technology can be successfully deployed reduces stakeholder flexibility. Such an approach is not technologically neutral and may not adequately account for future technological advances. By taking a technologically neutral approach that requires a fixed percentage of spectrum relative to each license included in an ECIP transaction, we provide sufficient flexibility to allow a wide range of different WRS licensees the opportunity to participate in, and benefit from, the ECIP. This approach will likely increase the number of ECIP transactions, and foster participation by not effectively barring licensees with smaller spectrum amounts based on the original spectrum allocation in a particular radio service.

Some commenters argued against a minimum threshold. We disagree. The Commission must balance the goals and benefits conferred through the program with the potential harms of abuse, and we find that establishing a minimum spectrum threshold is necessary to prevent sham transactions (*e.g.,* disaggregation of *de minimis* spectrum amounts simply to acquire program benefits). Accordingly, we adopt a 50% minimum spectrum threshold as proposed in the *FNPRM.* Provided the minimum spectrum threshold is met, parties to an ECIP Qualifying Transaction are free to negotiate specific terms for additional amounts of spectrum required to meet their operational or technological needs.

c. Minimum Geography Threshold

We adopt a minimum geography threshold for Qualifying Transactions under this small carrier or Tribal Nation prong, whether a partition, partition/disaggregation in combination, full assignment or a long-term leasing arrangement. We also incorporate two-tiered geographic scaling based on the overall size of the licensed area in the underlying license from which the ECIP transaction originates to ensure equitable treatment across differently-sized licensed areas. Specifically, for licensed areas that contain 30,000 square miles or less, we require a minimum geography threshold of 25% of the licensed area. For geographic area licenses larger than 30,000 square miles in size, we require a minimum geography threshold of 10% of the licensed area. We believe this approach appropriately balances the size of the licensed area to create incentives for program participation and ensure sufficient land area for small carriers or Tribal Nations, while discouraging transactions involving *de minimis* geography entered into solely to obtain program benefits.

In the *FNPRM,* we proposed a 25% geography threshold to ensure sufficient land area was made available for the provision of advanced telecommunications services and to prevent fraud from transactions involving *de minimis* amounts of geography entered into for the singular

purpose of receiving benefits. We are persuaded that the scaling concepts advanced by commenters provide a practical solution towards ensuring a fair and consistent application of the ECIP. We therefore find it in the public interest to adopt the two-tiered hybrid approach discussed above, based on the amount of square mileage within the licensed area of the assignor or lessor, regardless of the license type, to meet the required minimum geography threshold percentage. We believe this approach appropriately balances the goal of ensuring greater program participation, particularly for licensees with larger licensed areas that offer spectrum to others, and that benefit from program benefits applied to their entire license (*e.g.,* extension of renewal deadline and construction deadlines), while protecting against potential abuse through transactions that include *de minimis* amounts of geography. Assignors or lessors are permitted to include more of their licensed area in a Qualifying Transaction than the minimum geography threshold in this prong, up to their entire licensed area, potentially resulting in a larger Transaction Geography in a Qualifying Transaction. We believe this allows sufficient flexibility to structure transactions based on the needs of the parties.

We clarify that under the small carrier or Tribal Nation transaction prong, the geography assigned or leased can be from any type or size of covered geographic license and can include rural and/or suburban/urban areas, provided it meets the minimum geography threshold percentage described above. An ECIP transaction between unaffiliated parties, as required under this prong, may be either an assignment (full, partition, and/or disaggregation) or a lease, but not both, for each license. We impose this restriction to meet program goals, including the equitable distribution of program benefits and obligations, and therefore preclude an ECIP participant from, for example, partitioning a percentage of its licensed area, and then leasing another percentage of licensed area from the same license, which when combined meet the minimum geography threshold. While an ECIP application filed under this prong may include more than one license for assignment or leasing to a single assignee/lessee, each included license must independently meet the respective minimum geography percentage threshold, and will be independently reviewed and acted upon. Applications seeking ECIP benefits that do not satisfy the minimum spectrum and geography thresholds for each license on a stand-alone basis will be dismissed. We also clarify that parties participating in ECIP through this small carrier or Tribal Nation transaction prong remain subject to the substantive performance requirements (*e.g.,* covering a certain population percentage, in most flexible use bands) as set forth in the underlying radio service(s) rules of the license(s) involved in the Qualifying Transaction. Finally, after review of the record, we find no basis to restrict the program to census defined populations.

2. Rural-Focused Transaction Prong

To further the important Commission and Congressional goals of facilitating the provision of advanced telecommunications service in rural areas, we provide a second possible path for ECIP participants through a rural-focused transaction approach. This prong expands the scope of eligible entities beyond those specifically referenced in the MOBILE NOW Act and is intended to facilitate coverage to rural areas by tying ECIP benefits to construction and operation obligations. We believe this second transaction prong will expand the class of eligible participants, resulting in greater potential for increased spectrum usage and competition in rural areas.

a. Eligible Entities

Any covered geographic licensee is eligible to participate as an assignor and any covered geographic licensee in an ''included service,'' 47 CFR 1.9005, is eligible to participate as a lessor. Further, any entity is eligible to participate as an assignee or lessee if able to meet the prong requirements described below, including, for example, large or small carriers, common carriers, non-common carriers, Tribal Nations, critical infrastructure entities, and other entities (large or small) operating private wireless systems. We reiterate that, consistent with the MOBILE NOW Act, each party to a Qualifying Transaction must be unaffiliated.

Commenters unanimously supported the Commission's *FNPRM* proposal to adopt a rural-focused transaction prong available to anyone able to meet the requirements. We find it in the public interest to adopt our proposal to expand on the MOBILE NOW Act's focus to incentivize transactions involving a wide variety of stakeholders seeking to provide services in rural areas that may currently face spectrum access challenges.

b. Minimum Spectrum Threshold

Similar to our treatment of the small carrier or Tribal Nation prong above and for the same rationale, we adopt the proposed 50% minimum spectrum threshold for each license(s) included in the Qualifying Transaction of the rural-focused transaction prong. For licenses included in an ECIP transaction involving a disaggregation, partition/disaggregation in combination, or a lease, the assignor or lessor must include a minimum of 50% of the licensed spectrum, and must demonstrate that it meets the minimum spectrum threshold at every point in the transaction area (where the percentage is calculated at any point as the amount of spectrum being assigned/leased (in megahertz)/total spectrum held under the license (in megahertz). The minimum spectrum threshold under this rural-focused transaction prong provides stakeholders flexibility in structuring transactions to facilitate sufficient spectrum availability for the provision of advanced telecommunications services in rural areas, while simultaneously preventing transactions involving *de minimis* spectrum amounts that are potentially entered into solely to obtain ECIP benefits.

In the *FNPRM,* we proposed in the rural context that a Qualifying Transaction must designate a minimum of 50% of the licensed spectrum, for each license included in the transaction, consistent with the small carrier or Tribal Nation transaction prong. We find that adopting the minimum spectrum threshold is the best approach towards advancing the Commission's goals of fostering the provision of advanced telecommunications services and providing stakeholders flexibility in structuring transactions, while preventing transactions involving *de minimis* amounts of spectrum.

c. Minimum Qualifying Geography

To achieve the Commission's policy goals of facilitating *bona fide* transactions that ensure rural service while providing substantial program benefits, we require that a Qualifying Transaction under this prong (*e.g.,* a partition, partition/disaggregation in combination, full assignment, or a long-term leasing arrangement) must include a minimum amount of ''Qualifying Geography.'' All geography identified as Qualifying Geography, for purposes of this rural-focused transaction prong, must be in a rural area, as defined below. We adopt the statutory definition of ''Rural Area,'' which is defined as any area except (1) a city, town, or

incorporated area that has a population of more than 20,000 inhabitants; or (2) an urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants. MOBILE NOW Act, section 616(a)(2) (codified at 47 U.S.C. 1506(a)(2)). Although we understand concerns regarding areas adjacent to large cities/towns, we note that the MOBILE NOW Act did not provide an exception for the inclusion in the definition of ''rural'' those locations on the periphery of urban areas that are arguably less populated, but nonetheless are part of an urbanized area contiguous or adjacent to a city or town with a population of more than 50,000. We therefore recognize that parties may seek a waiver of the rule in certain unusual circumstances, which we will review pursuant to the criteria set forth in the Commission's rules. *See* 47 CFR 1.3, 1.925.

As applied to the ECIP rural-focused transaction prong, we define Qualifying Geography as at least 300 contiguous square miles for those licensed areas that are 30,000 square miles and smaller, with appropriate upward scaling for larger licensed areas. After reviewing the record and the varying geographic areas the Commission licenses in greater detail, we find that our proposed scaling approach that focused on license types (*e.g.,* Partial Economic Area (PEA) or smaller) potentially could create inequities. Commission staff reviewed data regarding license types in Covered Geographic Services, and found that, out of 410 PEAs, 399 (or 98%) were 30,000 square miles or less; however, certain other licensed areas larger than PEAs also consisted of 30,000 square miles or less. For example, 84% of BEAs, 26% of MTAs, and 28% of MEAs, consisted of 30,000 square miles or less. (The license area types reviewed include (from smallest to largest average area size): Counties, Cellular Market Areas (CMAs), Interactive Video Markets (IVMs), Basic Trading Areas (BTAs), Partial Economic Areas (PEAs), Basic Economic Areas (BEAs), Major Trading Areas (MTAs), Major Economic Areas (MEAs), VHF Public Coast (VPC), and Regional Economic Area Groupings (REAGs). *See What is Geographic Information Systems (GIS)?, https://www.fcc.gov/wireless/gis-wtb* (last visited April 2022)). Accordingly, were we to adopt the ''PEA and smaller'' approach, as proposed in the *FNPRM,* as the standard for the 300 square mile minimum Qualifying Geography threshold, 141 out of 170 BEAs, 12 out of 46 MTAs, and 13 out of 46 MEAs, all geographic sizes larger than PEAs, but also containing only 30,000 square miles or less, would have been unnecessarily subject to higher minimum Qualifying Geography thresholds (*e.g.,* 900 square miles). We seek to remedy this potential inequity through a more neutral approach that incentivizes transactions across all licensed areas in covered geographic services.

We therefore adopt a Qualifying Geography minimum threshold based on actual geographic license size in square miles and find that this slight modification to our proposed approach ensures equal treatment across similar sized licensed areas. Under the rural-focused transaction prong we adopt, the geographic threshold approach scaled for larger licensed areas in four categories is as follows: (1) Up to 30,000 square mile licensed areas—Qualifying Geography = 300 square miles; (2) 30,001–90,000 square mile licensed areas—Qualifying Geography = 900 square miles; (3) 90,001–500,000 square mile licensed areas—Qualifying Geography = 5,000 square miles; and (4) 500,001 square mile licensed areas and above—Qualifying Geography = 15,000 square miles.

We believe this approach ensures fairness and equal treatment across different license sizes and that scaling for larger licensed areas will ensure sufficient financial commitment by ECIP participants to yield more than nominal spectrum access. We also believe it achieves the Commission's goal of facilitating rural buildout sufficient to justify the ECIP benefits received, thus preventing windfall benefits. To afford ECIP participants substantial flexibility in structuring transactions and to incentivize participation under this rural-focused transaction prong, we permit assignors/lessors in Qualifying Transactions to include spectrum from multiple licenses, as long as the Qualifying Geography intersects each contributing license included in the underlying ECIP transaction application. To facilitate program participation under this rural focused transaction prong, however, we do not require a minimum square mileage of Qualifying Geography per contributing license, provided the sum total of the Qualifying Geography from the contributing licenses meets the required minimum threshold.

To protect program integrity, in instances where a Qualifying Transaction consists of multiple licenses with varying sized licensed areas contributing to the Qualifying Geography, we require the Qualifying Geography to be scaled to the minimum geographic threshold of the largest licensed area included. For example, where the Qualifying Geography intersects three contributing licenses and, based on their smaller overall licensed area, two of the three contributing licenses would require a minimum Qualifying Geography of 300 square miles, and the third contributing license is a larger licensed area that would require 900 square miles of minimum Qualifying Geography, we require the Qualifying Geography for this ECIP Qualifying Transaction to consist of a minimum of 900 square miles.

We do not mandate the maximum geographic scope of the parties' overall transaction, and clarify that the total Transaction Geography can be up to the entire licensed area of the contributing license(s), but no smaller than the minimum Qualifying Geography in the appropriate scaled category. This approach can potentially result in a larger Transaction Geography than the Qualifying Geography and affords program participants sufficient flexibility to structure transactions based on the needs of the parties. In this regard, we strongly encourage all parties to an ECIP transaction, and particularly assignees and lessees, to include as part of the overall transaction sufficient Transaction Geography to ensure that the Qualifying Geography will be 100% covered as required. We reiterate that both the Qualifying Geography and Transaction Geography is not determined by the Commission, but is voluntarily identified by the parties. Both assignees and lessees are required to cover 100% of the Qualifying Geography, and this requirement becomes the assignee's substituted performance obligation in lieu of the service rule obligation. We advise parties to perform the proper due diligence in advance of filing an ECIP application to ensure that site access and/or propagation issues will not prevent the assignee or lessee from meeting its construction requirement. Failure to do so, resulting in subsequent arguments that the 100% Qualifying Geography coverage requirement cannot be met, is a consideration in the Commission's evaluation as to whether the parties entered into a good faith transaction with a *bona fide* intent to meet the program's obligations. Finally, in any transaction involving licenses authorized in mixed spectrum bands, we clarify that all end-user devices operating throughout the Qualifying Geography must be capable of operation on all spectrum bands for contributing licenses that are part of the transaction.

D. Enhanced Competition Incentive Program Benefits

In this final rule, we adopt three ECIP benefits: where applicable, we afford participants a five-year license term extension, a one year construction extension, and alternative construction requirements for rural-focused transactions.

1. License Term Extension

We adopt a five-year license term extension for the following: all parties involved in a qualifying partition/disaggregation transaction; the lessor entering into a qualifying spectrum leasing transaction, given that the lessor retains the license renewal obligations; and the assignee in full license assignments. We believe this benefit will substantially reduce regulatory burdens associated with renewal obligations and will properly incentivize secondary market transactions, particularly spectrum leases that are subject to the lessor's license term. ECIP is available to a wide variety of WRS licenses, most of which have a renewal showing obligation requiring a demonstration of continued service at or above that required to meet the original construction obligation. We believe that the license term extension benefit offers an incentive, consistent with Congressional direction, to licensees that have yet to meet their construction obligations or those that may not have maintained the required level of service throughout the course of their license term.

2. Construction Extension

We adopt a one-year construction extension for all parties to a Qualifying Transaction for both the interim and final construction benchmarks, where applicable. This benefit applies to the following parties in an ECIP transaction: both parties in a Qualifying Transaction involving partition and/or disaggregation; to the lessor in a qualifying spectrum lease arrangement, and to the assignee in a full license assignment. We are not persuaded that additional time beyond a one-year construction extension of the service rule benchmark is warranted as an ECIP benefit. We seek to facilitate secondary market transactions that will benefit those needing increased spectrum access, as well as the provision of advanced telecommunications services to rural areas. Although Congress specifically focused on the Commission affording construction relief to help realize these policy goals, we are mindful that providing additional time to construct, while beneficial to the licensee recipient, correspondingly results in a delay in the ultimate provision of services to the public. Further, pursuant to the MOBILE NOW Act, the Commission is charged with assessing the administrative feasibility of the program, and we believe that substantially adding to the complexity of ECIP by adopting commenter-suggested gradations of construction extension benefits would not be in the public interest. MOBILE NOW Act section 616(b)(2)(D) (codified at 47 U.S.C. 1506(b)(2)(D)). Therefore, we adopt a one-year construction extension for both the interim and final construction benchmarks, where applicable. We also note that the Commission's rules are very clear with regard to circumstances that would not warrant an extension of time, and specifically state that construction and coverage deadline extension requests will not be granted due to transfers of control or assignments of authorization. 47 CFR 1.946(e)(3). For the ECIP program, Congress directed the Commission to consider incentives that we may deem appropriate to facilitate transactions, and specifically included this type of relief as a possible incentive. We find that application of this benefit serves the public interest as an incentive to participate in ECIP. We also clarify that construction deadlines previously extended through grant of a waiver may not be automatically transferrable to the assignee, unless specified by the waiver grant instrument. If transferrable, and where such further transfer is predicated upon the recipient justifying the waiver relief, ECIP assignees must separately justify any waiver relief separate from, and prior to, grant of ECIP benefits.

3. Alternate Construction Benchmarks for Rural-Focused Transactions

For the rural-focused transaction prong, we substitute an assignee's existing service rule-based performance requirement, if applicable, for the entire Transaction Geography as reflected on the assignee's new license created through ECIP, with the alternative construction benchmark described below. This benefit is provided to assignees in a Qualifying Transaction involving partition, partition and disaggregation combination, or full license assignment. Specifically, under ECIP, an assignee or lessee is required to provide 100% coverage to its Qualifying Geography, which is at least 300 square miles for licensed areas up to 30,000 square miles, with upward scaling by licensed area size. Although we require an assignee or lessee to meet the 100% Qualifying Geography coverage requirement to provide rural service in exchange for ECIP benefits, we do not substitute the alternative construction benchmark to leasing arrangements, as the lessee has no service-rule based performance benchmark requiring substitution. Moreover, under the Commission's rules, the lessor has the responsibility to meet underlying performance benchmarks for its entire license and also retains the ability to count any lessee construction towards lessor's buildout obligation. We also clarify that where the Commission has previously modified the assignor's substantive service-based performance requirement through conditions granted by waiver and such requirements have not been met, the assignee will only receive the substituted alternative construction requirement if the assignee separately requests, and is granted, a waiver to receive this ECIP benefit in lieu of the modified performance requirement applicable to the assignor.

We reiterate that although we require 100% coverage of the Qualifying Geography, parties to an ECIP transaction are free to include significantly more geography than the minimum square mileage of Qualifying Geography required to be constructed. In fact, under some circumstances, the Qualifying Geography coverage requirement can likely be met through construction of a single transmitter with approximately a ten mile radius of operation, though we anticipate that assignees or lessees may deploy multiple transmitters to ensure robust network coverage and to provide sufficient buffer to ensure 100% coverage of the Qualifying Geography. We find that substituting service rule requirements with mandatory coverage of Qualifying Geography for those assignees with remaining performance requirements represents a key benefit and an incentive to participate in ECIP, while still requiring a legitimate investment in network infrastructure that will result in public interest benefits in rural areas.

In adopting the substitution of an alternative construction requirement in lieu of service based requirements for rural-focused transactions (for assignees involved in partitioning and/or disaggregation or full license assignments), we clarify our treatment of the interim and final construction deadline in two distinct scenarios. First, where the interim performance requirement has not been met at the time of the ECIP transaction, the assignee meets its interim performance obligation for the entire Transaction Geography specified in its new

authorization (if larger than the Qualifying Geography) by complying with this alternative approach, and we remove the final performance requirement set forth in the service rules for the particular license acquired in the ECIP transaction. Second, where an assignor has previously met the interim construction deadline, this alternative construction benchmark will replace the final construction obligation for the assignee's entire Transaction Geography. We believe this flexible approach will facilitate rural-focused transactions and will ensure a reasonable stakeholder investment in rural buildout sufficient to warrant ECIP benefits. In the event an assignee has no performance obligation because the respective interim and final benchmarks have been satisfied, we do not confer the benefit of a substituted performance obligation.

E. Enhanced Competition Incentive Program Protections Against Waste, Fraud, and Abuse

In this final rule, we adopt several measures to protect the integrity of ECIP from potential waste, fraud, and abuse and to promote the program's goals of increased spectrum access, rural service, and competition. We also clarify that, unless specified herein, participation in the ECIP does not relieve a licensee of the obligation to comply with other Commission rules including, but not limited to, the following: (1) designated entity eligibility requirements or the obligation to make an unjust enrichment payment when required; (2) competitive review of an ECIP transaction if needed; (3) the application of a service-specific spectrum aggregation rule; or (4) obligations required by the Tribal Lands Bidding Credit rule.

These protections include: (1) a requirement for applicants seeking to participate in ECIP to select either the small carrier/Tribal Nation prong or the rural-focused transaction prong, but not both, for each ECIP transaction, without the option of changing prongs once selected; (2) a five-year holding period on licenses assigned through partitioning and/or disaggregation from an ECIP transaction, and a five-year minimum term for leasing arrangements; (3) an operational requirement of 100% coverage of the Qualifying Geography for three consecutive years for rural-focused transactions; (4) automatic termination of the relevant ECIP license and bar from future program participation for a licensee's failure to comply with the five-year holding period or to meet the applicable buildout and operational requirements (as required for rural-focused transactions); and (5) a one-time cap on ECIP benefits for each license subject to a Qualifying Transaction (*e.g.,* the original license and the subsequent license(s) issued from a partition and/or disaggregation). In adopting these program protections, we acknowledge that ECIP is in its nascency, and that we will continue to fine-tune the program to enhance its effectiveness and to better meet our objectives. We also direct the Wireless Telecommunications Bureau to conduct an evaluation of the program and prepare a report to the Commission no later than five years after the effective date of this final rule.

As with any Commission program conferring a benefit and intended to achieve results that serve the public interest, we find it imperative to establish adequate protections to avoid the potential of waste, fraud, and abuse. Indeed, some of the protections we adopt today were specifically included in the MOBILE NOW Act and have been implemented in prior Commission proceedings to guard against anti-competitive behavior and abuse of Commission process. *See, e.g.,* MOBILE NOW Act section 616(b)(3) (codified at 47 U.S.C. 1506(b)(3)) (stating that automatic license termination is the consequence of failure to buildout); 47 CFR 20.22(c) (requiring a holding period for 600 MHz reserve licenses); 47 CFR 1.946(c) (automatic termination for failure to build-out wireless licenses in certain radio services). Based on our experience administering wireless licenses to support the provision of service to rural areas, we find that implementing the protections discussed in more detail below aligns with our program goals and serves the public interest to facilitate, as much as possible, intense spectrum utilization in these underserved areas. We believe that our approach addresses a major commenter concern (ensuring that the assignor/lessor is not unduly punished for the failings of the assignee/lessee) while also protecting ECIP from waste, fraud, and abuse.

1. Single Prong Selection Required for ECIP Participation

To avoid gamesmanship and provide for administrative efficiency, ECIP participant(s) must select either the small carrier/Tribal Nation prong or the rural-focused transaction prong, even if the receiving party is otherwise eligible for both options. We find it more efficient and in the public interest to adopt a requirement that provides a clear and distinct path to ECIP participation by mandating that parties to an ECIP transaction may select either prong, but not both. This approach results in consistent application of program benefits and ensures program integrity by requiring applicants to follow through with their stated commitment to provide certain public interest benefits, and also reduces the potential for gamesmanship in ECIP prong selection. Accordingly, parties to an ECIP transaction are required to make a prong selection in the application filed with the Commission to approve the ECIP transaction, *i.e.,* an FCC Form 603 (for partitions and/or disaggregation) or FCC Form 608 (for leases). Once the associated application has been granted by the Commission, the parties (now ECIP participants) are not permitted to change their selection.

This restriction ensures that no party changes its ECIP prong selection, particularly towards the end of the period allotted for completing construction obligations, thereby leveraging potentially more favorable regulatory requirements. For example: Licensee A (the assignor) and Licensee B (the assignee) both file an FCC Form 603 application, selecting the rural-focused transaction prong, with Licensee B committing to provide service to a partitioned rural area of at least 300 rural square miles of Qualifying Geography as a substitute for an upcoming performance deadlines mandated under our service rules. Under this prong, Licensee B must meet the applicable construction and operational requirements for that area by the extended construction deadline. Once the Commission grants the application, Licensee B is not permitted to later elect, in lieu of meeting its obligation to provide service throughout its chosen Qualifying Geography, to meet the performance requirements applicable under the small carrier or Tribal Nation prong, *i.e.,* covering a percentage of the population within its license area (as required in many flexible wireless radio services), which may include more sub-urban and urban populations—even if Licensee B could have originally qualified for that prong as a small carrier. We clarify that, as with any transaction seeking Commission approval to alienate licensed spectrum, and independent of ECIP, the applicant(s) must otherwise meet the requirements to be Commission licensees and the Commission must deem the transaction to be in the public interest. *See* 47 U.S.C. 310(d).

We find that this approach aligns with the program's goals of fostering increased accessed to spectrum and the provision of rural service, ensures transparency by providing concrete criteria and expectations to program

participants and the public, and is a less burdensome and a more efficient way to administer the program.

2. Holding Period

With certain exceptions described below, we adopt a five-year holding period during which licensees cannot further partition, disaggregate, assign or lease licenses assigned through ECIP. We similarly adopt a five-year minimum lease term for long-term spectrum manager or long-term *de facto* transfer leasing arrangements under ECIP. Specifically, assignees of licenses obtained through partitioning and/or disaggregation or full license assignment pursuant to an ECIP-related transaction may subsequently assign or lease, in whole or in part, those licenses to other entities, regardless of whether the entity receiving the license is ECIP-eligible, only after a five-year holding period starting from the date of license issuance, and provided that the assignee has met any relevant construction requirement (interim and final) and operational requirement discussed below (for rural-focused transactions) for those licenses. We also require lessors and lessees participating in ECIP to commit to at least a five-year lease term for long-term spectrum manager or long-term *de facto* transfer leasing arrangements. We acknowledge that this five-year restriction may not directly align with parties' immediate business needs in all cases, but we believe that this approach, on balance, best promotes the goals of the program, effectively deters unwanted behavior, and serves the public interest.

Restriction on Leasing and Subleasing of Spectrum Rights Obtained through ECIP. We adopt our proposed approach to prohibit the leasing or subleasing of spectrum by ECIP assignees and lessees during the five-year holding period or five-year minimum lease term, respectively. In leasing/subleasing arrangements after the applicable five-year period, the lessee or sublessee will not receive ECIP benefits, consistent with the one-time ECIP benefit rule we discuss below. We remain concerned about situations where, for example, an ECIP licensee (or lessee) monetizes its benefits by further leasing its spectrums rights to a third party, with no guarantee that the lessee/sublessee's activities will yield the public interest benefits intended by ECIP. We therefore decline to allow such leasing arrangements during the relevant five-year period to help ensure program obligations are met by assignees and lessees, given the benefits ECIP provides, and to avoid providing an opportunity for program participants to circumvent our rules.

Exceptions to the Holding Period. Given the realities and challenges of today's ever-growing wireless market, and our consistent approach of providing flexibility to wireless radio service licensees to foster competition, we adopt an exception to the requisite holding period for *pro forma* transactions, including transfers and assignments. We have previously found *pro forma* transactions to be in the public interest because such transactions promote competition by allowing service providers to change their ownership structure or to reorganize without regulatory delay, increasing a provider's ability to compete in today's marketplace—a goal repeatedly advocated by Congress and the Commission.

We also adopt an exception to our holding period for lease arrangements, including subleases, involving providers of Contraband Interdiction Systems (CIS). We find that ECIP restrictions intended to prevent waste, fraud, and abuse should not be applied to vital public safety-related leasing or sub-leasing arrangements intended to deploy systems that prevent contraband wireless device use in correctional facilities. Specifically, to enable an ECIP assignee or lessee to lease/sublease a license (or some portion thereof) to a CIS provider, we will provide an exception to the: (1) five-year holding period or five-year minimum lease term; (2) operational requirement for rural-focused transactions (as applicable); (3) prohibition against leasing/subleasing during the relevant five-year period; and (4) penalties for failing to comply with certain program obligations. We find that this approach is consistent with our ECIP program goals, and enables CIS operation where needed to promote public safety. In adopting this exception, we reiterate that CIS providers require access to all the commercial spectrum bands covering the footprint of the correctional facility to effectively operate, and that any gap in coverage could render the system less effective. Because of these operating parameters, a CIS provider will likely need to enter into multiple spectrum leasing arrangements for the same geographic area covering the correctional facility. Given the public safety importance of protecting correctional facility staff and the public from the potential harms associated with the use of contraband wireless devices, we find it in the public interest to adopt narrow exceptions to the program protections.

We decline to adopt an exception for licensees that are exiting the wireless business. Given the various business models under which WRS licensees operate, we find it impractical to apply a one-size-fits-all standard to a proposed transaction involving an ECIP-participating licensee intending to exit the wireless business. We also note that the Commission does not generally permit a licensee to rely on business decisions and related transactions to justify a request for extension or waiver of performance requirements. *See* 47 CFR 1.946. Further, applying such a rigid standard can also run counter to the goals of the ECIP; if the standard is too lenient, it may be used by an ECIP entity to circumvent the Commission's rules and, if the standard is too harsh, it may prevent program participation and/or hinder competition. We therefore elect to address these types of situations on a case-by-case basis. As such, where an ECIP licensee intends to exit the telecommunications industry prior to the end of the requisite holding period or prior to the expiration of any applicable five-year lease term, we will entertain waiver requests for review under the criteria set forth in § 1.925 of the Commission's rules. *See* 47 CFR 1.925.

We also decline to adopt an exception to the five-year minimum lease term, or an alternative penalty scheme, for lessees that prematurely terminate their lease due to an involuntary transaction, such as bankruptcy. Based on our experience gained by administering transactions involving wireless licenses, we believe that adopting an exception for a lease termination resulting from involuntary transactions is unnecessary as such circumstances are atypical. We recognize, however, that a waiver of the five-year minimum lease term may be sought in unusual circumstances.

3. Operational Requirement for Rural-Focused Transactions

For rural-focused transactions, we adopt an operational requirement whereby the assignee or lessee must operate or provide service throughout the entire Qualifying Geography for a minimum of three consecutive years.

Operational Requirement—Coverage. Given the benefits afforded to participating licensees through ECIP, we find that adopting the operational requirement largely as proposed is in the public interest as a targeted measure to ensure that operation or the provision of service occurs throughout the entire Qualifying Geography for a sustained period. To fulfill the operational requirement, an assignee or lessee of an ECIP rural-focused transaction must, for a minimum of three consecutive years, operate or provide service to 100% of the Qualifying Geography. Specifically,

a common carrier assignee/lessee must provide signal coverage for 100% of the Qualifying Geography and offer commercial service in that area. An assignee/lessee that intends to operate private, internal communications for business purposes, including, for example, utilities, must demonstrate that it has fulfilled the three-year operational requirement by providing 100% signal coverage to the entire Qualifying Geography, and certify that it has provided continuous private communications throughout that area for a minimum of three consecutive years. We also adopt our proposal to impose a minimum level service requirement during the three-year operational period. During this three year period, operation/service must not fall below that used (or intended to be used) to meet the relevant construction requirement for assignees and lessors, and lessees must continue to provide service (or operate, to meet private internal business needs) throughout the entire Qualifying Geography, irrespective of whether the lessor attributes any of the lessee's buildout for its performance benchmark compliance.

For assignees, we note that the applicable Qualifying Geography of which 100% coverage must be met to fulfill the operational requirement could vary, depending on the size of the license(s) contributed. Where the parties in an ECIP transaction elect to contribute different license sizes to the Qualifying Geography, we will determine the size of the Qualifying Geography by using the minimum threshold applicable to the largest contributing license it intersects (*e.g.,* if the Qualifying Geography intersects a contributing license whose licensed area size is 30,001 to 90,000 square miles, the assignee's 100% coverage requirement must be at least 900 square miles, even if the Qualifying Geography also intersects a contributing license with a licensed area of 30,000 square miles or less). In this scenario, where multiple licenses contribute to the Qualifying Geography, to meet the operational requirement, we will also require that all spectrum contributed (if from different spectrum bands) to the Qualifying Geography be accessible by end-user devices operating throughout the Qualifying Geography. By adopting such a requirement, we ensure that the alternative construction benchmark is not used in such a way to undermine an important ECIP goal, the enabling of diverse spectrum access and the provision of service to rural areas.

Operational Requirement—Commencement of Three Year Period. We apply the operational requirement both to assignees (whether through partitioning, partitioning/disaggregation in combination, or full assignment) and lessees. We recognize, however, that the Commission's service rules regulate assignees and lessees differently, with varying rights and responsibilities applicable to each. For example, a lessee does not have service rule-based performance benchmarks or license renewal obligations independent of the licensee lessor, whereas an assignee is issued a separate license, may have independent performance requirements (if not previously met by the assignor), and has renewal obligations. Further, as discussed above, in the case of leasing arrangements under ECIP, we do not substitute the alternate geographic construction requirement for the service-based rule requirement, because the licensee lessor has the option of counting lessee construction towards compliance with lessor's performance benchmark. Given these distinctions in regulatory treatment, we find it in the public interest to adopt, with certain modifications, our proposal regarding the date by which operation or service must commence to ensure both timely construction and three continuous years of operation, and we clarify below the application of the rule in various scenarios that involve assignees versus lessees participating in ECIP.

To not undermine the key ECIP benefit afforded through the extension of the interim and final performance benchmarks associated with an assigned license, we will require an assignee with an upcoming interim benchmark (or final benchmark, if the interim has passed) to commence the three year operational requirement no later than the date of the extended interim (or extended final, if no interim) construction deadline. However, where a license assigned through ECIP has no service rule-based performance requirement because the licensee has met both the interim and final benchmarks, we require the assignee to commence the three year continuous operation requirement no later than two years after consummation of the ECIP transaction. This approach ensures prompt service/operation within the entire Qualifying Geography, regardless of whether the underlying performance requirements of the assignor's license that was partitioned, partition/disaggregated, or fully assigned, have been met. This approach also recognizes that a reasonable period of time might be required to construct the entire Qualifying Geography, particularly where the assignee may have acquired the Qualifying Geography as part of a larger Transaction Geography with plans to operate or provide service beyond the Qualifying Geography as part of a larger network.

With respect to lessees, we require the three year operational period to commence no later than two years following the commencement of the lease, regardless of whether the licensee lessor has an upcoming extended interim and/or final performance benchmark, or whether it has previously met both performance benchmarks. We seek to ensure that leased spectrum within the Qualifying Geography is timely put to use in the public interest, given the ECIP benefits conferred to the licensee/lessor. This approach is therefore warranted, particularly where we do not substitute construction of the Qualifying Geography as an alternative performance requirement (unlike an assignee, where the service rule construction requirement has not yet been met) because a lessee has no independent performance obligation. Moreover, as noted, a licensee/lessor has the option, but is not required, to count lessee construction towards lessor's performance obligation, so lessee construction under the Commission's service rules is not mandatory. By requiring a lessee of spectrum through ECIP to operate or provide service no later than two years following lease commencement, we also ensure three years of continuous operation where ECIP parties enter into the minimum required five year lease term.

We clarify that the date of construction that commences that start of the required three-year period of continuous operation is the date reflected on either: (1) the assignee's timely-filed construction notification required under our service rules, *see* 47 CFR 1.946(d), informing the Commission that the relevant buildout/coverage requirement has been met for the license at issue; or (2) its Initial Operational Requirement Notification, discussed below. Because lessees are not required under our service rules to file construction notifications, their date of actual construction will be the date indicated in its Initial Operational Requirement Notification. If the assignee or lessee files their Initial Operational Requirement Notification prior to the relevant construction deadline, we will count the date of construction certified to in that filing, as reflected in ULS, as the start date for the three-year operational period. For example, where the interim performance benchmark has not been met at the time of the ECIP transaction and the assignee does not fulfill its

construction requirement until the extended interim construction deadline, the date of the extended interim deadline would apply for determining when the operational period commences. Alternatively, where the assignee elects to construct and file a notification with the Commission before the extended interim construction deadline, then the filing date of the notification governs.

Initial and Final Operational Requirement Notifications. In order to ensure that assignees and lessees of rural-focused prong ECIP transactions comply with the operational requirement, we require the filing of two notifications: (1) an Initial Operational Requirement Notification, to be filed within 30 days of the commencement of operations complying with the operational requirement; and (2) a Final Operational Requirement Notification, to be filed within 30 days of satisfaction of the three consecutive year operational requirement. The Initial Operational Requirement Notification must include the following: (1) the date the assignee/lessee began operations; (2) a certification that the assignee/lessee satisfies the operational requirement of 100% coverage of the Qualifying Geography for that license or lease; and (3) technical data demonstrating such compliance. The Final Operational Requirement Notification must also include the following: (1) a certification that the network satisfied the operational requirement of 100% coverage of the Qualifying Geography for three consecutive years; (2) the date on which the three year period was completed; and (3) technical data demonstrating the coverage provided. The Initial Operational Requirement Notification and Final Operational Requirement Notification are required in addition to any construction notification required to be filed with the Commission pursuant to rule § 1.946. 47 CFR 1.946. We direct the Bureau to release a public notice providing program participants with further details regarding compliance with the Initial and Final Operational Requirement Notification procedures including, for example, the filing method and applicable fees. The data obtained from these filings will be critical component part of the Bureau's ECIP Evaluation Report, discussed below.

4. Prohibition on Bad-Faith Transactions

We find it unnecessary to penalize the assignor or lessor when the assignee or lessee is solely at fault for failing to adhere to the holding period, or meet the construction or operational requirement (for rural-focused transactions). In taking this approach, we observe that the assignee/lessee is an unaffiliated entity and that the assignor/lessor is not typically a guarantor of assignee/lessee performance, and therefore penalties should be applied to the party responsible for the violation and its affiliates. Additionally, we are aware that program participation may be hindered if we impose penalties on an assignor/lessor for the failures of the assignee/lessee that are beyond its control.

We remain committed, however, to preventing bad faith transactions which bring no public benefits in return for the ECIP benefits conferred. For instance, a licensee might actively seek an ECIP-eligible entity to derive ECIP benefits through a lease of unused spectrum rights without regard for whether that entity has the financial or technical resources to meet program requirements. Such agreements also might include compensating that recipient entity to participate in a transaction.

Accordingly, we will not penalize assignors/lessors that enter into good faith transactions with assignees/lessees for subsequent assignee/lessee failure to meet program obligations. However, where the assignor/lessor is found to have entered into a transaction solely to reap program benefits, whereby it knew or should have known the assignee/lessee could or would not meet program obligations, we will bar the assignor/lessor entity and its affiliates from future participation in ECIP (as discussed below), and may impose monetary penalties if appropriate. In taking this approach, we strike a balance between fostering spectrum access, increased competition, and facilitating service to rural areas through program incentives, and adopting appropriate protective measures that will not unduly hinder program effectiveness.

To address this concern, we require two new certifications to be included in the assignment and/or lease applications (FCC Forms 603 and 608, respectively). First, each party to the transaction must certify either that: (1) the licensee or lessor did not confer any benefit (monetary or otherwise) to the assignee/lessee as consideration for entering into the proposed ECIP transaction; or (2) if the parties cannot make this certification, provide a description of the benefit(s) conferred. In some transactions, for example, the consideration to an assignee or lessee might include roaming privileges or sharing of infrastructure that would not be indicative of a bad faith transaction, but which nonetheless merits Commission review to ensure program integrity. Second, each party to the transaction must certify that it has entered into the transaction in good faith and that the licensee/lessor reasonably believes that the assignee/lessee has the resources and a *bona fide* intent to meet the program's obligations. We caution prospective ECIP participants that making a false certification or providing false information in an assignment or lease application is a violation of the Commission's rules, which may result in a forfeiture or other penalties. *See* 47 CFR 1.17, 1.80. Additionally, as indicated in FCC Form 603 and 608, making a willful false statement in the form or attachment is punishable by fine and/or imprisonment (under 18 U.S.C. 1001) and/or revocation of any station license or construction permit (under 47 U.S.C. 312(a)(1)), and/or forfeiture (47 U.S.C. 503). Additionally, we direct the Bureau to refer suspected ECIP-related fraud or misrepresentation to the Enforcement Bureau.

5. Automatic Termination and Future Bar From ECIP Participation for Failing To Meet Certain ECIP Requirements

Consistent with the MOBILE NOW Act, we adopt our proposal to automatically terminate any license(s) assigned as part of an ECIP transaction where the assignee: (1) fails to comply with the five-year holding period; (2) fails to meet the relevant buildout requirement(s); and/or (3) fails to fully comply with the operational requirement (for rural-focused transactions). We also bar from future program participation the licensee that was the subject of the automatic termination and/or any lessee that fails to comply with the holding requirement (including by subleasing or prematurely terminating their lease) or is found to have engaged in a bad faith transaction to obtain ECIP benefits, as well as any affiliate of those entities. This bar will also apply to lessors that prematurely terminate a qualifying lease. In addition, to ensure program integrity, we clarify that the bar will apply indefinitely to the licensee, lessor, and/or lessee, including any of its affiliates. This means any officer, director, or entity that directly or indirectly controls the licensee or is directly or indirectly controlled by the licensee, may be within the scope of persons subject to the bar. In order to maximize administrative efficiency, while also minimizing gamesmanship of our prohibition on barred entities participating in ECIP, a prospective ECIP participant will be considered ''an

affiliate of a barred entity'' if it was affiliated with that entity either when the barred entity applied for the program for the transaction for which it was barred *or* at the time the prospective ECIP applicant applied to participate in the program. Once a licensee/lessee has been barred from program participation, it will no longer be eligible for ECIP benefits for future transactions, even if it enters into transactions that would otherwise be eligible for such benefits.

We find that the two consequences we adopt today, *i.e.,* automatic license termination and a bar on future program participation, are necessary and appropriate measures to deter program waste, fraud, and abuse, given the substantial benefits being offered to ECIP participants. Based on our experience administering wireless licenses and programs that provide benefits in furtherance of the public interest, we find that these two penalties are appropriate measures to incentivize program participants to fulfill their core program requirements. Importantly, the automatic termination provision is consistent with section 616 of the MOBILE NOW Act, which provides that ''the right to the spectrum shall be forfeited'' if a party ''fails to meet any build out requirements set by the Commission.'' MOBILE NOW Act section 616(b)(3), (codified at 47 U.S.C. 1506(b)(3)). We also adopt these penalties to impress upon program participants the importance of meeting the obligations associated with receiving ECIP benefits and the general need for program compliance to ensure the program operates effectively.

At the same time, we seek to encourage ECIP participation by ensuring that the penalties are targeted and proportional to the gravity of the program participant's failure to meet its ECIP obligations. We therefore limit the scope of actions that would merit automatic license termination against the ECIP assignee to the following: (1) failure to meet the five-year holding period; (2) failure to meet the relevant construction requirement for all the license(s) at issue, either interim or final deadline; and (3) failure to meet the 100% coverage and three-year operational requirement for the Qualifying Geography. The actions that will result in a bar from future participation in ECIP by the culpable party, as applicable, and its affiliates, are: (1) prematurely terminating a lease within the minimum five-year term or entering into a sublease in violation of ECIP rules; (2) failure to meet the five-year holding period; (3) failure to meet the relevant construction requirement for the license(s) at issue, either interim or final deadline; (4) failure to meet the 100% coverage and three-year operational requirement for the Qualifying Geography; and (5) entering into a transaction in bad faith, solely for the purpose of obtaining program benefits.

We clarify that, where appropriate, the automatic termination penalty will apply to the subject license regardless of whether the service rules for that license would yield a more lenient result. We also note that since an ECIP lessee does not hold the license subject to a qualifying lease, the automatic license termination penalty would not apply to it. With respect to an assignee failure identified above in a rural-focused transaction, the automatic termination penalty will apply to each license that makes up any part of the Qualifying Geography. For example, if an ECIP transaction results in two assigned licenses each consisting of Qualifying Geography of 150 square miles for a total of 300 square miles of Qualifying Geography, the assignee's failure to timely construct either license will result in the termination of both licenses, given our requirement that the entire Qualifying Geography must be constructed given the ECIP benefits conferred.

Date on Which a Barred Licensee/Lessee Will Lose Eligibility to Participate in the ECIP and Contents of Notification. When an ECIP licensee/lessee has failed to meet one or more of the above criteria by the relevant deadline(s), the bar commences on the date the licensee/lessee receives notice, which the Bureau will provide by letter. The letter will specify the reasons why the licensee/lessee will no longer be permitted to participate in ECIP and explain the scope and effect of the penalty. Additionally, we find that, consistent with the Commission's notice rules, notice has been provided once the Bureau sends such letter via electronic mail, using the last email address of record in ULS for that licensee/lessee. 47 CFR 1.5.

Effect of Being Barred from Program Participation. Once an ECIP participant has been barred from future program participation, it, along with its affiliates, are no longer eligible to receive ECIP benefits for entering into subsequent Qualifying Transactions. This applies to all parties in a transaction which would otherwise be ECIP-eligible; if a barred entity is a party to the transaction, it is not ECIP-eligible and no ECIP benefits will flow to any party to that transaction, even if the transaction meets all other ECIP criteria. Given that the established bar is from future program participation, a barred licensee/lessee will continue to receive existing ECIP benefits acquired through unrelated prior ECIP transactions, provided those benefits were conferred prior to the start date of the bar. We clarify that once an entity has been barred from participation in the program, the Commission will not process a pending application for ECIP participation to which it is a party, even where the application was initially accepted for filing prior to the date the bar commenced.

6. Limitations on Additional ECIP Benefits for Subsequent Transactions

We will not provide additional ECIP benefits where a licensee has already received benefits for a license involved in a previous ECIP transaction. Specifically, if a license in a given transaction has previously been involved in any ECIP-related transaction and received ECIP benefits as a result, any party that holds that license (or some portion thereof) cannot subsequently receive ECIP benefits by including that license (including any sub-parts of the license, spectrally or geographically) in another ECIP transaction. This restriction applies to the original license in the ECIP transaction, as well as to the licenses issued through a partition and/or disaggregation. We adopt this limitation to prevent licensees from undermining our renewal and construction requirements by compounding ECIP-related extensions through multiple ECIP transactions.

F. ECIP Evaluation Report

To ensure ECIP promotes competition and increases spectrum access for small carriers and Tribal Nations, as well as increases service to rural areas, we direct the Bureau to evaluate the progress and effectiveness of the ECIP program and submit a report to the Commission, no later than five years following the effective date of this final rule. Because the report could benefit from input from interested stakeholders, we also direct the Bureau and the Consumer and Governmental Affairs Bureau to conduct outreach, prior to the Bureau drafting the report, in order to yield meaningful evaluation and feedback of the ECIP from those interested stakeholders. As part of this outreach, we expect that both the Bureau and the Consumer and Governmental Affairs Bureau will monitor the program's effectiveness for Tribal Nations. The report should include information about ECIP participation by eligible stakeholders, including the number of ECIP

transactions since the inception of the program, as well as geographic areas and spectrum made available under each prong of the program. The report may include recommended rule and policy changes that would help improve the effectiveness of the program, including an assessment of whether the program is achieving benefits for Tribal Nations. Finally, the report should be made publicly available, although the Bureau may also prepare a non-public version with commercially sensitive information, if needed.

G. Reaggregation of Spectrum Licenses

Independent of establishing ECIP, we adopt rules permitting license reaggregation up to the original geographic size and spectrum band(s) for the type of license, and also adopt accompanying proposed safeguards. We find that allowing reaggregation will ease the administrative burden on both licensees and Commission staff. Further, we find that allowing reaggregation will create more certainty regarding our secondary markets rules and procedures to encourage licensees to engage in these types of transactions in the first instance.

Specifically, applicants seeking license reaggregation will be required to submit an application requesting a major modification pursuant to Commission rule § 1.929, 47 CFR 1.929, as well as an attachment certifying compliance with three safeguards. The compliance certification must state that each license to be reaggregated has: (1) met all performance requirements (both interim and final benchmarks); (2) been renewed at least once after meeting any relevant continuing service or operational requirements; and (3) not violated the Commission's permanent discontinuance rules. These safeguards are intended to ensure that licensees seeking to reaggregate licenses are not doing so merely to avoid complying with the regulatory requirements (*e.g.* meeting performance benchmarks) associated with each license to be reaggregated.

After review of the record, we agree with the majority of commenters that argue allowing reaggregation creates a certainty that a license holder could re-aggregate partitioned or disaggregated licenses in the future which would eliminate a potential reason not to partition or disaggregate in the first instance. We find that establishing a formal process for license reaggregation reduces regulatory and administrative burdens and could incentivize, not undermine, secondary market transactions consistent with the purposes of the ECIP and the goals of the MOBILE NOW Act. As the record reflects, we anticipate that requests for reaggregation will be submitted by licensees that, for business reasons, have reacquired licenses in their (or an affiliated party's) name potentially as part of a larger transaction, and now seek to reaggregate previously partitioned and/or disaggregated licenses into a single license largely for administrative purposes. We find that the substantial benefit of establishing a formal process for license reaggregation, coupled with our proposed safeguards to qualify for reaggregation, renders a five-year holding period unnecessary. Accordingly, we adopt our proposal to permit license reaggregation, up to the original geographic size and spectrum band(s) for the type of license, including the three safeguards described above to protect against potential abuses. We also clarify that in the event licenses identified in a voluntarily filed application for reaggregation have varying expiration dates, we will apply the earliest such date to the overall reaggregated license for reasons of administrative convenience, and to prevent the windfall of license term extensions achieved merely by seeking license reaggregation.

Treatment of Existing Waivers Grants or Special Conditions. We find it in the public interest to apply a flexible approach to reaggregation requests that maintains previously granted relief where applicable. We also find, however, that an automatic application of the terms and conditions of an individual license, that may have been subject to waiver relief, to the entire reaggregated license is not warranted absent a separate justification. We will apply special conditions (to reflect prior grant of waiver of application or special conditions) to a reaggregated license as necessary to identify the appropriate type and scope of relief, both spectrally and geographically, applicable to subparts of that license (*e.g.,* variations in transmit power levels, out-of-band emission limits or other technical parameters, or alternative interference protection criteria, for specific spectrum or geographic areas associated with the reaggregated license). Finally, we direct the Bureau to issue a public notice confirming the administrative details of required filings including, for example, the filing method, electronic map format, and applicable fees. *See, e.g., Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations,* Docket No. 10–90, Public Notice, 31 FCC Rcd 12900 (WCB 2016) (providing guidance Public Notice (PN) describing required information and filing parameters to enable carrier compliance with earlier Commission order); *Wireless Telecommunications Bureau To Accept 900 MHz Broadband Segment Applications Beginning May 27, 2021,* WT Docket No. 17–200, Public Notice, 36 FCC Rcd 7377 (WTB 2021).

List of Subjects in 47 CFR part 1

Practice and procedure, Reporting and recordkeeping requirements, Telecommunications, Wireless radio services.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Delayed indefinitely, amend § 1.929 by adding paragraph (a)(7) to read as follows:

§ 1.929 Classification of filings as major or minor.

* * * * *

(a) * * *

(7) Application or amendment requesting reaggregation of licenses pursuant to § 1.950.

* * * * *

■ 3. Amend § 1.948 by revising paragraph (j) to read as follows:

§ 1.948 Assignment of authorization or transfer of control, notification of consummation.

* * * * *

(j) *Processing of applications.* Applications for assignment of authorization or transfer of control relating to the Wireless Radio Services will be processed pursuant either to general approval procedures or the immediate approval procedures, as discussed in this paragraph (j).

(1) *General approval procedures.* Applications will be processed pursuant to the general approval procedures set forth in this paragraph unless they are submitted and qualify for the immediate approval procedures set forth in paragraph (j)(2) of this section.

(i) To be accepted for filing under these general approval procedures, the

application must be sufficiently complete and contain all necessary information and certifications requested on the applicable form, FCC Form 603, including any information and certifications (including those of the proposed assignee or transferee relating to eligibility, basic qualifications, and foreign ownership) required by the rules of this chapter and any rules pertaining to the specific service for which the application is filed, and must include payment of the required application fee(s) (see § 1.1102).

(ii) Once accepted for filing, the application will be placed on public notice, except no prior public notice will be required for applications involving authorizations in the Private Wireless Services, as specified in § 1.933(d)(9).

(iii) Petitions to deny filed in accordance with section 309(d) of the Communications Act must comply with the provisions of § 1.939, except that such petitions must be filed no later than 14 days following the date of the public notice listing the application as accepted for filing.

(iv) No later than 21 days following the date of the public notice listing an application as accepted for filing, the Wireless Telecommunications Bureau (Bureau) will affirmatively consent to the application, deny the application, or determine to subject the application to further review. For applications for which no prior public notice is required, the Bureau will affirmatively consent to the application, deny the application, or determine to subject the application to further review no later than 21 days following the date on which the application has been filed, if filed electronically, and any required application fee has been paid (see § 1.1102); if filed manually, the Bureau will affirmatively consent to the application, deny the application, or determine to subject the application to further review no later than 21 days after the necessary data in the manually filed application is entered into ULS.

(v) If the Bureau determines to subject the application to further review, it will issue a public notice so indicating. Within 90 days following the date of that public notice, the Bureau will either take action upon the application or provide public notice that an additional 90-day period for review is needed.

(vi) Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application.

(vii) Grant of consent to the application will be reflected in a public notice (see § 1.933(a)) promptly issued after the grant.

(viii) If any petition to deny is filed, and the Bureau grants the application, the Bureau will deny the petition(s) and issue a concise statement of the reason(s) for denial, disposing of all substantive issues raised in the petition(s).

(2) *Immediate approval procedures.* Applications that meet the requirements of paragraph (j)(2)(i) of this section qualify for the immediate approval procedures.

(i) To qualify for the immediate approval procedures, the application must be sufficiently complete, contain all necessary information and certifications (including those relating to eligibility, basic qualifications, and foreign ownership), and include payment of the requisite application fee(s), as required for an application processed under the general approval procedures set forth in paragraph (j)(1) of this section, and also must establish, through certifications, that the following additional qualifications are met:

(A) The license does not involve spectrum licensed in a Wireless Radio Service that may be used to provide interconnected mobile voice and/or data services under the applicable service rules and that would, if assigned or transferred, create a geographic overlap with spectrum in any licensed Wireless Radio Service (including the same service) in which the proposed assignee or transferee already holds a direct or indirect interest of 10% or more (see § 1.2112), either as a licensee or a spectrum lessee, and that could be used by the assignee or transferee to provide interconnected mobile voice and/or data services;

(B) The licensee is not a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules (see §§ 1.2110, and 1.2111 and §§ 24.709, 24.714, and 24.839 of this chapter);

(C) The assignment or transfer of control does not require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules in this chapter, and there is no pending issue as to whether the license is subject to revocation, cancellation, or termination by the Commission; and

(D) The assignment application does not involve a transaction in the Enhanced Competition Incentive Program (see subpart EE of this part).

(ii) Provided that the application establishes that it meets all of the requisite elements to qualify for these immediate approval procedures, consent to the assignment or transfer of control will be reflected in ULS. If the application is filed electronically, consent will be reflected in ULS on the next business day after the filing of the application; if filed manually, consent will be reflected in ULS on the next business day after the necessary data in the manually filed application is entered into ULS. Consent to the application is not deemed granted until the Bureau affirmatively acts upon the application.

(iii) Grant of consent to the application under these immediate approval procedures will be reflected in a public notice (see § 1.933(a)) promptly issued after the grant, and is subject to reconsideration (see §§ 1.106(f), 1.108, and 1.113).

■ 4. Delayed indefinitely, amend § 1.950 as follows:

■ a. Revise the section heading;

■ b. Add paragraphs (a)(4) and (b)(3);

■ c. Revise the heading of paragraph (c) and paragraph (e); and

■ d. Add paragraph (i).

The revisions and additions read as follows:

§ 1.950 Geographic partitioning, spectrum disaggregation, and reaggregation.

(a) * * *

(4) *Reaggregation.* Reaggregation is the consolidation into a single license of two or more licenses previously disaggregated and/or partitioned.

(b) * * *

(3) *Reaggregation.* An eligible licensee may reaggregate its covered geographic license(s), provided the requirements of paragraph (i) of this section are met, and subject to the following exceptions:

(i) 220 MHz Service licensees must comply with § 90.1019 of this chapter.

(ii) Cellular Radiotelephone Service licensees must comply with § 22.948 of this chapter.

(c) *Partitioning and disaggregation filing requirements.* * * *

* * * * *

(e) *License term.* The license term for a partitioned license or a disaggregated spectrum license is the remainder of the original licensee's license term. The license term for a reaggregated license is the remainder of the license term of the license with the earliest expiration date of those included in the underlying reaggregation application.

* * * * *

(i) *Reaggregation of licenses.* A licensee may apply to reaggregate two or more licenses that were previously disaggregated or partitioned pursuant to this section. Licenses may be reaggregated in any combination up to, but not exceeding, the original geographic size and/or spectrum band(s) for the type of Wireless Radio Service license at issue (*i.e.,* a licensee may, but

is not required, to reaggregate all licenses which were once part of the original license).

(1) *Prerequisites for reaggregation.* Licenses will only be eligible for reaggregation if they meet the following requirements:

(i) All licenses to be reaggregated must be of the same radio service, and have the same market and channel block;

(ii) Each license to be reaggregated must have met all applicable performance requirements, including any interim and final requirements, prior to the filing of the reaggregation application;

(iii) Each license to be reaggregated must have been renewed for at least one license term since the applicable performance requirements were met; and

(iv) None of the licenses for which an applicant seeks reaggregation have violated the Commission's permanent discontinuance rules, as applicable to that license.

(2) *Filing requirements for reaggregation.* Parties seeking approval for reaggregation must apply by filing a major modification application using FCC Form 601 that complies with the filing requirements described in §§ 1.913, 1.929, and 1.947, and that includes the following attachments:

(i) A certification that the licenses meet the requirements of paragraphs (i)(1)(i) through (iv) of this section;

(ii) An electronic map and table that together identify all licenses and spectrum to be aggregated and identify the composite license requested;

(iii) A certification that all licenses in the reaggregation request are active under the same FCC Registration Number at the time of filing;

(iv) A per-license list of all special conditions and a statement acknowledging that the listed special conditions will continue to apply only to that portion of the reaggregated license with respect to the spectrum and/or geography at issue, as if the license had not been reaggregated; and

(v) A per-license list of all waivers granted and a statement of understanding that the listed waiver(s) do not automatically convey to any other portion of the reaggregated license. If applicable, the applicant shall include a statement indicating that it is seeking waiver relief through a separately filed waiver request seeking to expand the scope of previously granted relief.

■ 5. Amend § 1.9020 as follows:

■ a. Remove ''and,'' at the end of paragraph (e)(2)(i)(B);

■ b. Remove the period at the end of paragraph (e)(2)(i)(C) and add ''; and'' in its place; and

■ c. Add paragraph (e)(2)(i)(D).

The addition reads as follows:

§ 1.9020 Spectrum manager leasing arrangements.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(D) The application does not involve a transaction in the Enhanced Competition Incentive Program (see subpart EE of this part).

* * * * *

■ 6. Amend § 1.9030 as follows:

■ a. Remove ''and,'' at the end of paragraph (e)(2)(i)(B);

■ b. Remove the period at the end of paragraph (e)(2)(i)(C) and add ''; and'' in its place; and

■ c. Add paragraph (e)(2)(i)(D).

The addition reads as follows:

§ 1.9030 Long-term *de facto* transfer leasing arrangements.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(D) The application does not involve a transaction in the Enhanced Competition Incentive Program (see subpart EE of this part).

* * * * *

■ 7. Add subpart EE, consisting of §§ 1.60000 through 1.60007, to read as follows:

Subpart EE—Enhanced Competition Incentive Program

Sec.

§ 1.60000 Purpose.

The purpose of this subpart is to implement the Enhanced Competition Incentive Program (ECIP), a program designed to incentivize Qualifying Transactions in the Wireless Radio Services to increase spectrum access for small carriers and Tribal Nations and to increase competition, and also facilitate the provision of advanced telecommunications services in rural areas by eligible entities.

§§ 1.60001–1.60007 [Reserved]

■ 8. Delayed indefinitely, add §§ 1.60001 through 1.60007 to read as follows:

Sec.

§ 1.60001 Definitions.

The following definitions are applicable to the ECIP.

(a) *Affiliate.* A person holding an attributable interest in an applicant if such individual or entity:

(1) Directly or indirectly controls or has the power to control the applicant; or

(2) Is directly or indirectly controlled by the applicant; or

(3) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant; or

(4) Has an ''identity of interest'' with the applicant.

Note 1 to paragraph (a). See §§ 1.2110 and 1.2112(a)(1) through (7) for further clarification on determining affiliation.

(b) *Qualifying transaction.* A transaction between unaffiliated parties involving a partition and/or disaggregation, long-term leasing arrangement, or full assignment that meets the requirements of either the small carrier or Tribal Nation transaction prong pursuant to § 1.60002 or the rural-focused transaction prong pursuant to § 1.60003.

(c) *Qualifying geography.* Qualifying Geography is the minimum geography threshold required for the rural-focused transaction prong.

(d) *Rural area.* Rural area is any area except:

(1) A city, town, or incorporated area that has a population of more than 20,000 inhabitants; or

(2) An urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants.

(e) *Small carrier.* A small carrier is a carrier, defined as any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy in section 3 of the Communications Act of 1934 (47 U.S.C. 153), that:

(1) Has not more than 1,500 employees (as determined under 13 CFR 121.106); and

(2) Offers services using the facilities of the carrier.

(f) *Transaction geography.* Transaction Geography is the total geography included in a Qualifying Transaction.

(g) *Tribal nation.* A Tribal Nation is any federally-recognized American Indian Tribe and Alaska Native Village, the consortia of federally recognized

Tribes and/or Native Villages, and other entities controlled and majority-owned by such Tribes or consortia.

§ 1.60002 Application requirements for program participation.

Applicants seeking to participate in the ECIP must submit an application on FCC Form 603 or 608, as applicable, to the Wireless Telecommunications Bureau for review and approval that details a Qualifying Transaction through a partition and/or disaggregation pursuant to § 1.950, a full assignment pursuant to § 1.948, a long-term spectrum manager lease arrangement pursuant to § 1.9020, or a long-term *de facto* transfer lease arrangement pursuant to § 1.9030, and that:

(a) Designates that the Qualifying Transaction identified in the application seeks consideration under the ECIP;

(b) Selects the prong applicable to its Qualifying Transaction, either § 1.60003 or § 1.60004, but not both, even if a party to the transaction is eligible under both prongs, and demonstrates that the applicants meet each requirement under § 1.60003 or § 1.60004;

(c) Demonstrates that the applicants to the Qualifying Transaction are unaffiliated by providing a list of all affiliated entities for each party to the transaction through the filing of a new FCC Form 602, or the filing of an updated FCC Form 602 if the ownership information is not current;

(d) Includes a certification that the applicants to the Qualifying Transaction are not barred from the ECIP pursuant to § 1.60007;

(e) Includes a certification that the license(s) included in the application have not previously received benefits under the ECIP pursuant to § 1.60005(e);

(f) Includes a certification that the applicants entered into the Qualifying Transaction in good faith and that the licensee/lessor reasonably believes the assignee/lessee has the resources and a bona fide intent to meet the program's obligations;

(g) Includes a certification that the assignor or lessor either did not confer any benefit (monetary or otherwise) to the assignee or lessee as consideration for entering into the proposed ECIP transaction or, if benefits were conferred to the assignee or lessee, the application must include a narrative with a detailed description of any benefits so conferred by the assignor or lessor to the assignee or lessee, respectively; and

(h) Includes a certification that any lease arrangement entered into for purposes of ECIP participation is for a minimum term of five (5) years, whether a long-term *de facto* transfer lease arrangement or a long-term spectrum manager lease arrangement.

§ 1.60003 Small carrier or tribal nation transaction prong.

(a) *Eligibility.* The following parties are eligible to participate through a Qualifying Transaction under the small carrier or Tribal Nation transaction prong of the ECIP: an assignor that is a covered geographic licensee as defined under § 1.907; a lessor in an included service as set forth in § 1.9005 that is also a covered geographic licensee as defined under § 1.907; and an unaffiliated assignee or unaffiliated lessee that is a small carrier or a Tribal Nation as defined in this subpart, except that a transaction shall not be eligible for participation in the ECIP under this prong if it includes either:

(1) A license(s) with existing shared construction obligations pursuant to § 1.950(g);

(2) An application to participate in ECIP that includes an election from the parties to share construction obligations pursuant to § 1.950(g);

(3) A light-touch leasing spectrum manager lease arrangement(s) of 3.5 GHz Priority Access Licenses in the Citizens Band Radio Service; or

(4) An application to participate in ECIP that includes a barred party pursuant to § 1.60007.

(b) *Qualification requirements.* An applicant in a Qualifying Transaction under the small carrier or Tribal Nation transaction prong must demonstrate that:

(1) The ECIP transaction involving a disaggregation, partition/disaggregation in combination, full license assignment, or a lease, includes a minimum of 50% of the licensed spectrum, and meets the minimum spectrum threshold at every point in the Transaction Geography (where the percentage is calculated at any point as the amount of spectrum being assigned/leased (in megahertz)/ total spectrum held under the license (in megahertz);

(2) The ECIP transaction involving a partition, partition/disaggregation in combination, full license assignment, or a lease, includes a minimum Transaction Geography of 25% of the total licensed area for licenses with a licensed area that contains 30,000 square miles or less, or a minimum Transaction Geography of 10% of the total licensed area for licenses with a licensed area 30,001 square miles or larger;

(3) If a lease arrangement, the minimum term of a long-term spectrum manager lease or *de facto* transfer lease is at least five (5) years; and

(4) The ECIP transaction was entered into in good faith with a bona fide intent by all parties to meet the program's obligations.

(c) *Qualifying Transaction limitations.* Multiple licenses may be included in a Qualifying Transaction between unaffiliated parties under this prong, however, spectrum and geography cannot be aggregated across multiple licenses to meet the respective minimum thresholds; each license in a Qualifying Transaction shall be considered separately and must independently meet the respective minimum spectrum and geography thresholds in paragraph (b) of this section. Each license included in a Qualifying Transaction under this prong shall either be the subject of an assignment (full, partition and/or disaggregation) or a lease arrangement, but not both. A party to a Qualifying Transaction under this prong is not permitted to assign a part of a license and lease a different part of the same license to meet the respective minimum spectrum and geographic thresholds.

§ 1.60004 Rural-focused transaction prong.

(a) *Eligibility.* The following parties are eligible to participate through a Qualifying Transaction under the rural-focused transaction prong of the ECIP: an assignor that is a covered geographic licensee as defined by § 1.907; a lessor in an included service as set forth in § 1.9005 that is also a covered geographic licensee as defined by § 1.907; and an unaffiliated assignee or lessee that commits to meeting the requirements of the rural-focused transaction prong, except that a transaction shall not be eligible for participation in the ECIP under this prong if it includes either:

(1) A license(s) with existing shared construction obligations pursuant to § 1.950(g);

(2) An application to participate in ECIP that includes an election from the parties to share construction obligations pursuant to § 1.950(g);

(3) A light-touch leasing spectrum manager lease arrangement(s) of 3.5 GHz Priority Access Licenses in the Citizens Band Radio Service; or

(4) An application to participate in ECIP that includes a barred party pursuant to § 1.60007.

(b) *Qualification requirements.* An applicant in a Qualifying Transaction under the rural-focused transaction prong must demonstrate that:

(1) The ECIP transaction involving a disaggregation, partition/disaggregation in combination, or a lease, includes a minimum of 50% of the licensed

spectrum, and meets the minimum spectrum threshold at every point in the Transaction Geography (where the percentage is calculated at any point as the amount of spectrum being assigned/leased (in megahertz)/total spectrum held under the license (in megahertz));

(2) The minimum Qualifying Geography threshold of exclusively rural area is included in the application based on the following scaled categories:

(i) 300 contiguous square miles for contributing licenses with licensed area containing up to 30,000 square miles;

(ii) 900 contiguous square miles for contributing licenses with licensed area containing between 30,001–90,000 square miles;

(iii) 5,000 contiguous square miles for contributing licenses with licensed area containing between 90,001–500,000 square miles; or

(iv) 15,000 contiguous square miles for contributing licenses with licensed area containing 500,001 square miles or more;

(3) If a lease arrangement, the minimum term of a long-term spectrum manager lease or *de facto* transfer lease is at least five (5) years; and

(4) The ECIP transaction was entered into in good faith with a bona fide intent by all parties to meet the program's obligations.

(c) *Multiple contributing licenses.* Qualifying Transactions between unaffiliated parties under the rural-focused transaction prong must specify at least one area of Qualifying Geography, and one or more licenses may contribute, via any combination of full assignment, partitioning and/or disaggregation, and/or lease(s), provided the Qualifying Geography intersects each contributing license included in the underlying application. Where multiple licenses with different size licensed areas are included in the Qualifying Transaction and each contributes to the Qualifying Geography, the Qualifying Geography must consist of the minimum geographic threshold applicable to the contributing license with the greatest square mileage in its licensed area.

§ 1.60005 Program benefits.

(a) *Program benefits.* The following benefits for license(s) included in an ECIP Qualifying Transaction filed pursuant to § 1.60002, shall be conferred upon consummation of a Commission approved assignment application, grant of a *de facto* transfer lease application, or acceptance of a spectrum manager lease application, as specified:

(1) *License term extension.* All parties to a partition and/or disaggregation Qualifying Transaction; the lessor entering into a spectrum lease arrangement Qualifying Transaction; and the assignee in a full license assignment Qualifying Transaction, shall receive a five-year license term extension on the license(s) subject to the application.

(2) *Construction extension.* All parties to a partition and/or disaggregation Qualifying Transaction; the lessor entering into a spectrum lease arrangement Qualifying Transaction; and the assignee in a full license assignment Qualifying Transaction, shall receive a one-year construction extension of both the interim and final performance requirement deadline, where applicable, on the license(s) subject to the application. Where the Commission has previously extended a performance requirement deadline on the license(s) and that deadline has not passed, the one year extension conferred through ECIP is in addition to the prior extension, provided the extension that was previously granted, whether by rule or through waiver, is transferrable, and the assignee separately justifies such relief if required.

(3) *Substitution of alternative construction requirement.* The assignee in a qualifying partition, combination partition disaggregation transaction, or full license assignment filed under the rural focused-transaction prong in § 1.60004, shall be subject to the alternative construction requirement set forth in § 1.60006 in lieu of any applicable service-based performance requirement for the license(s) resulting from an ECIP transaction. Where the Commission has previously modified the assignor's substantive service-based performance requirement through conditions granted by waiver and such requirements have not been met, the assignee will receive the substituted alternative construction requirement benefit if the assignee separately requests, and is granted, a waiver.

(b) *Limitation on duplicative benefits.* (1) A license included in a Commission approved Qualifying Transaction in the ECIP shall be eligible for program benefits a single time per license for the license term and all subsequent renewal terms.

(2) A license, including a license resulting from a partition and/or disaggregation, previously included in a Qualifying Transaction approved by the Commission in the ECIP, shall be ineligible to receive benefits in any subsequent ECIP transaction, regardless of whether the current licensee was the beneficiary in the original or a subsequent Qualifying Transaction.

§ 1.60006 Program obligations.

(a) *Compliance with requirements under selected prong.* An assignee or lessee must comply with the requirements of either the small carrier or Tribal Nation transaction prong in § 1.60003 or the rural-focused transaction prong in § 1.60004, as selected in its ECIP application, and is not permitted to change prongs after the consummation of the Commission approved assignment application, grant of a *de facto* transfer lease application, or acceptance of a spectrum manager lease application for a Qualifying Transaction in ECIP.

(b) *Construction requirement for rural-focused transaction prong assignees.* Assignees shall be subject to the following construction requirements for any resulting license(s) granted in a Commission approved Qualifying Transaction through partition, a combination partition/disaggregation, or full license assignment filed under the rural-focused transaction prong in ECIP, which supersedes any service-based requirement:

(1) The assignee must construct and operate, or provide signal coverage and offer service to, 100% of the Qualifying Geography identified in the Commission approved Qualifying Transaction.

(2) The construction period is the applicable construction deadline identified on the respective license(s), as extended by § 1.60005. If no such deadline remains for the license(s), the assignee must construct and operate, or provide signal coverage and offer service to, 100% of the Qualifying Geography no later than two (2) years after the consummation of the Commission approved application.

(3) Where the assignee is subject to both an interim and final performance benchmark, the performance requirements in this paragraph (b) shall replace the interim performance benchmark and the assignee shall not be subject to a final performance requirement. Where the assignee has only a remaining final performance requirement, the performance requirements in this paragraph (b) shall replace the final benchmark.

(4) All end user devices throughout the Qualifying Geography must be capable of operation on all spectrum bands associated with license(s) that contribute to the Qualifying Geography.

(5) Consistent with § 1.946(d), notification of completion of construction must be provided to the Commission through the filing of FCC Form 601, no later than 15 days after the applicable construction deadline or the expiration of the two (2) year period in paragraph (b)(2) of this section.

(c) *Operational requirement for rural-focused transaction prong assignees.* Assignees in a Commission approved rural-focused transaction pursuant to § 1.60004 are subject to the following operational requirements:

(1) Assignees must construct and operate in, or provide signal coverage and offer service to, 100% of the Qualifying Geography identified in the Commission approved Qualifying Transaction for a period of at least three (3) consecutive years;

(2) Operation or service must not fall below that used to meet the construction requirement in paragraph (b) of this section for the entire three (3) year period; and

(3) Assignees must construct and operate, or provide signal coverage and offer service, as required pursuant to paragraph (b) of this section, by the applicable construction deadline identified on the license(s), as extended by § 1.60005. Where no such deadline remains for the license(s), the three (3) year continuous operational requirement must commence no later than two (2) years after the consummation of the Commission approved application filed pursuant to § 1.60002.

(d) *Construction and operational requirements for rural-focused transaction prong leases.* Lessees must construct and operate, or provide signal coverage and offer service to, 100% of the Qualifying Geography identified in the underlying Qualifying Transaction that was the basis for Commission approval in the ECIP. Lessees must meet this requirement no later than two (2) years after grant of the underlying *de facto* transfer lease application or acceptance of the underlying spectrum manager lease application, and must maintain operation for a period of at least three (3) consecutive years during any period within the initial minimum required five (5) year lease term.

(e) *Operational requirement notifications.* Assignees and/or lessees of rural-focused transactions subject to § 1.60004 must file the following notifications to demonstrate compliance with the requirements in paragraphs (a) through (c) of this section:

(1) *Initial operational requirement notification.* Assignees and/or lessees must file an initial operational notification with the Commission within 30 days of the commencement of operations that:

(i) Provides the date operations began;

(ii) Certifies that the operational requirement of 100% coverage of the Qualifying Geography for that assigned license or lease has been satisfied; and

(iii) Provides technical data demonstrating such compliance.

(2) *Final operational requirement notification.* Assignees and/or lessees must file a final operational notification requirement with the Commission within 30 days of completion of the three consecutive year operational requirement that:

(i) Certifies that the operational requirement of 100% coverage of the Qualifying Geography for three (3) consecutive years has been satisfied;

(ii) Provides the date the three (3) year period was completed; and

(iii) Provides technical data demonstrating the coverage provided during the three (3) year period.

(f) *Holding period.* Assignees and/or lessees participating in ECIP under either the small carrier or Tribal Nation transaction prong set forth in § 1.60003, or the rural-focused transaction prong set forth in § 1.60004, must comply with the following obligations:

(1) *Assignees.* An assignee of a license(s) granted in a Qualifying Transaction involving a partition and/or disaggregation or full assignment is required to hold any such license(s) for a period of at least five (5) years, commencing upon the consummation date of the Commission approved application filed pursuant to § 1.60002. During this holding period, except as provided in paragraph (g) of this section, the license(s) received through ECIP is not permitted to be further partitioned, disaggregated, assigned, or leased.

(2) *Lessees.* Lease arrangements subject to the ECIP shall not be terminated by either lessor or lessee prior to the expiration of the five (5) year term required by § 1.60003(b)(3) or § 1.60004(b)(3), where applicable, and, except as provided in paragraph (g) of this section, may not be transferred or subleased to another party during the five (5) year term.

(3) *Rural-focused transaction prong assignees.* Any license(s) resulting from a Qualifying Transaction under the rural-focused transaction prong pursuant to § 1.60004 may not be subsequently assigned (partition and/or disaggregation or full assignment), leased or transferred until the following conditions have been met:

(i) The license(s) has been held by the assignee of the Qualifying Transaction for a period of at least five (5) years commencing on the date of consummation of the Commission approved application filed pursuant to § 1.60002; and

(ii) The construction and operational requirements pursuant to paragraphs (a) through (d) of this section, where applicable, have been satisfied.

(g) *Exceptions.* The requirements in paragraphs (a) through (e) of this section do not apply to pro forma transfers pursuant to § 1.948(c)(1), and do not apply to any area of the Transaction Geography and/or Qualifying Geography, which is covered by a lease or sublease entered into for the purpose of enabling a Contraband Interdiction System (as defined in § 20.30 of this chapter).

§ 1.60007 Penalties.

(a) *Automatic termination.* A license(s) resulting from a Qualifying Transaction in the ECIP shall be automatically terminated without specific Commission action or further notice to the licensee, superseding any service-based penalty, if the assignee fails to comply with any of the following:

(1) The five (5) year holding period pursuant to § 1.60006(e);

(2) The construction requirement pursuant to § 1.60006(a) or (c), or any remaining service-based performance requirement, where applicable; or

(3) The operational requirements pursuant to § 1.60006(b) or (c), where applicable.

(b) *Bar from future program participation.* A party participating in a Commission approved Qualifying Transaction in the ECIP shall be prohibited from future participation in the ECIP where it is found that it:

(1) Violated the five (5) year holding period requirements of § 1.60006(e), including premature termination of a lease or entering into a sublease in violation of § 1.60006(f)(2), if applicable;

(2) Failed to meet the construction requirement of § 1.60006(a) or (c), or any remaining service-based performance requirement, where applicable;

(3) Failed to meet the operational requirements of § 1.60006(b) or (c), where applicable; or

(4) Entered into a bad faith transaction in violation of § 1.60003(b)(4) or § 1.60004(b)(4).

(c) *Effect of program bar.* A bar from ECIP is applied as follows:

(1) A program bar shall commence upon the date the assignee or lessee receives notice from the Commission via electronic mail finding a violation pursuant to paragraph (b) of this section. A barred party shall be eligible to continue to receive benefits from Qualifying Transactions in ECIP that are unrelated to the Qualifying Transaction that resulted in the program bar, provided that those benefits were conferred prior to the commencement of the program bar, as a result of the

Commission accepting a consummation of an approved assignment application, granting a *de facto* transfer lease application, or accepting a spectrum manager lease application, as applicable.

(2) A program bar shall also apply to affiliates of barred parties. Third-parties shall be considered affiliates of a barred party if they qualify as an affiliate under § 1.60001. A prospective ECIP participant will be considered a barred affiliate when either:

(i) The third-party was identified, or should have been identified, as an affiliate on the initial Commission approved application for the Qualifying Transaction resulting in the bar; or

(ii) The third-party identifies, or should have identified, a barred affiliate in a subsequent application to participate in the ECIP, regardless of whether they were affiliates at the time of the filing of the initial application for a Qualifying Transaction resulting in the bar.

(3) Transactions that include a barred party shall not be eligible for ECIP benefits, even if all other qualifications are satisfied.

[FR Doc. 2022–17520 Filed 9–19–22; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 87, No. 181
Tuesday, September 20, 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–2022–0985; Project Identifier AD–2022–00096–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–400 and 747–8 series airplanes. This proposed AD was prompted by reports of three opened door 5 right ceiling stowage boxes that fell freely and injured a flight attendant in each event. For certain airplanes, this proposed AD would require replacing certain snubbers of the door 5 ceiling stowage boxes and, for certain other airplanes, replacing certain snubbers and changing the location of the snubber attachments. This proposed AD would also require an operation check of the stowage boxes or snubber, as applicable, and applicable on-condition 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 November 4, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *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–2022–0985.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0985; 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: Julie Linn, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3684; email: *julie.linn@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–2022–0985; Project Identifier AD–2022–00096–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 Julie Linn, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3684; email: *julie.linn@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 has received reports of an opened door 5 right ceiling stowage box that fell freely approximately 12 inches on a Model 747–8 airplane, and two additional door 5 ceiling stowage box free fall events on Model 747–400 airplanes. In one reported occurrence, an opened door 5 ceiling stowage box fell freely approximately 10 inches; in another, the stowage box fell freely approximately 8 inches. In each occurrence, a flight attendant was injured. Boeing and the supplier have since investigated and analyzed affected snubbers, part number (P/N) SP5378, used on the door 5 ceiling stowage boxes on Model 747–400 and 747–8 airplanes. It was determined that over time, air can get into the cylinder of the affected snubber and delay its damping

functionality, which means the affected snubber will not meet the requirement of the door 5 ceiling stowage boxes to open at a rate of not more than 15 degrees per second, when open more than 2.5 inches. The supplier has designed a replacement snubber, P/N SP26172, which meets those requirements. An unlatched door 5 ceiling stowage box, if not addressed, can open and fall freely more than 2.5 inches, possibly resulting in injury to the flightcrew or maintenance personnel.

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 Special Attention Requirements Bulletin 747–25–3726 RB, dated January 6, 2022. This service information specifies procedures for replacing certain snubbers of the door 5 ceiling stowage boxes on certain airplanes, and for replacing certain snubbers and changing the location of the snubber attachments on other airplanes. The service information also specifies procedures for an operation check of the stowage boxes or snubbers, as applicable, to ensure that the free-fall distance is no greater than 2.5 inches, and applicable on-condition actions. The on-condition actions include a post-snubber-replacement check until eventual replacement of any affected snubber.

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–2022–0985.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 45 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
Replace snubber and do operation check	2 work-hours × $85 per hour = $170	$3,712	$3,882	$174,690
Replace snubber, relocate snubber attachment, and do operation check.	7 work-hours × $85 per hour = $595	4,232	4,827	217,215

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace snubber	1 work-hour × $85 per hour = $85	$928	$1,013
Post-snubber-replacement check	1 work-hour × $85 per hour = $85	0	85

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–2022–0985; Project Identifier AD–2022–00096–T.

(a) Comments Due Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 and 747–8 series airplanes, certificated in any category, as identified in Boeing Special Attention Requirements Bulletin 747–25–3726 RB, dated January 6, 2022.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of three opened door 5 right ceiling stowage boxes that fell freely and injured a flight attendant in each event. The FAA is issuing this AD to address an unlatched door 5 ceiling stowage box, which can open and fall freely more than 2.5 inches, possibly resulting in injury to the flightcrew or maintenance personnel.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 747–25–3726 RB, dated January 6, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 747–25–3726 RB, dated January 6, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Service Bulletin 747–25–3726, dated January 6, 2022, which is referred to in Boeing Special Attention Requirements Bulletin 747–25–3726 RB, dated January 6, 2022.

(h) Exceptions to Service Information Specifications

Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 747–25–3726 RB, dated January 6, 2022, use the phrase ''the original issue date of Requirements Bulletin 747–25–3726 RB,'' this AD requires using ''the effective date of this AD.''

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Julie Linn, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3684; email: *julie.linn@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on July 26, 2022.

Christina Underwood,

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

[FR Doc. 2022–20320 Filed 9–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1168; Project Identifier MCAI–2022–00600–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2016–16–06, which applies to certain Airbus SAS Model A300 B4–603, B4–605R, and B4–622R airplanes; and Model A310–304, –324, and –325 airplanes. AD 2016–16–06 requires inspections around the rivet heads of the seal retainer run-out holes at certain frames and corrective actions if necessary. Since the FAA issued AD 2016–16–06, a determination was made that additional frames may also be susceptible to cracking, and that additional airplanes may be affected by the unsafe condition. This proposed AD would continue to require the actions in AD 2016–16–06 and add airplanes, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 4, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *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 is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this 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–2022–1168.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and

locating Docket No. FAA–2022–1168; 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 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: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1168; Project Identifier MCAI–2022–00600–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 Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2016–16–06, Amendment 39–18604 (81 FR 51320, August 4, 2016) (AD 2016–16–06), which applies to certain Airbus SAS Model A300 B4–603, B4–605R, and B4–622R airplanes; and Model A310–304, –324, and –325 airplanes. AD 2016–16–06 requires inspections around the rivet heads of the seal retainer run-out holes at certain frames and corrective actions if necessary. The FAA issued AD 2016–16–06 to address cracking of the door frame, which could result in reduced structural integrity of the airplane.

Actions Since AD 2016–16–06 Was Issued

Since the FAA issued AD 2016–16–06, a determination was made that cracking may also develop on frame (FR) 56A and FR 57A and that additional airplanes are subject to the unsafe condition.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0078, dated May 4, 2022 (EASA AD 2022–0078) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A300 B4–603, A300 B4–605R, A300 B4–622, A300 B4–622R and A310–203, A310–222, A310–304, A310–308, A310–322, A310–324, and A310–325 airplanes. Model A310–308 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.

This proposed AD was prompted by a report of a crack found on door FR 73A between stringers 24 and 25, and a determination that FR 56A and FR 57A may also be susceptible to cracking, and that additional airplanes may be affected. The FAA is proposing this AD to address cracking on door frames, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2016–16–06, this proposed AD would retain all of the requirements of AD 2016–16–06. Those requirements are referenced in EASA AD 2022–0078, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0078 specifies procedures for repetitive high frequency eddy current (HFEC) inspections of rivet heads of the seal retainer run-out holes at door frames FR 56A, FR 57A, and FR 73A for any cracking, and repair.

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 retain all requirements of AD 2016–16–06. This proposed AD would require accomplishing the actions specified in EASA AD 2022–0078 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 EASA AD 2022–0078 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0078 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0078 does not mean that operators need comply only with that section. For example, where the AD

requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0078.

Service information required by EASA AD 2022–0078 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1168 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 128 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2016–16–06	11 work-hours × $85 per hour = $935	$0	$935	$119,680

The FAA has received no definitive data on which to base the cost estimate for the on-condition repair 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:

■ a. Removing Airworthiness Directive (AD) 2016–16–06, Amendment 39–18604 (81 FR 51320, August 4, 2016); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2022–1168; Project Identifier MCAI–2022–00600–T.

(a) Comments Due Date

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

(b) Affected ADs

This AD replaces AD 2016–16–06, Amendment 39–18604 (81 FR 51320, August 4, 2016) (AD 2016–16–06).

(c) Applicability

This AD applies to all the Airbus SAS airplanes specified in paragraphs (c)(1) through (3) of this AD, certificated in any category.

(1) Model A300 B4–603 and –622 airplanes.

(2) Model A300 B4–605R and –622R airplanes.

(3) Model A310–203, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of a crack found on door frame (FR) 73A between stringers 24 and 25, and a determination that FR 56A and FR 57A may also be susceptible to cracking, and that additional airplanes may be affected by the unsafe condition. The FAA is issuing this AD to address cracking on door frames, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0078, dated May 4, 2022 (EASA AD 2022–0078).

(h) Exceptions to EASA AD 2022–0078

(1) Where EASA AD 2022–0078 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2022–0078 refers to September 25, 2014 (the effective date of EASA AD 2014–0202), this AD requires using September 8, 2016 (the effective date of AD 2016–16–06).

(3) The ''Remarks'' section of EASA AD 2022–0078 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0078 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, 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 (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, 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 (j)(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.

(k) Related Information

(1) For EASA AD 2022–0078, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD 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. This material may be found in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1168.

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

Issued on September 15, 2022.

Christina Underwood,

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

[FR Doc. 2022–20309 Filed 9–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1167; Project Identifier MCAI–2022–00461–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by reports indicating that protective caps were found on engine fire extinguishing pipes in the engine core zone (Zone 2) after airplane delivery. This proposed AD would require a one-time inspection of the engine fire extinguishing pipes for the presence of protective caps and removal of any protective caps found, as specified in a European Union Aviation Safety Agency (EASA) 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 November 4, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *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 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 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–2022–1167.

Examining the AD Docket

You may examine the AD docket at regulations.gov by searching for and locating Docket No. FAA–2022–1167; 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: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1167; Project Identifier MCAI–2022–00461–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 Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as

CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0065, dated April 7, 2022 (EASA AD 2022–0065) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes.

This proposed AD was prompted by reports indicating that protective caps were found on engine fire extinguishing pipes in zone 2 after airplane delivery. The FAA is proposing this AD to address the possibility that protective caps are present on engine fire extinguishing pipes. This condition, if not addressed, could prevent the extinguishment of an engine fire. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0065 specifies procedures for a one-time special detailed (borescope) inspection of the engine fire extinguishing pipes in zone 2 and removal of any protective caps found. If any protective cap is found, the lower gas generator fairing is removed and reinstalled, which includes the application of OMat 872 (a cold cure silicone compound).

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

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI 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 the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0065 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 EASA AD 2022–0065 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0065 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0065 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0065. Service information required by EASA AD 2022–0065 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1167 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$2,550

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
3 work-hours × $85 per hour = $255	$0	$255 *

* Up to an additional 48 hours to cure the OMat 872 (cold cure silicone compound) may be required.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order

13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2022–1167; Project Identifier MCAI–2022–00461–T.

(a) Comments Due Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0065, dated April 7, 2022 (EASA AD 2022–0065).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports indicating that protective caps were found on engine fire extinguishing pipes in the engine core zone (zone 2) after airplane delivery. The FAA is issuing this AD to address the possibility that protective caps are present on engine fire extinguishing pipes. This condition, if not addressed, could prevent the extinguishment of an engine fire.

(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 2022–0065.

(h) Exceptions to EASA AD 2022–0065

(1) Where EASA AD 2022–0065 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0065 does not apply to this AD.

(3) Where EASA AD 2022–0065 defines an affected engine, replace the text ''as listed in Appendix 1 of the Rolls-Royce NMSB, as applicable'' with ''as listed in Appendix 1 of Rolls-Royce Alert Non-Modification Service Bulletin TRENT XWB 26–AK834, dated March 9, 2022; or Rolls-Royce Alert Non-Modification Service Bulletin TRENT XWB 26–AK835, dated March 10, 2022; as applicable.''

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0065 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or 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 (j)(2) of this AD, if any service information referenced in EASA AD 2022–0065 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(k) Related Information

(1) For EASA AD 2022–0065, 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 *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. This material may be found in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1167.

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

Issued on September 13, 2022.

Christina Underwood,

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

[FR Doc. 2022–20206 Filed 9–19–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2022–0321, FRL–10144–01–R2]

Approval and Promulgation of Implementation Plans; New York; Particulate Matter Control Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the New York State Implementation Plan (SIP) for the purposes of implementing control of air pollution by particulate matter (PM). The proposed SIP revisions consist of amendments to existing regulations outlined within New York's Codes, Rules, and Regulations (NYCRR) that implement control measures for sources

of PM. These actions are being taken in accordance with the requirements of the Clean Air Act.

DATES: Written comments must be received on or before October 20, 2022.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2022–0321 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Fausto Taveras, Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, New York 10007–1866, at (212) 637–3378, or by email at *Taveras.Fausto@epa.gov.*

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What action is the EPA proposing?

The EPA is proposing to approve revisions to the New York SIP submitted by the State of New York on March 26, 2021. This SIP revision includes revisions to an existing regulation, Title 6 of the New York Code of Rules and Regulations (NYCRR) Subpart 227–1, ''Stationary Combustion Installations,'' which establishes PM emission standards for existing and new stationary combustion installations. The attendant revisions to 6 NYCRR Part 200, ''General Provisions,'' section 200.9, ''Referenced material,'' Table 1, for 6 NYCRR Subpart 227–1 has been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

These revisions include additional control strategies that will reduce PM emissions from major sources throughout the State. The EPA is proposing to approve New York's SIP submittals, which applies to major sources of PM, as a SIP-strengthening measure for New York's PM SIP.

II. What is the background for this proposed rulemaking?

Particulate Matter (PM) NAAQS Revisions

On September 21, 2006, the EPA retained the primary and secondary 24-hour PM_{10} standard of 150 micrograms per cubic meter of air ($\mu g/m^3$), as an average over a 24-hour period, not to be exceeded more than once per year on average over a 3-year period, that was initially promulgated on June 2, 1987. *See* 71 FR 61144 (October 17, 2006); *see also* 52 FR 24634 (July 1, 1987).

On October 17, 2006, the EPA strengthened the primary and secondary 24-hour $PM_{2.5}$ NAAQS to 35 $\mu g/m^3$. *See* 71 FR 61144. On November 13, 2009, the EPA promulgated designations for the revised 24-hour $PM_{2.5}$ standard set in 2006, designating the NY-NJ-CT area as ''nonattainment.'' *See* 74 FR 58688. On June 27, 2013, New York submitted a request to redesignate the New York portion of the NY-NJ-CT nonattainment area, NYMA, from ''nonattainment'' to ''attainment.'' As part of this request, New York also submitted a maintenance plan to ensure that New York's portion of the NYMA would continue attainment through 2025. On April 18, 2014, the EPA took final action to approve New York's SIP revision to redesignate the New York portion of the NYMA to ''attainment'' for the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 79 FR 21857.

On December 14, 2012, the EPA promulgated a revised primary NAAQS for $PM_{2.5}$ for the annual standard, setting the level at 12 micrograms per cubic meter ($\mu g/m^3$) calculated as an annual average, which is averaged over a three-year period. *See* 78 FR 3086.

On January 15, 2015, the EPA finalized its attainment/nonattainment designations for areas across the country with respect to the revised primary $PM_{2.5}$ NAAQS and on April 15, 2015, the designations became effective. *See* 80 FR 2206. The NYMA was designated by the EPA as an ''Unclassifiable/Attainment'' area for the revised primary $PM_{2.5}$ NAAQS. *See id.*

III. What did New York submit?

On March 26, 2021, the New York State Department of Environmental Conservation (NYSDEC or New York) submitted to the EPA proposed revisions to the SIP, which included State adopted revisions to Subpart 227–1, ''Stationary Combustion Installations,'' with an effective date of February 25, 2021. In this submittal, New York also made attendant revisions to Part 200, Section 200.9, ''General Provisions, Referenced material.'' These revisions include additional control strategies that will reduce $PM_{2.5}$ emissions statewide and provide support for New York State to maintain its attainment of the PM NAAQS.

IV. What is EPA's evaluation of Subpart 227–1, ''Stationary Combustion Installations''?

A. Background

NYSDEC has repealed and replaced 6 NYCRR Subpart 227–1, ''Stationary Combustion Installations,'' to impose more stringent PM emission limits for existing and new stationary combustion installations that either precede, or are not subject to, a federal New Source Performance Standard (NSPS) and/or National Emissions Standard for Hazardous Air Pollutants (NESHAP). The revisions to Subpart 227–1 contain PM emission limits for oil and solid fuel fired stationary installations and establishes an opacity limit for all stationary combustion installations. New York has also revised Subpart 227–1 to correct minor typographical errors and to incorporate changes into the air permitting regulations that have occurred over the past 20 years. The purpose of this revision is to further reduce the emissions of the precursors of $PM_{2.5}$, which will help New York State maintain its attainment of the PM NAAQS.

B. What are the new requirements of Subpart 227–1?

The Subpart 227–1 revisions include the definitions applied to this Subpart, a change in the applicability and prohibitions regarding stationary combustion installations, a change in PM emission limits for new and existing stationary combustion installations, the establishment of an opacity limit for all stationary combustion installations, and revisions to compliance testing,

monitoring, and recordkeeping provisions.

Section 227–1.2 was revised to incorporate the applicability and prohibitions outlined in Subpart 227–1. The revised Subpart 227–1 will apply to stationary combustion installations except for those that are already subject to the NSPS under 40 CFR part 60 and/or NESHAP under 40 CFR part 63. The PM standards outlined within the NSPS and NESHAP both meet and exceed the PM emission limits established within New York's revised Subpart 227–1. This revision is also modified to prohibit owner or operators to construct, install, modify, or cause to be constructed, installed, or modified, any hand-fed stationary combustion installation designed to fire bituminous coal.

Section 227–1.3 was revised to incorporate PM emission limits for stationary combustion installations. The emission limits outlined within this subpart apply to stationary combustion installations with a maximum heat input capacity equal or exceeding: (1) one million BTU per hour firing any amount of solid fuel or (2) 50 million BTU per hour firing oil or oil in combination with other liquid or gaseous fuels. Upon promulgation of Subpart 227–1, owners or operators of existing stationary combustion installations that fire oil or oil in combination with other liquid or gaseous fuels shall not emit PM in excess of 0.10 pounds per million BTU (lb/MMBTU) heat input. Within four years of the promulgation of Subpart 227–1, owners or operators of existing stationary combustion installations firing solid fuel shall not emit PM in excess of 0.10 lb/MMBTU heat input. NYSDEC has chosen the increased compliance period of four years for existing stationary combustion installations firing solid fuel, to accommodate owners or operators of the affected facilities by providing time to implement retrofits of controls equipment. Upon promulgation of Subpart 227–1, owners or operators of any new stationary combustion installation shall not be allowed to emit PM in excess of 0.10 lb/MMBTU heat input. Section 227–1.3 is revised to require all stationary combustion installations subject to the requirements of Subpart 227–1 to perform an annual tune-up. Section 227–1.3 is also revised to provide clarity of applicability for stationary combustion installations connected to a common air cleaning device and/or stack.

Section 227–1.4 was revised to establish the opacity limits that owners or operator of new and existing stationary combustion installations must comply with. No owner or operator shall operate a stationary combustion installation that exhibits greater than 20% opacity (six-minute average), except for one six-minute period per hour of not more than 27% opacity. Section 227–1.4 was also revised to outline how compliance of the opacity limits for the units may be determined.

Section 227–1.5 was revised to incorporate the compliance testing, monitoring, and recordkeeping provisions for stationary combustion installations applicable to Subpart 227–1. This revision requires owners or operators of new and existing solid fuel fired stationary combustion installations to follow a set of protocols to determine compliance with the applicable PM emission limit prescribed in section 227–1.3. Section 227–1.5 was revised to require owner or operators to install, operate, and properly maintain accurate Continuous Opacity Monitoring System (COMS) for stationary combustion installations with a total maximum heat input capacity exceeding 250 million BTU per hour. The revision also allows for owners or operators to utilize an NYSDEC approved case-by-case method for continuously monitoring and recording opacity. Section 227–1.5 also requires owners or operators that operate COMS to submit excess emissions and monitoring system performance report to NYSDEC quarterly. Section 227–1.5 is revised to require owners or operators of stationary combustion installations firing oil, or oil in combination with other liquid or gaseous fuels, with a total maximum heat input capacity of at least 50 million BTU per hour, to keep vendor certified fuel receipts which contain the sulfur content of the oil being fired as required in 6 NYCRR Subpart 225–1. Section 227–1.5 is also revised to detail the recordkeeping provisions that owners or operators, applicable to Subpart 227–1, must submit to the NYSDEC.

C. What is the EPA's evaluation?

The EPA agrees with New York's evaluation that the revised PM limits outlined within the revised Subpart 227–1 will lead to an estimated reduction of 2–5 tons of actual PM emission per day. A 2–5 tons per day of PM reductions could help New York State continue to maintain its attainment of the PM NAAQS. The implementation of more stringent PM emission limits will strengthen New York's PM SIP, and directly result in reductions of PM, $PM_{2.5}$, and PM_{10} throughout the state.

The EPA also reviewed New Jersey and Connecticut's PM emission limits for similar sources rated at similar heat input ratings and compared those limits with the limits adopted by NYSDEC in this rule. The EPA observed that New York's PM limits will be more stringent than Connecticut's for similar fuel-burning equipment.[1]

The EPA has reviewed New York's SIP submittal, which seeks to incorporate revisions to 6 NYCRR Subpart 227–1, ''Stationary Combustion Installations.'' After evaluating Subpart 227–1 for consistency with the Clean Air Act (CAA or the Act), EPA regulations, and EPA policy, the EPA proposes to find that the submission addresses the PM requirements found in CAA Section 175A, 42 U.S.C. Section 7505a, and proposes to approve this revision.

V. What other revisions did New York make?

New York also made administrative changes to Part 200, ''General Provisions'' which reflect implementation of Subpart 227–1 provisions. Specifically, the revisions to Part 200 will add new references in section 200.9, ''Referenced material'', Table 1. The revisions to Table 1 include all documents referenced in New York's amendments to Subpart 227–1. The attendant revisions to 6 NYCRR section 200, ''General Provisions,'' section 200.9, ''Referenced material'', Table 1, for 6 NYCRR Subpart 227–1 has been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

VI. What is the EPA's conclusion?

The EPA evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. The EPA proposes that the revisions made to 6 NYCRR Subpart 227–1, ''Stationary Combustion Installations,'' with the State effective date of February 25, 2021, meet the SIP requirements of the Act. The attendant revisions to 6 NYCRR section 200, ''General Provisions,'' section 200.9, ''Referenced material'', Table 1, for 6 NYCRR Subpart 227–1 has been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022. These revisions meet the requirement of the Act and EPA's regulations and are consistent with EPA's guidance and policy. EPA is taking this action pursuant to section

[1] Section 22a–174–18 of Connecticut's PM emission standards for fuel-burning equipment provides particulate matter emission limits for fuel-burning sources in pounds per million BTU (lbs/MMBTU). *See https://eregulations.ct.gov/eRegsPortal/Browse/RCSA/Title_22aSubtitle_22a-174Section_22a-174-18/.*

110 and part D of the Act and EPA's regulations.

VII. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to Title 6 of the NYCRR Subpart 227–1, ''Stationary Combustion Installations,'' as described in section III of this preamble. The EPA has made, and will continue to make, these materials available through the docket for this action, EPA–R02–OAR–2022–0321, at *http://regulations.gov,* and at the EPA Region II Office (please contact the person identified in the **FOR FUTHER INFORMATION CONTACT** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); *see* also 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, the SIP is not proposing to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose any substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental Relations, Incorporation by Reference, Particulate matter, Reporting and recordkeeping requirements.

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2022–20243 Filed 9–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 770

[EPA–HQ–OPPT–2017–0245; FRL–8452–03–OCSPP]

RIN 2070–AK94

Voluntary Consensus Standards Update; Formaldehyde Emission Standards for Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On March 29, 2022, the Environmental Protection Agency (EPA) proposed to update of the incorporation by reference of several voluntary consensus standards in the Agency's formaldehyde standards for composite wood products regulations under the Toxic Substances Control Act (TSCA). Two additional voluntary consensus standards that are incorporated by reference in the existing regulations were updated by the issuing standards organization after the public comment period for the March 29, 2022, proposed rule ended. EPA is now proposing to update the incorporation by reference of the two additional voluntary consensus standards in the formaldehyde standards for composite wood products regulations.

DATES: Comments must be received on or before October 20, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0245, 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: Jeffrey Putt, Existing Chemicals Risk Management Division (Mail Code 7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–3703; email address: *putt.jeffrey@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 affected by this supplemental proposal if you manufacture (including import), sell, supply, or offer for sale in the United States any of the following: hardwood plywood, medium-density fiberboard, particleboard, and/or products containing these composite wood materials. You may also be affected by this supplemental proposal if you test or work with certification firms that certify such materials. 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:

- Veneer, plywood, and engineered wood product manufacturing (NAICS code 3212).
- Manufactured home (mobile home) manufacturing (NAICS code 321991).
- Prefabricated wood building manufacturing (NAICS code 321992).
- Furniture and related product manufacturing (NAICS code 337).
- Furniture merchant wholesalers (NAICS code 42321).
- Lumber, plywood, millwork, and wood panel merchant wholesalers (NAICS code 42331).
- Other construction material merchant wholesalers (NAICS code 423390), *e.g.,* merchant wholesale distributors of manufactured homes (*i.e.,* mobile homes) and/or prefabricated buildings.
- Furniture stores (NAICS code 4421).
- Building material and supplies dealers (NAICS code 4441).
- Manufactured (mobile) home dealers (NAICS code 45393).
- Motor home manufacturing (NAICS code 336213).
- Travel trailer and camper manufacturing (NAICS code 336214).
- Recreational vehicle (RV) dealers (NAICS code 441210).
- Recreational vehicle merchant wholesalers (NAICS code 423110).
- Engineering services (NAICS code 541330).
- Testing laboratories (NAICS code 541380).
- Administrative management and general management consulting services (NAICS code 541611).
- All other professional, scientific, and technical services (NAICS code 541990).
- All other support services (NAICS code 561990).
- Business associations (NAICS code 813910).
- Professional organizations (NAICS code 813920).

If you have any questions regarding the applicability of this action, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

EPA is issuing this supplemental proposal pursuant to the authority in section 601 of TSCA, 15 U.S.C. 2697, relating to formaldehyde emission standards for composite wood products.

C. What action is the Agency taking?

The Agency is issuing this proposed rule to supplement a recent Notice of Proposed Rulemaking (Ref. 1). EPA is specifically soliciting comment on the proposed inclusion of ANSI A208.1–2022 Particleboard and ANSI A208.2–2022 Medium Density Fiberboard to update the incorporation by reference (IBR) of these two voluntary consensus standards issued by the Composite Panel Association (CPA) in 40 CFR 770.99 to reflect the most recent editions. CPA updated these standards after EPA incorporated them in 40 CFR 770.99 and after the proposed rule (87 FR 17963) was published on March 29, 2022. The supplemental proposed rule would require regulated entities to adhere to the updated editions of the voluntary consensus standards when complying with the requirements of 40 CFR part 770.

EPA is proposing to update the IBR of these two standards assembled by CPA in 40 CFR 770.99 to reflect the most recent editions:

1. Particleboard (ANSI A208.1–2022)

This standard was approved through the American National Standards Institute (ANSI) and describes the requirements and test methods for dimensional tolerances, physical and mechanical properties and formaldehyde emissions for particleboard, along with methods of identifying products conforming to the standard. The ANSI standard was last updated in June 2022 (Ref. 2). EPA is proposing to take action to update the version of the standard incorporated by reference in 40 CFR 770.99 from ANSI A208.1–2016 to ANSI A208.1–2022.

2. Medium Density Fiberboard (MDF) for Interior Applications (ANSI A208.2–2022)

This standard was approved through ANSI and describes the requirements and test methods for dimensional tolerances, physical and mechanical properties and formaldehyde emissions for MDF, along with methods of identifying products conforming to the standard. The ANSI standard was last updated in April 2022 (Ref. 3). EPA is proposing to take action to update the version of the standard incorporated by reference in 40 CFR 770.99 from ANSI A208.2–2016 to ANSI A208.2–2022.

3. Availability

Copies of these materials may be obtained from the Composite Panel Association, 19465 Deerfield Avenue, Suite 306, Leesburg, VA 20176, or by calling (703) 724–1128, or at *www.compositepanel.org.*

Additionally, as a result of the proposed inclusion of these two standards, EPA is soliciting comment on the proposed update to 40 CFR 770.3 to reflect the proposed standards that would be incorporated by reference in 40 CFR 770.99.

D. Why is the Agency taking this action?

The Agency is proposing to adopt two voluntary consensus standards for incorporation by reference at 40 CFR 770.99. This rulemaking would update two voluntary consensus standards under 40 CFR 770.99 to their current editions to address outdated, superseded, and withdrawn standards that were updated after the proposed rule was published in March 2022. These new updates are needed because outdated versions have been replaced by these new standards. EPA is proposing to update these voluntary consensus standards to reflect the current editions that are in use by regulated entities and industry stakeholders. EPA believes that this action is warranted to facilitate regulated entities using the most up to date voluntary consensus standards to comply with the regulation at 40 CFR part 770.

E. What are the incremental economic impacts?

EPA anticipates no additional costs to stakeholders associated with this supplemental proposal for updated standards. This supplemental proposal is part of a routine action that updates voluntary consensus standards referenced in the incorporation by reference section of the regulation at 40 CFR part 770 to address updated, superseded, and withdrawn versions of the referenced standards.

II. References

The following is a list of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Voluntary Consensus Standards Update; Formaldehyde Emission Standards for Composite Wood Products. Proposed Rule. **Federal Register**. 87 FR 17963, March, 29, 2022 (FRL–8452–02).
2. American National Standards Institute (ANSI). ANSI A208.1–2022, Particleboard.
3. ANSI. ANSI A208.2–2022, Medium Density Fiberboard (MDF) for Interior Applications.

III. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action under Executive Order 12866 (58 FR 51735, October 4, 1993) and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 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). This action does not create any new reporting or recordkeeping obligations. OMB previously approved the information collection activities contained in the existing regulations and assigned OMB control number 2070–0185 (EPA ICR No. 2446.03).

C. Regulatory Flexibility Act (RFA)

The Agency certifies 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.* In making this determination, EPA concludes that the impact of concern is any significant adverse economic impact on small entities, and the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the proposed rule will update incorporation by reference of voluntary consensus standards in 40 CFR part 770 by adopting the most current versions of those standards. The updated versions of the standards are substantially similar to the previous versions. EPA expects that many small entities are already complying with the updated versions of the finalized standards. This action will relieve these entities of the burden of having to also demonstrate compliance with outdated versions of these standards.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications 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 Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, E.O. 13175 does not apply to this action.

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 Agency 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 a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

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

This action involves voluntary standards under NTTAA section 12(d), 15 U.S.C. 272 note. EPA is proposing to adopt the use of ANSI A208.1–2022 and ANSI A208.2–2022. Additional information about these standards, including how to access them, is provided under **SUPPLEMENTARY INFORMATION**.

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

EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action will not materially alter the final rule as published and will update existing voluntary consensus standards incorporated by reference in the final rule.

List of Subjects in 40 CFR Part 770

Environmental protection, Formaldehyde, Incorporation by reference, Reporting and recordkeeping requirements, Third-party certification, Toxic substances, Wood.

Dated: September 12, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons set forth in the preamble, EPA proposes to amend 40 CFR chapter I, as proposed to be amended at 87 FR 17963 (March 29, 2022) as follows:

PART 770—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

■ 1. The authority citation for part 770 continues to read as follows:

Authority: 15 U.S.C. 2697(d).

■ 2. Amend § 770.3 by revising the definitions for ''Medium-density fiberboard'' and ''Particleboard'' to read as follows:

§ 770.3 Definitions

* * * * *

Medium-density fiberboard means a panel composed of cellulosic fibers made by dry forming and pressing a resinated fiber mat (as determined under ANSI A208.2–2022 (incorporated by reference, see § 770.99)).

* * * * *

Particleboard means a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands) that are pressed together with resin (as determined under ANSI A208.1–2022 (incorporated by reference, see § 770.99)). Particleboard does not include any product specified in PS 2–18 (incorporated by reference, see § 770.99).

* * * * *

■ 3. Amend § 770.99 by revising the introductory text and paragraphs (d)(5) and (6) to read as follows:

§ 770.99 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with *5 U.S.C. 552(a)* and *1 CFR part 51.* To enforce any edition other than that specified in this section, the Environmental Protection Agency (EPA) must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at the EPA and at the National Archives and Records Administration (NARA). Contact EPA at: OPPT Docket in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. For information on the availability of this material at NARA, email: *fr.inspection@nara.gov*; website: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the following source(s):

* * * * *

(d) * * *

(5) ANSI A208.1–2022, Particleboard, Approved June 22, 2022, IBR approved for § 770.3.

(6) ANSI A208.2–2022, Medium Density Fiberboard (MDF) for Interior Applications, Approved April 14, 2022, IBR approved for § 770.3.

[FR Doc. 2022–20043 Filed 9–19–22; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2558

RIN 3045–AA60

Protection of Human Subjects

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule.

SUMMARY: The Corporation for National and Community Service (operating as AmeriCorps) is proposing to adopt the Federal Policy for Protection of Human Subjects (referred to as the Common Rule). The Common Rule outlines the basic ethical principles and procedures that an agency will abide by when conducting or sponsoring research involving human subjects. Among the procedures required by the Common Rule are use of institutional review boards (IRBs), obtaining informed consent of research subjects, and requiring submission of assurances of compliance with the rule. AmeriCorps is proposing to make the Common Rule applicable to itself, meaning that all research involving human subjects conducted, supported, or otherwise subject to regulation by AmeriCorps will be subject to the Common Rule's ethical principles and procedures.

DATES: Written comments must be submitted by November 21, 2022.

ADDRESSES: You may send your comments electronically through the Federal government's one-stop rulemaking website at *www.regulations.gov.* You may also send your comments to Elizabeth Appel, Associate General Counsel, at *eappel@cns.gov* or by mail to AmeriCorps, 250 E Street SW, Washington DC 20525.

FOR FURTHER INFORMATION CONTACT: Mary Hyde, Ph.D., Director, AmeriCorps Office of Research and Evaluation, at (202) 606–6834 or *mhyde@cns.gov.*

SUPPLEMENTARY INFORMATION: On June 18, 1991, the U.S. Department of Health and Human Services (HHS) issued a rule setting forth the Common Rule requirements for the protection of human subjects. (56 FR 28003). The HHS regulations are codified at 45 CFR part 46. At that time, 15 other agencies joined HHS in adopting a uniform set of rules for the protection of human subjects, identical to Subpart A of 45 CFR part 46. The basic provisions of the Common Rule include, among other things, requirements related to the review of human subjects research by an IRB, obtaining and documenting informed consent of human subjects, and submitting written assurance of institutional compliance with the Common Rule. On January 19, 2017, HHS issued a final rule revising the Common Rule, which, among other things, established new requirements regarding the information that must be given to prospective research subjects as part of the informed consent process. 82 FR 7149.

AmeriCorps is proposing to codify the text of the revised Common Rule in its regulations at 45 CFR part 4558. This proposed rule is substantively identical to the HHS regulations in 45 CFR part 46, subpart A, ensuring consistency across Federal agencies. With this proposed codification, AmeriCorps would be subject to the same ethical principles and procedures that other agencies who have adopted the Common Rule are subject to when conducting or supporting research involving human subjects. The rule applies broadly: most relevant to AmeriCorps, it covers instances when an investigator conducting research obtains information through interaction with the individual and uses, studies, or analyzes the information. The rule also sets out certain research that is exempt from the rule. For any non-exempt research, under this rule AmeriCorps would:

- Conduct or support non-exempt research only if the institution engaged in the research has provided an assurance that it will comply with the Common Rule, and
- Conduct or support non-exempt research only if (when required by the rule) the institution has certified to AmeriCorps that the research has been reviewed and approved by an IRB.

The rule also sets out requirements applicable to the IRBs, including requirements for the IRB membership, IRB functions and operations, IRB review of research and criteria for IRB approval of research, IRB authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or has been associated with unexpected serious harm to subjects, and IRB records. The rule also sets out the requirements for investigators to obtain the legally effective informed consent of the subject before involving the subject in any non-exempt research. For example, the investigator must seek informed consent only under circumstances that provide sufficient opportunity to discuss and consider whether to participate in the research (to minimize the possibility of coercion or undue influence), and the investigator must provide the prospective subject with information a reasonable person would want to have in order to make an informed decision as to whether to participate in the research and provide the information in language understandable to the prospective subject. The rule also sets out the basic elements of what information must be provided to each prospective subject and how informed consent must be documented.

AmeriCorps at times undertakes research that would be considered non-exempt research under the Common Rule. The Office of Research and Evaluation (ORE), within AmeriCorps, furthers AmeriCorps' mission by providing accurate and timely research on national service, social innovation,

volunteering, and civic engagement. ORE conducts original and sponsored research and evaluations, among other activities, to infuse data into AmeriCorps' programs and contribute to the public's understanding of national service. For example, AmeriCorps surveys members/volunteers to inform recruitment and improve member/volunteer experience. ORE uses the survey responses to identify national service trends, such as trends in program participation, motivations, and outcomes. As another example, AmeriCorps sponsors evaluations of national service interventions (*e.g.,* Recovery Coach Programs, Tutoring Programs) that collect information from program participants about their experiences and outcomes.

ORE staff consists of professional social scientists and research analysts who abide by their professions' codes of ethics, including but not limited to those relating to integrity, respect for people's rights, dignity, and diversity, non-exploitation, and informed consent. AmeriCorps' research is therefore already guided by these codes of ethics, and typically engages in practices such as ensuring that informed consent of human subjects is properly obtained and, when supporting research conducted by universities and other research partners, ensuring that the research is reviewed and approved by an IRB.

Adoption of the Common Rule will not result in major changes in research conducted and supported by AmeriCorps, but it will provide a more concrete framework for AmeriCorps staff to follow to ensure protection of human research subjects. While AmeriCorps may currently avail itself of the broad range of HHS guidance documents on the Common Rule, adopting the Common Rule itself will ensure that it is interpreting those guidance documents in a manner consistent with the regulatory requirements of the Common Rule. HHS guidance includes decisions charts to guide everything from the analysis of whether an activity is covered by the Common Rule to whether documentation of informed consent can be waived, frequently asked question (FAQ) documents, and various other guidance documents—all of which will assist AmeriCorps in ensuring that its research protects human subjects. AmeriCorps' proposed adoption of the Common Rule would also provide assurance to individuals who are prospective and participating human research subjects for AmeriCorps-conducted or supported research that AmeriCorps abides by the same ethical and procedural provisions that HHS and 19 other agencies do. Finally, AmeriCorps' adoption of the Common Rule will ensure consistency across agencies in their approach to protecting human subjects in research.

At the time the Common Rule was first adopted in 1991, AmeriCorps had just been established as the Corporation for National and Community Service under the National and Community Service Act of 1990. AmeriCorps was not a participating agency in either that 1991 Common Rule rulemaking or in the more recent 2018 updates to the Common Rule; however, as noted above, AmeriCorps believes it is important to adopt this standard framework for AmeriCorps research professionals, prospective and participating human subjects, and consistency among Federal agencies, as described above. If AmeriCorps does not move forward with this rulemaking, AmeriCorps professionals will still be guided by their professions' ethical principles in conducting or supporting research involving human research subjects, but would lack the incentives of a mandatory procedural framework afforded by the Common Rule and human research subjects will be deprived of the assurances of their protection offered by the Common Rule.

AmeriCorps welcomes any public comment on the advisability or inadvisability of adopting the Common Rule in whole or in part and welcomes comment on any aspect of the rule, including but not limited to the following. Should AmeriCorps adopt the HHS Common Rule wholesale, as proposed, or should AmeriCorps make any adjustments to the Common Rule (in which case it would not be considered a Common Rule agency)? For example, is anything missing or overly burdensome in the procedures for obtain informed consent of prospective human research subjects? Are there any additional requirements or procedures that IRBs should be subject to, or any that should be removed? Is there anything the Common Rule does not address that AmeriCorps should consider in a future rulemaking? AmeriCorps welcomes comments from all interested parties, including but not limited to, any individuals who have participated as a human subject in research by HHS or other an agency that complies with the Common Rule or by AmeriCorps.

AmeriCorps anticipates there may be costs associated with its implementation of this rule to the extent it may have to contract for professionals to serve on an IRB to review and approve research that AmeriCorps is directly conducting. In most cases, AmeriCorps partners with universities or other research institutions that already have an IRB, so AmeriCorps anticipates that the instances in which it will be directly responsible for paying for an IRB will be negligible. The benefits of adopting the rule, beyond the clarity afforded to AmeriCorps research professionals and consistency in approach across Federal agencies, are the protections that compliance with the Common Rule will provide to prospective and participating human research subjects. AmeriCorps anticipates that individuals may be more willing to participate in AmeriCorps research as human subjects knowing that AmeriCorps will be following the same Common Rule standards as multiple other Federal agencies; however, AmeriCorps is unable to quantify any anticipated increase in participation by human subjects in its research because doing so would be too speculative.

Regulatory Analyses

A. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs in the Office of Management and Budget does not anticipate that this will be a significant regulatory action.

B. Congressional Review Act (Small Business Regulatory Enforcement Fairness Act of 1996, Title II, Subtitle E)

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, AmeriCorps will submit for an interim or final rule a report to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs in the Office of Management and Budget anticipates that this will not be a major rule under 5 U.S.C. 804 because this rule will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries,

Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

C. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), AmeriCorps certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Therefore, AmeriCorps has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for rules that are expected to have such results.

D. Unfunded Mandates Reform Act of 1995

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or Tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

E. Paperwork Reduction Act

Under the PRA, an agency may not conduct or sponsor a collection of information unless the collections of information display valid control numbers. The information collections in this proposed rule at proposed sections 2558.103, 2558.104, 2558.108, 2558.109, 2558.113, and 2558.115–2558.17 are approved by the Office of Management and Budget under Control Number 0990–0260.

F. Executive Order 13132, Federalism

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has Federalism implications if the rule imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have any Federalism implications, as described above.

G. Takings (E.O. 12630)

This proposed rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this proposed rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable ''taking.'' A takings implication assessment is not required.

H. Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this rule: (a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (E.O. 13175)

AmeriCorps recognizes the inherent sovereignty of Indian Tribes and their right to self-governance. We have evaluated this rule under our consultation policy and the criteria in E.O. 13175 and determined that this proposed rule does not impose substantial direct effects on federally recognized Tribes.

J. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each proposed rule we publish must: (a) be logically organized; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible. If you feel that we have not met these requirements, please send us comments by one of the methods listed in the **ADDRESSES** section. To help us revise the rule, your comments should be as specific as possible.

List of Subjects in 45 CFR Part 2558

Human research subjects, Reporting and recordkeeping requirements, Research.

For the reasons stated in the preamble, the Corporation for National and Community Service proposes to amend title 45 of the Code of Federal Regulations to add part 2558 to read as follows:

PART 2558—PROTECTION OF HUMAN SUBJECTS

Sec.

Authority: 42 U.S.C. 12651c(c)

§ 2558.101 To what does this policy apply?

(a) Except as detailed in § 2558.104, this policy applies to all research involving human subjects conducted, supported, or otherwise subject to regulation by any Federal department or agency that takes appropriate administrative action to make the policy applicable to such research. This includes research conducted by Federal civilian employees or military personnel, except that each department or agency head may adopt such procedural modifications as may be appropriate from an administrative standpoint. It also includes research conducted, supported, or otherwise subject to regulation by the Federal Government outside the United States. Institutions that are engaged in research described in this paragraph and institutional review boards (IRBs) reviewing research that is subject to this policy must comply with this policy.

(b) [Reserved]

(c) Department or agency heads retain final judgment as to whether a particular activity is covered by this policy and this judgment shall be

exercised consistent with the ethical principles of the Belmont Report.[1]

(d) Department or agency heads may require that specific research activities or classes of research activities conducted, supported, or otherwise subject to regulation by the Federal department or agency but not otherwise covered by this policy comply with some or all of the requirements of this policy.

(e) Compliance with this policy requires compliance with pertinent federal laws or regulations that provide additional protections for human subjects.

(f) This policy does not affect any state or local laws or regulations (including tribal law passed by the official governing body of an American Indian or Alaska Native tribe) that may otherwise be applicable and that provide additional protections for human subjects.

(g) This policy does not affect any foreign laws or regulations that may otherwise be applicable and that provide additional protections to human subjects of research.

(h) When research covered by this policy takes place in foreign countries, procedures normally followed in the foreign countries to protect human subjects may differ from those set forth in this policy. In these circumstances, if a department or agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided in this policy, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the department or agency head, notices of these actions as they occur will be published in the **Federal Register** or will be otherwise published as provided in department or agency procedures.

(i) Unless otherwise required by law, the department or agency head may waive the applicability of some or all of the provisions of this policy to specific research activities or classes of research activities otherwise covered by this policy, provided the alternative procedures to be followed are consistent with the principles of the Belmont Report.[2] Except when otherwise required by statute or Executive Order, the department or agency head shall forward advance notices of these actions to the Office for Human Research Protections, Department of Health and Human Services (HHS), or any successor office, or to the equivalent office within the appropriate Federal department or agency, and shall also publish them in the **Federal Register** or in such other manner as provided in department or agency procedures. The waiver notice must include a statement that identifies the conditions under which the waiver will be applied and a justification as to why the waiver is appropriate for the research, including how the decision is consistent with the principles of the Belmont Report.

(j) Federal guidance on the requirements of this policy shall be issued only after consultation, for the purpose of harmonization (to the extent appropriate), with other Federal departments and agencies that have adopted this policy, unless such consultation is not feasible.

(k) [Reserved]

(l) Compliance dates and transition provisions

(1) Pre-2018 Requirements. For purposes of this section, the pre-2018 Requirements means this subpart as published in the 2016 edition of the Code of Federal Regulations.

(2) 2018 Requirements. For purposes of this section, the 2018 Requirements means the Federal Policy for the Protection of Human Subjects requirements contained in this subpart. The general compliance date for the 2018 Requirements is January 21, 2019. The compliance date for § 46.114(b) (cooperative research) of the 2018 Requirements is January 20, 2020.

(3) Research subject to pre-2018 requirements. The pre-2018 Requirements shall apply to the following research, unless the research is transitioning to comply with the 2018 Requirements in accordance with paragraph (l)(4) of this section:

(i) Research initially approved by an IRB under the pre-2018 Requirements before January 21, 2019;

(ii) Research for which IRB review was waived pursuant to § 46.101(i) of the pre-2018 Requirements before January 21, 2019; and

(iii) Research for which a determination was made that the research was exempt under § 46.101(b) of the pre-2018 Requirements before January 21, 2019.

(4) Transitioning research. If, on or after July 19, 2018, an institution planning or engaged in research otherwise covered by paragraph (l)(3) of this section determines that such research instead will transition to comply with the 2018 Requirements, the institution or an IRB must document and date such determination.

(i) If the determination to transition is documented between July 19, 2018, and January 20, 2019, the research shall:

(A) Beginning on the date of such documentation through January 20, 2019, comply with the pre-2018 Requirements, except that the research shall comply with the following:

(1) Section 46.102(l) of the 2018 Requirements (definition of research) (instead of § 46.102(d) of the pre-2018 Requirements);

(2) Section 46.103(d) of the 2018 Requirements (revised certification requirement that eliminates IRB review of application or proposal) (instead of § 46.103(f) of the pre-2018 Requirements); and

(3) Section 46.109(f)(1)(i) and (iii) of the 2018 Requirements (exceptions to mandated continuing review) (instead of § 46.103(b), as related to the requirement for continuing review, and in addition to § 46.109, of the pre-2018 Requirements); and

(B) Beginning on January 21, 2019, comply with the 2018 Requirements.

(ii) If the determination to transition is documented on or after January 21, 2019, the research shall, beginning on the date of such documentation, comply with the 2018 Requirements.

(5) Research subject to 2018 Requirements. The 2018 Requirements shall apply to the following research:

(i) Research initially approved by an IRB on or after January 21, 2019;

(ii) Research for which IRB review is waived pursuant to paragraph (i) of this section on or after January 21, 2019; and

(iii) Research for which a determination is made that the research is exempt on or after January 21, 2019.

(m) Severability: Any provision of this part held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to continue to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this part and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

§ 2558.102 Definitions for purposes of this policy.

(a) *Certification* means the official notification by the institution to the supporting Federal department or agency component, in accordance with the requirements of this policy, that a research project or activity involving human subjects has been reviewed and

[1] The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research (Apr. 18, 1979).

[2] Id.

approved by an IRB in accordance with an approved assurance.

(b) *Clinical trial* means research study in which one or more human subjects are prospectively assigned to one or more interventions (which may include placebo or other control) to evaluate the effects of the interventions on biomedical or behavioral health-related outcomes.

(c) *Department or agency head* means the head of any Federal department or agency, for example, the Secretary of HHS, and any other officer or employee of any Federal department or agency to whom the authority provided by these regulations to the department or agency head has been delegated.

(d) *Federal department or agency* refers to a Federal department or agency (the department or agency itself rather than its bureaus, offices or divisions) that takes appropriate administrative action to make this policy applicable to the research involving human subjects it conducts, supports, or otherwise regulates (*e.g.,* the U.S. Department of Health and Human Services, the U.S. Department of Defense, or the Central Intelligence Agency).

(e)(1) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research:

(i) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or

(ii) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.

(2) Intervention includes both physical procedures by which information or biospecimens are gathered (*e.g.,* venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes.

(3) Interaction includes communication or interpersonal contact between investigator and subject.

(4) Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that the individual can reasonably expect will not be made public (*e.g.,* a medical record).

(5) Identifiable private information is private information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information.

(6) An identifiable biospecimen is a biospecimen for which the identity of the subject is or may readily be ascertained by the investigator or associated with the biospecimen.

(7) Federal departments or agencies implementing this policy shall:

(i) Upon consultation with appropriate experts (including experts in data matching and re-identification), reexamine the meaning of ''identifiable private information,'' as defined in paragraph (e)(5) of this section, and ''identifiable biospecimen,'' as defined in paragraph (e)(6) of this section. This reexamination shall take place within 1 year and regularly thereafter (at least every 4 years). This process will be conducted by collaboration among the Federal departments and agencies implementing this policy. If appropriate and permitted by law, such Federal departments and agencies may alter the interpretation of these terms, including through the use of guidance.

(ii) Upon consultation with appropriate experts, assess whether there are analytic technologies or techniques that should be considered by investigators to generate ''identifiable private information,'' as defined in paragraph (e)(5) of this section, or an ''identifiable biospecimen,'' as defined in paragraph (e)(6) of this section. This assessment shall take place within 1 year and regularly thereafter (at least every 4 years). This process will be conducted by collaboration among the Federal departments and agencies implementing this policy. Any such technologies or techniques will be included on a list of technologies or techniques that produce identifiable private information or identifiable biospecimens. This list will be published in the **Federal Register** after notice and an opportunity for public comment. The Secretary, HHS, shall maintain the list on a publicly accessible website.

(f) *Institution* means any public or private entity, or department or agency (including federal, state, and other agencies).

(g) *IRB* means an institutional review board established in accord with and for the purposes expressed in this policy.

(h) *IRB approval* means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

(i) *Legally authorized representative* means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research. If there is no applicable law addressing this issue, legally authorized representative means an individual recognized by institutional policy as acceptable for providing consent in the nonresearch context on behalf of the prospective subject to the subject's participation in the procedure(s) involved in the research.

(j) *Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(k) *Public health authority* means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, an Indian tribe, or a foreign government, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

(l) *Research* means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities. For purposes of this part, the following activities are deemed not to be research:

(1) Scholarly and journalistic activities (*e.g.,* oral history, journalism, biography, literary criticism, legal research, and historical scholarship), including the collection and use of information, that focus directly on the specific individuals about whom the information is collected.

(2) Public health surveillance activities, including the collection and testing of information or biospecimens, conducted, supported, requested, ordered, required, or authorized by a public health authority. Such activities are limited to those necessary to allow a public health authority to identify, monitor, assess, or investigate potential public health signals, onsets of disease outbreaks, or conditions of public health importance (including trends, signals, risk factors, patterns in diseases, or increases in injuries from using consumer products). Such activities

include those associated with providing timely situational awareness and priority setting during the course of an event or crisis that threatens public health (including natural or man-made disasters).

(3) Collection and analysis of information, biospecimens, or records by or for a criminal justice agency for activities authorized by law or court order solely for criminal justice or criminal investigative purposes.

(4) Authorized operational activities (as determined by each agency) in support of intelligence, homeland security, defense, or other national security missions.

(m) Written, or in writing, for purposes of this part, refers to writing on a tangible medium (*e.g.,* paper) or in an electronic format.

§ 2258.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.

(a) Each institution engaged in research that is covered by this policy, with the exception of research eligible for exemption under § 2558.104, and that is conducted or supported by a Federal department or agency, shall provide written assurance satisfactory to the department or agency head that it will comply with the requirements of this policy. In lieu of requiring submission of an assurance, the department or agency head shall accept the existence of a current assurance, appropriate for the research in question, on file with the Office for Human Research Protections, HHS, or any successor office, and approved for Federal-wide use by that office. When the existence of an HHS-approved assurance is accepted in lieu of requiring submission of an assurance, reports (except certification) required by this policy to be made to department and agency heads shall also be made to the Office for Human Research Protections, HHS, or any successor office. Federal departments and agencies will conduct or support research covered by this policy only if the institution has provided an assurance that it will comply with the requirements of this policy, as provided in this section, and only if the institution has certified to the department or agency head that the research has been reviewed and approved by an IRB (if such certification is required by § 2558.103(d)).

(b) The assurance shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by this policy and shall be filed in such form and manner as the department or agency head prescribes.

(c) The department or agency head may limit the period during which any assurance shall remain effective or otherwise condition or restrict the assurance.

(d) Certification is required when the research is supported by a Federal department or agency and not otherwise waived under § 2558.101(i) or exempted under § 2558.104. For such research, institutions shall certify that each proposed research study covered by the assurance and this section has been reviewed and approved by the IRB. Such certification must be submitted as prescribed by the Federal department or agency component supporting the research. Under no condition shall research covered by this section be initiated prior to receipt of the certification that the research has been reviewed and approved by the IRB.

(e) For nonexempt research involving human subjects covered by this policy (or exempt research for which limited IRB review takes place pursuant to § 2558.104(d)(2)(iii), (d)(3)(i)(C), (d)(7), or (d)(8)) that takes place at an institution in which IRB oversight is conducted by an IRB that is not operated by the institution, the institution and the organization operating the IRB shall document the institution's reliance on the IRB for oversight of the research and the responsibilities that each entity will undertake to ensure compliance with the requirements of this policy (*e.g.,* in a written agreement between the institution and the IRB, by implementation of an institution-wide policy directive providing the allocation of responsibilities between the institution and an IRB that is not affiliated with the institution, or as set forth in a research protocol).

§ 2558.104 Exempt research.

(a) Unless otherwise required by law or by the department or agency head, research activities in which the only involvement of human subjects will be in one or more of the categories in paragraph (d) of this section are exempt from the requirements of this policy, except that such activities must comply with the requirements of this section and as specified in each category.

(b) Use of the exemption categories for research subject to the requirements of subparts B, C, and D. Application of the exemption categories to research subject to the requirements of 45 CFR part 46, subparts B, C, and D, is as follows:

(1) Subpart B. Each of the exemptions at this section may be applied to research subject to Subpart B if the conditions of the exemption are met.

(2) Subpart C. The exemptions at this section do not apply to research subject to Subpart C, except for research aimed at involving a broader subject population that only incidentally includes prisoners.

(3) Subpart D. The exemptions at paragraphs (d)(1), (4), (5), (6), (7), and (8) of this section may be applied to research subject to Subpart D if the conditions of the exemption are met. Paragraphs (d)(2)(i) and (ii) of this section only may apply to research subject to Subpart D involving educational tests or the observation of public behavior when the investigator(s) do not participate in the activities being observed. Paragraph (d)(2)(iii) of this section may not be applied to research subject to Subpart D.

(c) [Reserved.]

(d) Except as described in paragraph (a) of this section, the following categories of human subjects research are exempt from this policy:

(1) Research, conducted in established or commonly accepted educational settings, that specifically involves normal educational practices that are not likely to adversely impact students' opportunity to learn required educational content or the assessment of educators who provide instruction. This includes most research on regular and special education instructional strategies, and research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research that only includes interactions involving educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior (including visual or auditory recording) if at least one of the following criteria is met:

(i) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects;

(ii) Any disclosure of the human subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; or

(iii) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a

limited IRB review to make the determination required by § 2558.111(a)(7).

(3) (i) Research involving benign behavioral interventions in conjunction with the collection of information from an adult subject through verbal or written responses (including data entry) or audiovisual recording if the subject prospectively agrees to the intervention and information collection and at least one of the following criteria is met:

(A) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects;

(B) Any disclosure of the human subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; or

(C) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by § 2558.111(a)(7).

(ii) For the purpose of this provision, benign behavioral interventions are brief in duration, harmless, painless, not physically invasive, not likely to have a significant adverse lasting impact on the subjects, and the investigator has no reason to think the subjects will find the interventions offensive or embarrassing. Provided all such criteria are met, examples of such benign behavioral interventions would include having the subjects play an online game, having them solve puzzles under various noise conditions, or having them decide how to allocate a nominal amount of received cash between themselves and someone else.

(iii) If the research involves deceiving the subjects regarding the nature or purposes of the research, this exemption is not applicable unless the subject authorizes the deception through a prospective agreement to participate in research in circumstances in which the subject is informed that he or she will be unaware of or misled regarding the nature or purposes of the research.

(4) Secondary research for which consent is not required: Secondary research uses of identifiable private information or identifiable biospecimens, if at least one of the following criteria is met:

(i) The identifiable private information or identifiable biospecimens are publicly available;

(ii) Information, which may include information about biospecimens, is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained directly or through identifiers linked to the subjects, the investigator does not contact the subjects, and the investigator will not re-identify subjects;

(iii) The research involves only information collection and analysis involving the investigator's use of identifiable health information when that use is regulated under 45 CFR parts 160 and 164, subparts A and E, for the purposes of ''health care operations'' or ''research'' as those terms are defined at 45 CFR 164.501 or for ''public health activities and purposes'' as described under 45 CFR 164.512(b); or

(iv) The research is conducted by, or on behalf of, a Federal department or agency using government-generated or government-collected information obtained for nonresearch activities, if the research generates identifiable private information that is or will be maintained on information technology that is subject to and in compliance with section 208(b) of the E-Government Act of 2002, 44 U.S.C. 3501 note, if all of the identifiable private information collected, used, or generated as part of the activity will be maintained in systems of records subject to the Privacy Act of 1974, 5 U.S.C. 552a, and, if applicable, the information used in the research was collected subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

(5) Research and demonstration projects that are conducted or supported by a Federal department or agency, or otherwise subject to the approval of the department or agency head (or the approval of the heads of bureaus or other subordinate agencies that have been delegated authority to conduct the research and demonstration projects), and that are designed to study, evaluate, improve, or otherwise examine public benefit or service programs, including procedures for obtaining benefits or services under those programs, possible changes in or alternatives to those programs or procedures, or possible changes in methods or levels of payment for benefits or services under those programs. Such projects include, but are not limited to, internal studies by Federal employees, and studies under contracts or consulting arrangements, cooperative agreements, or grants. Exempt projects also include waivers of otherwise mandatory requirements using authorities such as sections 1115 and 1115A of the Social Security Act, as amended.

(i) Each Federal department or agency conducting or supporting the research and demonstration projects must establish, on a publicly accessible Federal website or in such other manner as the department or agency head may determine, a list of the research and demonstration projects that the Federal department or agency conducts or supports under this provision. The research or demonstration project must be published on this list prior to commencing the research involving human subjects.

(ii) [Reserved]

(6) Taste and food quality evaluation and consumer acceptance studies:

(i) If wholesome foods without additives are consumed, or

(ii) If a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

(7) Storage or maintenance for secondary research for which broad consent is required: Storage or maintenance of identifiable private information or identifiable biospecimens for potential secondary research use if an IRB conducts a limited IRB review and makes the determinations required by § 46.111(a)(8).

(8) Secondary research for which broad consent is required: Research involving the use of identifiable private information or identifiable biospecimens for secondary research use, if the following criteria are met:

(i) Broad consent for the storage, maintenance, and secondary research use of the identifiable private information or identifiable biospecimens was obtained in accordance with § 46.116(a)(1) through (4), (a)(6), and (d);

(ii) Documentation of informed consent or waiver of documentation of consent was obtained in accordance with § 46.117;

(iii) An IRB conducts a limited IRB review and makes the determination required by § 46.111(a)(7) and makes the determination that the research to be conducted is within the scope of the broad consent referenced in paragraph (d)(8)(i) of this section; and

(iv) The investigator does not include returning individual research results to subjects as part of the study plan. This provision does not prevent an

investigator from abiding by any legal requirements to return individual research results.

§ 2558.105 [Reserved]

§ 2558.106 [Reserved]

§ 2558.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members (professional competence), and the diversity of its members, including race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. The IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments (including policies and resources) and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a category of subjects that is vulnerable to coercion or undue influence, such as children, prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these categories of subjects.

(b) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(c) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(d) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(e) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues that require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

§ 2558.108 IRB functions and operations.

(a) In order to fulfill the requirements of this policy each IRB shall:

(1) Have access to meeting space and sufficient staff to support the IRB's review and recordkeeping duties;

(2) Prepare and maintain a current list of the IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications or licenses sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution, for example, full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant;

(3) Establish and follow written procedures for:

(i) Conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution;

(ii) Determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; and

(iii) Ensuring prompt reporting to the IRB of proposed changes in a research activity, and for ensuring that investigators will conduct the research activity in accordance with the terms of the IRB approval until any proposed changes have been reviewed and approved by the IRB, except when necessary to eliminate apparent immediate hazards to the subject.

(4) Established and follow written procedures for ensuring prompt reporting to the IRB; appropriate institutional officials; the department or agency head; and the Office for Human Research Protections, HHS, or any successor office, or the equivalent office within the appropriate Federal department or agency of

(i) Any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB; and

(ii) Any suspension or termination of IRB approval

(b) Except when an expedited review procedure is used (as described in § 2558.110), an IRB must review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

§ 2558.109 IRB review of research.

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by this policy, including exempt research activities under § 2258.104 for which limited IRB review is a condition of exemption (under § 2558.104(d)(2)(iii), (d)(3)(i)(C), (d)(7), and (d)(8)).

(b) An IRB shall require that information given to subjects (or legally authorized representatives, when appropriate) as part of informed consent is in accordance with § 2558.116. The IRB may require that information, in addition to that specifically mentioned in § 2558.116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with § 2558.117.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research requiring review by the convened IRB at intervals appropriate to the degree of risk, not less than once per year, except as described in § 2558.109(f).

(f)(1) Unless an IRB determines otherwise, continuing review of research is not required in the following circumstances:

(i) Research eligible for expedited review in accordance with § 2558.110;

(ii) Research reviewed by the IRB in accordance with the limited IRB review described in § 2558.104(d)(2)(iii), (d)(3)(i)(C), (d)(7), or (d)(8);

(iii) Research that has progressed to the point that it involves only one or both of the following, which are part of the IRB-approved study:

(A) Data analysis, including analysis of identifiable private information or identifiable biospecimens, or

(B) Accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care.

(2) [Reserved.]

(g) An IRB shall have authority to observe or have a third party observe the consent process and the research.

§ 2558.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

(a) The Secretary of HHS has established, and published as a Notice in the **Federal Register**, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The Secretary will evaluate the list at least every 8 years and amend it, as appropriate, after consultation with other federal departments and agencies and after publication in the **Federal Register** for public comment. A copy of the list is available from the Office for Human Research Protections, HHS, or any successor office.

(b)(1) An IRB may use the expedited review procedure to review the following:

(i) Some or all of the research appearing on the list described in paragraph (a) of this section, unless the reviewer determines that the study involves more than minimal risk;

(ii) Minor changes in previously approved research during the period for which approval is authorized; or

(iii) Research for which limited IRB review is a condition of exemption under § 2558.104(d)(2)(iii), (d)(3)(i)(C), and (d)(7) and (d)(8)

(2) Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in. § 2558.108(b)

(c) Each IRB that uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals that have been approved under the procedure.

(d) The department or agency head may restrict, suspend, terminate, or choose not to authorize an institution's or IRB's use of the expedited review procedure.

§ 2258.111 Criteria for IRB approval of research.

(a) In order to approve research covered by this policy the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized:

(i) By using procedures that are consistent with sound research design and that do not unnecessarily expose subjects to risk, and

(ii) Whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (*e.g.,* the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted. The IRB should be particularly cognizant of the special problems of research that involves a category of subjects who are vulnerable to coercion or undue influence, such as children, prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by, § 2558.116.

(5) Informed consent will be appropriately documented or appropriately waived in accordance with § 2558.117.

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(i) The Secretary of HHS will, after consultation with the Office of Management and Budget's privacy office and other Federal departments and agencies that have adopted this policy, issue guidance to assist IRBs in assessing what provisions are adequate to protect the privacy of subjects and to maintain the confidentiality of data.

(ii) [Reserved.]

(8) For purposes of conducting the limited IRB review required by § 2558.104(d)(7)), the IRB need not make the determinations at paragraphs (a)(1) through (7) of this section, and shall make the following determinations:

(i) Broad consent for storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens is obtained in accordance with the requirements of § 2558.116(a)(1)–(4), (a)(6), and (d);

(ii) Broad consent is appropriately documented or waiver of documentation is appropriate, in accordance with § 2558.117; and

(iii) If there is a change made for research purposes in the way the identifiable private information or identifiable biospecimens are stored or maintained, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

§ 2558.112 Review by Institution.

Research covered by this policy that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

§ 2258.113 Suspension or Termination of IRB Approval of Research.

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the department or agency head.

§ 2558.114 Cooperative Research.

(a) Cooperative research projects are those projects covered by this policy that involve more than one institution. In the conduct of cooperative research projects, each institution is responsible for safeguarding the rights and welfare of human subjects and for complying with this policy.

(b)(1) Any institution located in the United States that is engaged in cooperative research must rely upon approval by a single IRB for that portion

of the research that is conducted in the United States. The reviewing IRB will be identified by the Federal department or agency supporting or conducting the research or proposed by the lead institution subject to the acceptance of the Federal department or agency supporting the research.

(2) The following research is not subject to this provision:

(i) Cooperative research for which more than single IRB review is required by law (including tribal law passed by the official governing body of an American Indian or Alaska Native tribe); or

(ii) Research for which any Federal department or agency supporting or conducting the research determines and documents that the use of a single IRB is not appropriate for the particular context.

(c) For research not subject to paragraph (b) of this section, an institution participating in a cooperative project may enter into a joint review arrangement, rely on the review of another IRB, or make similar arrangements for avoiding duplication of effort.

§ 2558.115 IRB Records.

(a) An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent forms, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities, including the rationale for conducting continuing review of research that otherwise would not require continuing review as described in § 2558.109(f)(1).

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members in the same detail as described in § 2558.108(a)(2).

(6) Written procedures for the IRB in the same detail as described in § 2558.108(a)(3) and (4).

(7) Statements of significant new findings provided to subjects, as required by § 2558.116(c)(5).

(8) The rationale for an expedited reviewer's determination under § 2558.110(b)(1)(i) that research appearing on the expedited review list described in § 2558.110(a) is more than minimal risk.

(9) Documentation specifying the responsibilities that an institution and an organization operating an IRB each will undertake to ensure compliance with the requirements of this policy, as described in § 2558.103(e).

(b) The records required by this policy shall be retained for at least 3 years, and records relating to research that is conducted shall be retained for at least 3 years after completion of the research. The institution or IRB may maintain the records in printed form, or electronically. All records shall be accessible for inspection and copying by authorized representatives of the Federal department or agency at reasonable times and in a reasonable manner.

§ 2558.116 General Requirements for Informed Consent.

(a) General. General requirements for informed consent, whether written or oral, are set forth in this paragraph and apply to consent obtained in accordance with the requirements set forth in paragraphs (b) through (d) of this section. Broad consent may be obtained in lieu of informed consent obtained in accordance with paragraphs (b) and (c) of this section only with respect to the storage, maintenance, and secondary research uses of identifiable private information and identifiable biospecimens. Waiver or alteration of consent in research involving public benefit and service programs conducted by or subject to the approval of state or local officials is described in paragraph (e) of this section. General waiver or alteration of informed consent is described in paragraph (f) of this section. Except as provided elsewhere in this policy:

(1) Before involving a human subject in research covered by this policy, an investigator shall obtain the legally effective informed consent of the subject or the subject's legally authorized representative.

(2) An investigator shall seek informed consent only under circumstances that provide the prospective subject or the legally authorized representative sufficient opportunity to discuss and consider whether or not to participate and that minimize the possibility of coercion or undue influence.

(3) The information that is given to the subject or the legally authorized representative shall be in language understandable to the subject or the legally authorized representative.

(4) The prospective subject or the legally authorized representative must be provided with the information that a reasonable person would want to have in order to make an informed decision about whether to participate, and an opportunity to discuss that information.

(5) Except for broad consent obtained in accordance with paragraph (d) of this section:

(i) Informed consent must begin with a concise and focused presentation of the key information that is most likely to assist a prospective subject or legally authorized representative in understanding the reasons why one might or might not want to participate in the research. This part of the informed consent must be organized and presented in a way that facilitates comprehension.

(ii) Informed consent as a whole must present information in sufficient detail relating to the research, and must be organized and presented in a way that does not merely provide lists of isolated facts, but rather facilitates the prospective subject's or legally authorized representative's understanding of the reasons why one might or might not want to participate.

(6) No informed consent may include any exculpatory language through which the subject or the legally authorized representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence.

(b) Basic elements of informed consent. Except as provided in paragraph (d), (e), or (f) of this section, in seeking informed consent the following information shall be provided to each subject or the legally authorized representative:

(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures that are experimental;

(2) A description of any reasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others that may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of

records identifying the subject will be maintained;

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject;

(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled; and

(9) One of the following statements about any research that involves the collection of identifiable private information or identifiable biospecimens:

(i) A statement that identifiers might be removed from the identifiable private information or identifiable biospecimens and that, after such removal, the information or biospecimens could be used for future research studies or distributed to another investigator for future research studies without additional informed consent from the subject or the legally authorized representative, if this might be a possibility; or

(ii) A statement that the subject's information or biospecimens collected as part of the research, even if identifiers are removed, will not be used or distributed for future research studies.

(c) Additional elements of informed consent. Except as provided in paragraph (d), (e), or (f) of this section, one or more of the following elements of information, when appropriate, shall also be provided to each subject or the legally authorized representative:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) that are currently unforeseeable;

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's or the legally authorized representative's consent;

(3) Any additional costs to the subject that may result from participation in the research;

(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

(5) A statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject;

(6) The approximate number of subjects involved in the study;

(7) A statement that the subject's biospecimens (even if identifiers are removed) may be used for commercial profit and whether the subject will or will not share in this commercial profit;

(8) A statement regarding whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions; and

(9) For research involving biospecimens, whether the research will (if known) or might include whole genome sequencing (*i.e.,* sequencing of a human germline or somatic specimen with the intent to generate the genome or exome sequence of that specimen).

(d) Elements of broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens. Broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens (collected for either research studies other than the proposed research or nonresearch purposes) is permitted as an alternative to the informed consent requirements in paragraphs (b) and (c) of this section. If the subject or the legally authorized representative is asked to provide broad consent, the following shall be provided to each subject or the subject's legally authorized representative:

(1) The information required in paragraphs (b)(2), (b)(3), (b)(5), and (b)(8) and, when appropriate, (c)(7) and (9) of this section;

(2) A general description of the types of research that may be conducted with the identifiable private information or identifiable biospecimens. This description must include sufficient information such that a reasonable person would expect that the broad consent would permit the types of research conducted;

(3) A description of the identifiable private information or identifiable biospecimens that might be used in research, whether sharing of identifiable private information or identifiable biospecimens might occur, and the types of institutions or researchers that might conduct research with the identifiable private information or identifiable biospecimens;

(4) A description of the period of time that the identifiable private information or identifiable biospecimens may be stored and maintained (which period of time could be indefinite), and a description of the period of time that the identifiable private information or identifiable biospecimens may be used for research purposes (which period of time could be indefinite);

(5) Unless the subject or legally authorized representative will be provided details about specific research studies, a statement that they will not be informed of the details of any specific research studies that might be conducted using the subject's identifiable private information or identifiable biospecimens, including the purposes of the research, and that they might have chosen not to consent to some of those specific research studies;

(6) Unless it is known that clinically relevant research results, including individual research results, will be disclosed to the subject in all circumstances, a statement that such results may not be disclosed to the subject; and

(7) An explanation of whom to contact for answers to questions about the subject's rights and about storage and use of the subject's identifiable private information or identifiable biospecimens, and whom to contact in the event of a research-related harm.

(e) Waiver or alteration of consent in research involving public benefit and service programs conducted by or subject to the approval of state or local officials.

(1) Waiver. An IRB may waive the requirement to obtain informed consent for research under paragraphs (a) through (c) of this section, provided the IRB satisfies the requirements of paragraph (e)(3) of this section. If an individual was asked to provide broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens in accordance with the requirements at paragraph (d) of this section, and refused to consent, an IRB cannot waive consent for the storage, maintenance, or secondary research use of the identifiable private information or identifiable biospecimens.

(2) Alteration. An IRB may approve a consent procedure that omits some, or alters some or all, of the elements of informed consent set forth in paragraphs (b) and (c) of this section provided the IRB satisfies the requirements of paragraph (e)(3) of this section. An IRB may not omit or alter any of the requirements described in paragraph (a) of this section. If a broad consent

procedure is used, an IRB may not omit or alter any of the elements required under paragraph (d) of this section.

(3) Requirements for waiver and alteration. In order for an IRB to waive or alter consent as described in this subsection, the IRB must find and document that:

(i) The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine:

(A) Public benefit or service programs;

(B) Procedures for obtaining benefits or services under those programs;

(C) Possible changes in or alternatives to those programs or procedures; or

(D) Possible changes in methods or levels of payment for benefits or services under those programs; and

(ii) The research could not practicably be carried out without the waiver or alteration.

(f) General waiver or alteration of consent.

(1) Waiver. An IRB may waive the requirement to obtain informed consent for research under paragraphs (a) through (c) of this section, provided the IRB satisfies the requirements of paragraph (f)(3) of this section. If an individual was asked to provide broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens in accordance with the requirements at paragraph (d) of this section, and refused to consent, an IRB cannot waive consent for the storage, maintenance, or secondary research use of the identifiable private information or identifiable biospecimens.

(2) Alteration. An IRB may approve a consent procedure that omits some, or alters some or all, of the elements of informed consent set forth in paragraphs (b) and (c) of this section provided the IRB satisfies the requirements of paragraph (f)(3) of this section. An IRB may not omit or alter any of the requirements described in paragraph (a) of this section. If a broad consent procedure is used, an IRB may not omit or alter any of the elements required under paragraph (d) of this section.

(3) Requirements for waiver and alteration. In order for an IRB to waive or alter consent as described in this subsection, the IRB must find and document that:

(i) The research involves no more than minimal risk to the subjects;

(ii) The research could not practicably be carried out without the requested waiver or alteration;

(iii) If the research involves using identifiable private information or identifiable biospecimens, the research could not practicably be carried out without using such information or biospecimens in an identifiable format;

(iv) The waiver or alteration will not adversely affect the rights and welfare of the subjects; and

(v) Whenever appropriate, the subjects or legally authorized representatives will be provided with additional pertinent information after participation.

(g) Screening, recruiting, or determining eligibility. An IRB may approve a research proposal in which an investigator will obtain information or biospecimens for the purpose of screening, recruiting, or determining the eligibility of prospective subjects without the informed consent of the prospective subject or the subject's legally authorized representative, if either of the following conditions are met:

(1) The investigator will obtain information through oral or written communication with the prospective subject or legally authorized representative, or

(2) The investigator will obtain identifiable private information or identifiable biospecimens by accessing records or stored identifiable biospecimens.

(h) Posting of clinical trial consent form

(1) For each clinical trial conducted or supported by a Federal department or agency, one IRB-approved informed consent form used to enroll subjects must be posted by the awardee or the Federal department or agency component conducting the trial on a publicly available Federal website that will be established as a repository for such informed consent forms.

(2) If the Federal department or agency supporting or conducting the clinical trial determines that certain information should not be made publicly available on a Federal website (*e.g.,* confidential commercial information), such Federal department or agency may permit or require redactions to the information posted.

(3) The informed consent form must be posted on the Federal website after the clinical trial is closed to recruitment, and no later than 60 days after the last study visit by any subject, as required by the protocol.

(i) Preemption. The informed consent requirements in this policy are not intended to preempt any applicable Federal, state, or local laws (including tribal laws passed by the official governing body of an American Indian or Alaska Native tribe) that require additional information to be disclosed in order for informed consent to be legally effective.

(j) Emergency medical care. Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable Federal, state, or local law (including tribal law passed by the official governing body of an American Indian or Alaska Native tribe).

§ 2558.117 Documentation of informed consent.

(a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written informed consent form approved by the IRB and signed (including in an electronic format) by the subject or the subject's legally authorized representative. A written copy shall be given to the person signing the informed consent form.

(b) Except as provided in paragraph (c) of this section, the informed consent form may be either of the following:

(1) A written informed consent form that meets the requirements of § 2558.116. The investigator shall give either the subject or the subject's legally authorized representative adequate opportunity to read the informed consent form before it is signed; alternatively, this form may be read to the subject or the subject's legally authorized representative.

(2) A short form written informed consent form stating that the elements of informed consent required by § 2558.116 have been presented orally to the subject or the subject's legally authorized representative, and that the key information required by § 2558.116(a)(5)(i) was presented first to the subject, before other information, if any, was provided. The IRB shall approve a written summary of what is to be said to the subject or the legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Only the short form itself is to be signed by the subject or the subject's legally authorized representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the subject's legally authorized representative, in addition to a copy of the short form.

(c)(1) An IRB may waive the requirement for the investigator to obtain a signed informed consent form for some or all subjects if it finds any of the following:

(i) That the only record linking the subject and the research would be the informed consent form and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject (or legally authorized representative) will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern;

(ii) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context; or

(iii) If the subjects or legally authorized representatives are members of a distinct cultural group or community in which signing forms is not the norm, that the research presents no more than minimal risk of harm to subjects and provided there is an appropriate alternative mechanism for documenting that informed consent was obtained.

(2) In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects or legally authorized representatives with a written statement regarding the research.

§ 2558.118 Applications and proposals lacking definite plans for involvement of human subjects.

Certain types of applications for grants, cooperative agreements, or contracts are submitted to Federal departments or agencies with the knowledge that subjects may be involved within the period of support, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants when selection of specific projects is the institution's responsibility; research training grants in which the activities involving subjects remain to be selected; and projects in which human subjects' involvement will depend upon completion of instruments, prior animal studies, or purification of compounds. Except for research waived under § 2558.101(i) or exempted under § 2558.104, no human subjects may be involved in any project supported by these awards until the project has been reviewed and approved by the IRB, as provided in this policy, and certification submitted, by the institution, to the Federal department or agency component supporting the research.

§ 2558.119 Research undertaken without the intention of involving human subjects.

Except for research waived under § 2558.101(i) or exempted under § 2558.104, in the event research is undertaken without the intention of involving human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in this policy, a certification submitted by the institution to the Federal department or agency component supporting the research, and final approval given to the proposed change by the Federal department or agency component.

§ 2558.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.

(a) The department or agency head will evaluate all applications and proposals involving human subjects submitted to the Federal department or agency through such officers and employees of the Federal department or agency and such experts and consultants as the department or agency head determines to be appropriate. This evaluation will take into consideration the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained.

(b) On the basis of this evaluation, the department or agency head may approve or disapprove the application or proposal, or enter into negotiations to develop an approvable one.

§ 2558.121 [Reserved]

§ 2558.122 Use of Federal funds.

Federal funds administered by a Federal department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied.

§ 2558.123 Early termination of research support: Evaluation of applications and proposals.

(a) The department or agency head may require that Federal department or agency support for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the department or agency head finds an institution has materially failed to comply with the terms of this policy.

(b) In making decisions about supporting or approving applications or proposals covered by this policy the department or agency head may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragraph (a) of this section and whether the applicant or the person or persons who would direct or has/have directed the scientific and technical aspects of an activity has/have, in the judgment of the department or agency head, materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).

§ 2558.124 Conditions.

With respect to any research project or any class of research projects the department or agency head of either the conducting or supporting Federal department or agency may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

Fernando Laguarda,

General Counsel.

[FR Doc. 2022–20223 Filed 9–19–22; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 19–38; FCC 22–53; FR ID 99880]

Partition, Disaggregation, and Leasing of Spectrum

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: In this document, a *Second Further Notice of Proposed Rulemaking* (*Second FNPRM*) seeks comment on whether potential future expansion of the Enhanced Competition Incentive Program (ECIP) for wireless services could further the Congressional goals set out in the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (MOBILE NOW Act). It also proposes a framework for creating alternatives to population-based performance requirements for a variety of wireless radio service stakeholders with communications plans and business models not specifically targeted towards providing commercial wireless service to subscribers. It seeks specific comment on these proposals and a variety of alternatives to develop

a robust record on the most efficient approach towards addressing this industry goal. The *Second FNPRM* also seeks comment on how the proposals in the *Second FNPRM* may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

DATES: Interested parties may file comments on or before October 20, 2022; and reply comments on or before November 21, 2022.

ADDRESSES: You may submit comments, identified by WT Docket No. 19–38, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the Commission's Electronic Comment Filing System (ECFS): *https://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcccloses-headquarters-open-window-andchanges-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Katherine Patsas Nevitt of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418–0638 or *Katherine.Nevitt@fcc.gov.* For information concerning the Paperwork Reduction Act of 1995 (PRA) information collection requirements contained in the *Second FNPRM,* contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *Cathy.Williams@fcc.gov* or email *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (*Second FNPRM*) in WT Docket No. 19–38, FCC 22–53, adopted July 14, 2022 and released July 18, 2022. The full text of this document, including all Appendices, is available for inspection and viewing via the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-22-53A1.pdf* or ECFS by entering the docket number, WT Docket No. 19–38. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This proceeding shall continue to be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules (47 CFR 1.1200 through 1.1216). Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Paperwork Reduction Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Initial Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Second FNPRM.* It requests written public comment on the IRFA, contained at Appendix C to the *Second FNPRM.* Comments must be filed in accordance with the same deadlines as comments filed in response to the *Second FNPRM* as set forth on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Second FNPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Synopsis

A. ECIP Eligibility Expansion

The *Second FNPRM* seeks comment on whether to expand eligibility under the small carrier or Tribal Nation transaction prong of the ECIP to other entities. The initial *Notice of Proposed Rulemaking* (*NPRM*) was released on March 15, 2019, which initiated this

proceeding as directed by Congress to assess whether potential changes to the Commission's partitioning, disaggregation, and leasing rules might provide spectrum access to covered small carriers or promote the availability of advanced telecommunications services in rural areas. *Partitioning, Disaggregation, and Leasing of Spectrum,* Notice of Proposed Rulemaking, WT Docket No. 19–38, 84 FR 12566, April 2, 2019, 34 FCC Rcd 1758 (2019) (*NPRM*). On November 18, 2021, the Commission released a *Further Notice of Proposed Rulemaking* (*FNPRM*) that proposed an enhanced competition incentive program. Separate from the incentive program, the *FNPRM* sought comment on potential alternatives to population-based performance requirements and the feasibility of implementing use or share models for opportunistic spectrum use. *Partitioning, Disaggregation, and Leasing of Spectrum,* Further Notice of Proposed Rulemaking, WT Docket No. 19–38, 86 FR 74024, December 29, 2021, FCC 21–120 (Nov. 19, 2022) (*FNRPM*). In response, one commenter proposed an expansion of eligibility, beyond small carriers and Tribal Nations, to include certain non-common carriers in the first transaction prong of the ECIP. Wireless internet Service Providers Association (WISPA) Comments at 3–5. The *Second FNPRM* seeks comment on whether expanding eligibility using our general Title III powers would advance Congressional and Commission goals of facilitating broad deployment of advanced spectrum-based services. Is there a reason that Congress in the MOBILE NOW Act limited the scope of entities that we were directed to consider to those with common-carrier obligations? If we should expand eligibility beyond that called for in the MOBILE NOW Act, what is the appropriate vehicle for expanding eligibility in the small carrier or Tribal Nation transaction prong of the ECIP? Should we create a distinct eligibility designation for non-common carriers as we have done for Tribal Nations?

In considering eligibility expansion, we seek comment on two threshold issues: (1) how to define the specific category of eligible non-common carriers; and (2) what objective measure to determine relative small size is appropriate in this context. WISPA proposed two specific metrics for determining the scope of expansion of eligible entities in the ECIP, including whether an entity: (1) has filed an FCC Form 477 for census blocks that overlap or are adjacent to the license area to be disaggregated, partitioned or leased for at least the two calendar years preceding the transaction; and (2) together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers. WISPA Comments at 5. We seek comment on these metrics and whether they strike the appropriate balance in the potential range of expansion, including how these limitations relate to the goals of the program. If not, is there an alternate standard for determining which non-common carriers should be eligible that would achieve the Commission's goals? We note that the Commission has used the 250,000 subscriber benchmark for determining small providers in other contexts, and for determining rural service providers eligibility for a bidding credit in certain spectrum auctions, and we seek comment on whether subscriber count, as opposed to employee numbers, would be an appropriate measure of size for purposes of participation in ECIP as a small entity. The Commission has previously used the 250,000 subscriber benchmark as evidence of being a small communications provider. *See Small Business Exemption from Open internet Enhanced Transparency Requirements,* GN Docket No. 14–28, Order, 32 FCC Rcd 1772, 1772, para. 1 (2017). The House and the Senate Committee on Commerce, Science and Transportation have also passed bills using the 250,000 subscriber benchmark to designate small broadband providers. *See* Small Business Broadband Deployment Act, H.R. 4596, 114th Cong. section 2(d)(2) (2016); Small Business Broadband Deployment Act, S. 2283, 114th Cong. section 2(a)(4). The Commission has also used the 250,000 subscriber benchmark as a metric for entities to qualify for the rural service provider bidding credit in certain spectrum auctions. 47 CFR 1.2110(f)(4)(i) (defining an eligible rural service provider as having, together wireless, wireline, broadband, and cable subscribers and serving predominantly rural areas); *Updating Part 1 Competitive Bidding Rules,* WT Docket No. 14–170, Report and Order, 80 FR 56764, September 18, 2015, 30 FCC Rcd 7493, 7534–7535, para. 98 (2015). Typically, absent Small Business Administration approval for a different size standard, the Commission would consider a wireless provider to be small if it has 1,500 or fewer employees. *See* 13 CFR 121.201, North American Industry Classification System (NAICS) Code 517312. Is there an alternate approach for determining whether a non-common carrier is considered sufficiently small for purposes of ECIP?

Are there alternate proposals that we should consider for expanding eligibility to non-common carriers or any other class of users? If commenters believe an alternative proposal merits consideration, they should describe with specificity the precise proposal for expansion of eligibility in the small carrier or Tribal Nation transaction prong, the effects of applying any rule changes to entities that are non-common carriers, whether or not the Commission should adjust rules to better meet the goals in this proceeding of facilitating secondary markets transactions, and the costs and benefits of such an approach.

B. Alternative to Population-Based Construction Requirements

The *Second FNPRM* seeks further comment on, and proposes a structure for, the establishment of an alternate construction requirement and renewal standard for wireless radio service (WRS) licensees with communications needs less suited to population-based requirements. In most auctioned flexible services, licensees are required to meet population coverage performance benchmarks at an interim and final stage, which results in not having to provide signal coverage and service over the entire geographic area of the license. We note that the Commission has departed from providing the ''substantial service'' option that was available to many licensees as an alternative to population coverage in certain services, in large part because the subjective nature of the term ''substantial'' created uncertainty over both its fulfillment and enforcement. Commenters generally supported adoption of alternate requirements that were flexible and tailored to the unique needs and challenges of the applicable geographic area or entity, but advanced limited specific proposals beyond advocating a metric of less than 100 percent coverage. Additionally, while the record puts forward various general safe-harbor proposals, none of these proposals provide more certainty or objectivity than the ''substantial service'' standard. To facilitate industry-requested regulatory certainty, we seek further comment on specific details and potential real-world application of an alternative safe harbor and appropriate metrics that will balance the industry's desire for certainty while not resulting in spectrum lying fallow.

Alternate Requirement for Private Networks. We note that commenters described the need for alternative requirements in cases where a licensee is putting spectrum to use for private,

internal radio communications associated with its business functions. We acknowledge that, in these instances, the geographic area of the license might be more expansive than the desired area of operation, and that a population-based construction metric might not align with the intended area of operation, increasing the difficulty in meeting population coverage requirements. In addition, such licensees would need to meet not only construction requirements in the initial license term, but also the renewal requirements. In cases where licenses are obtained in the secondary market, renewal safe harbors may not be available to this type of licensee, potentially resulting in a chilling of potential transactions based on the uncertainty as to whether renewal obligations can be met.

We recognize that an alternative approach may benefit parties acquiring a license in the secondary market, which in many cases might occur after an interim performance benchmark is met, but prior to the end of term performance benchmark and/or renewal deadline. To benefit licensees seeking to meet private communications needs, we propose, and seek further comment on, an alternate, demand-based construction requirement. We propose to modify our renewal safe harbor to include ''demand-based initial construction.'' We also propose that, to meet the alternate construction requirement and to qualify for the modified renewal safe harbor, the licensee must show that its licensed area is entirely covered through the sum of the following three zones: a core usage zone, an expansion zone, and a protection zone.

We propose that the network must include a core usage zone where all the spectrum is actively used to meet private, internal communications needs. We expect that the licensed area subject to an alternative benchmark will vary in size, depending on, for example, whether the license was acquired through auction or through partition and/or disaggregation. We thus do not propose a standard minimum or maximum size for this core usage area, consistent with our goal of permitting each entity the flexibility to define the usage area tailored to its specific needs. We seek comment, however, on how best to delineate the appropriate size of a core area in order to guard against inefficient spectrum use or warehousing. Should the core area consist of a minimum percentage of the overall licensed area? Are there other minimum metrics we could set to achieve Commission goals? We also seek comment on whether to adopt a minimum signal level or other requirements to define this core usage area. Are there other minimum requirements that we should impose to delineate the core area of operations? Is it most efficient for licensees to provide maps and engineering showings confirming where the spectrum is in use, or should licensees define this area using other methods when making a certification to the Commission?

We also propose that licensees define an expansion zone into which the usage area may extend in the future or certify that they do not require such a zone based on network plans. Given the goals of this proceeding, we propose that this zone would be a nominal area, and seek comment on how to define this area in a way that avoids spectrum warehousing. How should the Commission evaluate the permissible size and boundaries of this area to avoid potential abuse, while permitting flexibility to account for expansion to meet future business communications needs? Should there be additional certifications, notices, or deadlines for the usage of a defined expansion area? Commenters should provide specific metrics where possible to describe how the Commission should define the expansion zone to best achieve our goal of providing certainty, while maintaining licensee flexibility. For both the core and expansion zones, we seek additional comment on whether to establish deadlines for licensees to meet their usage obligations in these respective zones. Should licensees be required within a certain period of time to complete core and expansion construction? What is the appropriate timeframe for construction of each of these areas to ensure that licensees are carrying out core operations and expansion plans in these respective zones?

Finally, we propose that licensees should be given flexibility to define a reasonable protection zone surrounding the core usage and expansion zones, up to the license boundary, in order to provide interference protection, consistent with the established service rule-based protection criteria, for the licensee and neighboring licensees. This approach would allow licensees greater flexibility to place transmitters according to business needs without having to provide commercial-grade signal coverage at the very edge of their license boundary. We note that this is the same flexibility provided today in radio services that require coverage of a population percentage within the licensed area, not coverage to the entire licensed area. We clarify, however, that licensees operating under this proposed framework would nonetheless be required to meet the applicable co-channel and adjacent channel protection criteria set forth in the relevant radio service rules (*e.g.,* a signal strength at the boundary, or maintaining a service/interfering contour). We seek comment on how best to define this protection area, including addressing how any definition would continue to protect for system expansion. In particular, we ask commenters to provide input regarding how the appropriate size of any protection area relates to promoting spectrum use in the core and expansion usages area, while not resulting in spectrum hoarding in a licensed area. As stated, this framework could substantially benefit licensees seeking to provide private internal communications, and is likely to provide clarity regarding stakeholder rights and responsibilities associated with secondary market transactions. This regulatory relief, however, might also benefit licensees intending to use spectrum to meet private, internal communication needs, but that acquired their authorizations at auction. Should we apply this framework to licenses acquired at auction, in addition to licenses acquired through the secondary markets? Would a three-zone approach that contemplates coverage of all geography in a license area provide stakeholders with the requisite flexibility when applied to potentially larger license sizes available in certain auctions?

We believe the alternative standard should be codified in part 1 of our rules, within the existing renewal standard. 47 CFR 1.949 and 1.950. We seek comment, however, on the most appropriate location for these proposed rule changes. Are Commission rule §§ 1.949 and 1.950 the appropriate place to amend our performance rules to facilitate administrative ease without creating confusion for licensees over Commission requirements? In the alternative, rather than creating a general rule applicable to all WRS licensees, regardless of spectrum band, should we amend our rules for affected services with a service-specific exception?

Similarly, and given that the current technical standards and protections at the boundary of a partitioned or disaggregated license are service-specific, we seek comment on whether to consider changes to any of these rules for ECIP licensees in particular. Are the current protections adequate for the types of licensees we consider here? What changes, if any, should the Commission consider in order to allow these networks to meet construction

requirements yet avoid harmful interference?

Alternate Use or Share Safe Harbor. Commenters note the existence of a variety of enterprises in rural areas that serve critical industries and locations, such as hospitals, school campuses, public safety facilities, and mining and farming concerns. Some commenters argue that, given the nature of private enterprise networks, the construction and renewal requirements could be fulfilled as long as licensees make use of the spectrum to meet communications needs at any place within the geographic license area, regardless of population or geographic coverage. We find this standard to be overbroad and contrary to the goals of this proceeding, as it could incentivize spectrum warehousing and result in transactions for areas substantially larger than required to meet an entity's communications needs.

We seek comment instead on a ''use or offer to share'' safe harbor metric for renewal and construction that acknowledges the needs of these types of networks and would facilitate spectrum use. Under this approach, to meet the safe harbor, the licensee would show that: (1) it is using the spectrum in order to meet a private internal need within the licensed area; and (2) it has an ongoing public offering to sell or lease any unused geographic area under reasonable terms and conditions.

We seek comment on specific definitions of the relevant terms and concepts within such a safe harbor. For example, how should the Commission determine whether the terms and conditions are reasonable? Are there specific additional ways to prevent warehousing within this standard? Do commenters believe that this type of standard would continue to allow spectrum warehousing and abuse? Is it more efficient to require return of unused spectrum to Commission inventory for re-licensing, rather than allowing such a safe harbor? Commenters are encouraged to discuss how this proposal could incentivize deployment and spectrum use by the types of private networks for which alternative metrics are needed. We also seek comment on the costs and benefits of the proposals advanced above and any alternatives raised by commenters.

Ensuring connectivity for all private wireless applications. Many emerging private wireless use cases have the potential to unlock efficiencies in areas that are not only less populated but also associated with more moderate levels of enterprise demand. For example, small farms can still benefit from smart agriculture, just as small businesses in any number of rural industries can leverage wireless technologies to enhance their operations—and increasingly may need to do so to stay competitive as larger firms do the same. Similarly, smart infrastructure, which can be deployed outside of population centers, may not always be operated by a single customer (*e.g.,* a large utility) that can generate a large amount of concentrated demand. To what extent can secondary market transactions fulfill demand for these applications, and to what extent will these applications rely on buildout by the original licensee? Given the centrality of these and similar use cases to the public interest benefits of 5G and other advanced wireless technologies, how can we ensure that our construction requirements, both population-based and alternative, encourage spectrum deployment in all areas with private wireless demand? Should we modify our population-based requirements to ensure that spectrum is available and put to use in these locations? If so, how?

C. Other Efforts To Promote Digital Equity and Inclusion

Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–17519 Filed 9–19–22; 8:45 am]

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Notices

Federal Register
Vol. 87, No. 181
Tuesday, September 20, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA–2022–0011]

Information Collection Request; In-Person and Online Registration for FSA-Hosted Events and Conferences

AGENCY: Farm Service Agency, Department of Agriculture (USDA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on a revision and an extension of the information collection associated with online and in-person registration for FSA-hosted events and conferences. The information collection is needed for FSA to obtain information from the respondents who register on the internet to access and make preparation for participation in events, and when necessary, to make payment and reservations to attend any FSA-hosted conferences and events. Additionally, the demographic data collected through this information collection assists FSA in monitoring its outreach and engagement of farmers and ranchers.

DATES: We will consider comments that we receive by November 21, 2022.

ADDRESSES: We invite you to submit comments on the information collection request. You may submit comments by any of the following methods, although FSA prefers that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and search for Docket ID FSA–2022–0004. Follow the online instructions for submitting comments.
- *Mail, Hand-Delivery, or Courier:* Farm Service Agency, USDA, Kaley Grimland, Program Analyst, 1400 Independence Avenue, Mail Stop 0539 SW, Washington, DC 20250. In your comment, specify the docket ID FSA–2022–0011.

All comments will be posted without change and publicly available on *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kaley Grimland telephone: 831–975–7769; email: *Kaley.Grimland@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: In-Person and Online Registration for FSA-hosted Events and Conferences.

OMB Control Number: 0560–0226.

Expiration Date of Approval: November 30, 2022.

Type of Request: Extension with a Revision.

Abstract: The collection of information is needed for FSA to obtain information from the respondents who register on the internet to access participation in events, and when necessary, to make payment and reservations to attend any FSA-hosted conferences and events. They can register on FSA's Online Registration site on the internet. Respondents who do not have access to the internet can register by mail or fax. The information is collected by the FSA employees who host the conferences and events. FSA is collecting common elements from interested respondents such as name, organization, address, country, phone number, email address, State, city or town, payment options (credit card, check), special accommodations requests and how the respondent learned of the conference. The information collection element may also include race, ethnicity, gender and veteran status, and new farmer status. The respondents are mainly individuals who will attend the FSA-hosted conferences or events. The information is primarily used to assess attendance and assist FSA staff in preparations to serve individuals registering for online or in person events. If applicable, the information collection may be used to collect payment from the respondents and make hotel reservations and other special arrangements as necessary. Race, ethnicity, gender, and other demographic information obtained through registration is voluntary, and is used to monitor FSA's outreach and engagement of farmers and ranchers, including historically underserved farmers and ranchers. FSA defines historically underserved as a community made up of a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Those groups include African Americans, American Indians or Alaskan natives, Hispanics, and Asians or Pacific Islanders and women. This information is not used to evaluate any FSA program application and choosing not to provide this information will not affect the application process for any individual applying to an FSA program.

The burden hours increased by 41,025 hours due to the revamped and improved registration format. FSA intends to obtain manual registration at in-person outreach events, which has not previously been done, and has also increased the number of on-line outreach events requiring registration. The number of respondents and responses increased by 549,100 so the total number of 550,000 is currently reflected in the request.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per responses hours multiplied by the estimated total annual of responses.

Estimate of Annual Burden: Public reporting burden for this collection of information is estimated to average 0.075 hours per response. (4.5 minutes).

Type of Respondents: Individuals, Business or other for-profit, non-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Government.

Estimated Number of Respondents: 550,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual of Responses: 550,000.

Estimated Average Time per Responses: 0.075 hours.

Estimated Total Annual Burden on Respondents: 41,250 hours.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper

performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

William Marlow,

Acting Administrator, Farm Service Agency.

[FR Doc. 2022–20266 Filed 9–19–22; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID: FSA–2022–0012]

Information Collection Requests; Direct Loan Making; Direct Loan Servicing-Regular; Servicing Minor Program Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on a revision of three currently approved information collection associated with Direct Loan Making Program, Direct Loan Servicing—Regular and Servicing Minor Program Loans. For Direct Loan Making, the collected information is used in eligibility and feasibility determinations on farm loan applications. In the Direct Loan Servicing—Regular, the information is used to determine borrower compliance with loan agreements, assist the borrower in achieving business goals, and regular servicing of the loan account such as graduation, subordination, partial release, and use of proceeds. In Servicing Minor Program Loans, the information collected is used to perform routine and special servicing actions for loans authorized and serviced under FSA's Minor Loan Program.

DATES: We will consider comments that we receive by November 21, 2022.

ADDRESSES: We invite you to submit comments in response to this notice. FSA prefers that the comments are submitted electronically through the Federal eRulemaking Portal, identified by Docket ID No. FSA–2022–0012, go to *http://www.regulations.gov* and search for docket ID FSA–2022–0012. Follow the online instructions for submitting comments.

All comments received will be posted without change and made publicly available on *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For specific questions related to the collection activities or to obtain a copy of the information collection request: For the Direct Loan Making Program please contact Raenata Walker-Cohen; telephone; (202) 205–0682; email: *raenata.walker-cohen@usda.gov*; for Direct Loan Servicing—Regular or Servicing Minor Program Loans, please contact Lee Nault, (202) 720–6834; *lee.nault@usda.gov*. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice) or (844) 433–2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Title: Farm Loan Programs, Direct Loan Making.

OMB Control Number: 0560–0237.

Type of Request: Revision.

Abstract: FSA's Farm Loan Programs provide loans to family farmers to purchase real estate and equipment, and to finance agricultural production. Direct Loan Making (including Direct Farm Ownership Microloan (DFOML)) regulations in 7 CFR part 764 provide the requirements and process for determining an applicant's eligibility for a direct loan.

FSA will be streamlining and simplifying the forms and application process to follow the Executive Order 14058—Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government. Thus, the form FSA–2001, ''Request for Direct Loan Assistance'' has been amended to consolidate the current loan application package into one, simplified, concise form.

The following forms will also be consolidated and will no longer be required as a part of a complete direct loan application. Those forms are not being rendered obsolete because those forms are being used for the Farm Storage Facility Loan Program (FSFL) that was exempted from the Paperwork Reduction Act (7 U.S.C. 9091(c)(2)(B)) and not accounted for in the burden hours in the request. FSA–2330, Request for Microloan Assistance; FSA–2002, Three Year Financial History; FSA–2003, Three Year Production History; FSA–2004, Authorization to Release Information; FSA–2005, Creditor List; FSA–2006, Property Owned and Leased; FSA–2037, Farm Business Plan Worksheet/Balance Sheet; FSA–2038, Farm Business Plan Worksheet/Projected/Actual Income & Expense; and FSA–2302, Description of Farm Training and Experience.

As it relates solely to the form FSA–2001, the burden hours are projected to increase due to the consolidation of multiple forms into one. The burden hours of the package in its entirety are expected to increase by 61,661 while decreasing the estimated annual number of responses by 135,668.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per responses hours multiplied by the estimated total annual responses.

Estimate of Average Time to Respond: Public reporting burden for the information collection is estimated to average 0.4968 hours per response.

Type of Respondents: Individuals or households, businesses or other for-profit farms.

Estimated Annual Number of Respondents: 189,772.

Estimated Number of Reponses per Respondent: 2.97.

Estimated Total Annual Responses: 562,726.

Estimated Average Time per Response: 0.4968 hours.

Estimated Total Annual Burden on Respondents: 279,588 hours.

Title: Farm Loan Programs—Direct Loan Servicing—Regular.

OMB Control Number: 0560–0236.

Expiration Date: September 30, 2023.

Type of Request: Revision.

Abstract: FSA's Farm Loan Programs provide loans to family farmers to purchase real estate and equipment, and finance agricultural production. Direct Loan Servicing—Regular, as specified in 7 CFR part 765, provides the requirements related to routine servicing actions associated with direct loans. FSA is required to actively supervise its borrowers and provide credit counseling, management advice and financial guidance. Additionally, FSA must document that credit is not available to the borrower from commercial credit sources in order to maintain eligibility for assistance. Information collections established in the regulation are necessary for FSA to monitor and account for loan security, including proceeds derived from the

sale of security, and to process a borrower's request for subordination or partial release of security. Borrowers are required to provide financial information to determine graduation eligibility based on commercial lender standards provided to FSA.

The existing approved request is being revised due to a change in use of one of the forms, FSA–2060 ''Application for Subordination (Real or Personal), or Partial Release, or Consent for Real Estate Security.'' FSA intends to utilize this form for servicing requests in place of the FSA–2001. With minimal revisions, FSA was able to edit the existing FSA–2060 to capture the information previously requested on the FSA–2001.

FSA is requesting OMB approval on the revised, estimated numbers, which are being provided in this request. The burden hours increased by 235 hours while the annual responses have increased by 470. The reason for the increase is due to an increase of the number of borrowers who utilize the revised FSA–2060 to request servicing actions.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per responses multiplied by the estimated total annual of responses.

Estimate of Annual Burden: Public reporting burden for this collection of information is estimated to average 0.3086 hours per response.

Type of Respondents: Individuals, associations, partnerships, or corporations.

Estimated Number of Respondents: 94,951.

Estimated Annual Number of Responses per Respondent: 1.046.

Estimated Total Annual of Responses: 98,970.

Estimated Average Time per Responses: 0.3086 hours.

Estimated Total Annual Burden on Respondents: 30,550 hours.

Title: Servicing Minor Program Loans.

OMB Control Number: 0560–0230.

Expiration Date: August 31, 2025.

Type of Request: Revision.

Abstract: Section 331(b) of the Consolidated Farm and Rural Development Act (CONTACT, 7 U.S.C. 1981(b)), in part, authorizes the Secretary of Agriculture to modify, subordinate and release terms of security instruments, leases, contracts, and agreements entered by FSA. That section also authorizes transfers of security property, as the Secretary deems necessary, to carry out the purpose of the loan or protect the Government's financial interest. Section 335 of the CONACT (7 U.S.C. 1985) provides servicing authority for real estate security; operation or lease of realty; disposition of property; conveyance of real property interest of the United States; easements; and condemnations.

The information collection relates to a program benefit recipient or loan borrower requesting action on security they own, which was purchased with FSA loan funds, improved with FSA loan funds or has otherwise been mortgaged to FSA to secure a government loan. The information collected is primarily financial data not already on file, such as borrower asset values, current financial information and public use and employment data.

The existing approved request is being revised due to a change in the use of one of the forms, FSA–2060 ''Application for Subordination (Real or Personal), or Partial Release, or Consent for Real Estate Security.'' FSA intends to utilize this form for servicing requests in place of the FSA–2001. FSA will edit the existing FSA–2060 to capture the information previously requested on the FSA–2001. Even though FSA will use the revised FSA–2060 under the OMB Control Number of 0560–0236, there is no anticipated increase or decrease in usage for loans serviced under this program. Thus, the burden hours have not changed.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per responses hours multiplied by the estimated total annual responses.

Estimate of Annual Burden: Public reporting burden for this collection of information is estimated to average 0.64 hours per response.

Type of Respondents: Individuals, associations, partnerships, or corporations.

Estimated Number of Respondents: 58.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual of Responses: 58.

Estimated Average Time per Responses: 0.64 hours.

Estimated Total Annual Burden on Respondents: 37 hours.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

William Marlow,

Acting Administrator, Farm Service Agency.

[FR Doc. 2022–20250 Filed 9–19–22; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 03–5A008]

Export Trade Certificate of Review

ACTION: Notice of application for an amended Export Trade Certificate of Review for California Pistachio Export Council, LLC, application no. 03–5A008.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (OTEA) of the International Trade Administration, has received an application for an amended Export Trade Certificate of Review (Certificate). This notice summarizes the proposed application and seeks public comments on whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, OTEA, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) (the Act) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing title III are found at 15

CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the **Federal Register**, identifying the applicant and each member and summarizing the proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

Written comments should be sent to *ETCA@trade.gov.* An original and two (2) copies should also be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 03–5A008.''

A summary of the application follows.

Summary of the Application

Applicant: California Pistachio Export Council, LLC, 512 C St. NE, Washington, DC 20002.

Contact: Robert Schramm, Principal at Schramm, Williams & Associates, Inc.

Application No.: 03–5A008.

Date Deemed Submitted: September 9, 2022.

Proposed Amendment

1. California Pistachio Export Council, LLC seeks to amend its Certificate as follows: add the following entity as a Member of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):

a. Horizon Nut, LLC

The proposed amendment would result in the following Members under the Certificate:

1. Horizon Nut, LLC
2. Keenan Farms, Inc.
3. Meridian Nut Growers, LLC
4. Monarch Nut Company
5. Primex Farms, LLC
6. Setton Pistachio of Terra Bella, Inc.
7. Zymex Industries, Inc.

Dated: September 15, 2022.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2022–20334 Filed 9–19–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–869]

Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that sales of diffusion-annealed, nickel-plated flat-rolled steel products (nickel-plated steel products) from Japan have been made at less than normal value by Toyo Kohan Co., Ltd. (Toyo Kohan) during the period of review (POR), May 1, 2020, through April 30, 2021.

DATES: Applicable September 20, 2022.

FOR FURTHER INFORMATION CONTACT: Amaris Wade, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6334.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2022, Commerce published the *Preliminary Results.*[1] We invited interested parties to comment on the *Preliminary Results.*[2] This review covers only one respondent, Toyo Kohan. No interested party submitted comments on the *Preliminary Results.* Accordingly, the final results remain unchanged from the *Preliminary Results.* Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

[1] *See Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 34253 (June 6, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *Id.*

Scope of the Order [3]

The diffusion-annealed, nickel-plated flat-rolled steel products included in this order are flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (*i.e.,* ''diffusion-annealed''); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness. For purposes of this order, ''nickel-based alloys'' include all nickel alloys with other metals in which nickel accounts for at least 80 percent of the alloy by volume.

Imports of merchandise included in the scope of this order are classified primarily under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7212.50.0000 and 7210.90.6000, but may also be classified under HTSUS subheadings 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, or 7226.99.0180. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Final Results of the Review

We determine that the following weighted-average dumping margin exists for the respondent for the POR, May 1, 2020, through April 30, 2021:

Exporter or producer	Weighted-average dumping margin (percent)
Toyo Kohan Co., Ltd	1.92

Disclosure and Public Comment

As noted above, Commerce received no comments on its *Preliminary Results.* As a result, we have not modified our analysis, and will not issue a decision memorandum to accompany this **Federal Register** notice. Further, because we have not changed our calculations since the *Preliminary Results,* there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for these final results. We are adopting the *Preliminary Results* as the final results.

[3] *See Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Antidumping Duty Order,* 79 FR 30816 (May 29, 2014) (*Order*).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. We will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of the importer's sales in accordance with 19 CFR 351.212(b)(1).

Where the respondent's weighted-average dumping margin is either zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[4]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to each company's weighted-average dumping margin established in the final results of this administrative review (except if that rate is *de minimis,* in which situation the cash deposit rate will be zero); (2) for merchandise exported by a producer or exporter not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer has been covered in a prior complete segment of this proceeding, the cash deposit rate will be the company-specific rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 45.42 percent,[5] the all-others rate established in the less-than-fair-value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: September 14, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–20305 Filed 9–19–22; 8:45 am]

BILLING CODE 3510–DS–P

[4] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[5] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–814]

Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 8, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Vandewater International, Inc.* v. *United States,* Court No. 18–00199, sustaining the U.S. Department of Commerce (Commerce)'s remand redetermination pertaining to the scope ruling for the antidumping duty order on carbon steel butt-weld pipe fittings from the People's Republic of China finding steel branch outlets imported by Vandewater International Inc. (Vandewater) to be covered by the order. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's scope ruling, and that Commerce is amending the scope ruling to clarify that a different effective date for suspension of liquidation now applies.

DATES: Applicable September 18, 2022.

FOR FURTHER INFORMATION CONTACT: Kelsie Hohenberger, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2517.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2018, Commerce found that Vandewater's steel branch outlets were covered by the order.[1] Commerce's determination was based on the sources enumerated under 19 CFR 351.225(k)(1). Vandewater

[1] *See* Memorandum, ''Antidumping Duty Order on Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Final Scope Ruling on Vandewater International Inc.'s Steel Branch Outlets,'' dated September 10, 2018 (Final Scope Ruling).

appealed Commerce's Final Scope Ruling.

On October 16, 2020, the CIT remanded the Final Scope Ruling to Commerce, holding that Commerce's determination that the sources identified in 19 CFR 351.225(k)(1) were dispositive as to whether Vandewater's outlets were covered by the scope of the order was not supported by substantial evidence.[2] The CIT instructed Commerce to conduct a full scope inquiry on remand and analyze the criteria set forth in 19 CFR 351.225(k)(2).[3]

In its remand redetermination proceedings, Commerce initiated a full scope inquiry and reopened the record, prior to issuing the final results of redetermination in July 2021.[4] Commerce also evaluated the criteria set forth in 19 CFR 351.225(k)(2) and continued to find that Vandewater's steel branch outlets are covered by the order.[5] As a consequence of initiating a scope inquiry on remand, Commerce clarified that it would no longer instruct U.S. Customs and Border Protection (CBP) to suspend or continue to suspend entries that were suspended pursuant to the instructions issued following the September 10, 2018, Final Scope Ruling. Rather, Commerce indicated that it would instruct CBP (upon a final and conclusive court decision) to suspend or continue to suspend entries of steel branch outlets that entered, or were withdrawn from warehouse, for consumption on or after October 30, 2020 (*i.e.,* the date of initiation of the scope inquiry).[6] The CIT sustained Commerce's final redetermination.[7]

Timken Notice

In its decision in *Timken,*[8] as clarified by *Diamond Sawblades,*[9] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's September 8, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's Final Scope Ruling. Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Scope Ruling

In accordance with the CIT's September 8, 2022, final judgment, Commerce has revised the analysis contained in its Final Scope Ruling and continues to find that the scope of the order covers the products addressed in the Final Scope Ruling. However, as summarized above, Commerce has modified its determination with respect to the suspension of liquidation for entries of Vandewater's steel branch outlets. Specifically, if Commerce's decision on remand is sustained, we no longer intend to instruct CBP to suspend or continue to suspend entries that were suspended pursuant to the instructions issued following the September 10, 2018, Final Scope Ruling. Rather, Commerce intends to instruct CBP (upon a final and conclusive court decision) to suspend or continue to suspend entries of steel branch outlets that entered, or were withdrawn from warehouse, for consumption on or after October 30, 2020.[10]

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by the CIT from liquidating Vandewater's entries of steel branch outlets covered by the scope of the order entered, or withdrawn from warehouse for consumption, on or after September 10, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

With respect to entries predating October 30, 2020, that were suspended pursuant to the instructions issued following the September 10, 2018, Final Scope Ruling, Commerce will instruct CBP that, pending any appeals, the cash deposit rate will be zero percent for steel branch outlets imported by Vandewater. In the event that the CIT's final judgment is not appealed or is upheld on appeal, Commerce intends to instruct CBP to lift suspension of liquidation and liquidate such entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: September 14, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–20307 Filed 9–19–22; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Vandewater International, Inc.* v. *United States,* 476 F. Supp. 3d 1357, 1359 (CIT October 16, 2020) (*Remand Order*).

[3] *Id.*

[4] *See* Commerce's Letter, ''Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Scope Inquiry,'' dated October 30, 2020.

[5] *See Final Results of Redetermination Pursuant to Court Remand, Vandewater International, Inc.* v. *United States,* Court No. 18–00199, Slip Op. 20–146, dated July 22, 2021 (Final Results of Redetermination), available at *https://access.trade.gov/Resources/remands/20-146.pdf.*

[6] *Id.* at 103.

[7] *See Vandewater International, Inc.* v. *United States,* Court No. 18–00199, Slip Op. 22–104 (September 8, 2022).

[8] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[9] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[10] *See* Final Results of Redetermination at 103.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC386]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) will hold a one-day hybrid (in-person/virtual) meeting of its Joint Council Workgroup for Section 102 of the Modernizing Recreational Fisheries Management Act of 2018.

DATES: The meeting will take place Wednesday, October 12, 2022, from 9:30 a.m. to 4 p.m., EST.

ADDRESSES: The in-person meeting will take place at the Gulf Council office. Registration information will be available on the Council's website by visiting *www.gulfcouncil.org* and clicking on the Joint Workgroup meeting on the calendar.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Rindone, Lead Fishery Biologist, Gulf of Mexico Fishery Management Council; *ryan.rindone@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Wednesday, October 12, 2022; 9:30 a.m.–4 p.m., EST

The meeting will begin with Introductions, Adoption of Agenda, Approval of Minutes from the September 10, 2020 meeting, and a presentation and discussion on the Future Vision for Federal Managed Recreational Fisheries.

The Joint Workgroup will receive a summary from the South Atlantic Fishery Management Council's

Workgroup on Federal Reef Fish Permits, followed by a review of the National Saltwater Recreational Fisheries Policy and the March 2022 Recreational Fisheries Summit Recap and Workgroup Goals. The Joint Workgroup will then receive a presentation titled: How are the Councils Doing, with respect to implementing alternative recreational fisheries management strategies, followed by making recommendations to the Councils for Alternative Recreational Fisheries Management Strategies.

Lastly, the Joint Workgroup will receive Public Comment and discuss any Other Business items.

—*Meeting Adjourns*

The meeting will also be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the Joint Workgroup meeting on the calendar. The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Pereira, (813) 348–1630, at least 5 days prior to the meeting date.

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

Dated: September 15, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–20323 Filed 9–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC223]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Office of Naval Research's Arctic Research Activities in the Beaufort and Chukchi Seas (Year 5)

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Office of Naval Research (ONR) to incidentally harass, by Level B harassment only, marine mammals during active acoustic testing associated with Arctic Research Activities (ARA) in the Beaufort Sea and eastern Chukchi Sea. The ONR's activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year (FY) 2004 (2004 NDAA).

DATES: This Authorization is effective from September 14, 2022 through September 13, 2023.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. 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 proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''), and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The 2004 NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as applied to a ''military readiness activity.'' The activity for which incidental take of marine mammals is being authorized addressed here qualifies as a military readiness activity. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On March 21, 2022, NMFS received a request from ONR for an IHA to take marine mammals incidental to ARA in the Beaufort and eastern Chukchi Seas. The application was deemed adequate and complete on June 30, 2022. ONR's request is for take of beluga whales (*Delphinapterus leucas;* two stocks) and ringed seals (*Pusa hispida hispida*) by Level B harassment. Neither ONR nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

This IHA covers the fifth year of a larger project for which ONR obtained prior IHAs (83 FR 48799, September 27, 2018; 84 FR 50007, September 24, 2019; 85 FR 53333, August 28, 2020; 86 FR 54931, October 5, 2021) and may request take authorization for subsequent facets of the overall project. This IHA is valid for a period of 1 year from the date of issuance. The larger project supports the development of an under-ice navigation system under the ONR Arctic Mobile Observing System (AMOS) project. ONR has complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs (83 FR 48799, September 27, 2018; 84 FR 50007, September 24, 2019; 85 FR 53333, August 28, 2020; 86 FR 54931, October 5, 2021).

Description of Specified Activity

Overview

ONR's ARA include scientific experiments to be conducted in support of the programs named above. Specifically, the project includes the AMOS experiments in the Beaufort and Chukchi Seas. Project activities involve acoustic testing and a multi-frequency navigation system concept test using left-behind active acoustic sources. More specifically, these experiments involve the deployment of moored, drifting, and ice-tethered active acoustic sources from the Research Vessel (R/V) *Sikuliaq.* Another vessel will be used to

retrieve the acoustic sources. Underwater sound from the acoustic sources may result in Level B harassment of marine mammals.

Dates and Duration

This action will occur from mid-September 2022 through mid-September 2023. The 2022 cruise will leave from Nome, Alaska on September 14, 2022 using the R/V *Sikuliaq* and involve 120 hours of active source testing. During this first cruise, several acoustic sources will be deployed from the ship. Some acoustic sources will be left behind to provide year-round observation of the Arctic environment. Gliders deployed during the September 2022 cruise may be recovered before the research vessel departs the study area or during the September 2023 cruise. Up to seven fixed acoustic navigation sources transmitting at 900 hertz (Hz) will remain in place for a year. Drifting and moored oceanographic sensors will record environmental parameters throughout the year. Autonomous weather stations and ice mass balance buoys will also be deployed to record environmental measurements throughout the year (Table 1). The research vessel is planned to return to Nome, Alaska on October 28, 2022. ONR will apply for a renewal or separate IHA for activities conducted during the planned September 2023 cruise.

During the scope of this project, other activities may occur at different intervals that will assist ONR in meeting the scientific objectives of the various projects discussed above. However, these activities are designated as de minimis sources in ONR's 2022–2023 IHA application (consistent with analyses presented in support of previous Navy ONR IHAs), or will not produce sounds detectable by marine mammals (see discussion on de minimis sources below). These include the deployment of a Woods Hole Oceanographic Institution (WHOI) micromodem, acoustic Doppler current profilers (ADCP), and ice profilers (Table 2).

Geographic Region

This action will occur across the U.S. Exclusive Economic Zone (EEZ) in both the Beaufort and Chukchi Seas, partially in the high seas north of Alaska, the Global Commons, and within a part of the Canadian EEZ (in which the appropriate permits will be obtained by the Navy) (Figure 1). The action will primarily occur in the Beaufort Sea, but the analysis considers the drifting of active sources on buoys into the eastern portion of the Chukchi Sea. The closest point of the study area to the Alaska coast is 110 nautical miles (nm) (204 km). The study area is approximately 639,267 km^2.

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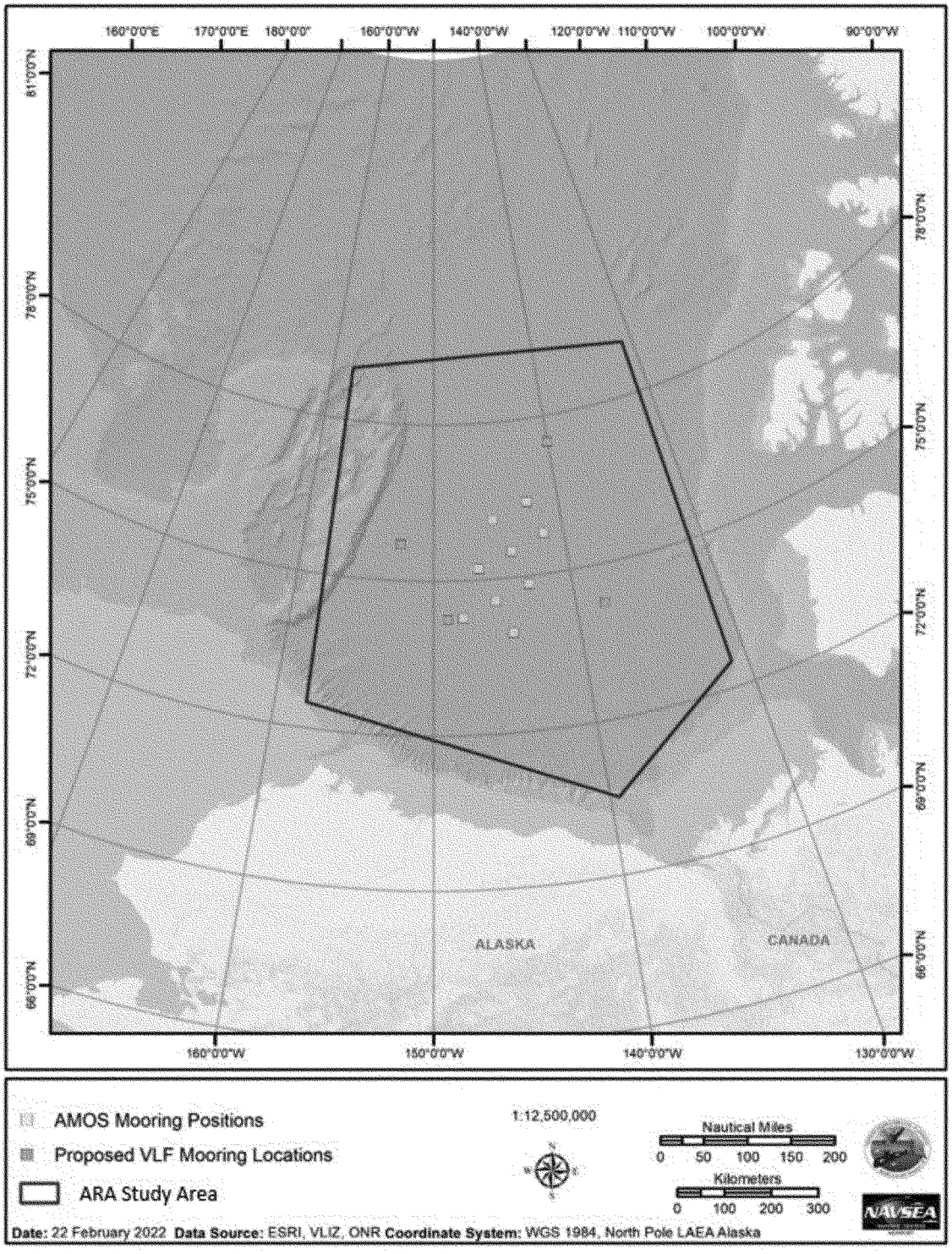

Figure 1. ONR ARA Study Area and Fixed Source Locations

BILLING CODE 3510–22–C

Detailed Description of Specific Activity

The ONR Arctic and Global Prediction Program supports two major projects: Stratified Ocean Dynamics of the Arctic (SODA) and AMOS. The SODA and AMOS projects have been previously discussed in association with previously issued IHAs (83 FR 40234, August 14, 2018; 84 FR 37240, July 31, 2019). However, only activities relating to the AMOS project will occur during the period covered by this action.

The AMOS project constitutes the development of a new system involving very low (35 hertz (Hz)), low (900 Hz), and mid-frequency transmissions (10 kilohertz (kHz)). The AMOS project will utilize acoustic sources and receivers to provide a means of performing under-ice navigation for gliders and unmanned underwater vehicles (UUVs). This will allow for the possibility of year-round

scientific observations of the environment in the Arctic. As an environment that is particularly affected by climate change, year-round observations under a variety of ice conditions are required to study the effects of this changing environment for military readiness, as well as the implications of environmental change to humans and animals. Very-low frequency technology is important in extending the range of navigation systems. The technology also has the potential to allow for development and use of navigational systems that would not be heard by some marine mammal species, and therefore would be less impactful overall.

Active acoustic sources will be lowered from the cruise vessel while stationary, deployed on gliders and UUVs, or deployed on fixed AMOS moorings. This project will use groups of drifting buoys with sources and receivers communicating oceanographic information to a satellite in near real time. These sources will employ low-frequency transmissions only (900 Hz).

The action will utilize non-impulsive acoustic sources, although not all sources will cause take of marine mammals. Any marine mammal takes will only arise from the operation of non-impulsive active sources. Although not currently planned, icebreaking could occur as part of this action if a research vessel needs to return to the study area before the end of the IHA period to ensure scientific objectives are met. In this case, icebreaking could result in potential Level B harassment takes.

Below are descriptions of the equipment and platforms that will be deployed at different times during the authorized action.

Research Vessels

The R/V *Sikuliaq* will perform the research cruise in September 2022 and conduct testing of acoustic sources during the cruise, as well as leave sources behind to operate as a year-round navigation system observation. R/V *Sikuliaq* has a maximum speed of approximately 12 knots (6.2 m/s) with a cruising speed of 11 knots (5.7 m/s) (University of Alaska Fairbanks, 2014). The R/V *Sikuliaq* is not an ice breaking ship, but an ice strengthened ship. It will not be icebreaking and therefore acoustic signatures of icebreaking for the R/V *Sikuliaq* are not relevant.

The ship to be used in September 2023 to retrieve any acoustic sources could potentially be the Coast Guard Cutter (CGC) *Healy.* CGC *Healy* travels at a maximum speed of 17 knots (8.7 m/s) with a cruising speed of 12 knots (6.2 m/s) (United States Coast Guard, 2013), and a maximum speed of 3 knots (1.5 m/s) when traveling through 4.5 feet (1.07 m) of sea ice (United States Coast Guard, 2013). While no icebreaking cruise on the CGC *Healy* is scheduled during the IHA period, need may arise. Therefore, for the purposes of this IHA application, an icebreaking cruise is considered.

The R/V *Sikuliaq,* CGC *Healy,* or any other vessel operating a research cruise associated with this action may perform the following activities during their research cruises:

- Deployment of moored and/or ice-tethered passive sensors (oceanographic measurement devices, acoustic receivers);
- Deployment of moored and/or ice-tethered active acoustic sources to transmit acoustic signals;
- Deployment of UUVs;
- Deployment of drifting buoys, with or without acoustic sources; or,
- Recovery of equipment.

Moored and Drifting Acoustic Sources

During the September 2022 cruise, active acoustic sources will be lowered from the cruise vessel while stationary, deployed on gliders and UUVs, or deployed on fixed AMOS moorings. This will be done for intermittent testing of the system components. The total amount of active source testing for ship-deployed sources used during the cruise will be 120 hours. The testing will take place near the seven source locations on Figure 1, with UUVs running tracks within the designated box. During this testing, 35 Hz, 900 Hz, and 10 kHz acoustic signals, as well as acoustic modems will be employed.

Up to seven fixed acoustic navigation sources transmitting at 900 Hz will remain in place for a year and continue transmitting during this time. These moorings will be anchored on the seabed and held in the water column with subsurface buoys. All sources will be deployed by shipboard winches, which will lower sources and receivers in a controlled manner. Anchors will be steel ''wagon wheels'' typically used for this type of deployment. Two very low frequency (VLF) sources transmitting at 35 Hz will be deployed in a similar manner. Two Ice Gateway Buoys (IGB) will also be configured with active acoustic sources. Autonomous vehicles will be able to navigate by receiving acoustic signals from multiple locations and triangulating. This is needed for vehicles that are under ice and cannot communicate with satellites. Source transmits will be offset by 15 minutes from each other (*i.e.,* sources will not be transmitting at the same time). All navigation sources will be recovered. The purpose of the navigation sources is to orient UUVs and gliders in situations when they are under ice and cannot communicate with satellites. For the purposes of this action, activities potentially resulting in take will not be included in the fall 2023 cruise; a subsequent application will be provided by ONR depending on the scientific plan associated with that cruise.

TABLE 1—CHARACTERISTICS FOR THE MODELED ACOUSTIC SOURCES FOR THE ACTION

Platform	Acoustic source	Purpose/function	Frequency	Signal strength (dB re1uPa @ 1m) [1]	Band width
REMUS 600 UUV (1)	WHOI [2]/Micro-modem	Acoustic communication ..	900–950 Hz [3]	NTE [3] 180 dB by sys design limits.	50 Hz.
	UUV/WHOI Micro-modem	Acoustic communication ..	8–14 kHz [3]	NTE 185 dB by sys design limits.	5 kHz.
IGB [3] (drifting) (2)	WHOI Micro-modem	Acoustic communication ..	900–950 Hz ...	NTE 180 dB by sys design limits.	50 Hz.
	WHOI Micro-modem	Acoustic communication ..	8–14 kHz	NTE 185 dB by sys design limits.	5 kHz.
Mooring (9)	WHOI Micro-modem (7) ...	Acoustic navigation	900–950 Hz ...	NTE 180 dB by sys design limits.	50 Hz.
	VLF [3] (2)	Acoustic navigation	35 Hz	NTE 190 dB	6 Hz.

[1] dB re 1 μPa at 1 m = decibels referenced to 1 micropascal at 1 meter.
[2] WHOI = Woods Hole Oceanographic Institution.
[3] Hz = Hertz; IGB = Ice Gateway Buoy; kHz = 1 kilohertz; NTE = not to exceed; VLF = very low frequency.

Activities Not Likely To Result in Take

The following in-water activities have been determined to be unlikely to result in take of marine mammals. These activities are described here but they are not discussed further in this document.

De minimis Sources—De minimis sources have the following parameters: Low source levels, narrow beams, downward directed transmission, short pulse lengths, frequencies outside known marine mammal hearing ranges, or some combination of these factors (Department of the Navy, 2013). The following are some of the planned de minimis sources which will be used during this action: WHOI micromodem, ADCPs, ice profilers, and additional sources below 160 dB re 1 μPa used during towing operations. ADCPs may be used on moorings. Ice-profilers measure ice properties and roughness. The ADCPs and ice-profilers will all be above 200 kHz and therefore out of marine mammal hearing ranges, with the exception of the 75 kHz ADCP which has the characteristics and de minimis justification listed in Table 2. They may be employed on moorings or UUVs. Descriptions of some de minimis sources are discussed below and in Table 2. More detailed descriptions of these de minimis sources can be found in ONR's IHA application under Section 1.1.1.2.

TABLE 2—PARAMETERS FOR DE MINIMIS NON-IMPULSIVE ACTIVE SOURCES

Source name	Frequency range (kHz)	Sound pressure level (dB re 1 μPa at 1 m)	Pulse length(s)	Duty cycle (percent)	De minimis justification
ADCP	>200, 150, or 75	190	<0.001	<0.1	Very low pulse length, narrow beam, moderate source level.
Nortek Signature 500 kHz Doppler Velocity Log.	500	214	<0.1	<13	Very high frequency.
CTD[1] Attached Echosounder	5–20	160	0.004	2	Very low source level.

[1] Conductivity Temperature Depth.

Drifting Oceanographic Sensors

Observations of ocean-ice interactions require the use of sensors that are moored and embedded in the ice. For this action, it will not be required to break ice to do this, as deployments can be performed in areas of low ice-coverage or free floating ice. Sensors are deployed within a few dozen meters of each other on the same ice floe. Three types of sensors will be used: autonomous ocean flux buoys, Integrated Autonomous Drifters, and ice-tethered profilers. The autonomous ocean flux buoys measure oceanographic properties just below the ocean-ice interface. The autonomous ocean flux buoys will have ADCPs and temperature chains attached, to measure temperature, salinity, and other ocean parameters in the top 20 ft (6 m) of the water column. Integrated Autonomous Drifters will have a long temperate string extending down to 656 ft (200 m) depth and will incorporate meteorological sensors, and a temperature spring to estimate ice thickness. The ice-tethered profilers will collect information on ocean temperature, salinity and velocity down to 820 ft (250 m) depth.

Up to 20 Argo-type autonomous profiling floats may be deployed in the central Beaufort Sea. Argo floats drift at 4,921 ft (1,500 m) depth, profiling from 6,562 ft (2,000 m) to the sea surface once every 10 days to collect profiles of temperature and salinity.

Moored Oceanographic Sensors

Moored sensors will capture a range of ice, ocean, and atmospheric conditions on a year-round basis. These will be bottom anchored, sub-surface moorings measuring velocity, temperature, and salinity in the upper 1,640 ft (500 m) of the water column. The moorings also collect high-resolution acoustic measurements of the ice using the ice profilers described above. Ice velocity and surface waves will be measured by 500 kHz multibeam sonars from Nortek Signatures. The moored oceanographic sensors described above use only de minimis sources and are therefore not anticipated to have the potential for impacts on marine mammals or their habitat.

On-Ice Measurements

On-ice measurement systems will be used to collect weather data. These will include an Autonomous Weather Station and an Ice Mass Balance Buoy. The Autonomous Weather Station will be deployed on a tripod; the tripod has insulated foot platforms that are frozen into the ice. The system will consist of an anemometer, humidity sensor, and pressure sensor. The Autonomous Weather Station also includes an altimeter that is de minimis due to its very high frequency (200 kHz). The Ice Mass Balance Buoy is a 20 ft (6 m) sensor string, which is deployed through a 2 inch (5 cm) hole drilled into the ice. The string is weighted by a 2.2 lb (1 kg) lead weight, and is supported by a tripod. The buoy contains a de minimis 200 kHz altimeter and snow depth sensor. Autonomous Weather Stations and Ice Mass Balance Buoys will be deployed, and will drift with the ice, making measurements, until their host ice floes melt, thus destroying the instruments (likely in summer, roughly one year after deployment). After the on-ice instruments are deployed they cannot be recovered, and will sink to the seafloor as their host ice floes melted.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

A notice of NMFS's proposal to issue an IHA to ONR was published in the **Federal Register** on July 25, 2022 (87 FR 44339). That notice described, in detail, ONR's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received one non-substantive public comment that did not present relevant information and did not change our determinations or any aspects of the IHA as described in the proposed **Federal Register** notice (87 FR 44339, July 25, 2022).

Changes From Proposed IHA to Final IHA

There were no changes from the proposed IHA to the final IHA.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 3 lists all species or stocks for which take is expected and authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. 2021 SARs (*e.g.,* Muto *et al.,* 2022). All values presented in Table 3 are the most recent available at the time of publication and are available in the 2021 SARs (Muto *et al.,* 2022).

TABLE 3—MARINE MAMMAL SPECIES[6] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]	PBR	Annual M/SI[3]
Order Artiodactyla—Infraorder Cetacea—Odontoceti (toothed whales, dolphins, and porpoises)						
Family Monodontidae:						
Beluga Whale	*Delphinapterus leucas*	Beaufort Sea	-, -, N	39,258 (0.229, N/A, 1992)	UND[4]	104
Beluga Whale	*Delphinapterus leucas*	Eastern Chukchi Sea	-, -, N	13,305 (0.51, 8,875, 2012)	178	55
Order Carnivora—Pinnipedia						
Family Phocidae (earless seals):.						
Ringed Seal[5]	*Pusa hispida hispida*	Arctic	T, D, Y	171,418 (N/A, 158,507, 171,418.	5,100	6,459

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] The 2016 guidelines for preparing SARs state that abundance estimates older than 8 years should not be used to calculate PBR due to a decline in the reliability of an aged estimate. Therefore, the PBR for this stock is considered undetermined (UND).

[5] Abundance and associated values for ringed seals are for the U.S. population in the Bering Sea only.

[6] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*; Committee on Taxonomy (2022)).

As indicated above, the two species (with three managed stocks) in Table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), bearded seals (*Erignathus barbatus*), spotted seals (*Phoca largha*), ribbon seals (*Histiophoca fasciata*), have been documented in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

Due to the location of the study area (*i.e.,* northern offshore, deep water), there were no calculated exposures for the bowhead whale, gray whale, spotted seal, bearded seal, and ribbon seal from quantitative modeling of acoustic sources. Bowhead and gray whales are closely associated with the shallow waters of the continental shelf in the Beaufort Sea and are unlikely to be exposed to acoustic harassment (Carretta *et al.,* 2018; Muto *et al.,* 2018). Similarly, spotted seals tend to prefer pack ice areas with water depths less than 200 m during the spring and move to coastal habitats in the summer and fall, found as far north as 69–72° N (Muto *et al.,* 2018). Although the study area includes some waters south of 72° N, the acoustic sources with the potential to result in take of marine mammals are not found below that latitude and spotted seals are not expected to be exposed. Ribbon seals are found year-round in the Bering Sea but may seasonally range into the Chukchi Sea (Muto *et al.,* 2018). The authorized action occurs primarily in the Beaufort Sea, outside of the core range of ribbon seals, thus ribbon seals are not expected to be behaviorally harassed. Narwhals (*Monodon monoceros*) are considered extralimital in the project area and are not expected to be encountered. As no harassment is expected of the bowhead whale, gray whale, spotted seal, bearded seal, narwhal, and ribbon seal, these

species will not be discussed further in this notice.

A detailed description of the species likely to be affected by the ONR ARA, including brief introductions to the species and relevant stocks, as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (87 FR 44339, July 25, 2022); since that time, we are not aware of any changes in the status of these species and stocks. Therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS's website (*http://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from ONR's ARA have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of the proposed IHA (87 FR 44339, July 25, 2022) included a discussion of the effects of anthropogenic noise ONR's ARA on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (87 FR 44339, July 25, 2022).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. For this military readiness activity, the MMPA defines ''harassment'' as (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where the behavioral patterns are abandoned or significantly altered (Level B harassment).

Authorized takes will be by Level B harassment only, in the form of disruption of behavioral patterns and/or temporary threshold shift (TTS) for individual marine mammals resulting from exposure to ONR's acoustic sources. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized.

As described previously, no serious injury or mortality has been authorized for this activity. Below we describe how the authorized take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). ONR employed an advanced model known as the Navy Acoustic Effects Model (NAEMO) for assessing the impacts of underwater sound. Below, we describe the factors

considered here in more detail and present the authorized take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur a permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

In this case, NMFS is adopting the Navy's approach to estimating incidental take by Level B harassment from the active acoustic sources for this action, which includes use of dose response functions. The Navy's dose response functions were developed to estimate take from sonar and similar transducers, but are not applicable to icebreaking. Multi-year research efforts have conducted sonar exposure studies for odontocetes and mysticetes (Miller *et al.,* 2012; Sivle *et al.,* 2012). Several studies with captive animals have provided data under controlled circumstances for odontocetes and pinnipeds (Houser *et al.,* 2013a; Houser *et al.,* 2013b). Moretti *et al.* (2014) published a beaked whale dose-response curve based on passive acoustic monitoring of beaked whales during a U.S. Navy training activity at Atlantic Underwater Test and Evaluation Center during actual Anti-Submarine Warfare exercises. This information necessitated the update of the behavioral response criteria for the U.S. Navy's environmental analyses.

Southall *et al.* (2007), and more recently Southall *et al.* (2019), synthesized data from many past behavioral studies and observations to determine the likelihood of behavioral reactions at specific sound levels. While in general, the louder the sound source the more intense the behavioral response, it was clear that the proximity of a sound source and the animal's experience, motivation, and conditioning were also critical factors influencing the response (Southall *et al.,* 2007; Southall *et al.,* 2019). After examining all of the available data, the authors felt that the derivation of thresholds for behavioral response based solely on exposure level was not supported because context of the animal at the time of sound exposure was an important factor in estimating response. Nonetheless, in some conditions, consistent avoidance reactions were noted at higher sound levels depending on the marine mammal species or group allowing conclusions to be drawn. Phocid seals showed avoidance reactions at or below 190 dB re 1 μPa at 1m; thus, seals may actually receive levels adequate to produce TTS before avoiding the source.

Odontocete behavioral criteria for non-impulsive sources were updated based on controlled exposure studies for dolphins and sea mammals, sonar, and safety (3S) studies where odontocete behavioral responses were reported after exposure to sonar (Antunes *et al.,* 2014; Houser *et al.,* 2013b; Miller *et al.,* 2011; Miller *et al.,* 2014; Miller *et al.,* 2012). For the 3S study, the sonar outputs included 1–2 kHz up- and down-sweeps and 6–7 kHz up-sweeps; source levels were ramped up from 152–158 dB re 1 μPa to a maximum of 198–214 re 1 μPa at 1 m. Sonar signals were ramped up over several pings while the vessel approached the mammals. The study did include some control passes of ships with the sonar off to discern the behavioral responses of the mammals to vessel presence alone versus active sonar.

The controlled exposure studies included exposing the Navy's trained bottlenose dolphins to mid-frequency sonar while they were in a pen. Mid-frequency sonar was played at 6 different exposure levels from 125–185 dB re 1 μPa (rms). The behavioral response function for odontocetes resulting from the studies described above has a 50 percent probability of response at 157 dB re 1 μPa. Additionally, distance cutoffs (20 km for MF cetaceans) were applied to exclude exposures beyond which the potential of significant behavioral responses is considered to be unlikely.

The pinniped behavioral threshold was updated based on controlled exposure experiments on the following captive animals: hooded seal, gray seal (*Halichoerus grypus*), and California sea lion (Götz *et al.,* 2010; Houser *et al.,* 2013a; Kvadsheim *et al.,* 2010). Hooded seals were exposed to increasing levels of sonar until an avoidance response was observed, while the grey seals were exposed first to a single received level multiple times, then an increasing received level. Each individual California sea lion was exposed to the same received level 10 times. These exposure sessions were combined into a single response value, with an overall response assumed if an animal responded in any single session. The resulting behavioral response function for pinnipeds has a 50 percent probability of response at 166 dB re 1 μPa. Additionally, distance cutoffs (10 km for pinnipeds) were applied to exclude exposures beyond which the potential of significant behavioral responses is considered unlikely. For additional information regarding marine mammal thresholds for PTS and TTS onset, please see NMFS (2018) and Table 6.

Empirical evidence has not shown responses to non-impulsive acoustic sources that would constitute take beyond a few km from a non-impulsive acoustic source, which is why NMFS and the Navy conservatively set distance cutoffs for pinnipeds and mid-frequency cetaceans (U.S. Department of the Navy, 2017a). The cutoff distances for fixed sources are different from those for moving sources, as they are treated as individual sources in Navy modeling given that the distance between them is significantly greater than the range to which environmental effects can occur. Fixed source cutoff distances used were 2.7 nm (5 km) for pinnipeds and 5.4 nm (10 km) for beluga whales (Table 5). As some of the on-site drifting sources could come closer together, the drifting source cutoffs applied were 5.4 nm (10 km) for pinnipeds and 10.8 nm (20 km) for beluga whales (Table 5). Regardless of the received level at that distance, take is not estimated to occur beyond these cutoff distances. Range to thresholds were calculated for the noise associated with icebreaking in the study

area. These all fall within the same cutoff distances as non-impulsive acoustic sources; range to behavioral threshold for both beluga whales and ringed seal were under 2.7 nm (5 km), and range to TTS threshold for both under 15 m (Table 5).

TABLE 5—THRESHOLDS [1] AND CUTOFF DISTANCES FOR SOURCES BY SPECIES

Species	Behavioral threshold for non-impulsive acoustic sources	Fixed source behavioral threshold cutoff distance [3] (km)	Drifting source behavioral threshold cutoff distance [3] (km)	Behavioral threshold for ice breaking sources	Ice breaking source cutoff distance [3] (km)	TTS threshold	PTS threshold
Ringed Seal ..	Pinniped Dose Response Function [2].	5	10	120 dB re 1 μPa step function.	<5	181 dB SEL [4] cumulative.	201 dB SEL cumulative.
Beluga Whale	Mid-Frequency BRF dose Response Function [2].	10	20	120 dB re 1 μPa step function.	<15	178 dB SEL cumulative.	198 dB SEL cumulative.

[1] The threshold values provided are assumed for when the source is within the animal's best hearing sensitivity. The exact threshold varies based on the overlap of the source and the frequency weighting.
[2] See Figure 6–1 in application.
[3] Take is not estimated to occur beyond these cutoff distances, regardless of the received level.
[4] SEL = Sound exposure level.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). ONR's activity includes the use of non-impulsive acoustic sources; however, Level A harassment is not expected as a result of these activities nor is it authorized by NMFS.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 6—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,0\text{-}pk,flat}$: 219 dB; $L_{E,p,LF,24h}$: 183 dB	*Cell 2:* $L_{E,p,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{p,0\text{-}pk,flat}$: 230 dB; $L_{E,p,MF,24h}$: 185 dB	*Cell 4:* $L_{E,p,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{p,0\text{-}pk,flat}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	*Cell 6:* $L_{E,p,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{p,0\text{-}pk,flat}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	*Cell 8:* $L_{E,p,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{p,0\text{-}pk,flat}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	*Cell 10:* $L_{E,p,OW,24h}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa^2s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript ''flat'' is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Quantitative Modeling

The Navy performed a quantitative analysis to estimate the number of marine mammals that could be exposed to underwater acoustic transmissions above the previously described threshold criteria during this action. Inputs to the quantitative analysis included marine mammal density estimates obtained from the Kaschner *et al.* (2006) habitat suitability model and Cañadas *et al.* (2020), marine mammal depth occurrence (U.S. Department of the Navy, 2017b), oceanographic and mammal hearing data, and criteria and thresholds for levels of potential effects. The quantitative analysis consists of computer modeled estimates and a post-model analysis to determine the number of potential animal exposures. The model calculates sound energy propagation from the non-impulsive acoustic sources, the sound received by animat (virtual animal) dosimeters representing marine mammals distributed in the area around the modeled activity, and whether the sound received by animats exceeds the thresholds for effects.

The Navy developed a set of software tools and compiled data for estimating acoustic effects on marine mammals without consideration of behavioral avoidance or mitigation. These tools and data sets serve as integral components of the NAEMO. In NAEMO, animats are distributed non-uniformly based on species-specific density, depth distribution, and group size information and animats record energy received at their location in the water column. A fully three-dimensional environment is used for calculating sound propagation and animat exposure in NAEMO. Site-specific bathymetry, sound speed profiles, wind speed, and bottom properties are incorporated into the propagation modeling process. NAEMO

calculates the likely propagation for various levels of energy (sound or pressure) resulting from each source used during the training event.

NAEMO then records the energy received by each animat within the energy footprint of the event and calculates the number of animats having received levels of energy exposures that fall within defined impact thresholds. Predicted effects on the animats within a scenario are then tallied and the highest order effect (based on severity of criteria; *e.g.,* PTS over TTS) predicted for a given animat is assumed. Each scenario, or each 24-hour period for scenarios lasting greater than 24 hours is independent of all others, and therefore, the same individual marine mammal (as represented by an animat in the model environment) could be impacted during each independent scenario or 24-hour period. In a few instances, although the activities themselves all occur within the study location, sound may propagate beyond the boundary of the study area. Any exposures occurring outside the boundary of the study area are counted as if they occurred within the study area boundary. NAEMO provides the initial estimated impacts on marine species with a static horizontal distribution (*i.e.,* animats in the model environment do not move horizontally).

There are limitations to the data used in the acoustic effects model, and the results must be interpreted within this context. While the best available data and appropriate input assumptions have been used in the modeling, when there is a lack of definitive data to support an aspect of the modeling, conservative modeling assumptions have been chosen (*i.e.,* assumptions that may result in an overestimate of acoustic exposures):

- Animats are modeled as being underwater, stationary, and facing the source and therefore always predicted to receive the maximum potential sound level at a given location (*i.e.,* no porpoising or pinnipeds' heads above water);
- Animats do not move horizontally (but change their position vertically within the water column), which may overestimate physiological effects such as hearing loss, especially for slow moving or stationary sound sources in the model;
- Animats are stationary horizontally and therefore do not avoid the sound source, unlike in the wild where animals would most often avoid exposures at higher sound levels, especially those exposures that may result in PTS;
- Multiple exposures within any 24-hour period are considered one continuous exposure for the purposes of calculating potential threshold shift, because there are not sufficient data to estimate a hearing recovery function for the time between exposures; and
- Mitigation measures were not considered in the model. In reality, sound-producing activities would be reduced, stopped, or delayed if marine mammals are detected by visual monitoring.

Due to these inherent model limitations and simplifications, model-estimated results should be further analyzed, considering such factors as the range to specific effects, avoidance, and the likelihood of successfully implementing mitigation measures. This analysis uses a number of factors in addition to the acoustic model results to predict acoustic effects on marine mammals, as described below in the *Marine Mammal Occurrence and Take Estimation* section.

The underwater radiated noise signature for icebreaking in the central Arctic Ocean by CGC *Healy* during different types of ice-cover was characterized in Roth *et al.* (2013). The radiated noise signatures were characterized for various fractions of ice cover. For modeling, the 8/10 and 3/10 ice cover were used. Each modeled day of icebreaking consisted of 16 hours of 8/10 ice cover and 8 hours of 3/10 ice cover. The sound signature of the 5/10 icebreaking activities, which would correspond to half-power icebreaking, was not reported in (Roth *et al.,* 2013); therefore, the full-power signature was used as a conservative proxy for the half-power signature. Icebreaking was modeled for 8 days total. Since ice forecasting cannot be predicted more than a few weeks in advance, it is unknown if icebreaking would be needed to deploy or retrieve the sources after one year of transmitting. Therefore, the potential for an icebreaking cruise on CGC *Healy* was conservatively analyzed within this request for an IHA. As the R/V *Sikuliaq* is not expected to be icebreaking, acoustic noise created by icebreaking is only modeled for the CGC *Healy.* Figures 5a and 5b in Roth *et al.* (2013) depict the source spectrum level versus frequency for 8/10 and 3/10 ice cover, respectively. The sound signature of each of the ice coverage level was broken into 1-octave bins (Table 7). In the model, each bin was included as a separate source on the modeled vessel. When these independent sources go active concurrently, they simulate the sound signature of CGC *Healy.* The modeled source level summed across these bins was 196.2 dB for the 8/10 signature and 189.3 dB for the 3/10 ice signature. These source levels are a good approximation of the icebreaker's observed source level (provided in Figure 4b of (Roth *et al.,* 2013)). Each frequency and source level was modeled as an independent source, and applied simultaneously to all of the animats within NAEMO. Each second was summed across frequency to estimate sound pressure level (root mean square [SPL_{RMS}]). Any animat exposed to sound levels greater than 120 dB was considered a take by Level B harassment. For PTS and TTS, determinations, sound exposure levels were summed over the duration of the test and the transit to the deep water deployment area. The method of quantitative modeling for icebreaking is considered to be a conservative approach; therefore, the number of takes estimated for icebreaking are likely an overestimate and would not be expected to reach that level.

TABLE 7—MODELED BINS FOR 8/10 (FULL POWER) AND 3/10 (QUARTER POWER) ICE COVERAGE ICE BREAKING ON THE CGC *Healy*

Frequency (Hz)	8/10 source level (dB)	3/10 source level (dB)
25	189	187
50	188	182
100	189	179
200	190	177
400	188	175
800	183	170
1,600	177	166
3,200	176	171
6,400	172	168
12,800	167	164

For non-impulsive sources, NAEMO calculates the SPL and SEL for each active emission during an event. This is done by taking the following factors into account over the propagation paths: bathymetric relief and bottom types, sound speed, and attenuation contributors such as absorption, bottom loss, and surface loss. Platforms such as a ship using one or more sound sources are modeled in accordance with relevant vehicle dynamics and time durations by moving them across an area whose size is representative of the testing event's operational area.

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations. We also describe

how the marine mammal occurrence information is synthesized to produce a quantitative estimate of the take that is authorized and reasonably likely to occur.

The beluga whale density numbers utilized for quantitative acoustic modeling are from the Navy Marine Species Density Database (Department of the Navy, 2014). Where available (*i.e.,* June through 15 October over the continental shelf primarily), density estimates used were from Duke density modeling based upon line-transect surveys (Cañadas *et al.,* 2020). The remaining seasons and geographic area were based on the habitat-based modeling by Kaschner *et al.* (2006) and Kaschner (2004). Density for beluga whales was not distinguished by stock and varied throughout the project area geographically and monthly; the range of densities in the project area during September I shown in Table 8. The density estimates for ringed seals are based on the habitat suitability modeling by Kaschner *et al.* (2006) and Kaschner (2004) and shown in Table 8 as well.

TABLE 8—DENSITY ESTIMATES OF IMPACTED SPECIES

Common name	Density estimates (animals/km^2)
Beluga whale (Beaufort Sea) Stock Beluga whale (Eastern Chukchi Sea Stock).	0.000506 to 0.5176
Ringed seal (Arctic Stock)	0.1108 to 0.3562

Take of all species will occur by Level B harassment only. NAEMO estimated for potential TTS exposure and predicted one exposure of ringed seals may occur as a result of the authorized activities. Table 9 shows the total number of authorized takes by Level B harassment that NMFS has authorized for both beluga whale stocks and the Arctic ringed seal stock based upon NAEMO modeled results.

Density estimates for beluga whales are equal as estimates were not distinguished by stock (Kaschner *et al.,* 2006; Kaschner, 2004). The ranges of the Beaufort Sea and Eastern Chukchi Sea beluga whales vary within the study area throughout the year (Hauser *et al.,* 2014). Based upon the limited information available regarding the expected spatial distributions of each stock within the study area, take has been apportioned equally to each stock (Table 9). In addition, in NAEMO, animats do not move horizontally or react in any way to avoid sound. Therefore, the current model may overestimate non-impulsive acoustic impacts.

TABLE 9—AUTHORIZED TAKE BY LEVEL B HARASSMENT

Species	Non-impulsive active acoustics (behavioral)	Icebreaking (behavioral)	Icebreaking (TTS)	Total authorized take	Percentage of stock authorized for take [1]
				Behavioral/TTS	
Beluga whale—Beaufort Sea Stock	134	11	0	145/0	0.369
Beluga whale—Eastern Chukchi Sea Stock	134	11	0	145/0	1.09
Ringed seal	2,839	538	1	3,377/1	1.97

[1] Percentage of stock taken calculated based on proportion of number of Level B takes per the stock population estimate provided in Table 3–1 in the application.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)). The NDAA for FY 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

The Navy will be required to abide by the mitigation measures below. These measures are expected to: further minimize the likelihood of ship strikes; reduce the likelihood that marine mammals are exposed to sound levels during acoustic source deployment that would be expected to result in TTS or more severe behavioral responses and also to ensure that there are no other

interactions between the deployed gear and marine mammals, and further ensure that there are no impacts to subsistence uses.

Ships operated by or for the Navy are required to have at least one personnel assigned to stand watch at all times, day and night, when moving through the water. Watch personnel must be trained through the U.S. Navy Marine Species Awareness Training Program, which standardizes watch protocols and trains personnel in marine species detection to prevent adverse impacts to marine mammal species. While in transit, ships must be alert at all times, use extreme caution and proceed at a safe speed such that the ship can take proper and effective action to avoid a collision with any marine mammals.

During mooring or UUV deployment, visual observation will start 15 minutes prior to and continue throughout the deployment within the mitigation zone of 180 ft (55 m, roughly one ship length) around the deployed mooring. Deployment will stop if a marine mammal is visually detected within the exclusion zone. Deployment will re-commence if any one of the following conditions are met: (1) The animal is observed exiting the exclusion zone, (2) the animal is thought to have exited the exclusion zone based on its course and speed, or (3) the exclusion zone has been clear from any additional sightings for a period of 15 minutes for pinnipeds and 30 minutes for cetaceans.

Ships will avoid approaching marine mammals head-on and will maneuver to maintain a mitigation zone of 500 yards (yd; 457 m) around observed cetaceans, and 200 yd (183 m) around all other marine mammals, provided it is safe to do so in ice-free waters. Ships captains and subsistence whalers will also maintain at-sea communication to avoid conflict of ship transit with hunting activity.

If a marine mammal species for which take is not authorized is encountered or observed within the mitigation zone, or a species for which authorization was granted but the authorized number of takes have been met, activities must cease. Activities may not resume until the animal is confirmed to have left the area.

These requirements do not apply if a vessel's safety is at risk, such as when a change of course would create an imminent and serious threat to safety, person, or vessel, and to the extent that vessels are restricted in their ability to maneuver. No further action is necessary if a marine mammal other than a cetacean continues to approach the vessel after there has already been one maneuver and/or speed change to avoid the animal. Avoidance measures should continue for any observed cetacean in order to maintain a mitigation zone of 500 yd (457 m).

Based on our evaluation of the applicant's measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

While underway, the ships (including non-Navy ships operating on behalf of the Navy) utilizing active acoustics will have at least one watch person during activities. Watch personnel must undertake extensive training through the Navy's Marine Species Awareness Training. Their duties may be performed in conjunction with other job responsibilities, such as navigating the ship or supervising other personnel. While on watch, personnel will employ visual search techniques, including the use of binoculars, using a scanning method in accordance with the U.S. Navy Marine Species Awareness Training or civilian equivalent. A primary duty of watch personnel is to detect and report all objects and disturbances sighted in the water that may be indicative of a threat to the ship and its crew, such as debris, or surface disturbance. Per safety requirements, watch personnel also report any marine mammals sighted that have the potential to be in the direct path of the ship as a standard collision avoidance procedure.

While underway, the ships (including non-Navy ships operating on behalf of the Navy) utilizing active acoustics and towed in-water devices will have at least one watch person during activities. While underway, watch personnel must be alert at all times and have access to binoculars. Each day, the following information will be recorded:

- Vessel name;
- Watch personnel names and affiliations;
- Effort type (*i.e.,* transit or deployment); and
- Environmental conditions (at the beginning of watch personnel shift and whenever conditions changed significantly), including Beaufort Sea State and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon.

Watch personnel must use standardized data collection forms, whether electronic or hard copy, as well as distinguish between marine mammal sightings that occur during ship transit or acoustic source deployment. Watch personnel must distinguish between sightings that occur on transit, during deployment of acoustic sources, and during ice breaking. Data must be recorded on all days of activities even if marine mammals are not sighted.

Upon visual observation of a marine mammal, the following information will be recorded:

- Date/time of sighting;
- Identification of animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;
- Location (latitude/longitude) of sighting;
- Estimated number of animals (high/low/best);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; length of time the animal was observed within the harassment zone; note any observed changes in behavior);
- Distance from ship to animal;
- Direction of animal's travel relative to the vessel;
- Platform activity at time of sighting (*i.e.,* transit, deployment); and
- Weather conditions (*i.e.,* Beaufort Sea State, cloud cover).

During ice breaking, the following information must be recorded:

- Start and end time of ice breaking; and
- Ice cover conditions.

The U.S. Navy has coordinated with NMFS to develop an overarching program plan in which specific monitoring would occur. This plan is called the Integrated Comprehensive Monitoring Program (ICMP) (Department of the Navy, 2011). The ICMP has been developed in direct response to Navy permitting requirements established through various environmental compliance efforts. As a framework document, the ICMP applies by regulation to those activities on ranges and operating areas for which the Navy is seeking or has sought incidental take authorizations. The ICMP is intended to coordinate monitoring efforts across all regions and to allocate the most appropriate level and type of effort based on a set of standardized research goals, and in acknowledgement of regional scientific value and resource availability.

The ICMP is focused on Navy training and testing ranges where the majority of Navy activities occur regularly as those areas have the greatest potential for being impacted. ONR's ARA in comparison is a less intensive test with little human activity present in the Arctic. Human presence is limited to the deployment of sources that will take place over several weeks. Additionally, due to the location and nature of the testing, vessels and personnel will not be within the study area for an extended period of time. As such, more extensive monitoring requirements beyond the basic information being collected will not be feasible as it would require additional personnel and equipment to locate seals and a presence in the Arctic during a period of time other than what is planned for source deployment. However, ONR will record all observations of marine mammals, including the marine mammal's species identification, location (latitude and longitude), behavior, and distance from project activities. ONR will also record date and time of sighting. This information is valuable in an area with few recorded observations.

If any injury or death of a marine mammal is observed during the 2022–2023 ARA, the Navy will immediately halt the activity and report the incident to the Office of Protected Resources (OPR), NMFS, and the Alaska Regional Stranding Coordinator, NMFS. The following information must be provided:

- Time, date, and location of the discovery;
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal(s) was discovered (*e.g.,* deployment of moored or drifting sources or by transiting vessel).

ONR will provide NMFS, OPR, and Alaska Regional Office (AKR) with a draft monitoring report within 90 days of the conclusion of each research cruise, or 60 days prior to the issuance of any subsequent IHA for this project, whichever comes first. All monitoring reports must be reviewed and checked for accuracy prior to submission to NMFS. The draft monitoring report will include data regarding acoustic source use and any mammal sightings or detection documented. The report will include the estimated number of marine mammals taken during the activity. The report will also include information on the number of shutdowns recorded. If no comments are received from NMFS within 30 days of submission of the draft final report, the draft final report will constitute the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to beluga whales and ringed seals, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Underwater acoustic transmissions associated with ONR's ARA, as outlined previously, have the potential to result in Level B harassment of beluga whales and ringed seals in the form of behavioral disturbances. No serious injury, mortality, or Level A harassment are anticipated to result from these described activities. Effects on

individual belugas or ringed seals taken by Level B harassment could include alteration of dive behavior and/or foraging behavior, effects to breathing rates, interference with or alteration of vocalization, avoidance, and flight. More severe behavioral responses are not anticipated due to the localized, intermittent use of active acoustic sources. However, exposure duration is likely to be short-term and individuals will, most likely, simply be temporarily displaced by moving away from the acoustic source. Exposures are, therefore, unlikely to result in any significant realized decrease in fitness for affected individuals or adverse impacts to stocks as a whole.

Arctic ringed seals are listed as threatened under the ESA. The primary concern for Arctic ringed seals is the ongoing and anticipated loss of sea ice and snow cover resulting from climate change, which is expected to pose a significant threat to ringed seals in the future (Muto *et al.,* 2022). In addition, Arctic ringed seals have also been experiencing an Unusual Mortality Event (UME) since 2019 although the cause of the UME is currently undetermined. As mentioned earlier, no mortality or serious injury to ringed seals is anticipated nor authorized. Due to the short-term duration of expected exposures and required mitigation measures to reduce adverse impacts, we do not expect the ARA to affect annual rates of ringed seal survival and recruitment that may threaten population recovery or exacerbate the ongoing UME.

A small portion of the ARA study area overlaps with ringed seal critical habitat. Although this habitat contains features necessary for ringed seal formation and maintenance of subnivean birth lairs, basking and molting, and foraging, these features are also available throughout the rest of the designated critical habitat area. Displacement of ringed seals from the ARA study area would likely not interfere with their ability to access necessary habitat features. Therefore, we expect minimal impacts to any displaced ringed seals as similar necessary habitat features would still be available nearby.

The ARA study area also overlaps with a beluga whale migratory Biologically Important Area (BIA). Due to the small amount of overlap between the BIA and the ARA study area, as well as the low intensity and short-term duration of acoustic sources and required mitigation measures, we expect minimal impacts to migrating belugas. Shutdown zones will reduce the potential for Level A harassment of belugas and ringed seals, as well as the severity of any Level B harassment. The requirements of trained dedicated watch personnel and speed restrictions will also reduce the likelihood of any ship strikes to migrating belugas.

In all, ONR's ARA are expected to have minimal adverse effects on marine mammal habitat. While the activities may cause some fish to leave the area of disturbance, temporarily impacting marine mammals' foraging opportunities, this would encompass a relatively small area of habitat leaving large areas of existing fish and marine mammal foraging habitat unaffected. As such, the impacts to marine mammal habitat are not expected to impact the health or fitness of any marine mammals.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Impacts will be limited to Level B harassment only;
- Only temporary behavioral modifications are expected to result from these activities;
- Impacts to marine mammal prey or habitat will be minimal and short-term.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the authorized activity will have a negligible impact on all affected marine mammal species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Subsistence hunting is important for many Alaska Native communities. A study of the North Slope villages of Nuiqsut, Kaktovik, and Utqiaġvik (formerly Barrow) identified the primary resources used for subsistence and the locations for harvest (Stephen R. Braund & Associates, 2010), including terrestrial mammals (caribou, moose, wolf, and wolverine), birds (geese and eider), fish (Arctic cisco, Arctic char/Dolly Varden trout, and broad whitefish), and marine mammals (bowhead whale, ringed seal, bearded seal, and walrus). Ringed seals and beluga whales are likely located within the project area during this action, yet the action will not remove individuals from the population nor behaviorally disturb them in a manner that would affect their behavior more than 100 km farther inshore where subsistence hunting occurs. The permitted sources will be placed far outside of the range for subsistence hunting. The closest active acoustic source (fixed or drifting) within the project site that is likely to cause Level B take is approximately 110 nm (204 km) from land. This ensures a significant standoff distance from any subsistence hunting area. The closest distance to subsistence hunting (70 nm, or 130 km) is well the largest distance from the sound sources in use at which behavioral harassment would be expected to occur (20 km) described above. Furthermore, there is no reason to believe that any behavioral disturbance of beluga whales or ringed seals that occurs far offshore (we do not anticipate any Level A harassment) would affect their subsequent behavior in a manner that would interfere with subsistence uses should those animals later interact with hunters.

In addition, ONR has been communicating with the Native communities about the action. The ONR chief scientist for AMOS gave a virtual briefing on ONR research planned for 2022–2023 at the Alaska Eskimo Whaling Commission (AEWC) meeting in February 2022. This briefing communicated the lack of effect on subsistence hunting due to the distance of the sources from hunting areas. ONR scientists also attend Arctic Waterways Safety Committee (AWSC) and AEWC meetings regularly to discuss past, present, and future ARA. While no take is anticipated to result during transit, points of contact for at-sea communication will also be established between ship captains and whalers to avoid any conflict of ship transit with hunting activity.

Based on the description of the specified activity, distance of the study area from subsistence hunting grounds, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the planned mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from ONR's planned ARA.

Peer Review of the Monitoring Plan—The MMPA requires that monitoring plans be independently peer reviewed where the activity may affect the availability of a species or stock for taking for subsistence uses (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Given the factors discussed above, NMFS has also determined that the activity is not likely to affect the availability of any marine mammal species or stock for taking for subsistence uses, and therefore, peer review of the monitoring plan is not warranted for this project.

Endangered Species Act

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, in this case with AKR.

There is one marine mammal species (Arctic ringed seal) with confirmed occurrence in the study area that is listed as threatened under the ESA. The NMFS Alaska Regional Office of Protected Resources Division issued a Biological Opinion on September 13, 2022 under section 7 of the ESA, on the issuance of an IHA to ONR under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of Arctic ringed seals, and is not likely to destroy or adversely modify Arctic ringed seal critical habitat.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by the regulations published by the Council on Environmental Quality (CEQ) (40 CRF parts 1500–1508), ONR prepared an Overseas Environmental Assessment (OEA) to consider the direct, indirect, ad cumulative effects to the human environment resulting from the ARA project. In compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6A, NMFS has reviewed ONR's OEA, determined it to be sufficient, and adopted that OEA and signed a Finding of Significant Impact (FONSI) on September 13, 2022.

Authorization

NMFS has issued an IHA to ONR for the potential harassment of small numbers of two species of marine mammals incidental to ARA in the Beaufort Sea and eastern Chukchi Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are followed.

Dated: September 14, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–20240 Filed 9–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC385]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a one-day meeting of its Reef Fish Advisory Panel (AP).

DATES: The meeting will take place Tuesday, October 11, 2022, from 8:30 a.m. to 5:30 p.m., EST.

ADDRESSES: The in-person meeting will take place at the Gulf Council office.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Rindone, Lead Fishery Biologist, Gulf of Mexico Fishery Management Council; *ryan.rindone@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Tuesday, October 11, 2022; 8:30 a.m.–5:30 p.m., EST

The meeting will begin with Introductions of Members and Adoption of Agenda, Approval of Minutes from the January 5–6, 2022 meeting, review of Scope of Work and Reef Fish and Individual Fishing Quota (IFQ) Program Landings.

The AP will receive a presentation on the Florida Keys National Marine Sanctuary Expansion Proposal; followed by a review and discussion of Public Hearing Draft Amendment 54: Modifications to the Greater Amberjack Catch Limits and Sector Allocations, and other Rebuilding Plan Modifications. The AP will then receive a summary of the SEDAR 64 Interim Analysis for Southeastern U.S. Yellowtail Snapper and SSC Recommendations, and then a review of draft options for Reef Fish Amendment 56: Modifications to Gulf of Mexico Gag Grouper Stock Status Determination Criteria, Sector Allocation, Catch Limits, and Fishing Seasons.

Next, the AP will review and discuss the SEDAR 68 Operational Assessment for Gulf of Mexico Scamp, followed by a discussion of Management Options for Gray Triggerfish Commercial Trip Limits and of For-Hire Trip Declaration Modification. The AP will then discuss the Development of Electronic Reporting for the Commercial Coastal Logbook Program, review a presentation on Modifications to Greater Amberjack Recreational and Commercial Management Measures, and then receive Public Comment.

Lastly, the AP will discuss any Other Business items, including U.S. Coast Guard Inspection Requirements for Gulf Federal Commercial Reef Fish Permits.

—*Meeting Adjourns*

The meeting will be also be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the Advisory Panel meeting on the calendar. The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take-action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Pereira, (813) 348–1630, at least 5 days prior to the meeting date.

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

Dated: September 14, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–20322 Filed 9–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC360]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Floating Dry Dock Project at Naval Base San Diego in San Diego, California

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

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization (IHA).

SUMMARY: NMFS received a request from the U.S. Navy (Navy) for the renewal of their currently active IHA to take marine mammals incidental to the Floating Dry Dock Project at Naval Base San Diego in San Diego, California. These activities are nearly identical to those covered in the current authorization. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than October 5, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.Fowler@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, including all attachments, must not exceed a 25-megabyte file size. Attachments to 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: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, 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

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. 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, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation

showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

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 (*i.e.,* the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) 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. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA renewal qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA renewal request.

History of Request

On May 27, 2020, NMFS issued an IHA to the Navy to take marine mammals incidental to in-water construction associated with the Floating Dry Dock Project at Naval Base San Diego in San Diego, California (85 FR 33129, June 1, 2020), effective from September 15, 2020 through September 14, 2021 (hereafter referred to as the 2020 IHA). On July 12, 2021, the Navy informed NMFS that the project had been delayed and none of the work identified in the initial IHA had occurred. The Navy requested an identical IHA be reissued with the effective dates 1 year later, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. On July 21, 2021, NMFS reissued the IHA to the Navy (86 FR 40468, July 28, 2021), effective from September 15, 2021 through September 14, 2022 (hereafter referred to as the initial IHA).

On July 15, 2022, the Navy notified NMFS that the project had been further delayed and none of the work identified in the initial IHA had occurred. In addition, the Navy had made minor changes to the project design plan, which would result in fewer proposed days of in-water construction than what was planned and analyzed in the 2020 IHA and initial IHA. As described in the Description of the Specified Activities and Anticipated Impacts section below, the activities for which incidental take is requested are nearly identical to those covered in the initial IHA. In order to consider an IHA renewal, NMFS requires the applicant provide a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. However, as no construction activities have been conducted, the Navy has no monitoring results to report. NMFS has preliminarily determined that the minor changes to the Navy's proposed pile driving activities would not affect the previous analyses, including the mitigation, monitoring, and reporting requirements, or take estimates (with the exception of reducing the amount of estimated take due to fewer days of construction). However, NMFS is requesting comments or additional information that may further inform our proposal to issue an IHA renewal to the Navy.

Description of the Specified Activities and Anticipated Impacts

The Navy proposes to construct a floating dry dock and associated pier-side access at Naval Base San Diego in the south-central portion of San Diego Bay. The floating dry dock is needed to ensure the Base's capability to conduct berth-side repair and maintenance of vessels. Implementation of the proposed project requires installation of two mooring dolphins, including vertical and angled structural piles, as well as fender piles, installation of a concrete ramp wharf and vehicle bridge, and dredging at the proposed floating dry dock location. The planned in-water construction covered in the initial IHA included installation of a maximum of 56 24-inch concrete piles using impact pile driving and high-pressure water jetting and a maximum of 10 24-inch steel pipe piles using impact and vibratory pile driving. The Navy's revised construction design plan includes fewer 24-inch octagonal concrete piles and has eliminated all 24-inch steel pipe piles, while adding 18-inch square concrete piles, 18-inch octagonal concrete piles, and 14-inch steel H-piles (Table 1).

The anticipated impacts of the Navy's proposed activities are identical to those described in the initial IHA. As in the initial IHA, NMFS anticipates that only the U.S. stock of California sea lions (*Zalophus californianus*) may be taken by Level B harassment incidental to underwater noise resulting from in-water construction associated with the proposed activities.

The following documents are referenced in this notice and include important supporting information:

- **Federal Register** notice of proposed IHA for the 2020 IHA (85 FR 21179, April 16, 2020);
- **Federal Register** notice of final IHA for the 2020 IHA (85 FR 33129, June 1, 2020);
- **Federal Register** notice of reissued IHA for the initial IHA (86 FR 40468, July 28, 2021); and
- The Navy's 2020 IHA application, references cited, request for reissued IHA, and request for IHA renewal (available at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*).

Detailed Description of the Activity

The Navy proposes to construct a floating dry dock and associated pier-side access in the south-central portion of San Diego Bay. The floating dry dock is needed in order to address current and projected shortfall of dry dock

space required for maintenance of the Pacific Fleet, and ensure the Naval Base San Diego's capability to conduct berth-side repair and maintenance of vessels. The proposed activities will allow for the emplacement and operation of a floating dry dock and associated pier-side access at Marine Group Boat Works (MGBW) Commercial Out Lease (COL) in the southern edge of Naval Base San Diego.

Up to 50 days of in-water pile driving were planned to occur under the initial IHA, which included installation of two mooring dolphins, including vertical and angled structural piles, as well as fender piles, and installation of a concrete ramp wharf and vehicle bridge. Two mooring dolphins would be located forward and aft of the proposed dry dock. The mooring dolphins would each be supported by up to 16 vertical 24-inch octagonal concrete piles (32 total) installed using impact pile driving and high-pressure water jetting. The aft mooring dolphin would also require approximately two 24-inch angled steel pipe piles. Up to eight additional 24-inch steel pipe piles are anticipated to be required for the forward and aft mooring dolphins. Cast-in-place reinforced concrete caps, 9.1 by 9.1 meter (m; 30 by 30 feet (ft)), would be installed at each mooring dolphin location. Grippers would be secured to the dolphins' concrete pile caps and used to hold the floating dry dock in position. Construction materials would be delivered by truck and the piles would be installed using a floating crane and an impact or vibratory pile driver aided by jetting methods. Fender piles associated with the aft mooring dolphin would consist of two steel pipe piles, 24-inches in diameter or less. All steel pipe piles would initially be installed using vibratory pile driving, followed by the use of an impact pile driver. The concrete ramp wharf and vehicle bridge would be supported by 24 24-inch octagonal concrete piles installed using vibratory pile driving and high-pressure water jetting.

The modified construction design plan proposed to occur under the renewal IHA includes the installation of a total of 55 concrete piles and 10 steel H-piles. Five concrete piles would also be removed (via dead pull with no vibratory hammer required) and 12 steel template H-piles would be installed and subsequently removed using a vibratory hammer. A total of 77 piles would be installed (65 permanent, 12 temporary) which is greater than the total number of piles planned to be installed under the initial IHA (Table 1); however, the revised construction plan includes a reduction in diameter for the majority of piles as assessed in the initial IHA. Therefore, the modified construction plan is reasonably similar to the plan associated with the initial IHA. In addition, the Navy had estimated up to 50 days of in-water work would be required to complete the planned construction in the initial IHA, and the revised construction design would require only 40 days of construction, beginning in April 2023.

TABLE 1—SUMMARY OF PILE DRIVING ACTIVITIES IN INITIAL IHA COMPARED TO PROPOSED PILE DRIVING ACTIVITIES IN IHA RENEWAL

Pile type and size	Pile location	Number of piles	
		Initial IHA	Proposed IHA renewal
24-inch octagonal concrete	Forward and aft mooring dolphins	56	[a] 22
24-inch steel pipe	Forward and aft mooring dolphins	10	0
18-inch square concrete	Bulkhead	0	[b] 5
18-inch octagonal concrete	Ramp wharf and vehicle bridge	0	33
14-inch steel H-piles	Fender system on the offshore dolphin	0	10
14-inch template steel H-piles	Forward and aft mooring dolphins	0	[c] 12
Total piles installed		66	[d] 77
Total maximum days of work		50	40

[a] This includes 11 piles per dolphin.
[b] Removed using direct pull only.
[c] Installed and subsequently removed. Includes 6 piles per dolphin.
[d] Includes 65 permanent piles and 12 temporary piles.

A detailed description of the construction activities for which authorization of take is proposed here may be found in the **Federal Register** notice of proposed IHA for the 2020 IHA (85 FR 21179, April 16, 2020). With the exception of some reduced pile sizes and change from steel pipe piles to steel H-piles, the methods of pile driving (*i.e.,* vibratory and impact hammers, high-pressure water jetting) proposed in the IHA renewal are identical to those analyzed in the initial IHA. Similarly, the location and timing (*e.g.,* seasonality) are identical to those analyzed in the initial IHA. The proposed IHA renewal would be effective from the date of issuance through September 14, 2023.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the 2020 IHA (85 FR 21179, April 16, 2020). NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and preliminarily determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which the authorization of take is proposed here may be found in the **Federal Register** notice of the proposed IHA for the 2020 IHA (85 FR 21179, April 16, 2020). The Navy's revised construction design plan includes some pile sizes and types that were not included in the initial IHA (*e.g.,* addition of 18-inch octagonal piles and 14-inch steel H-piles). However, the estimated sound source levels for the

smaller (18-inch) concrete piles and the steel H-piles are lower than the source levels for the larger (24-inch) concrete piles and the 24-inch steel pipe piles, respectively, that were planned to be used during the activity described in the initial IHA (described in detail in the Navy's IHA renewal request, available at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*). Therefore, NMFS has preliminarily determined that the effects of the Navy's proposed installation of these new pile sizes and types on marine mammals and their habitat are the same as those analyzed in the initial IHA. Additionally, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notices for the proposed and final 2020 IHA (85 FR 21179, April 16, 2020; 85 FR 33129, June 1, 2020). The marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA. The take calculation method also remains the same as for the initial IHA, with the exception of fewer days of activity than what was described in the initial IHA.

The initial IHA estimated the distances to the Level B harassment thresholds for each pile size and type that was planned to be included in the initial construction plan. In the initial IHA, the largest Level B harassment zone resulted from vibratory installation of 24-inch steel pipe piles (1,848 m). However, since 24-inch steel pipe piles are no longer proposed to be installed, the largest Level B harassment zone now results from vibratory installation of 14-inch steel H-piles (398 m).

Based on the number of piles to be installed, the Navy estimates that the proposed pile driving activity would take 40 days (Table 1). As in the initial IHA, the Navy estimates four California sea lions could be present in the project area each day. Multiplication of the above estimate of animals per day (4) times the days of work (40) results in a proposed 160 incidents of Level B harassment take of California sea lions (Table 2). The Navy intends to avoid Level A harassment take by shutting down activities if a California sea lion approaches within 25 m of the project site, which encompasses all estimated Level A harassment zones. Therefore, no take by Level A harassment is anticipated or proposed to be authorized.

TABLE 2—ESTIMATED TAKE PROPOSED FOR AUTHORIZATION AND PROPORTION OF STOCK POTENTIALLY AFFECTED

Species	Days of activity	Estimated daily occurrence (# per day)	Proposed take by Level B harassment	Proposed take by Level A harassment	Percent of stock
California sea lion (*Zalophus californianus*) U.S. Stock	40	4	160	0	0.06

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the 2020 IHA (85 FR 33129, June 1, 2020), and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this renewal:

Mitigation

The Navy would conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, *etc.*), if a marine mammal comes within 10 m, operations would cease and vessels would reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile).

Though not required, Navy has indicated that in-water pile driving would only be conducted at least 30 minutes after sunrise and up to 30 minutes before sunset, when visual monitoring of marine mammals can be conducted.

For those marine mammals for which Level B harassment take has not been requested, in-water pile driving would shut down immediately if such species are observed within or entering the monitoring zone (*i.e.,* Level B harassment zone). If take reaches the authorized limit for an authorized species, pile installation would be stopped as these species approach the Level B harassment zone to avoid additional take.

Establishment of Shutdown Zone for Level A Harassment—For all pile driving activities, the Navy would establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Conservative shutdown zones of 25 m for impact and vibratory pile driving activities would be implemented for California sea lions. The placement of protected species observers (PSOs) during all pile driving activities (described in detail in the Monitoring section below) would ensure shutdown zones are visible.

Establishment of Monitoring Zones for Level B Harassment—The Navy would establish monitoring zones corresponding with the estimated Level B harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

TABLE 3—MONITORING AND SHUTDOWN ZONES FOR EACH PROJECT ACTIVITY

Source	Monitoring zone (m)	Shutdown zone (m)
Impact Pile Driving 24-inch octagonal concrete piles	120	25
Impact Pile Driving 18-inch octagonal concrete piles	25	25
Vibratory Pile Driving 14-inch steel H-piles	400	25

Soft Start—The use of soft-start procedures is believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure would be conducted a total of three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start would not be required during vibratory pile driving activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start would not proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and species with no take authorization are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment monitoring zone. When a marine mammal for which take by Level B harassment is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take would be recorded. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zone would commence again.

Monitoring

Marine Mammal Visual Monitoring – Monitoring would be conducted by NMFS-approved observers. Trained observers would be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training would be provided prior to project start, and would include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving activities. In addition, observers would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven. Pile driving activities include the time to install a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

At least one land-based PSO would be located at the project site, and the Navy has indicated that when possible and appropriate during vibratory pile driving activities, one additional boat-based PSO would be located at the edge of the Level B harassment isopleth (see Figure 1–2 of the Marine Mammal Monitoring Plan dated March, 2020; available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*).

PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and would have no other project-related tasks while conducting monitoring. In addition, monitoring would be conducted by qualified observers, who would be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. The Navy would adhere to the following PSO qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required;

(ii) At least one observer must have prior experience working as an observer;

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience;

(iv) Where a team of three or more observers are required, one observer shall be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

(v) The Navy would submit observer CVs for approval by NMFS.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including, but not limited to, the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Observers would be required to use approved data forms (see data collection forms in the applicant's Marine

Mammal Mitigation and Monitoring Plan). Among other pieces of information, the Navy would record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy would attempt to distinguish between the number of individual animals taken and the number of incidences of take.

Reporting

A draft report would be submitted to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report would include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days (and associated PSO data sheets), and would also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report. At minimum, the following information must be collected on all sighting forms and included in the monitoring report:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory);
- Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state);
- The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;
- Age and sex class, if possible, of all marine mammals observed;
- PSO locations during marine mammal monitoring;
- Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);
- Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;
- Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;
- Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals;
- An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible; and
- Submit all PSO datasheets and/or raw sighting data (in a separate file from the final report referenced immediately above).

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy would report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to the West Coast Region Stranding Coordinator (562–980–3230) as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The Navy would not resume their activities until notified by NMFS. The report would include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

NMFS would work with the Navy to determine what, if anything, is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Navy would not resume their activities until notified by NMFS.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (85 FR 21179, April 16, 2020) and solicited public comments on both our proposal to issue the 2020 IHA for the Navy's proposed activity and on the potential for a renewal IHA, should certain requirements be met.

All public comments were addressed in the notice announcing the issuance of the 2020 IHA (85 FR 33129, June 1, 2020). Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the renewal of the 2020 IHA.

Comment: The Marine Mammal Commission (Commission) recommended that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process, which is similarly expeditious and fulfills NMFS's intent to maximize efficiencies. If NMFS continues to propose to issue renewals, the Commission recommended that it (1) stipulate that a renewal is a one-time opportunity (a) in all **Federal Register** notices requesting comments on the possibility of a renewal, (b) on its web page detailing the renewal process, and (c) in all draft and final authorizations that include a term and condition for a renewal and, (2) if NMFS declines to adopt this recommendation, explain fully its rationale for not doing so.

Response: NMFS does not agree with the Commission and, therefore, does not adopt the Commission's recommendation. NMFS will provide a detailed explanation of its decision within 120 days, as required by section 202(d) of the MMPA.

Update: Since publication of the **Federal Register** notice of final IHA for the 2020 IHA, NMFS has sent the Commission a letter with detailed responses to their comments and concerns regarding IHA renewals. At the recommendation of the Commission, NMFS has added the ''one-time'' language to our website and to our templates for both **Federal Register** notices of proposed IHAs and the IHAs themselves.

Preliminary Determinations

The construction activities proposed by the Navy are nearly identical to those analyzed in the initial IHA. Due to the construction design plan changes, the proposed number of days of activity are fewer than the initial IHA. The method

of taking and effects of the action are identical to those analyzed in the initial IHA. The potential effects of the Navy's activities are limited to Level B harassment in the form of behavioral disturbance and temporary threshold shift. In analyzing the effects of the activities in the initial IHA, NMFS determined that the Navy's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third of the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis 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; (4) the Navy'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; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

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. No incidental take of ESA-listed marine mammal species is expected to result from this activity, and none would be authorized. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to the Navy for conducting the Floating Dry Dock Project at Naval Base San Diego in San Diego, California, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final 2020 IHA and the reissued initial IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: September 14, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–20264 Filed 9–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC389]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of seminar series presentation.

SUMMARY: The South Atlantic Fishery Management Council (Council) will host a presentation from the National Marine Fisheries Service on incorporating video into reef fish surveys via webinar on October 11, 2022.

DATES: The webinar presentation will be held on Tuesday, October 11, 2022, from 1 p.m. until 2:30 p.m.

ADDRESSES: The presentation will be provided via webinar. The webinar is open to members of the public. Information, including a link to webinar registration will be posted on the Council's website at: *https://safmc.net/safmc-meetings/other-meetings/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Council will host a presentation from National Marine Fisheries Service entitled ''Incorporating Video into the Southeast Reef Fish Survey: Methods, Relative Abundance, and Applied Research''. The presentation will: (1) describe why and how underwater video was included in a long-term trap survey along the southeast U.S. Atlantic continental shelf; (2) review video-based trends in relative abundance trends for a number of economically important reef-fish species; and (3) detail two acoustic tracking studies (gray triggerfish and red snapper) to help us understand fish behaviour around baited sampling gears. A question-and-answer session will follow the presentation. Members of the public will have the opportunity to participate in the discussion. The presentation is for informational purposes only and no management actions will be taken.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 14, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–20258 Filed 9–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC387]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting of its Law Enforcement Technical Committee (LETC), in conjunction with the Gulf States Marine Fisheries Commission's Law Enforcement Committee (LEC).

DATES: The meeting will convene on Tuesday, October 18, 2022; beginning at 9:30 a.m. until 5 p.m., CDT. The

Committees will be in a closed session from 8:30 a.m. until 9:15 a.m.

ADDRESSES:

Council address: The meeting will be held at the San Antonio Marriott Riverwalk Hotel, located at 889 East Market Street, San Antonio, TX; (877) 622–3056. Please visit the Gulf Council website (*www.gulfcouncil.org)* for agenda and meeting materials information.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Ava Lasseter, Anthropologist, Gulf of Mexico Fishery Management Council; *ava.lasseter@gulfcouncil.org,* telephone: (813) 348–1630, and Mr. Steve VanderKooy, Inter-jurisdictional Fisheries (IJF) Coordinator, Gulf States Marine Fisheries Commission; *svanderkooy@gsmfc.org,* telephone: (228) 875–5912.

SUPPLEMENTARY INFORMATION: The following items of discussion are on the agenda, though agenda items may be addressed out of order and any changes will be noted on the Council's website when possible.

Joint Gulf Council's Law Enforcement Technical Committee (LETC) and Gulf States Marine Fisheries Commission's Law Enforcement Committee (LEC) Meeting Agenda, Tuesday, October 18, 2022; 8:30 a.m.–5 p.m., CDT.

The joint meeting will begin in a *CLOSED SESSION* from 8:30 a.m. to 9:15 a.m. with introductions and review of revisions to Council SOPP's regarding fishing violations.

General session will begin at approximately 9:30 a.m. with introductions and adoption of agenda, and approval of minutes from the Joint LEC/LETC virtual meeting from March 2022.

The Gulf Council LETC will review and discuss potential management changes to Vermillion Snapper and Gray Triggerfish; changes to Mexico Status Due to IUU Enforcement; IFQ Landings Transaction Discrepancies; and State Licensed Charters Fishing in Federal Waters. The Committees will review the Council's Framework Actions to Change For-Hire Requirements, including Modification to Location Reporting Requirements and Modification of Trip Declaration Requirements.

Following, the committees will receive a SEFHIER program update, a presentation on Return 'Em Right, and will discuss the Nomination Process for the 2022 Officer/Team of the Year Award.

The GSMFC LEC will follow-up on the Future of the Strategic and Operations Plans, hold a discussion on FADs in State Waters, and review the IJF Program Activity for the status of the Red Drum Profile, Mangrove Snapper Profile Preparations, and Commission Pubs.

The committee will present the State Report Highlights from Florida, Alabama, Mississippi, Louisiana, Texas, USCG, NOAA OLE, and USFWS; and will discuss any Other Business items.

— Meeting Adjourns

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org.*

The Law Enforcement Technical Committee consists of principal law enforcement officers in each of the Gulf States, as well as the NOAA Office of Law Enforcement, U.S. Fish and Wildlife Service, the U.S. Coast Guard, and the NOAA Office of General Counsel for Law Enforcement.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

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

Dated: September 14, 2022.

Rey Israel Marquez,

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

[FR Doc. 2022–20259 Filed 9–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC351]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Naval Base San Diego Pier 6 Replacement Project, San Diego, California

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

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization (IHA).

SUMMARY: NMFS received a request from the U.S. Navy (Navy) for the renewal of their currently active IHA to take marine mammals incidental to the Naval Base San Diego Pier 6 Replacement Project in San Diego, California. These activities consist of activities that are covered by the current authorization, but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act, prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later October 5, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.Fowler@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, including all attachments, must not exceed a 25-megabyte file size. Attachments to 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: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, 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

The Marine Mammal Protection Act (MMPA) prohibits the ''take'' of marine mammals, with certain exceptions. 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, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

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 (*i.e.,* the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) 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. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA renewal qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA renewal request.

History of Request

On January 22, 2021, NMFS issued an IHA to the Navy to take California sea lions (*Zalophus californianus*), by Level B harassment only, incidental to the Naval Base San Diego Pier 6 Replacement Project in San Diego, California (86 FR 7993, February 3, 2021), effective from October 1, 2021 through September 30, 2022. On July 29, 2022, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

The purpose of the Naval Base San Diego Pier 6 Replacement Project is to remove and replace a decaying and inadequate pier for Navy ships. Specifically, the planned in-water construction work authorized under the initial IHA included removing piles that supported the existing pier and installing new piles using an impact hammer. After first removing the above-water structures and utilities, the Navy planned to remove a total of 1,998 piles, including 1,833 12 to 24-inch (in) square concrete piles, 149 12-in composite (timber-plastic) piles, and 16 16-in I-shaped steel piles. Once demolition had opened up space, the Navy planned to begin construction in the same location on a new pier measuring 37 meters (m; 120 feet (ft)) wide by 457 m (1,500 ft) long. New construction work involved impact driving of 966 piles, including 528 24-in octagonal concrete structural piles, 208 24-in square concrete fender piles, four 20-in square concrete piles for a load-out ramp, and 226 16-in fiberglass secondary and corner fender piles. Pile installation and removal was expected to take no more than 250 days.

Of the planned pile removal and installation activities described in the initial IHA, the Navy removed a total of 1,835 concrete piles over 70 days using a vibratory hammer and installed a total of 526 new concrete piles over 62 days using an impact hammer (Table 1). The Navy also removed 149 12-in composite piles and 16 16-inch I-shaped steel piles using direct pull (*i.e.,* no pile hammer required). All planned pile removal activities described in the initial IHA have been completed. The Navy now proposes to install the remaining piles over the course of approximately 54 days starting in November or early December 2022 and continuing through February 2023.

The types of impacts of the Navy's proposed activities are identical to those described in the initial IHA. As in the initial IHA, NMFS anticipates that only the U.S. stock of California sea lions may be taken by Level B harassment incidental to underwater noise resulting from construction associated with the remaining proposed activities.

The following documents are referenced in this notice and include important supporting information:

- **Federal Register** notice of proposed initial IHA (85 FR 80027, December 11, 2020);
- **Federal Register** notice of final initial IHA (86 FR 7993, February 3, 2021); and
- Initial IHA application, references cited, IHA renewal request, and preliminary monitoring report (available at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*).

Detailed Description of the Activity

The purpose of the project is to remove and replace a decaying and inadequate pier built in 1945. A new, wider pier is needed to provide adequate ship berthing infrastructure to support modern Navy ships and fleet readiness. All in-water demolition (*i.e.,* pile removal) and installation of concrete structural piles has been completed. The remaining in-water construction activities to be covered under this IHA renewal include the following:

- Impact installation of 204 2-in square concrete fender piles; and
- Impact installation of 226 16-in round fiberglass fender piles.

TABLE 1—SUMMARY OF COMPLETED AND REMAINING PILE DRIVING ACTIVITIES

Method	Pile type	Number of piles planned in initial IHA	Number of piles completed	Number of piles remaining	Total days of completed work	Total estimated days remaining
Demolition of Existing Pier:						
Vibratory Extraction, High-pressure Water Jetting, Hydraulic Pile Clipper, and/or Hydraulic Chainsaw.	24-inch square pre-cast concrete, 20-inch square pre-stressed/pre-cast concrete piles.	1,833	[a] 1,835	0	70	0
	12-inch composite (timber-plastic) piles.	149	[b] 149	0		
Vibratory Extraction	16-inch I-shaped steel piles	16	[b] 16	0		
Total		1,998	1,835	0		
Construction of New Pier:						
Impact Pile Driving	24-inch octagonal concrete structural test piles.	15	9	0	62	54
	24-inch octagonal concrete structural piles.	513	517	0		
	24-inch square concrete fender system test piles.	4	[c] 0	[c] 0		
	24-inch square concrete primary fender piles.	204	0	204		
	20-inch square concrete pile for load-out ramp cradle.	4	[d] 0	[d] 0		
	16-inch fiberglass secondary and corner fender piles.	226	0	226		
Total		966	526	430	132	54

[a] Note that the total observed piles removed (1,835 piles) exceeds by two the proposed number of 20-in and 24-in piles described in the initial IHA (1,833 piles). This is likely due to command PSOs double counting piles as a result of difficulties encountered when viewing/tracking the large number of piles removed during the course of demolition activities at Pier 6.

[b] All 12-inch composite piles and 16-inch I-shaped steel piles were removed via direct pull with no vibratory hammer required.

[c] 24-inch square concrete fender system test piles have been removed from the construction plan.
[d] These 20-inch square concrete piles were changed to 24-inch octagonal concrete piles and are included in the total number of 24-inch octagonal concrete piles installed above.

A detailed description of the construction activities for which authorization of take is proposed here may be found in the **Federal Register** notice of proposed IHA for the initial IHA (85 FR 80027, December 11, 2020). The location, timing (*e.g.,* seasonality), and nature of the pile driving operations, including the type and size of piles and the methods of pile driving, are identical to those analyzed in the initial IHA. The proposed IHA renewal would be effective through September 30, 2023.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (85 FR 80027, December 11, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and preliminarily determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which the authorization of take is proposed here may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (85 FR 80027, December 11, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notice for the proposed and final initial IHAs (85 FR 80027, December 11, 2020; 86 FR 7993, February 3, 2021). Specifically, the source levels and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA, with the exception of fewer days of activity since the proposed activities are a subset of those covered in the initial IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA.

Based on the number of piles to be installed, the Navy estimates that the remaining activity would take 54 days (Table 1). As in the initial IHA, the Navy estimates four California sea lions could be present in the project area each day. Multiplication of the above estimate of animals per day (4) times the days of work (54) results in an estimated 216 Level B harassment takes of California sea lions (Table 2). The Navy intends to avoid Level A harassment take by shutting down activities if a California sea lion approaches within 20 m of the project site, which encompasses all Level A harassment ensonification zones. Therefore, no take by Level A harassment is anticipated or proposed to be authorized.

TABLE 2—ESTIMATED TAKE PROPOSED FOR AUTHORIZATION AND PROPORTION OF STOCK POTENTIALLY AFFECTED

Species	Days of activity remaining	Estimated daily occurrence (# per day)	Proposed take by Level B harassment	Proposed take by Level A harassment	Percent of stock
California sea lion (*Zalophus californianus*) U.S. Stock	54	4	216	0	0.08

Description of Proposed Mitigation, Monitoring and Reporting Measures

With the exception of measures specific to vibratory pile removal that are not relevant to this IHA renewal, the proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (86 FR 7993, February 3, 2021), and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this renewal:

Mitigation

Establishment of Shutdown Zones—The Navy would establish shutdown zones for all pile driving and removal activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones typically vary based on the activity type and marine mammal hearing group (Table 3). In this case there is only one species affected and all Level A harassment isopleths are less than 10 m radius. To be conservative, the Navy would establish a 20 m shutdown zone for all pile driving or removal activities.

The placement of Protected Species Observers (PSOs) during all pile driving and removal activities (described in detail in the Monitoring section below) would ensure that the entire shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

For in-water heavy machinery work other than pile driving, if a marine mammal comes within 10 m, operations would cease and vessels would reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile).

The Navy would conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

For marine mammal species for which take by Level B harassment has not been authorized, in-water pile driving would shut down immediately if such species are observed within or entering the Level B harassment zone.

If take reaches the authorized limit for an authorized species, pile installation would be stopped as these species approach the Level B harassment zone to avoid additional take.

Monitoring for Level B Harassment—The Navy would monitor the Level A and B harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential halt of activity should the animal enter the shutdown zone. Placement of PSOs would allow PSOs to observe marine mammals within the Level B harassment zones.

Soft Start—Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the impact hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period. This procedure would be conducted three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Pre-activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start would not proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take would be recorded. If the entire Level B harassment zone is not visible at the start of construction, pile driving activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence.

Monitoring

Marine mammal monitoring during pile driving and removal would be conducted by NMFS-approved PSOs in a manner consistent with the following:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods would be used;
- At least one PSO would have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience;
- Where a team of three or more PSOs are required, a lead observer or monitoring coordinator would be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and
- The Navy would submit PSO Curriculum Vitae for approval by NMFS prior to the onset of pile driving.

PSOs would have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Up to four PSOs would be employed. PSO locations would provide an unobstructed view of all water within the shutdown zone, and as much of the Level A and Level B harassment zones as possible. PSO locations are as follows:

(1) At the pile driving/removal site or best vantage point practicable to monitor the shutdown zones;

(2) For activities with Level B harassment zones larger than 400 m (*i.e.,* water jetting), two additional PSO locations would be used. One would be across from the project location along Inchon Road at Naval Amphibious Base Coronado; and

(3) Two additional PSOs would be located in a small boat. The boat would conduct a pre-activity survey of the entire monitoring area prior to in-water construction. The boat would start from south of the project area (where potential marine mammal occurrence is lowest) and proceed to the north. When the boat arrives near the northern boundary of the Level B harassment zone (*e.g.,* just north of the western side of the Coronado Bridge as depicted in the Figures in the monitoring plan) it would set up a station so the PSOs are best situated to detect any marine mammals that may approach from the north. The two PSOs aboard would split monitoring duties in order to monitor a 360 degree sweep around the vessel with each PSO responsible for 180 degrees of observable area.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving or drilling equipment is no more than 30 minutes.

Hydroacoustic Monitoring and Reporting—The Navy has volunteered to conduct hydroacoustic monitoring of all pile driving and removal methods. Data would be collected for a representative number of piles (three to five) for each pile size and/or type. As part of the below-mentioned report, or in a separate report with the same timelines as above, the Navy would provide an acoustic monitoring report for this work. Hydroacoustic monitoring results could be used to adjust the size of the Level B harassment and monitoring zones after a request is made and approved by NMFS. The acoustic

monitoring report would, at minimum, include the following:

- Hydrophone equipment and methods: recording device, sampling rate, distance (m) from the pile where recordings were made; depth of recording device(s);
- Type of pile being driven or removed, substrate type, method of driving or removal during recordings;
- For impact pile driving: Pulse duration and mean, median, and maximum sound levels (dB re: 1µPa): SELcum, peak sound pressure level (SPLpeak), and single-strike sound exposure level (SELs-s);
- For non-impulsive sources (*e.g.,* water jetting): Mean, median, and maximum sound levels (dB re: 1µPa): root mean square sound pressure level (SPLrms), SELcum; and
- Number of strikes (impact) or duration (non-impulsive sources) per pile measured, one-third octave band spectrum and power spectral density plot.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report would include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory and if other removal methods were used);
- Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state);
- The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;
- Age and sex class, if possible, of all marine mammals observed;
- PSO locations during marine mammal monitoring;
- Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving was occurring at time of sighting);
- Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;
- Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone;
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any; and
- Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals.

If no comments are received from NMFS within 30 days, the draft final report would constitute the final report. If comments are received, a final report addressing NMFS comments would be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy would report the incident to the Office of Protected Resources (OPR), NMFS, and to the regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The Navy would not resume their activities until notified by NMFS. The report would include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (85 FR 80027, December 11, 2020) and solicited public comments on both our proposal to issue the initial IHA for the Naval Base San Diego Pier 6 Replacement Project and on the potential for a renewal IHA, should certain requirements be met. During the 30-day public comment period, NMFS received no public comments.

Preliminary Determinations

The construction activities proposed by the Navy are a subset of those analyzed in the initial IHA, as are the method of taking and the effects of the action. The planned number of days of activity are reduced given the completion of a portion of the originally planned work. The potential effects of the Navy's activities are limited to Level B harassment in the form of behavioral disturbance and temporary threshold shift. In analyzing the effects of the activities in the initial IHA, NMFS determined that the Navy's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third of the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis 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; (4) the Navy'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; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

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. No incidental take of ESA-listed marine

mammal species is expected to result from this activity, and none would be authorized. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to the Navy for conducting the Naval Base San Diego Pier 6 Replacement Project in San Diego, California, effective through September 30, 2023, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* We request comment on our analyses, the proposed renewal IHA, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: September 14, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–20265 Filed 9–19–22; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:30 a.m. EDT, Wednesday, September 21, 2022.

PLACE: CFTC headquarters office, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: September 16, 2022.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2022–20482 Filed 9–16–22; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:30 a.m. EDT, Thursday, September 22, 2022.

PLACE: CFTC headquarters office, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: September 16, 2022.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2022–20483 Filed 9–16–22; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 22–C0005]

Clawfoot Supply, LLC

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission publishes in the **Federal Register** any settlement that it provisionally accepts under the Consumer Product Safety Act. Published below is a provisionally accepted Settlement Agreement with Clawfoot Supply, LLC containing a civil penalty in the amount of six million ($6,000,000), subject to the terms and conditions of the Settlement Agreement. The Commission voted unanimously (5–0) to provisionally accept the proposed Settlement Agreement and Order pertaining to Clawfoot Supply, LLC. Commissioner Feldman issued a statement with his vote which can be found here: *https://www.CPSC.gov.*

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 5, 2022.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 22–C0005, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (240) 863–8938 (mobile), (301) 504–7479 (office); email: *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: Madeleine Mietus, Trial Attorney, Division, of Enforcement and Litigation, Office of Compliance and Field Operations, Consumer Product, Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; *mmieuts@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 15, 2022.

Alberta E. Mills,

Secretary.

United States of America

Consumer Product Safety Commission

In the Matter of: CLAWFOOT SUPPLY, LLC

CPSC Docket No.: 22–C0005

Settlement Agreement

1. In accordance with the Consumer Product Safety Act (''CPSA''), 15 U.S.C. 2051–2089, and 16 CFR 1118.20, Clawfoot Supply, LLC (''Clawfoot Supply'') and the United States Consumer Product Safety Commission (''Commission''), through its staff, hereby enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order resolve staff's charges set forth below.

The Parties

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 CFR 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Clawfoot Supply is a wholly owned subsidiary of Ferguson Enterprises, LLC (''Ferguson Enterprises'') and is organized and existing under the laws of the state of Kentucky, with its principal place of business in Erlanger, Kentucky.

Staff Charges

4. Between 2011 and 2018, Clawfoot Supply imported, distributed, and offered for sale approximately 7,200 Wall-Mounted Teak Folding Shower Seats (''Shower Seats'' or ''Subject Products'').

5. The Shower Seats are ''consumer products'' that were ''distribut[ed] in commerce,'' as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. 2052(a)(5), (8). Clawfoot Supply is a ''manufacturer''

and ''distributor'' of the Subject Products, as such terms are defined in sections 3(a)(7) and (11) of the CPSA, 15 U.S.C. 2052(a)(7), (11).

Violation of CPSA Section 19(a)(4)

6. The Shower Seats contain a defect which could create a substantial product hazard and create an unreasonable risk of serious injury or death because the aluminum hardware supporting the Shower Seat can corrode and break, posing fall and laceration hazards.

7. Between 2011 and 2018, Clawfoot Supply received multiple reports of corrosion and breakage with the Shower Seats, including reports of consumers who were injured when they were sitting on the Shower Seat when it failed.

8. During 2015, Clawfoot Supply initiated a design change to strengthen the support rods of the Shower Seats. In late 2015 through early 2016, Clawfoot Supply contacted consumers to advise them of the potential defect and corrosion problem occurring with the Shower Seats.

9. Despite possessing information that reasonably supported the conclusion that the Subject Products contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death, Clawfoot Supply did not immediately report to the Commission.

10. After the acquisition of Clawfoot Supply by Ferguson Enterprises, Clawfoot Supply's compliance program was enhanced in Spring 2018. It was at this time that Ferguson Enterprises learned of the corrosion issue.

11. In July 2018, Clawfoot Supply filed an Initial Report with the Commission and filed a Full Report in August 2018 under 15 U.S.C. 2064(b) concerning the Shower Seats.

12. Clawfoot Supply and the Commission jointly announced a recall of the Shower Seats on December 4, 2018. The press release announcing the recall stated that the aluminum hardware supporting the Shower Seats can corrode, posing fall and laceration hazards. The release noted that 194 incidents of the seat breaking, including 37 incidents of falls without injury and 23 injuries had been reported.

Failure to Timely Report

13. Despite having information reasonably supporting the conclusion that the Subject Products contained a defect or created an unreasonable risk of serious injury or death, Clawfoot Supply did not notify the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3), (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

14. Because the information in Clawfoot Supply's possession about the Subject Products constituted actual and presumed knowledge, Clawfoot Supply knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

15. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Clawfoot Supply is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

Compliance Program and Internal Controls Reports

16. Failure to make timely and accurate reports pursuant to CPSA section 16(b), as required by paragraph 27 of this Agreement and Order may constitute a violation of Section 19(a)(3) of the CPSA.

Response of Clawfoot Supply

17. This Agreement does not constitute an admission by Clawfoot Supply of the staff's charges set forth in paragraphs 4 through 16 above, including without limitation that the Subject Products contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death, that Clawfoot Supply failed to notify the Commission in a timely matter in accordance with section 15(b) of the CPSA, 15 U.S.C. 2064(b), and that Clawfoot Supply knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

18. Clawfoot Supply enters into this Agreement to settle this matter without the delay and unnecessary expense of litigation. Clawfoot Supply does not admit that it violated the CPSA or any other law, and Clawfoot Supply's willingness to enter into this Agreement and Order does not constitute, nor is it evidence of, an admission by Clawfoot Supply of liability or violation of any law.

Agreement of the Parties

19. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products and over Clawfoot Supply.

20. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Clawfoot Supply or a determination by the Commission that Clawfoot Supply violated the CPSA's reporting requirements.

21. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Clawfoot Supply shall pay a civil penalty in the amount of six million dollars ($6,000,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via *http://www.pay.gov,* for allocation to, and credit against, the payment obligations of Clawfoot Supply under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

22. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Clawfoot Supply to the United States, and interest shall accrue and be paid by Clawfoot Supply at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter ''Default Payment Amount'' and ''Default Interest Balance''). Clawfoot Supply shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Clawfoot Supply agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Clawfoot Supply shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

23. After staff receives this Agreement executed on behalf of Clawfoot Supply, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th

calendar day after the date the Agreement is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

24. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 CFR 1118.20(h). Upon the later of: (i) the Commission's final acceptance of this Agreement and service of the accepted Agreement upon Clawfoot Supply, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

25. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Clawfoot Supply and (ii) the date of issuance of the final Order, for good and valuable consideration, Clawfoot Supply hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement:

(i) an administrative or judicial hearing;

(ii) judicial review or other challenge or contest of the Commission's actions;

(iii) a determination by the Commission of whether Clawfoot Supply failed to comply with the CPSA and the underlying regulations;

(iv) a statement of findings of fact and conclusions of law; and

(v) any claims under the Equal Access to Justice Act.

26. Clawfoot Supply shall maintain a compliance program and a system of internal controls and procedures designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed, or sold by Clawfoot Supply, and which shall contain the following elements:

(i) written standards, policies, and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury has been reported;

(ii) procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;

(iii) procedures requiring that information required to be disclosed by Clawfoot Supply to the Commission is recorded, processed and reported in accordance with applicable law;

(iv) procedures requiring that all reporting made to the Commission is timely, truthful, complete, accurate and in accordance with applicable law;

(v) procedures requiring that immediate disclosure is made to Clawfoot Supply's senior management of any significant deficiencies or material weaknesses in the design or operation of such compliance program or internal controls that affect adversely, in any material respect, Clawfoot Supply's ability to record, process and report to the Commission in accordance with applicable law;

(vi) mechanisms to effectively communicate to all applicable Clawfoot Supply's employees through training programs or other means, compliance related company policies and procedures to prevent violations of the CPSA;

(vii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;

(viii) Clawfoot Supply's senior management responsibility for CPSA compliance; and

(ix) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to CPSC staff upon request.

27. The Firm shall submit a report sworn to under penalty of perjury:

(i) describing in detail its compliance program and internal controls and the actions the Firm has taken to comply with each subparagraph of paragraph 26,

(ii) affirming that during the reporting period the Firm has reviewed its compliance program and internal controls including the actions referenced in subparagraph (i) of this paragraph for effectiveness, and that it complies with each subparagraph of paragraph 26 or describing in detail any non-compliance with any such subparagraph, and

(iii) identifying any changes or modifications made during the reporting period to the Firm's compliance program or internal controls to ensure compliance with the terms of the CPSA and in particular, the requirements of CPSA Section 15 related to timely reporting.

Such reports shall be submitted annually to the Director, Office of Compliance, Division of Enforcement and Litigation, for a period of 3 years beginning 12 months after the Commission's Final Order of Acceptance of the Agreement. The first report shall be submitted 30 days after the close of the first 12-month reporting period, and successive reports shall be due annually on the same date thereafter.

28. Notwithstanding and in addition to the above, upon request of staff, Clawfoot Supply shall promptly provide to CPSC written documentation identifying any material changes or improvements to the Firm's compliance program or internal controls and the effective date of those changes or improvements. Clawfoot Supply shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and any personnel deemed necessary by staff, to evaluate Clawfoot Supply's compliance with the terms of the Agreement.

29. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

30. Clawfoot Supply represents that the Agreement:

(i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever;

(ii) has been duly authorized; and

(iii) constitutes the valid and binding obligation of Clawfoot Supply, enforceable against Clawfoot Supply in accordance with its terms. The individuals signing the Agreement on behalf of Clawfoot Supply represent and warrant that they are duly authorized by Clawfoot Supply to execute the Agreement.

31. The signatories represent that they are authorized to execute this Agreement.

32. The Agreement is governed by the laws of the United States.

33. The Agreement and the Order shall apply to, and be binding upon, Clawfoot Supply and each of its successors, transferees, and assigns; and a violation of the Agreement or Order may subject Clawfoot Supply, and each of its successors, transferees, and assigns, to appropriate legal action.

34. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

35. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

36. The Agreement may not be waived, amended, modified, or otherwise altered, except as in

accordance with the provisions of 16 CFR 1118.20(h). The Agreement may be executed in counterparts.

37. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Clawfoot Supply agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

Clawfoot Supply, LLC

Dated: 8/16/2022

By: /s/

Keith Hammond,

Clawfoot Supply, LLC, President.

Dated: 8/15/2022

By: /s/

Jennifer Karmonick,

Counsel to Clawfoot Supply, LLC.

U.S. Consumer Product Safety Commission

Dated: 8/16/2022

By: /s/

Madeleine Mietus,

Trial Attorney, Office of Compliance and Field Operations.

United States of America

Consumer Product Safety Commission

In the Matter of: CLAWFOOT SUPPLY, LLC

CPSC Docket No.: 22–C0005

Order

Upon consideration of the Settlement Agreement entered into between Clawfoot Supply, LLC (''Clawfoot Supply'') and the U.S. Consumer Product Safety Commission (''Commission''), and the Commission having jurisdiction over the subject matter and over Clawfoot Supply, and it appearing that the Settlement Agreement is in the public interest, the Settlement Agreement is incorporated by reference and it is:

Provisionally accepted and provisional Order issued on the 13th day of September, 2022.

By Order of the Commission:

Alberta Mills, *Secretary U.S. Consumer Product Safety Commission.*

Finally accepted and final Order issued on the __ day of ____, 2022.

By Order of the Commission:

Alberta Mills, *Secretary U.S. Consumer Product Safety Commission*

[FR Doc. 2022–20292 Filed 9–19–22; 8:45 am]

BILLING CODE 6355–01–P

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

Senior Executive Service Performance Review Board Membership

AGENCY: Council of the Inspectors General on Integrity and Efficiency.

ACTION: Notice.

DATES: Applicable October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Individual Offices of Inspectors General at the telephone numbers listed below.

SUPPLEMENTARY INFORMATION:

I. Background

The Inspector General Act of 1978, as amended, created the Offices of Inspectors General as independent and objective units to conduct and supervise audits and investigations relating to Federal programs and operations. The Inspector General Reform Act of 2008 established the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to address integrity, economy, and effectiveness issues that transcend individual Government agencies; and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the Offices of Inspectors General. CIGIE is an interagency council whose executive chair is the Deputy Director for Management, Office of Management and Budget, and is comprised principally of the 75 Inspectors General (IGs).

II. CIGIE Performance Review Board

Under 5 U.S.C. 4314(c)(1)–(5), and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the Council of the Inspectors General on Integrity and Efficiency Performance Review Board, as of October 1, 2022, are as follows:

Agency for International Development

Phone Number: (202) 712–1150

CIGIE Liaison—Nicole Angarella (202) 712–4630

Nicole Angarella—Acting Deputy Inspector General.

Justin Brown—Counselor to the Inspector General (SL).

Suzann Gallaher—Assistant Inspector General for Investigations.

Marc Meyer—Deputy Assistant Inspector General for Investigations.

Toayoa Aldridge—Assistant Inspector General for Audit.

Alvin A. Brown—Deputy Assistant Inspector General for Audit.

Sabrina Ferguson-Ward—Assistant Inspector General for Management.

Will Young—Deputy Assistant Inspector General for Management.

Department of Agriculture

Phone Number: (202) 720–8001

CIGIE Liaison—Angel N. Bethea (202) 720–8001

Ann M. Coffey—Deputy Inspector General.

Steven H. Rickrode, Jr.—Deputy Assistant Inspector General for Audit.

Yarisis Rivera Rojas—Deputy Assistant Inspector General for Audit.

Kevin Tyrrell—Assistant Inspector General for Investigation.

Virginia E.B. Rone—Assistant Inspector General for Analytics and Innovation.

Department of Commerce

Phone Number: (202) 280–8374

CIGIE Liaison—Jacqueline G. Ruley (202) 280–8374

Roderick M. Anderson—Deputy Inspector General.

Richard L. Bachman—Assistant Inspector General for Audit and Evaluation.

E. Wade Green—Counsel to the Inspector General.

Robert O. Johnston, Jr.—Chief of Staff.

Scott M. Kieffer—Assistant Inspector General for Investigations.

Frederick J. Meny—Assistant Inspector General for Audit & Evaluation.

Arthur L. Scott, Jr.—Assistant Inspector General for Audit and Evaluation.

Mark H. Zabarsky—Principle Assistant Inspector General for Audit and Evaluation.

Council of the Inspectors General on Integrity and Efficiency

Phone Number: (202) 292–2600

CIGIE Liaison—Denise Mangra (202) 510–5409

Alan F. Boehm—Executive Director.

Douglas Holt—Executive Director, CIGIE Training Institute.

Department of Defense

Phone Number: (703) 604–8324

Acting CIGIE Liaison—Crystal Johnson (703) 601–3149

Leo J. Fitzharris IV—Assistant IG for Strategic Planning and Performance.

Marguerite C. Garrison—Deputy Inspector General for Administrative Investigations.

Carol N. Gorman—Assistant Inspector General for Readiness and Cyber Operations.

Paul Hadjiyane—General Counsel.

Theresa S. Hull—Assistant Inspector General for Acquisition and Sustainment Management.

James R. Ives—Deputy Inspector General for Overseas Contingency Operations.

Brett A. Mansfield—Deputy Inspector General for Audit.
Kelly P. Mayo—Deputy Inspector General for Investigations.
Troy M. Meyer—Principal Assistant Inspector General for Audit.
Harris S. Quddos—Chief Information Officer.
Michael J. Roark—Deputy Inspector General for Evaluations.
Steven A. Stebbins—Chief of Staff.
Paul K. Sternal—Assistant Inspector General for Investigations/Investigative Ops.
Randolph R. Stone—Assistant Inspector General for Space, Intelligence, Engineering and Oversight.
Richard B. Vasquez—Assistant Inspector General for Readiness & Global Operations.
Lorin T. Venable—Assistant Inspector General for Financial Management and Reporting.
David G. Yacobucci—Assistant Inspector General for Data Analytics.
Michael C. Zola—Assistant Inspector General for Legislative Affairs & Communications.

Department of Education

Phone Number: (202) 245–6900

CIGIE Liaison—Joy Stith (202) 245–6435

Bryon Gordon—Assistant Inspector General for Audit Services.
Sean Dawson—Deputy Assistant Inspector General for Audit Services.
Theresa Perolini—Deputy Assistant Inspector General for Audit Services.
Robert Mancuso—Assistant Inspector General for Investigation Services.
Kevin Young—Assistant Inspector General for Technology Services.
Francine Hines—Assistant Inspector General for Management Services.
Antigone Potamianos—Counsel to the Inspector General.

Department of Energy

Phone Number: (202) 586–4393

CIGIE Liaison—Ryan Cocolin (202) 586–8672

Jennifer Quinones—Deputy Inspector General.
Nicholas Acker—Counsel to the Inspector General.
Travis Farris—Special Counsel for Administrative Remedies.
Charles Sabatos—Assistant Inspector General for Management and Administration.
Lewe Sessions—Assistant Inspector General for Investigations.
Kenneth Dieffenbach—Deputy Inspector General for Investigations.
Earl Omer—Assistant Inspector General for Audits.
John McCoy II—Deputy Assistant Inspector General for Audits.
Anthony Cruz—Assistant Inspector General for Inspections, Intelligence Oversight, and Special Projects.

Environmental Protection Agency

CIGIE Liaison—Jennifer Kaplan (202) 578–6098

Mary Katherine Trimble—Assistant Inspector General for Audit and Evaluation.
Stephanie Wright—Chief Technology Officer.
M. Benjamin May—Chief Counsel.

Federal Labor Relations Authority

Phone Number: (202) 218–7744

CIGIE Liaison—Dana Rooney (202) 218–7744

Dana Rooney—Inspector General.

Federal Maritime Commission

Phone Number: (202) 523–5863

CIGIE Liaison—Jon Hatfield (202) 523–5863

Jon Hatfield—Inspector General.

Federal Trade Commission

Phone Number: (202) 326–2355

CIGIE Liaison—Andrew Katsaros (202) 326–2355

Andrew Katsaros—Inspector General.

General Services Administration

Phone Number: (202) 501–0450

CIGIE Liaison—Sarah Breen (202) 273–7284

Robert C. Erickson—Deputy Inspector General.
Larry L. Gregg—Associate Inspector General.
Edward Martin—Counsel to the Inspector General.
R. Nicholas Goco—Assistant Inspector General for Audits.
Barbara Bouldin—Deputy Assistant Inspector General for Acquisition Program Audits.
Brian Gibson—Deputy Assistant Inspector General for Real Property Audits.
James E. Adams—Assistant Inspector General for Investigations.
Jason Suffredini—Deputy Assistant Inspector General for Investigations.
Patricia D. Sheehan—Assistant Inspector General for Inspections.
Kristine Preece—Assistant Inspector General for Administration.

Department of Health and Human Services

Phone Number: (202) 619–3148

CIGIE Liaison—Elise Stein (202) 619–2686

Gregory Demske—Acting Principal Inspector General/Chief Counsel to the Inspector General.
Juliet Hodgkins—Acting Chief of Staff.
Robert Owens, Jr.—Deputy Inspector General for Management and Policy.
Gerald Caron III—Assistant Inspector General/Chief Information Officer.
Gregg Treml—Assistant Inspector General/Deputy Chief Financial Officer.
Renata Miskell—Assistant Inspector General/Chief Data Analytics Officer.
Christian Schrank—Deputy Inspector General for Investigations.
Adam Globerman—Assistant Inspector General for Investigations.
Suzanne Murrin—Deputy Inspector General for Evaluation and Inspections.
Erin Bliss—Assistant Inspector General for Evaluation and Inspections.
Ann Maxwell—Assistant Inspector General for Evaluation and Inspections.
Robert DeConti—Assistant Inspector General for Legal Affairs.
Lisa Re—Assistant Inspector General for Legal Affairs.
Amy Frontz—Deputy Inspector General for Audit Services.
Tamara Lilly—Assistant Inspector General for Audit Services.
Carla Lewis—Assistant Inspector General for Audit Services.
John Hagg—Assistant Inspector General for Audit Services.
Megan Tinker—Assistant Inspector General for Audit Services.

Department of Homeland Security

Phone Number: (202) 981–6000

CIGIE Liaison—E. William Baxter (202) 321–4357

Jordan Gottfried—Assistant Inspector General for Management.

Department of Housing and Urban Development

Phone Number: (202) 708–0430

CIGIE Liaison—Michael White (202) 402–8410

Charles Jones—Senior Advisor for External Affairs.
Fara Damelin—Chief of Staff.
Kimberly Randall—Deputy Assistant Inspector General for Audit.
Kilah White—Assistant Inspector General for Audit.
Kudawashe Ushe—Chief Information Officer.
Maura Malone—Counsel to the Inspector General.
Brian Pattison—Assistant Inspector General for Evaluation.
Matthew Harris—Deputy Assistant Inspector General for Investigation.
Jacquelyn Phillips—Chief Strategy Officer.
Stephen Begg—Deputy Inspector General.

International Development Finance Corporation

Phone Number: (202) 336–8400

CIGIE Liaison—Gladis Griffith (202) 477–5896

Anthony Zakel—Inspector General (SL).
Gladis Griffith—Deputy Inspector General & General Counsel (SL).
Darrell Benjamin—Assistant Inspector General of Audits (SL).
John Warren—Assistant Inspector General of Investigations (SL).

Department of the Interior

Phone Number: (202) 208–5635

CIGIE Liaison—Karen Edwards (202) 208–5635

Caryl Brzymialkiewicz—Deputy Inspector General.
Jill Baisinger—Chief of Staff.
Matthew Elliott—Assistant Inspector General for Investigations.
Edward ''Ted'' Baugh—Deputy Assistant Inspector General for Investigations.
Justin Martell—General Counsel.
Kathleen Sedney—Assistant Inspector General for Audit.
Jorge Christian—Assistant Inspector General for Management.

Department of Justice

Phone Number: (202) 514–3435

CIGIE Liaison—John Lavinsky (202) 514–3435

William M. Blier—Deputy Inspector General.
Jonathan M. Malis—General Counsel.
Michael Sean O'Neill—Assistant Inspector General for Oversight and Review.
Patricia A. Sumner—Deputy Assistant Inspector General for Oversight and Review.
Jason R. Malmstrom—Assistant Inspector General for Audit.
Mark L. Hayes—Deputy Assistant Inspector General for Audit.
Kevin M. Strug—Deputy Assistant Inspector General for Audit, Office of Data Analytics.
Sarah E. Lake—Assistant Inspector General for Investigations.
Sandra D. Barnes—Deputy Assistant Inspector General for Investigations.
Sanjay Arnold—Assistant Inspector General for Information Technology Division.
Rene L. Rocque—Assistant Inspector General for Evaluation and Inspections.
Allison E. Russo—Deputy Inspector General for Evaluation and Inspections.
Cynthia Sjoberg Radway—Deputy Assistant Inspector for Management and Planning.

Department of Labor

Phone Number: (202) 693–5100

CIGIE Liaison—Erin Zickafoose (202) 693–7062

Luiz A. Santos—Deputy Inspector General.
Dee Thompson—Counsel to the Inspector General.
Carolyn Ramona Hantz—Assistant Inspector General for Audit.
Laura Nicolosi—Deputy Assistant Inspector General for Audit.
Tawanda Holmes—Deputy Assistant Inspector General for Audit.
Michael C. Mikulka—Assistant Inspector General for Investigations—Labor Racketeering and Fraud.
Tara A. Porter—Assistant Inspector General for Management and Policy.
Claudette L. Fogg-Castillo—Deputy Assistant Inspector General for Management and Policy.
Thomas D. Williams—Chief Technology Officer.
Jessica Southwell—Chief Performance and Risk Management Officer.

National Aeronautics and Space Administration

Phone Number: (202) 358–1220

CIGIE Liaison—Renee Juhans (202) 358–1712

George A. Scott—Deputy Inspector General.
Robert H. Steinau—Assistant Inspector General for Investigations.
Frank LaRocca—Counsel to the Inspector General.
Kimberly F. Benoit—Assistant Inspector General for Audits.
Ross W. Weiland—Assistant Inspector General for Management Planning.

National Archives and Records Administration

Phone Number: (301) 837–3000

CIGIE Liaison—John Simms (301) 837–3000

Brett Baker—Inspector General.
Jewel Butler—Assistant Inspector General for Audit.
Jason Metrick—Assistant Inspector General for Investigations.

National Labor Relations Board

Phone Number: (202) 273–1960

CIGIE Liaison—Robert Brennan (202) 273–1960

David P. Berry—Inspector General.

National Science Foundation

Phone Number: (703) 292–7100

CIGIE Liaison—Lisa Vonder Haar (703) 292–2989

Megan Wallace—Assistant Inspector General for Investigations.
Mark Bell—Assistant Inspector General for Audits.
Ken Chason—Counsel to the Inspector General.
Javier E. Inclán—Assistant Inspector General for Management and CIO.

Nuclear Regulatory Commission

Phone Number: (301) 415–5930

CIGIE Liaison—Christine Arroyo (301) 415–0526

Ziad Buhaissi—Deputy Inspector General.
Malion Bartley—Assistant Inspector General for Investigations.
Hruta Virkar—Assistant Inspector General for Audits.

Office of Personnel Management

Phone Number: (202) 606–1200

CIGIE Liaison—Faiza Mathon-Mathieu (202) 606–2236

Krista A. Boyd—Inspector General.
Norbert E. Vint—Deputy Inspector General.
Michael R. Esser—Assistant Inspector General for Audits.
Melissa D. Brown—Deputy Assistant Inspector General for Audits.
Lewis F. Parker, Jr.—Deputy Assistant Inspector General for Audits.
Drew M. Grimm—Assistant Inspector General for Investigations.
Conrad Quarles—Deputy Assistant Inspector General for Investigations.
Nicholas E. Hoyle—Assistant Inspector General for Management.
Robin A. Thottungal—Deputy Assistant Inspector General for Management/Chief Information Technology Officer.
Paul St. Hillaire—Assistant Inspector General for Legal and Legislative Affairs.

Special Inspector General for Pandemic Recovery

Phone Number: (202) 713–8437

CIGIE Liaison—Geoffrey A. Cherrington (202) 713–8437

Barbara Bruin—Deputy Special Inspector General.
Theodore R. Stehney—Assistant Inspector General for Auditing.
Michael T. Ryan—Assistant Inspector General for Investigations.
Erica M. Kavanagh—Assistant Inspector General for Administration.
Geoffrey A. Cherrington—Assistant Inspector General for External Affairs.
Tracy A. Doherty-McCormick—General Counsel.
Christopher Cherry—Deputy Assistant Inspector General for Investigations.
Jean Saint Elin—Deputy Assistant Inspector General for Audits.
James A. Nussbaumer—Deputy Assistant Inspector General Administration.
David C. Woll Jr.—Deputy General Counsel.

United States Postal Service

Phone Number: (703) 248–2100

CIGIE Liaison—Agapi Doulaveris (703) 248–2286

Elizabeth Martin—General Counsel.
Mark Duda—Assistant Inspector General for Mission Support/Chief Financial Officer.

Railroad Retirement Board

Phone Number: (312) 751–4690

CIGIE Liaison—Jill Roellig (312) 751–4993

Patricia A. Marshall—Deputy Inspector General and Counsel to the Inspector General.
Debra Stringfellow-Wheat—Assistant Inspector General for Audit.
Paul Palumbo—Assistant Inspector General for Investigations.

Small Business Administration

Phone Number: (202) 205–6586

CIGIE Liaison—Mary Kazarian (202) 401–0753

Brian Grossman—Assistant Inspector General for Investigations.
Shafee Carnegie—Assistant Inspector General for Investigations.
Andrea Deadwyler—Assistant Inspector General for Audits.
Sheldon Shoemaker—Assistant Inspector General for Management and Operations.

Social Security Administration

Phone Number: (410) 966–8385

CIGIE Liaison—Craig Meklir (443) 316–7922

Benjamin S. Alpert—Deputy Inspector General.
B. Chad Bungard—Chief of Staff/Chief Strategy Officer (Acting).
Jennifer Walker—Assistant Inspector General for Investigations.
Sotiris Planzos—Chief Investigative Counsel.
Kevin Huse—Deputy Assistant Inspector General for Investigations.
Donald Jefferson—Deputy Assistant Inspector General for Investigations.
Mark Franco—Deputy Assistant Inspector General for Investigations.
Michelle L. Anderson—Assistant Inspector General for Audit.
Jeffrey Brown—Deputy Assistant Inspector General for Audit.
Michael Arbuco—Assistant Inspector General of Information Technology.
Adriana Menchaca-Gendron—Assistant Inspector General of Resource Management.

Andrew Cannarsa—Deputy Assistant Inspector General of Resource Management.

Michelle M. Murray—Chief Counsel to the Inspector General.

Special Inspector General for the Troubled Asset Relief Program

Phone Number: (202) 622–1419

CIGIE Liaison—Melissa Bruce (202) 617–4238

Melissa Bruce—Acting, Special Inspector General.

Thomas Jankowski—Deputy Inspector General for Investigations.

Gabriele Tonsil—Deputy Inspector General for Audits.

Sidney Rocke—General Counselor for the Special Inspector General.

Department of State and the U.S. Agency for Global Media

Phone Number: (571) 348–3804

CIGIE Liaison—Mark Huffman (571) 348–4881

Diana Shaw—Senior Official Performing the Duties of the Inspector General.

Nicole Matthis—Deputy Assistant Inspector General for Evaluations and Special Projects (on detail as the Acting Chief of Staff).

Matthew Tuchow—General Counsel.

Kevin Donohue—Deputy General Counsel.

Andrew Chiu—Assistant Inspector General for Administration.

Connie Yates—Deputy Assistant Inspector General for Administration.

Norman Brown—Assistant Inspector General for Audits.

Gayle Voshell—Deputy Assistant Inspector General for Audits.

Beverly O'Neill—Deputy Assistant Inspector General for Audits, Middle East Region Operations.

Sandra Lewis—Assistant Inspector General for Inspections.

Lisa Rodely—Deputy Assistant Inspector General for Operations, Inspections.

Arne Baker—Deputy Assistant Inspector General for Inspections.

Robert Smolich—Assistant Inspector General for Investigations.

Jeffrey McDermott—Assistant Inspector General for Evaluations and Special Projects.

Department of Transportation

Phone Number: (202) 366–1959

CIGIE Liaison—Nathan P. Richmond: (202) 493–0422

Mitchell L. Behm—Deputy Inspector General.

M. Elise Chawaga—Principal Assistant Inspector General for Investigations.

Barry DeWeese—Principal Assistant Inspector General for Auditing and Evaluation.

Susan Ocampo—Deputy Assistant Inspector General for Investigations.

Omer Poirier—Chief Counsel.

David Pouliott—Assistant Inspector General for Surface Transportation Audits.

Charles A. Ward—Assistant Inspector General for Audit Operations and Special Reviews.

Kevin Dorsey—Assistant Inspector General for Information Technology Audits.

Karl Schuler—Assistant Inspector General for Administration and Management.

Department of the Treasury

Phone Number: (202) 622–1090

CIGIE Liaison—Richard K. Delmar (202) 927–3973

Richard K. Delmar—Deputy Inspector General.

Jeffrey Lawrence—Assistant Inspector General for Management.

Sally Luttrell—Assistant Inspector General for Investigations.

Deborah L. Harker—Assistant Inspector General for Audit.

Pauletta Battle—Deputy Assistant Inspector General for Financial Management and Transparency Audits.

Susan L. Barron—Deputy Assistant Inspector General for Financial Sector Audits.

Donna F. Joseph—Deputy Assistant Inspector General for Cyber and Financial Assistance Audits.

Sean A. McDowell—Deputy Assistant Inspector General for Investigations.

Treasury Inspector General for Tax Administration/Department of the Treasury

Phone Number: (202) 622–6500

CIGIE Liaison—David Barnes (Acting) (202) 622–3062

Gladys Hernandez—Chief Counsel.

Lori Creswell—Deputy Chief Counsel.

Mervin Hyndman—Deputy Inspector General for Mission Support/Chief Financial Officer.

Richard Varn II—Chief Information Officer.

Trevor Nelson—Deputy Inspector General for Investigations.

Heather Hill—Deputy Inspector General for Audit.

Nancy LaManna—Assistant Inspector General for Audit, Management, Planning, and Workforce Development.

Russell Martin—Deputy Inspector General for Inspections and Evaluations.

Danny Verneuille—Assistant Inspector General for Audit, Security, and Information Technology Services.

Matthew Weir—Assistant Inspector General for Audit, Compliance, and Enforcement Operations.

Edward Currie—Assistant Inspector General for Investigations—Operational Support Directorate.

Derek Anderson—Assistant Inspector General for Investigations—Investigative Operations.

Department of Veterans Affairs

Phone Number: (202) 461–4603

CIGIE Liaison—Brandy Beckham (202) 461–9376

David Case—Deputy Inspector General.

John D. Daigh—Assistant Inspector General for Healthcare Inspections.

Julie Kroviak—Principal Deputy Assistant Inspector General for Healthcare Inspections.

Gopala Seelamneni—Deputy Assistant Inspector General for Management and Administration/Chief Technology Officer.

Larry Reinkemeyer—Assistant Inspector General for Audits and Evaluations.

Chris Wilber—Counselor to the Inspector General.

David Johnson—Assistant Inspector General for Investigations.

Dated: September 14, 2022.

Alan F. Boehm,

Executive Director.

[FR Doc. 2022–20239 Filed 9–19–22; 8:45 am]

BILLING CODE 6820–C9–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0115]

Agency Information Collection Activities; Comment Request; Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before November 21, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *https://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0115. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *https://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection

activities, please contact Carmen Gordon, 202–453–7311.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report.

OMB Control Number: 1840–0640.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 187.

Total Estimated Number of Annual Burden Hours: 2,057.

Abstract: Ronald E. McNair Postbaccalaureate Achievement (McNair) Program grantees must submit the Annual Performance Report each year. The reports are used to evaluate grantees' performance for substantial progress, respond to the Government Performance and Results Act (GPRA), and award prior experience points at the end of each project (budget) period. The Department also aggregates the data to provide descriptive information on the projects and to analyze the impact of the McNair Program on the academic progress of participating students.

Dated: September 15, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–20291 Filed 9–19–22; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10185–01–R9]

Revision of Approved State Primacy Program for the State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval.

SUMMARY: Notice is hereby given that the State of Arizona revised its approved State primacy program under the federal Safe Drinking Water Act (SDWA) by adopting regulations that effectuate the federal Filter Backwash Recycling Rule (FBRR), Ground Water Rule (GWR), and Radionuclides Rule. The Environmental Protection Agency (EPA) has determined that Arizona's revision request meets the applicable SDWA program revision requirements and the regulations adopted by Arizona are no less stringent than the corresponding federal regulations. Therefore, EPA approves this revision to Arizona's approved State primacy program. However, this determination on Arizona's request for approval of a program revision shall take effect in accordance with the procedures described below in the **SUPPLEMENTARY INFORMATION** section of this notice after the opportunity to request a public hearing.

DATES: A request for a public hearing must be received or postmarked before October 20, 2022.

ADDRESSES: Documents relating to this determination that were submitted by Arizona as part of its program revision request are available for public inspection online *https://azdeq.gov/notices.* In addition, these documents are available by appointment between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday at the following address: Records Center, 1110 W Washington Street, Phoenix, Arizona 85007.

FOR FURTHER INFORMATION CONTACT: Daria Evans-Walker, EPA Region 9, Drinking Water Section; via telephone at (415) 972–3451or via email address at *Evans-Walker.Daria@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background. EPA approved Arizona's initial application for primary enforcement authority (''primacy'') of drinking water systems on August 25, 1978 (43 FR 38083). Since initial primacy approval, EPA has approved various revisions to Arizona's primacy program. For the revision covered by this action, EPA promulgated the FBRR at 40 CFR 141.76 on June 8, 2001. The FBRR reduces the opportunity for recycle practices to adversely affect the performance of drinking water treatment plants and to help prevent microbial contaminants from passing through treatment systems and into finished drinking water. EPA promulgated the GWR on November 8, 2006 (71 FR 65574). The GWR provides protection against microbial pathogens in public water systems using ground water sources. EPA promulgated National Interim Primary Drinking Water Regulations (NIPDWRs) for radioactivity in drinking water on July 9, 1976. The 1986 amendments to the Safe Drinking Water Act finalized NIPDWRs and required EPA to promulgate maximum contaminant limit goals and National Primary Drinking Water Regulations for the radionuclides, radon and uranium. On December 7, 2000, EPA revised the Radionuclides Rule which modified the monitoring provisions for community water systems and established a new drinking water standard for uranium and new analytical methods (65 FR 76708). The FBRR reduces the opportunity for recycle practices to adversely affect the performance of drinking water treatment plants and to help prevent microbial contaminants from passing through treatment systems and into finished drinking water. EPA promulgated the GWR on November 8, 2006 (71 FR 65574). The GWR provides protection against microbial pathogens in public water systems using ground water sources. EPA promulgated National Interim Primary Drinking Water Regulations (NIPDWRs) for radioactivity in drinking water on July 9, 1976. The 1986 amendments to the Safe Drinking Water Act finalized NIPDWRs and required EPA to promulgate maximum contaminant limit goals and National Primary Drinking Water Regulations for the radionuclides, radon and uranium. On December 7, 2000, EPA revised the Radionuclides Rule which modified the monitoring provisions for community water systems and established a new drinking water standard for uranium and new analytical methods (65 FR 76708). EPA has determined that Arizona has adopted into state law FBRR, GWR and Radionuclides Rule

requirements that are comparable to and no less stringent than the federal requirements. EPA has also determined that Arizona's program revision request meets all of the regulatory requirements for approval, as set forth in 40 CFR 142.12, including a side-by-side comparison of the Federal requirements demonstrating the corresponding Arizona authorities, additional materials to support special primacy requirements of 40 CFR 142.16, a review of the requirements contained in 40 CFR 142.10 necessary for States to attain and retain primary enforcement responsibility, and a statement by the Arizona Attorney General certifying that Arizona's laws and regulations to carry out the program revision were duly adopted and are enforceable. The Attorney General's statement also affirms that Arizona's audit privilege law does not impact Arizona's ability to implement or enforce the Arizona laws and regulations pertaining to the program revision. This finding relies upon the analysis contained in the letter from the Office of the Attorney General to the EPA Region 9 Water Division Director, dated January 28, 2019, regarding its environmental audit privilege law. Therefore, EPA approves this revision of Arizona's approved State primacy program. The Technical Support Document, which provides EPA's analysis of Arizona's program revision request, is available by submitting a request to the following email address: *R9dw-program@epa.gov.* Please note ''Technical Support Document'' in the subject line of the email.

Public Process. Any interested person may request a public hearing on this determination. A request for a public hearing must be received or postmarked before October 20, 2022 and addressed to the Regional Administrator of EPA Region 9, via the following email address: *R9dw-program@epa.gov,* or by contacting the EPA Region 9 contact person listed above in this notice by telephone if you do not have access to email. Please note ''Arizona Program Revision Determination'' in the subject line of the email. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. If a timely request for a public hearing is made, then EPA Region 9 may hold a public hearing. Any request for a public hearing shall include the following information: 1. The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; 2. A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and 3. The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If EPA Region 9 does not receive a timely request for a hearing or a request for a hearing was denied by the Regional Administrator for being frivolous or insubstantial, and the Regional Administrator does not elect to hold a hearing on their own motion, EPA's approval shall become final and effective on October 20, 2022, and no further public notice will be issued.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g–2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: September 13, 2022.

Deborah Jordan,

Acting Regional Administrator, EPA Region 9.

[FR Doc. 2022–20263 Filed 9–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0083; FRL–9409–05–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients (August 2022)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before October 21, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2021–0083, 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: Charles Smith, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566–1400, email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this 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 *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*https://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions*).

New Active Ingredients

1. *File Symbol:* 94473–R, E, G. *Docket ID number:* EPA–HQ–OPP–2022–0504. *Applicant:* Crop Enhancement, 2186 Bering Drive, San Jose, California 95131. *Product name:* Raw Linseed Oil Technical (technical grade active ingredient), Cropcoat CX1098 (end use product), and Cropcoat (end use product). *Active ingredient:* Linseed oil at 99.7%, 54.0%, and 70.0%. *Proposed classification/use:* For control of mites and insects on terrestrial food crops, terrestrial non-food crops, turfs and ornamentals. *Contact:* BPPD.

2. *File Symbol:* 99269–R. *Docket ID number:* EPA–HQ–OPP–2022–0743. *Applicant:* Columbia River Carbonates, 300 North Pekin Road, Woodland, Washington 98674. *Product name:* MICRONA Shield WP. *Active ingredient:* Biochemical—Calcium carbonate at 98.8%. *Proposed use:* For use as a protective barrier against insects, sunburn, and heat stress. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 14, 2022.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–20327 Filed 9–19–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm*. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 19, 2022.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org*:

1. *First Waterloo Bancshares, Inc., Waterloo, Illinois;* to merge with Village Bancshares, Inc., and thereby indirectly acquire The Village Bank, both of Saint Libory, Illinois.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *AllBank Holding Company, Inc., Tulsa, Oklahoma;* to become a bank holding company by acquiring the Bank of Locust Grove, Locust Grove, Oklahoma.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–20238 Filed 9–19–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm*. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 5, 2022.

A. Federal Reserve Bank of Cleveland (Bryan S. Huddleston, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566, or electronically to *Comments.applications@clev.frb.org*:

1. *The John Romer Trust B, David J. Romer, individually, and as trustee, both of St. Henry, Ohio*; to join the Romer Family Control Group, a group acting in concert, to retain voting shares of The St Henry Bancorp, Inc., and thereby indirectly retain voting shares of The St Henry Bank, both of Saint Henry, Ohio.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Justin B. Danover, San Jose, California; Jeremy A. Danover, Los Angeles, California; Jacquelyn N. Danover, Catheryn J. Cooper, and Carli L. Cooper, all of Marion, Iowa; Cole D. Cooper, Denver, Colorado; Anne E. Gothard, Scottsdale, Arizona; Hallie S. Cooper and Bennett C. Cooper, both of Cedar Rapids, Iowa; Riley J. Cooper, Tyler N. Cooper, and a minor shareholder, all of Batavia, Illinois*; to

join the Cooper Family Control Group, a group acting in concert, to retain voting shares of Delhi Bancshares, Inc., and thereby indirectly retain voting shares of Heritage Bank, both of Marion, Iowa.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–20331 Filed 9–19–22; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–XXXX; Docket No. 2022–0001; Sequence No. 16]

Information Collection; GSA Equity Study on Remote Identity Proofing

AGENCY: Technology Transformation Services (TTS), General Services Administration (GSA).

ACTION: Notice of request for comments regarding a new request for an OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, GSA will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement. The collection is to facilitate a research study in which participants will test several remote identity proofing services and respond to survey questions to gather demographic information related to the study.

DATES: Submit comments on or before November 21, 2022.

ADDRESSES: Submit comments identified by Information Collection 3090–XXXX; GSA Equity Study on Remote Identity Proofing to: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–XXXX; GSA Equity Study on Remote Identity Proofing''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–XXXX; GSA Equity Study on Remote Identity Proofing''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–XXXX; GSA Equity Study on Remote Identity Proofing'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''Information Collection 3090–XXXX; GSA Equity Study on Identity Solutions'', in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tiffany Andrews or Gerardo E. Cruz-Ortiz by phone (202) 969–0772 or via email to *identityequitystudy@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA ''Equity Study on Remote Identity Proofing'' will assess the impact of demographic factors on both biometric and non-biometric proofing checks. Using the NIST SP 800–63–3 Identity Assurance Level 2 (IAL2) standard as a framework, GSA will test how remote identity-proofing methods like facial verification technology perform across various demographic groups. To conduct this study, GSA is working with vendors that are compatible with the study architecture and can meet agency compliance requirements.

GSA will release the study's results in a peer-reviewed publication. The report will present a statistical analysis of failures and successes for the proofing checks and explore the causes behind negative or inconclusive results. These results will help GSA understand the current technological barriers to equitable identity-proofing services for the public.

GSA will be partnering with a recruitment agency to engage the general American public to participate in the study. Participants will be asked to share demographic information to help GSA understand if and how these variables impact the performance of various remote identity-proofing solutions; GSA will collect the participant's race, ethnicity, gender, age, income, educational level, and other demographic data.

The identity-proofing workflow will also collect the following personally identifiable information (PII): a picture of the participants' State ID Card (including name, date of birth, physical address, and document number), Social Security Number, phone number, and a picture of the participant's face.

Identity-proofing vendors will delete all participant data from their systems within 24 hours of collection. GSA will retain PII data until the study is published in a peer-reviewed publication.

Furthermore, while participants are using the study's web-based platform, GSA will collect the personal mobile device hardware and software data as well as device-behavioral information (how the device and its applications are used).

GSA will share anonymized demographic information, identity-proofing results, and PII data with an academic partner that will analyze the results and assist GSA in publishing a peer-reviewable report.

Finally, upon completion of the workflows, participants will be asked to complete an exit survey that gathers feedback on their overall experience with the study.

Selected participants will be compensated for their participation in this study.

B. Annual Reporting Burden

Respondents: 2,000–4,000.

Responses per Respondent: 1.

Hours per Response: .5 hours.

Estimated Total Burden Hours: 2,000.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov*. Please cite OMB Control No. ''3090–XXXX, GSA Equity Study on Remote Identity Proofing'' in all correspondence.

Beth Anne Killoran,

Deputy Chief Information Officer.

[FR Doc. 2022–20249 Filed 9–19–22; 8:45 am]

BILLING CODE 6820–AB–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee; Correction

AGENCY: Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Office of the Assistant Secretary for Health published a document in the **Federal Register** of September 14, 2022, announcing a public meeting to be held meeting June 22–23, 2022. The document referred to the incorrect month and should have read September 22–23, 2022 instead. We also noticed a minor typo to correct and is described in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ann Aikin, Acting Designated Federal Officer, at the Office of Infectious Disease and HIV/AIDS Policy, U.S. Department of Health and Human Services, Mary E. Switzer Building, Room L618, 330 C Street SW, Washington, DC 20024. Email: *nvac@hhs.gov*. Phone: 202–494–1719.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 14, 2022, in FR Doc. 2022–19849, on page 56427 in the third column, correct the first sentence of the **DATES** caption to read: ''The meeting will be held September 22–23, 2022.''

On page 56428 in the first column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, first sentence, correct the word ''influenza'' by adding a ''z''.

Dated: September 14, 2022.

Ann Aikin,

Acting Designated Federal Official, Office of the Assistant Secretary for Health.

[FR Doc. 2022–20276 Filed 9–19–22; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Exploratory Clinical Trials of Mind and Body Interventions (MB).

Date: October 13–14, 2022.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: SUSHMITA Purkayastha, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, *sushmita.purkayastha@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS.)

Dated: September 15, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20283 Filed 9–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Centers of Biomedical Research Excellence (COBRE) Phase 3 (P30) Applications.

Date: November 2–3, 2022.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nina Sidorova, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.22, Bethesda, MD 20892–6200, 301–594–3663, *sidorova@nigms.nih.gov*.

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS.)

Dated: September 14, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20236 Filed 9–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Support for Research Excellence (SuRE) Program (R16).

Date: October 27, 2022.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institutes of General Medical Sciences, 45 Center Dr., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov*.

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: September 14, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20242 Filed 9–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cellular and Molecular Biology of Glia Study Section, October 13, 2022, 8 a.m. to October 14, 2022, 5:30 p.m., Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314, which was published in the **Federal Register** on September 12, 2022, 87 FR 55828 Doc 2022–19646.

This meeting is being amended to change the meeting start time from 8 a.m. to 9 a.m. and the meeting location from Lorien Hotel, 1600 King Street, Alexandria, VA 22314 to Double Tree Tysons, 1960 Chain Bridge Road, McLean, VA 22101. The meeting date remains the same. The meeting is closed to the public.

Dated: September 15, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20284 Filed 9–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.

Date: October 17–18, 2022.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetic Variation and Evolution Study Section.

Date: October 20–21, 2022.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Guoqin Yu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1276, *guoqin.yu@nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Drug Discovery for the Nervous System Study Section.

Date: October 20–21, 2022.

Time: 9 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aurea D. De Sousa, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, Bethesda, MD 20892, (301) 827–6829, *aurea.desousa@nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Bioengineering of Neuroscience, Vision and Low Vision Technologies Study Section.

Date: October 20–21, 2022.

Time: 9:30 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tina Tze-Tsang Tang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Suite 3030, Bethesda, MD 20817, (301) 435–4436, *tangt@mail.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Human Studies of Diabetes and Obesity Study Section.

Date: October 20–21, 2022.

Time: 10 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, (301) 435–1044, *chenhui@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: October 20–21, 2022.

Time: 10 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: September 15, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20285 Filed 9–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: October 6–7, 2022.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.

Date: October 12–13, 2022.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Adem Can, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, (301) 435–1042, *cana2@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Nutrition and Metabolism in Health and Disease Study Section.

Date: October 13–14, 2022.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria, Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Gregory S. Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, (301) 755–4335, *greg.shelness@nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; Mechanisms of Cancer Therapeutics B Study Section.

Date: October 13–14, 2022.

Time: 9 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria Dolores Arjona Mayor, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 806D, Bethesda, MD 20892, (301) 827–8578, *dolores.arjonamayor@nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Interventions to Prevent and Treat Addictions Study Section.

Date: October 13–14, 2022.

Time: 9:30 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sarah Vidal, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710Q, Bethesda, MD 20892, (301) 480–5359, *sarah.vidal@nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section.

Date: October 13–14, 2022.

Time: 9:30 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Janetta Lun, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007E, Bethesda, MD 20892, (301) 435–5877, *janetta.lun@nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Management in General Care Settings Study Section.

Date: October 17–18, 2022.

Time: 9 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Washington DC/Vermont Ave., 1199 Vermont Avenue NW, Washington, DC 20005.

Contact Person: Lauren Fordyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, Bethesda, MD 20892, (301) 435–6998, *fordycelm@mail.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Hemostasis, Thrombosis, Blood Cells and Transfusion Study Section.

Date: October 18–19, 2022.

Time: 9 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, (301) 435–0912, *malindakm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: September 13, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20280 Filed 9–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: October 25, 2022.

Closed: 9 a.m. to 9:45 a.m.

Agenda: Executive Session.

Place: National Institutes of Health, National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Open: 9:45 a.m. to 11:30 a.m.
Agenda: Committee discussion, individual presentations, laboratory overview.
Place: National Institutes of Health, National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).
Closed: 11:30 a.m. to 1 p.m.
Agenda: Executive Session.
Place: National Institutes of Health, National Institute on Aging, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).
Contact Person: Luigi Ferrucci, Ph.D., MD, Scientific Director, National Institute on Aging, 251 Bayview Boulevard, Suite 100, Room 4C225, Baltimore, MD 21224, 410–558–8110, *LF27Z@NIH.GOV.*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS.)

Dated: September 15, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20282 Filed 9–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

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 Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 NCBIB Review H–SEP.
Date: October 26–27, 2022.
Time: 10 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Songtao Liu, MD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 920, MSC 5469, Bethesda, MD 20817, (301) 827–3025, *songtao.liu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: September 15, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20286 Filed 9–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The 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 Diabetes and Digestive and Kidney Diseases Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases B Study Section.
Date: October 26–28, 2022.
Time: 10 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Suite 7017, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Charlene J. Repique, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7347, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *charlene.repique@nih.gov.*

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS.)

Dated: September 15, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20281 Filed 9–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be held as a virtual meeting on October 14, 2022 and is open to the public as indicated below. The open session (event) will be videocast by NIH with closed captioning at: *https://videocast.nih.gov/watch=46066.* To request reasonable accommodations, please contact *Nathan.Brown2@nih.gov* at least five days before the event. The agenda can be found at: *https://www.nei.nih.gov/about/advisory-committees/national-advisory-eye-council-naec/national-advisory-eye-council-naec-meeting-agenda.*

A portion of this 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 Advisory Eye Council.
Date: October 14, 2022.
Open: 10 a.m. to 2:30 p.m.
Agenda: Presentation of the NEI Director's report and discussion of NEI programs.
Place: National Eye Institute, National Institutes of Health, 6700 Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).
Closed: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700 Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kathleen C. Anderson, Ph.D., Director, Division of Extramural Activities, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3440, Bethesda, MD 20892, (301) 451–2020, *kanders1@nei.nih.gov.*

Information is also available on the NEI Council page: *https://www.nei.nih.gov/about/advisorye-council-naec,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS.)

Dated: September 13, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20287 Filed 9–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of SuRE Applications.

Date: November 14–15, 2022.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS.)

Dated: September 14, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20237 Filed 9–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2022 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award supplemental funding.

SUMMARY: This notice is a notice of intent to award supplemental funding to the nine Minority Fellowship recipients funded in FY 2018 under Notice of Funding Opportunity (NOFO) SM–18–002 and TI–18–013 and in FY 2020 under NOFO SM–20–013. This is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting one-year administrative supplements, which are consistent with the initial award, up to $209,996 each for eight Minority Fellowship Program (MFP) recipients funded under NOFO SM–18–002 and SM–20–013, and up to $119,053 for the MFP recipient funded under NOFO TI–18–013, for a total of $1,799,019.

FOR FURTHER INFORMATION CONTACT: Sheryl Crawford, Center for Substance Abuse Treatment, SAMHSA, 5600 Fishers Lane, Rockville, MD 20857, telephone (240) 276–1063; email: *sheryl.crawford@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: The MFP program is comprised of professional organizations representing mental and substance use disorder treatment professionals in the fields of psychiatry, nursing, social work, psychology, marriage and family therapy, mental health counseling, substance use disorder and addiction counseling and addiction psychiatry and medicine. This supplement will enhance and increase the behavioral health workforce knowledge related to prevention, treatment, and recovery support for mental illness and substance use disorders among racial and ethnic minority populations by providing specialized training among the MFP professional organizations. Assistance will only be provided to the nine MFP recipients, which were funded in FY 2018 under SM–18–002 and TI–18–002 with a project end date of September 29, 2023, and FY 2020 under SM–20–013 with a project end date of August 30, 2025.

This is not a formal request for application. Assistance will only be provided to the nine MFP grant recipients, based on the receipt of a satisfactory application and associated budget that is approved by a review group.

Funding Opportunity Title: FY 2018 Minority Fellowship Program (MFP) NOFO SM–18–022 and TI–18–013 and FY 2020 MFP NOFO SM–20–013.

Assistance Listing Number: 93.243.

Authority: The MFP is authorized under section 597 of the Public Health Service Act, as amended.

Justification: Eligibility for this supplemental funding is limited to the nine MFP organizations funded in FY 2018 and FY 2020. These organizations have the required expertise to provide specialized training to increase behavioral health professionals' knowledge related to prevention, treatment, and recovery support for mental illness and substance use disorders among racial and ethnic minority populations.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–20321 Filed 9–19–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0345]

Certificate of Alternative Compliance for the GUNDERSON MARINE OIL SPILL RECOVERY BARGE (OSRB–5), HULL NO 129

AGENCY: Coast Guard, DHS.

ACTION: Notification of issuance of a certificate of alternative compliance.

SUMMARY: The Coast Guard announces that the Chief, Prevention Division, Thirteenth Coast Guard District has issued a certificate of alternative

compliance from the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), for the GUNDERSON MARINE OSRB–5, HULL NO 129. We are issuing this notification because its publication is required by statute. Due to the construction and placement of the sidelights GUNDERSON MARINE OSRB–5, HULL NO 129 cannot fully comply with the light, shape, or sound signal provisions of the 72 COLREGS without interfering with the vessel's design and construction. This notification of issuance of a certificate of alternative compliance promotes the Coast Guard's marine safety mission.

DATES: The certificate of alternative compliance was issued on August 10, 2022.

FOR FURTHER INFORMATION CONTACT: For information or questions about this notice call or email Ms. Jill L. Lazo, Thirteenth District, U.S. Coast Guard; telephone 206–220–7232, email *Jill.L.Lazo@uscg.mil.*

SUPPLEMENTARY INFORMATION: The United States is signatory to the International Maritime Organization's International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as amended. The special construction or purpose of some vessels makes them unable to comply with the light, shape, or sound signal provisions of the 72 COLREGS. Under statutory law, however, specified 72 COLREGS provisions are not applicable to a vessel of special construction or purpose if the Coast Guard determines that the vessel cannot comply fully with those requirements without interfering with the special function of the vessel.[1]

The owner, builder, operator, or agent of a special construction or purpose vessel may apply to the Coast Guard District Office in which the vessel is being built or operated for a determination that compliance with alternative requirements is justified,[2] and the Chief of the Prevention Division would then issue the applicant a certificate of alternative compliance (COAC) if he or she determines that the vessel cannot comply fully with 72 COLREGS light, shape, and sound signal provisions without interference with the vessel's special function.[3] If the Coast Guard issues a COAC, it must publish notice of this action in the **Federal Register**.[4]

The Chief, Prevention Division, Thirteenth Coast Guard District, certifies that GUNDERSON MARINE OSRB–5, HULL NO 129 is a barge of special construction or purpose, and that, with respect to the position of the sidelights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS, without interfering with the normal operation, construction, or design of the vessel. The unique design of the vessel did not lend itself to full compliance with Annex I Part 3 (b), of the 72 COLREGS, 33 CFR 83.21(b), and 84.03(b) of the International Navigational Rules. The Chief, Prevention Division, Thirteenth Coast Guard District further finds and certifies that the sidelights, are in the closest possible compliance with the applicable provisions of the 72 COLREGS.[5]

This document is issued under authority of 33 U.S.C. 1605(c) and 33 CFR 81.18.

Dated: September 13, 2022.

P.C. Burkett,

Captain, U.S. Coast Guard, Chief, Prevention Division, Thirteenth Coast Guard District.

[FR Doc. 2022–20304 Filed 9–19–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will increase from the previous quarter. For the calendar quarter beginning October 1, 2022, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: The rates announced in this notice are applicable as of October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Revenue Division, Collection Refunds & Analysis Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 298–1107.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2022–15, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2022, and ending on December 31, 2022. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties are increased from the previous quarter. These interest rates are subject to change for the calendar quarter beginning January 1, 2023, and ending on March 31, 2023.

For the convenience of the importing public and U.S. Customs and Border Protection personnel, the following list of IRS interest rates used, covering the period from July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

[1] 33 U.S.C. 1605.

[2] 33 CFR 81.5.

[3] 33 CFR 81.9.

[4] 33 U.S.C. 1605(c) and 33 CFR 81.18.

[5] 33 U.S.C. 1605(a); 33 CFR 81.9.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate Overpayments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033116	3	3	2
040116	033118	4	4	3
040118	123118	5	5	4
010119	063019	6	6	5
070119	063020	5	5	4
070120	033122	3	3	2
040122	063022	4	4	3
070122	093022	5	5	4
100122	123122	6	6	5

Dated: September 14, 2022.

Jeffrey Caine,

Chief Financial Officer, U.S. Customs and Border Protection.

[FR Doc. 2022–20277 Filed 9–19–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2022–0049]

Faith-Based Security Advisory Council

AGENCY: Office of Partnership and Engagement (OPE), Department of Homeland Security (DHS).

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The Faith-Based Security Advisory Council (FBSAC) will meet virtually on Thursday, October 6, 2022. The meeting will be open to the public.

DATES: The meeting will take place from 10:30 a.m. EDT to 11:30 a.m. EDT on Thursday, October 6, 2022. Please note that the meeting may end early if the Council has completed its business.

ADDRESSES: The FBSAC meeting will be held via teleconference. Members of the public interested in participating may do so by following the process outlined below. At all times during the meeting, the public will be in listen-only mode. Written comments can be submitted from September 22, 2022 to October 4, 2022. Comments must be identified by Docket No. DHS–2022–0049 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FBSAC@hq.dhs.gov.* Include Docket No. DHS–2022–0049 in the subject line of the message.
- *Mail:* Michael J. Miron, Committee Management Officer, Office of Partnership and Engagement, Mailstop 0385, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and ''DHS–2022–0049,'' the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice found via a link on the homepage of *http://www.regulations.gov.*

Docket: For access to the docket to read comments received by the Council, go to *http://www.regulations.gov,* search ''DHS–2022–0049,'' ''Open Docket Folder'' and provide your comments.

FOR FURTHER INFORMATION CONTACT: Michael J. Miron at 202–891–2876 or *FBSAC@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. appendix), which requires each FACA committee meeting to be open to the public unless the President, or the head of the agency to which the advisory committee reports, determines that a portion of the meeting may be closed to the public in accordance with 5 U.S.C. 552b(c).

The FBSAC provides organizationally independent, strategic, timely, specific, and actionable advice to the Secretary through the OPE Assistant Secretary, who serves as the DHS Faith-Based Organizations Security Coordinator, on security and preparedness matters related to places of worship, faith communities, and faith-based organizations. The Council consists of members who are: faith-based organization security officials; faith-based organization leaders; faith leaders; state and local public safety, law enforcement, and emergency management leaders; and a representative from the Department of Justice or Federal Bureau of Investigation.

The agenda for the meeting is as follows: Council members will be introduced, followed by the virtual swearing-in of new members. DHS senior leadership will provide opening remarks, followed by a moderated discussion.

Members of the public may register to participate in this Council teleconference via the following procedures. Each individual must provide their full legal name and email address no later than 5 p.m. EDT on Tuesday, October 4, 2022 to Michael J. Miron of the Council via email to *FBSAC@hq.dhs.gov* or via phone at 202–891–2876. Members of the public who have registered to participate will be provided the conference call details after the closing of the public registration period and prior to the start of the meeting.

For information on services for individuals with disabilities, or to request special assistance, please email *FBSAC@hq.dhs.gov* by 5 p.m. EDT on October 4, 2022 or call 202–891–2876. The FBSAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Michael J. Miron at 202–891–2876 or *FBSAC@hq.dhs.gov* as soon as possible.

Dated: September 14, 2022.

Michael J. Miron,

Committee Management Officer, Department of Homeland Security.

[FR Doc. 2022–20197 Filed 9–19–22; 8:45 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2022–0075; FXIA16710900000–223–FF09A30000]

Marine Mammal Protection Act and Wild Bird Conservation Act; 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 (Service), invite the public to comment on foreign or native species for which the Service has jurisdiction under the Marine Mammal Protection Act (MMPA) and foreign bird species covered under the Wild Bird Conservation Act (WBCA). With some exceptions, the MMPA and WBCA prohibit activities with listed species unless Federal authorization is issued that allows such activities. These Acts also require that we invite public comment before issuing permits for any activity they otherwise prohibit with respect to any species.

DATES: We must receive comments by October 20, 2022.

ADDRESSES:

Obtaining Documents: The application, 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–2022–0075.

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–2022–0075.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2022–0075; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185, or via email at *DMAFR@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 104(c) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and section 112(4) of the Wild Bird Conservation Act of 1992 (WBCA; 16 U.S.C. 4901–4916), we invite public comments on permit applications before final action is taken. With some exceptions, these Acts prohibit certain activities with listed species unless Federal authorization is issued that allows such activities. Service regulations regarding permits for any activity otherwise prohibited by the MMPA with respect to any marine mammals are available in title 50 of the Code of Federal Regulations in part 18. Service regulations regarding permits for any activity otherwise prohibited by the WBCA with respect to any wild birds are available in title 50 of the Code of Federal Regulations in part 15.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the marine mammal applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

III. Permit Applications

We invite comments on the following applications.

A. Marine Mammal Protection Act

Applicant: Matson's Laboratory, Manhattan, MT; Permit No. 166346

The applicant requests to renew a permit to obtain samples of polar bears (*Ursus maritimus*) that have been legally harvested or were taken from the wild for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

B. Wild Bird Conservation Act

Applicant: Vernon Padgett, Atlanta, GA; Permit No. PER0026547

On April 25, 2022, we published a **Federal Register** notice inviting the public to comment on an application to amend a cooperative breeding program for foreign bird species covered under the Wild Bird Conservation Act (WBCA) (87 FR 24338). The comment period closed on May 25, 2022. We are now reopening the comment period to allow the public the opportunity to review additional information submitted by the applicant.

The applicant wishes to amend Cooperative Breeding Program CB042 to add seven new species wreathed hornbill (*Rhyticeros undulatus*), wrinkled hornbill (*Rhabdotorrhinus corrugatus*), rhinoceros hornbill (*Buceros rhinoceros*), and Indian hornbill (*Buceros bicornis*), painted conure (*Pyrrhura picta*), fiery shouldered conure (*Pyrrhura egregia*) and blue-headed Pionus (*Pionus menstruus*) joand to increase the approved number of imports for Papuan hornbill (*Rhyticeros plicatus*) and rufous hornbill (*Buceros hydrocorax*) to the already existing program.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *https://www.regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Wild Bird Conservation Act of 1992 1992 (WBCA; 16 U.S.C. 4901–4916), and its implementing regulations, and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and its implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2022–20303 Filed 9–19–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2022–0052; FXIA16710900000–223–FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Information about the applications for the permits listed in this notice is available online at *https://www.regulations.gov.* See **SUPPLEMENTARY INFORMATION** for details.

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: We, the U.S. Fish and Wildlife Service (Service), have issued permits to conduct certain activities with endangered and threatened species in response to permit applications that we received under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

After considering the information submitted with each permit application and the public comments received, we issued the requested permits subject to certain conditions set forth in each permit. For each application for an endangered species, we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Availability of Documents

The permittees' original permit application materials, along with public comments we received during public comment periods for the applications, are available for review. To locate the application materials and received comments, go to *https://www.regulations.gov* and search for the appropriate permit number (*e.g.,* 12345C) provided in the following table:

Permit No.	ePermits No.	Applicant	Permit issuance date
Endangered Species			
79076D		Venado Ventures LLC	December 17, 2021.
79085D		Venado Ventures LLC	December 17, 2021.
83167D		Associated Humane Societies, dba Popcorn Park Animal Refuge.	February 2, 2022.
	PER0013488	Antonin R. Dvorak	January 24, 2022.
Marine Mammals			
	PER0003402	BBC Studios Productions Ltd	March 15, 2022.

Authorities

We issue this notice under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.*), and their implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2022–20317 Filed 9–19–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX22LR000F60100; OMB Control Number 1028–0060]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Mine, Development, and Mineral Exploration Supplement

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the U.S. Geological Survey (USGS) is proposing to renew an Information Collection.

DATES: Interested persons are invited to submit comments on or before October 20, 2022.

ADDRESSES: Send your comments on this Information Collection Request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to the U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0060 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Shonta E. Osborne by email at *sosborne@usgs.gov* or by telephone at 703–648–7960. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may

also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 17, 2022, 87 FR 9082. We did not receive any public comments in response to that notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) is the collection necessary for the proper functions of the USGS minerals information mission; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifying information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The National Mining and Minerals Policy Act of 1970 and the National Materials and Minerals Policy, Research and Development Act of 1980 mandate that the Secretary of the Interior collect, evaluate, and analyze information concerning mineral occurrence, production, and use for the domestic mineral industry and to inform Congress of important domestic mining and minerals industries developments. These responsibilities are delegated to the USGS and are carried out, in part, through this information collection.

Title of Collection: Mine, Development, and Mineral Exploration Supplement.

OMB Control Number: 1028–0060.

Form Number: USGS Form 9–4000–A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Business or other-for-profit institutions: U.S. nonfuel minerals producers and exploration operations.

Total Estimated Number of Annual Respondents: 324.

Total Estimated Number of Annual Responses: 324.

Estimated Completion Time per Response: 45 minutes.

Total Estimated Number of Annual Burden Hours: 243.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: There are no ''nonhour cost'' burdens associated with this IC.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the PRA of 1995 (44 U.S.C. 3501 *et seq*), the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq*), and the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21(a)).

Steven Fortier,

Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2022–20313 Filed 9–19–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Wisconsin

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Third Amendment to the Lac Courte Oreilles Band of Lake Superior Chippewa Indians and the State of Wisconsin Gaming Compact of 1991 (Amendment) providing for Class III gaming between the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin (Tribe) and the State of Wisconsin (State).

DATES: The Amendment takes effect on September 20, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment permits the Tribe to engage in event wagering and adds the Tribe's minimum internal control standards for sports betting, including rules governing events wagering. The Amendment makes technical amendments to update and correct various provisions of the compact. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–20319 Filed 9–19–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L19900000.PO0000.LLHQ320.22X; OMB Control No. 1004–0001]

Agency Information Collection Activities; Free Use Application and Permit for Vegetative or Mineral Materials

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 20, 2022.

ADDRESSES: Written comments and recommendations for this information collection request (ICR) should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request additional information about

this Information Collection Request (ICR), contact Tom Huebner by email at *thuebner@blm.gov,* or by telephone at (307) 775–6195. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess impacts of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 21, 2022 (87 FR 23883). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on the proposed ICR described below. The BLM is especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments submitted in response to this notice are a matter of public record. 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.

Abstract: The Free Use vegetative permits are available for Mining Claimants, Federal, State, Territorial agencies, municipalities and associations or corporations not organized for profit and they must certify that the materials will not be used for commercial or industrial purposes. Free Use Permits for Mineral Materials are available to any Federal, State, or territorial agency, unit, or subdivision including municipalities or any non-profit organization. OMB Control Number 1004–0001 authorizes the BLM to collect information to continue the use of separate permit forms for the free use of vegetative materials and mineral materials. There are no changes proposed for the forms. We are, however, adjusting the total estimated annual burden hours from 124 hours to 73 hours, a reduction of 51 annual burden hours. The reduction of annual burden hours results from adjusting the number of estimated annual response from 247 to 146. The number of annual responses is being adjusted to reflect the average number of applications received by the BLM over the past three years. This OMB Control Number is currently scheduled to expire on January 31, 2023. The BLM request that OMB renew this OMB Control Number for an additional three years.

Title of Collection: Free Use Application and Permit for Vegetative or Mineral Materials (43 CFR parts 3600, 3620, and 5510).

OMB Control Number: 1004–0001.

Form Numbers: 3604–1 a and b, Free Use Application and Permit for Mineral Materials; and 5510–1, Free Use Application and Permit for Vegetative Materials.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals seeking authorization for free use of mineral or vegetative materials.

Total Estimated Number of Annual Respondents: 146.

Total Estimated Number of Annual Responses: 146.

Estimated Completion Time per Response: 30 minutes.

Total Estimated Number of Annual Burden Hours: 73.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

The authority for this action is the PRA of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin King,

Information Collection Clearance Officer.

[FR Doc. 2022–20315 Filed 9–19–22; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORM06000.L63000000.DD0000–HAG22–0017]

Notice of Recreational Target Shooting Closure on Public Lands in the Anderson Butte Area of Jackson County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: The Bureau of Land Management (BLM) is temporarily closing 11 sites, totaling 50 acres, in the Anderson Butte area of Jackson County, Oregon, south of the cities of Jacksonville and Medford, to recreational target shooting for 2 years.

DATES: The lands described later in this notice will be temporarily closed to recreational target shooting for 2 years from 12:01 a.m., October 20, 2022.

ADDRESSES: A notice, a map of the target shooting closure, and other documents associated with the temporary recreational target shooting closure are available at the BLM Medford District Office, 3040 Biddle Rd., Medford, Oregon 97504, and on the BLM's National NEPA Register ePlanning website: *https://eplanning.blm.gov/eplanning-ui/project/123432/510.*

FOR FURTHER INFORMATION CONTACT: Lauren Brown, Ashland Field Office Manager, telephone: (541) 618–2232, email: *lpbrown@blm.gov,* or by mail at the Medford District Office.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make

international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The temporary closure order applies to 11 sites that encompass approximately 4.5 acres (250-foot radius circle) each and will collectively total approximately 50 acres of BLM-administered lands in the Anderson Butte area of Jackson County, Oregon. This temporary closure is necessary to protect persons, property, public lands, and resources from the discharge or use of firearms at unsafe locations. The temporary closure applies only to recreational target shooting. It does not prohibit public access to this portion of the Anderson Butte or apply to legal hunting in the area.

The Anderson Butte area of BLM-administered lands consists of approximately 11,459 acres located immediately south of the cities of Jacksonville and Medford, Oregon. The area is used for a variety of outdoor recreational activities including, but not limited to, hiking, horseback riding, hunting, mountain biking, off-highway vehicle use, and recreational target shooting. Despite more than 5 years of efforts to reduce conflicts and dangers associated with recreational target shooting, the BLM continues to receive reports of stray bullets traveling across recreational trails and roads or onto nearby private property. Eleven sites were identified as posing a high risk of potential harm to recreational users of the area and nearby residents due to recreational target shooting activities occurring at those sites.

To ameliorate the dangerous and unsafe target shooting activities at the 11 locations, the BLM Ashland Field Office signed a Decision Record on March 10, 2022, authorizing a temporary closure to recreational target shooting on select public lands. As stated earlier, the temporary closure only affects recreational target shooting; it does not affect legal hunting.

The BLM will monitor recreation uses and site conditions during the 2-year temporary closure to determine if it resolves the identified safety issues. The findings will help guide long-term solutions to these land management challenges.

The BLM will post recreational target shooting closure signs at main entry points to the Anderson Butte area and at the 11 target shooting locations.

Description of Closed Areas: The legal description of the affected public lands is:

TABLE 1—CENTER POINT OF RESTRICTION SITE LOCATIONS, 250′ BUFFER FROM CENTER

Site No.	Latitude, longitude	Township, range, section, and subsection
1	42°13′50.92″ N, 122°55′32.47″ W	T38S, R2W, Sec. 27, SW¼
2	42°13′05.97″ N, 122°55′42.47″ W	T38S, R2W, Sec. 34, SW¼
3	42°12′22.14″ N, 122°55′59.83″ W	T39S, R2W, Sec. 3, SW¼
4	42°13′02.40″ N, 122°54′26.51″ W	T38S, R2W, Sec. 35, SW¼
5	42°12′31.66″ N, 122°54′10.50″ W	T39S, R2W, Sec. 2, NE¼
6	42°12′29.14″ N, 122°54′23.39″ W	T39S, R2W, Sec. 2, NW¼
7	42°12′08.84″ N, 122°54′56.21″ W	T39S, R2W, Sec. 3, SE¼
8	42°11′42.75″ N, 122°53′15.56″ W	T39S, R2W, Sec. 12, NW¼
9	42°11′43.92″ N, 122°53′27.04″ W	T39S, R2W, Sec. 12, NW¼
10	42°10′41.22″ N, 122°55′47.82″ W	T39S, R2W, Sec. 15, SW¼
11	42°11′16.57″ N, 122°56′33.62″ W	T39S, R2W, Sec. 9, SE¼

Closure: The 11 sites that each encompass approximately 4.5 acres (250-foot radius circle) and totaling approximately 50 acres as described above will be temporarily closed to recreational target shooting.

Exceptions to Closure: The following persons are exempt from this order: Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and persons with written authorization from the BLM.

Enforcement: Any person who violates the restriction may be tried before a United States magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of State law.

Effect of Closure: The 11 sites that encompass approximately 4.5 acres (250-foot radius circle) totaling approximately 50 acres as described earlier and for the duration as described are temporarily closed to recreational target shooting unless specifically excepted as described above.

(Authority: 43 CFR 8364.1)

Lauren Brown,

Ashland Field Manager.

[FR Doc. 2022–20278 Filed 9–19–22; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAKF00000.L51010000.ER0000. LVRWL22L0980.22X]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Proposed Ambler Mining District Industrial Access Road, Fairbanks, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), as amended, the Bureau of Land Management (BLM) intends to prepare a Supplemental Environmental Impact Statement (EIS) to consider the effects of Federal authorizations to construct and operate a 200+mile long industrial access road in the southern Brooks Range foothills of Alaska, terminating at the Ambler Mining District. By this notice BLM is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public-scoping process for the Supplemental EIS. The BLM requests that the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information, and studies by November 4, 2022. To afford the BLM the opportunity to consider comments in the Draft Supplemental EIS, please

ensure your comments are received prior to the close of the 45-day scoping period.

ADDRESSES: You may submit comments related to the Proposed Ambler Mining District Industrial Access Road by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/57323/510.*
- *Email: BLM_AK_AKSO_AmblerRoad_Comments@blm.gov.*
- *Fax:* (907) 271–5479.
- *Mail:* Ambler Road Scoping Comments, 222 West 7th Avenue, Stop #13, Anchorage, Alaska 99513.

Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/project/57323/510* and at the BLM Alaska Public Room, Fairbanks District Office, 222 University Avenue, Fairbanks, Alaska 99709; and at the BLM Alaska Public Information Center, Alaska State Office, 222 West 7th Avenue, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Wendy Huber, Planning and Environmental Specialist, telephone 907–271–3137; address 222 W 7th Ave. Stop #13, Anchorage, AK 99513; email *whuber@blm.gov.* Contact Ms. Huber to have your name added to our mailing list. 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 for contacting Ms. Huber. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Proposed Ambler Mining District Industrial Access Road was originally analyzed in the March 2020 Final EIS and authorized in a Record of Decision (ROD) issued in July 2020. Litigation commenced with suits from multiple parties in August and October 2020. In February 2022, the Department of the Interior requested the U.S. District Court for Alaska grant voluntary remand, stating that additional legal analysis had revealed deficiencies in the BLM's analysis of subsistence impacts under ANILCA Section 810 and consultation with tribes pursuant to Section 106 of the National Historic Preservation Act (NHPA). The Court granted that request in May 2022, returning the matter to BLM to correct the identified deficiencies. The BLM will prepare a Supplemental EIS to help address the identified deficiencies, and to ensure compliance with applicable law, including NEPA, FLPMA, NHPA, and ANILCA. The BLM's Supplemental EIS analysis will focus on more thoroughly assessing the impacts and resources related to the identified deficiencies to facilitate integrating its NEPA analysis with its ongoing ANILCA Section 810 and NHPA Section 106 processes. BLM is providing this opportunity for scoping to help determine which additional impacts and resources should be more thoroughly assessed.

If the BLM holds any public meetings, in-person or virtual, during this 45-day scoping period, specific date(s) and location(s) of meetings will be announced in advance on the project page at *https://eplanning.blm.gov/eplanning-ui/project/57323/510.* The BLM is seeking public comments on issues, concerns, potential impacts, alternatives, and mitigation measures that should be considered in the analysis. Additional opportunities for public participation, including at least a 45-day public comment period, will be provided upon publication of the Draft Supplemental EIS.

The input of Alaska Native Tribes and Corporations is of critical importance to this Supplemental EIS. Therefore, the BLM will continue to consult with potentially affected Federally recognized Tribes on a government-to-government basis, and with affected Alaska Native Corporations in accordance with Executive Order 13175 and Public Law 108–199, Div. H, sec. 161, 118 Stat. 452, as amended by Public Law 108–447, Div. H, sec. 518, 118 Stat. 3267, as well as other Department and Bureau policies. The BLM will hold individual consultation meetings upon request.

The BLM will also use and coordinate the NEPA process to help fulfill its obligations under the National Historic Preservation Act, including as provided in 36 CFR 800.2(d)(3). New information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

It is important that commenters provide their comments at such times and in such manner that they are useful to the agency's preparation of the Supplemental EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the commenter's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

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: 40 CFR 1506.6)

Erika Reed,

Acting Alaska State Director.

[FR Doc. 2022–20251 Filed 9–19–22; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034565; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of Anthropology (UTK), has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Burleigh and Stutsman Counties, ND, and Buffalo, Davison, Gregory, Hanson, Hughes, Sully, and Walworth Counties, SD.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 20, 2022.

ADDRESSES: Dr. Robert Hinde, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2445, email *rhinde@utk.edu* and *vpaa@utk.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 UTK. The National Park Service is not responsible for the determinations in this notice. Additional information on the

determinations in this notice, including the results of consultation, can be found in the inventory or related records held by UTK.

Description

Around May of 1976, human remains representing, at minimum, three individuals were removed from Burleigh County, ND, during right-of-way construction by Nick Franke of the North Dakota Historical Society (NDHS). These human remains belong to a group of nine burials excavated from the Double Ditch site, 32BL8, an earth lodge village dating to the period 1490–1785 C.E. In 1977, the human remains from all nine burials were transferred to Richard Jantz at UTK. Although an undated file at UTK records the return of the human remains to NDHS, for whatever reason, the human remains of the three individuals listed in this notice were never returned. No known individuals were identified. The one associated funerary object is one lot of burial soil.

Around August of 1952, human remains representing, at minimum, one individual were removed from 32SN30, the Joos site, in Stutsman County, ND, by members of the Missouri River Basin Project, under the direction of R.P. Wheeler. At an unknown date these human remains were transferred to UTK. No known individual was identified. No associated funerary objects are present.

Between 1950 and 1952, human remains representing, at minimum, eight individuals were removed from 39BF3, the Talking Crow site, in Buffalo County, SD, by the University of Kansas (KU) and the National Park Service (NPS) as part of the Inter-Agency Archeological Salvage Program, under the direction of Carlyle Smith. This site is a multi-component earthlodge village, with levels dating to the period 600–1865 C.E. At the close of the field seasons, the human remains, funerary objects, and cultural materials were transferred to KU. William Bass, who taught at KU from 1960 to 1971, likely brought the human remains and associated funerary objects listed in this notice to the UTK Department of Anthropology in 1971, when he began working there. No known individuals were identified. The 11 associated funerary objects are four lots of animal bone, one lot of seed pods, two lots of soil samples, one lot of animal hide, one lot of lithics, one lot of ceramics, and one lot of soil.

Between 1938 and 1954, human remains representing, at minimum, three individuals were removed from the Mitchell Village and Mounds site, 39DV2, in Davison County, SD, by E.E. Meleen and Martin Thome. This site dates to the period 900 CE–1400 C.E. Subsequently, these human remains were transferred to the South Dakota State Archaeological Research Center (SARC). Later, between 1987 and 1988, these human remains were transferred to UTK. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from 39GR5, a site located near Fort Randall in Gregory County, SD, by an unknown person. Surface-collected ceramics have identified a Plains Woodland occupation of the site (500 B.C.E.–900 C.E.). At an unknown date, these human remains were transferred to UTK. No known individual was identified. The one associated funerary object is one lot of ceramics.

In 1944, human remains representing, at minimum, three individuals were removed from 39HS1, the Bloom Village site in Hanson County, SD, by F.C. Kratz. This site is a fortified earthlodge village and mound dating to the period 885–1153 C.E. The human remains were housed at SARC until their transfer to the UTK Department of Anthropology in 1987. Although UTK subsequently returned most of the human remains to SARC, some skeletal elements remained at UTK. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, 15 individuals were removed from 39HU5, the Mush Creek site in Hughes County, SD. This site is an unfortified village that was occupied during the LeBeau phase of the Post-Contact Coalescent Variant (1650–1886 C.E.). Based on information on file at UTK, before their transfer to SARC, these human remains were part of the W.H. Over Museum collections (accession 10.71.5). In 1987, SARC transferred the human remains to UTK. Although UTK subsequently returned most of the human remains to SARC, some skeletal elements remained at UTK. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, two individuals were removed from 39HU26, the Spotted Bear site, in Hughes County, SD, by an unknown person. This site is an earthlodge village established between 1650 and 1700 C.E. These human remains were stored at SARC until 1987, when they were transferred to UTK. Although UTK subsequently returned most of the human remains to SARC, some skeletal elements remained at UTK. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual, were removed from Fairbanks Village site, 39SL2, Sully County, SD, by an unknown person. This site is an Arikara Village that was occupied between 1550 and 1675 C.E. At an unknown date, these human remains were transferred to UTK. No known individual was identified. No associated funerary objects are present.

Between 1954 and 1956, as well as at an unknown date, human remains representing, at minimum, 36 individuals were removed from the Swan Creek site, 39WW7, in Walworth County, SD. Swan Creek has two separate components—a fortified village and a cemetery. The site was inhabited around 1500–1886 C.E. A note accompanying the human remains of two of the individuals indicates they were discovered by Dennis Bessinger of Pierre, SD. The human remains of a third individual were transferred to William Bass by Richard Weeks, with removal and transfer dates unknown. The human remains of the other 33 individuals were removed from the site between 1954–1956, by Wesley R. Hurt, Jr. The human remains were housed at the W.H. Over Museum in South Dakota before being transferred to SARC. Sometime in the 1980s, SARC transferred them to the UTK Department of Anthropology. UTK subsequently returned most of the human remains to SARC, and in 1986, they reportedly were reburied at site 39ST15, but some skeletal elements remained at UTK. No known individuals were identified. The three associated funerary objects are one lot of ceramics and two lots of faunal remains.

At an unknown date, human remains representing, at minimum, one individual, were removed from site 39WW8 in Walworth County, SD, by an unknown person. This site dates to the period 1500–1675 C.E. These human remains were among the human remains from several burials at the site that were excavated during the River Basin Survey and sent (probably in the 1960s) by the State Historical Society of North Dakota to William Bass at KU. In 1971, when Bass left KU to begin a position in the UTK Department of Anthropology, he likely brought the human remains of the individual listed in this notice with him. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, two

individuals were removed from site 39WW202, the Walth Bay site, in Walworth County, SD, by an unknown person. Based on archeological evidence, the site dates to the period 1500–1675 C.E. (radiocarbon dating with a 2-sigma probability range yields a date 1492 and 1653 C.E.). These human remains were housed at SARC before being transferred to UTK in 1987. Although UTK subsequently returned most of the human remains to SARC, some skeletal elements remained at UTK. No known individuals were identified. No associated funerary objects are present.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, UTK has determined that:

- The human remains described in this notice represent the physical remains of 76 individuals of Native American ancestry.
- The 16 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations 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.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after October 20, 2022. If competing requests for repatriation are received, UTK must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. UTK is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: September 14, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–20299 Filed 9–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034567; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Beloit College, Logan Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Beloit College, Logan Museum of Anthropology at the address in this notice by October 20, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Beloit College, Logan Museum of Anthropology, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains were likely removed from The Dalles in Wasco County, OR, or Memaloose Island in Klickitat County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Coeur D'Alene Tribe (*previously* listed as Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho); Confederated Salish and Kootenai Tribes of the Flathead Reservation; Confederated Tribes and Bands of the Yakama Nation; Confederated Tribes of the Colville Reservation; Confederated Tribes of the Umatilla Indian Reservation (*previously* listed as Confederated Tribes of the Umatilla Reservation, Oregon); Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe (*previously* listed as Nez Perce Tribe of Idaho); and one non-federally recognized Indian group—the Wanapum Band of Priest Rapids. The Confederated Tribes of Siletz Indians of Oregon (*previously* listed as Confederated Tribes of the Siletz Reservation); Confederated Tribes of the Chehalis Reservation; Confederated Tribes of the Grand Ronde Community of Oregon; Cowlitz Indian Tribe; Kalispel Indian Community of the

Kalispel Reservation; Kootenai Tribe of Idaho; and the Spokane Tribe of the Spokane Reservation were invited to consult but did not participate. Hereafter, all the Indian Tribes and groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were most likely removed from The Dalles in Wasco County, OR, or Memaloose Island in Klickitat County, WA. The human remains (23154) were acquired by Beloit College, Logan Museum of Anthropology from an unknown source. They belong to an adult female. No known individual was identified. No associated funerary objects are present.

Determinations Made by Beloit College, Logan Museum of Anthropology

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes and Bands of the Yakama Nation; Confederated Tribes of the Umatilla Indian Reservation (*previously* listed as Confederated Tribes of the Umatilla Reservation, Oregon); Confederated Tribes of the Warm Springs Reservation of Oregon; and the Nez Perce Tribe (*previously* listed as Nez Perce Tribe of Idaho) (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Nicolette B. Meister, Beloit College, Logan Museum of Anthropology, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu,* by October 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: September 14, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–20301 Filed 9–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034566; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Gordon L. Grosscup Museum of Anthropology, Wayne State University, Detroit, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Gordon L. Grosscup Museum of Anthropology, Wayne State University, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Gordon L. Grosscup Museum of Anthropology, Wayne State University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Gordon L. Grosscup Museum of Anthropology, Wayne State University at the address in this notice by October 20, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Megan McCullen, Gordon L. Grosscup Museum of Anthropology, Wayne State University, 4841 Cass Avenue, Suite 2155, Detroit, MI 48201, telephone (313) 577–6455, email *grosscupmuseum@wayne.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Gordon L. Grosscup Museum of Anthropology, Wayne State University, Detroit, MI. The human remains and associated funerary objects were removed from the Gibraltar Site (20WN10) in Wayne County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Gordon L. Grosscup Museum of Anthropology, Wayne State University professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (*previously* listed as Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

Between 1970 and 1972, and again in 1978, human remains representing, at minimum, 35 individuals were removed from the Gibraltar Site (20WN10) in Wayne County, MI. Salvage excavations were undertaken at the site by S. Demeter and C. Martinez between 1970 and 1972, and a Wayne State University Field School was conducted at the site in 1971 and 1978. There is no report on the total number of burials excavated

during 1970–1972; the highest number assigned to a burial is No. 37. The majority of the individuals are represented only by fragmentary and incomplete remains. No known individuals were identified. The 21 associated funerary objects are seven wood fragments, two iron fragments, two silver brooches, two ribbon brooches, two white seed beads, two copper springs, two square nails, one belt buckle, and one silver coin.

While the Gibraltar Site was occupied as early as the Woodland period, the human remains and associated funerary objects listed in this notice all derive from a historic period Native American cemetery that was once located near the intersection of West Jefferson and Gibraltar Roads, in Gibraltar, Michigan. In 1968, this burial ground was bulldozed for development of the Kingsbridge Apartment Complex.

The Wayne State University archeologists who excavated the Gibraltar Site did not compile written reports, but their historical research led them to believe that it was Wyandot. More recent archeological work in the region has also documented the Gibraltar Site and possibly additional nearby sites as Wyandot (see Demeter, C.S. ''*Phase I Archaeological Survey and Literature Search of the Proposed Woodland Meadows Van Buren Expansion Wetland Mitigation Site, Parcel III D. Gibraltar, Wayne County, Michigan*''). Also, historical records document Wyandot settlements near Gibraltar during the early 18th century, as well as the establishment of the village of Brownstown in present day Gibraltar, in 1742. Today, the local Wyandot of Anderdon Nation recognize the area around Gibraltar as a significant cultural landscape.

Determinations Made by the Gordon L. Grosscup Museum of Anthropology, Wayne State University

Officials of the Gordon L. Grosscup Museum of Anthropology, Wayne State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 35 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 21 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Wyandotte Nation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Megan McCullen, Gordon L. Grosscup Museum of Anthropology, Wayne State University, 4841 Cass Avenue, Suite 2155, Detroit, MI 48201, telephone (313) 577–6455, email *grosscupmuseum@wayne.edu,* by October 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Wyandotte Nation may proceed.

The Gordon L. Grosscup Museum of Anthropology, Wayne State University, is responsible for notifying the Wyandotte Nation and The Consulted Tribes that this notice has been published.

Dated: September 14, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–20300 Filed 9–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034562; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Nevada State Museum, Carson City, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Nevada State Museum has completed an inventory of human remains in consultation with the appropriate Indian Tribes and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes. Representatives of any Indian Tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Nevada State Museum. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes stated in this notice may proceed.

DATES: Representatives of any Indian Tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Nevada State Museum at the address in this notice by October 20, 2022.

FOR FURTHER INFORMATION CONTACT: Nevada State Museum, 600 North Carson Street, Carson City, NV 89701, telephone (530) 249–5745 Ext. 261, email *acamp@nevadaculture.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Nevada State Museum, Carson City, NV. The human remains were removed from the Town of Minden in Douglas County, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Nevada State Museum professional staff in consultation with representatives of the Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches).

History and Description of the Remains

In 2010, human remains representing, at minimum, one individual were removed from a house in Douglas County, NV. In 2010, the human remains—crania and mandible fragments—were donated to the Nevada State Museum by an anonymous donor. Museum professionals analyzed the human remains and determined that the individual was Native American. The human remains belong to an individual of undetermined age and sex. No known individual was identified. No associated funerary objects are present.

Determinations Made by the Nevada State Museum

Officials of the Nevada State Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on cranial morphology.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice

represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.

• According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches).

• Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches).

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches).

Additional Requestors and Disposition

Representatives of any Indian Tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Anna Camp, Nevada State Museum, Carson City, 600 North Carson Street, Carson City, NV 89701, telephone (775) 687–4810 Ext. 261, email *acamp@nevadaculture.org,* by October 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches) may proceed.

The Nevada State Museum is responsible for notifying the Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches) that this notice has been published.

Dated: September 14, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–20297 Filed 9–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034563; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of Anthropology (UTK), has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Doniphan County, KS.

DATES: Repatriation of the human remains in this notice may occur on or after October 20, 2022.

ADDRESSES: Dr. Robert Hinde, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2445, email *rhinde@utk.edu* and *vpaa@utk.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 UTK. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by UTK.

Description

Around 1962, human remains representing, at minimum, one individual were removed from 14DP2, the Doniphan site, in Doniphan County, KS, by an unnamed person. Around 1968, the unnamed person transferred the human remains—a skull fragment—to Les Hixon (Central Procurement Division, Fort Leavenworth). In 1970, Hixon transferred the human remains to William Bass (who, at the time, was at the University of Kansas. On October 18, 2019, Bass transferred them to the UTK Anthropology Department (where he had been since 1971). No known individual was identified. No associated funerary objects are present.

On May 20, 1970, human remains representing, at minimum, one individual were removed from 14DP2, the Doniphan site, in Doniphan County, KS, by an unidentified person. At an unknown date, these human remains were transferred to William Bass, and on October 18, 2019, Bass transferred them to the UTK Anthropology Department. No known individual was identified. No associated funerary objects are present.

The Doniphan site, 14DP2, is a well-documented historic Kaw village and burial site located at the confluence of Independence Creek and the Missouri River. The two individuals likely were interred at the Doniphan site sometime during the post-contact period. In 1724, the Kansa, who are represented by the present-day Kaw Nation, were recorded as inhabiting the site.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, historical, and geographical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, UTK has determined that:

• The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.

• There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and Kaw Nation, Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations 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.

Repatriation of the human remains in this notice to a requestor may occur on

or after October 20, 2022. If competing requests for repatriation are received, UTK must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. UTK is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: September 14, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–20298 Filed 9–19–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034561; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Department of Anthropology and Geography, Colorado State University, Fort Collins, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Department of Anthropology and Geography, Colorado State University has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Department of Anthropology and Geography. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Department of Anthropology and Geography at the address in this notice by October 20, 2022.

FOR FURTHER INFORMATION CONTACT: Jeannine Pedersen-Guzmán, Archaeological Collections Coordinator, Colorado State University, Department of Anthropology and Geography, 1787 Campus Delivery, Fort Collins, CO 80523, telephone (970) 491–5497, email *J.Pedersen-Guzman@colostate.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Department of Anthropology and Geography, Colorado State University, Fort Collins, CO. The human remains and associated funerary objects are believed to have been removed from the coastal region of Southern California.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Department of Anthropology and Geography professional staff with the California Native American Heritage Commission and Dr. Wendy Teeter, UCLA Repatriation Coordinator, and in consultation with the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California. The Yuhaaviatam of San Manuel Nation (*previously* listed as San Manuel Band of Mission Indians, California); two non-federally recognized Indian groups: the Juaneño Band of Mission Indians Acjachemen Nation and the San Gabriel Band of Mission Indians; and the Tii'at Society—Traditional Council of Pimu, a Tongva Community Organization were invited to consult but did not participate.

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from what is reasonably believed to be the coastal region of Southern California. The human remains—an adult male—were donated to the Department of Anthropology and Geography before or during 1990 by an unknown donor. The human remains were given the number 90.4 (CSU NAGRPA Case #64). Collection and archival work conducted by Professors Dr. Jason LaBelle and Dr. Ann Magennis between 2005–2010 failed to yield any additional documentation regarding the remains of this individual. No known individual was identified. The 10 associated funerary objects include four olivella (*Olivella biplicatta*) marine shells, one unmodified animal tooth fragment, three bird (possibly Common raven, *Corvus corax*) bones (including the claw), and two sea mammal bones (one identified as a harbor seal (*Phoca vitulina*).

The human remains are reasonably believed to be Native American based on their physical attributes and the associated funerary objects. The associated funerary objects have a geographic connection to the coast of Southern California and indicate a cultural affiliation to a coastal Indian Tribe in the region.

Determinations Made by the Department of Anthropology and Geography, Colorado State University

Officials of the Department of Anthropology and Geography, Colorado State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 10 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jeannine Pedersen-Guzmán, Archaeological Collections Coordinator, Colorado State University, Department of Anthropology and

Geography, 1787 Campus Delivery, Fort Collins, CO 80523, telephone (970) 491–5497, email *J.Pedersen-Guzman@colostate.edu,* by October 20, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may proceed.

The Department of Anthropology and Geography, Colorado State University is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California and the Yuhaaviatam of San Manuel Nation (*previously* listed as San Manuel Band of Mission Indians, California) that this notice has been published.

Dated: September 14, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–20296 Filed 9–19–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1314 (Review)]

Phosphor Copper From South Korea; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on phosphor copper from South Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: June 6, 2022.

FOR FURTHER INFORMATION CONTACT: Nitin Joshi (202–708–1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 6, 2022, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 11467, March 1, 2022) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and was made available to persons on the Administrative Protective Order service list for this review on September 16, 2022. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before September 23, 2022 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by September 23, 2022. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on Filing Procedures, available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 14, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–20252 Filed 9–19–22; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the response submitted by Metallurgical Products Company, a domestic producer, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1313 (Review)]

1,1,1,2-Tetrafluoroethane (R–134a) From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited

review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on 1,1,1,2-tetrafluoroethane (R–134a) from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: June 6, 2022.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 6, 2022, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 11475, March 1, 2022) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record and will be made available to persons on the Administrative Protective Order service list for this review on September 14, 2022. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before September 23, 2022 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by September 23, 2022. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 15, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–20329 Filed 9–19–22; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the responses submitted by Arkema Inc., Mexichem Fluor Inc., and The Chemours Company FC LLC, U.S. producers; Honeywell International Inc., a U.S. wholesaler; and the American HFC Coalition, a U.S. trade association, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–475 and 731–TA–1177 (Second Review)]

Aluminum Extrusions From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countervailing and antidumping duty orders on aluminum extrusions from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: June 6, 2022.

FOR FURTHER INFORMATION CONTACT: Celia Feldpausch (202–205–2387), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On June 6, 2022, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 11470, March 1, 2022) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and was made available to persons on the Administrative Protective Order service list for these reviews on September 13, 2022. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before September 19, 2022 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by September 19, 2022. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on Filing Procedures, available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 14, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–20253 Filed 9–19–22; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission has found the joint response to its notice of institution filed on behalf of the Aluminum Extrusions Fair Trade Committee and the Aluminum Extruders Council, trade or business associations, a majority of whose members are U.S. producers of aluminum extrusions, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Attestation for Employers Seeking To Employ H–2B Nonimmigrant Workers

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before October 20, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR supports the Temporary Final Rule (TFR), Exercise of Time-Limited Authority to Increase the Numerical Limitation for Second Half of FY2022 for H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking to Change Employers, which is being promulgated by the Department of Labor (DOL or Department) and the Department of Homeland Security (DHS). The regulatory requirements are codified at 8 CFR part 214 and 20 CFR part 655 and the information collection activities covered under Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers under Section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117–103, Form ETA–9142–B–CAA–6 (Form ETA–9142–B–CAA–6), along with other requirements (*e.g.,* recruitment efforts; recordkeeping requirements), covered under Office of Management and Budget (OMB) Control Number 1205–0550 (OMB 1205–0550). DOL seeks to revise the ICR to eliminate the requirement that employers complete and submit the Form ETA–9142–B–CAA–6 to DHS, but extend the recordkeeping requirements for an additional three years. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 18, 2022 (87 FR 30334).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB

approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers.

OMB Control Number: 1205–0550.

Affected Public: Private Sector—Businesses or other for-profits, not-for-profit institutions, and farms.

Total Estimated Number of Respondents: 6,304.

Total Estimated Number of Responses: 6,304.

Total Estimated Annual Time Burden: 1,576 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: September 14, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–20262 Filed 9–19–22; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2018–0005]

Whistleblower Stakeholder Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of public meeting.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing a public meeting to solicit comments and suggestions from stakeholders on issues facing the agency in the administration of the whistleblower laws it enforces.

DATES: The public meeting will be held on October 19, 2022, from 1 p.m. to 4 p.m., ET via telephone and virtually via Teams. Persons interested in attending the meeting must register by October 12, 2022. In addition, comments relating to the ''Scope of Meeting'' section of this document must be submitted by November 2, 2022.

ADDRESSES:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking portal. Follow the on-line instructions for submissions. All comments should be identified with Docket No. OSHA–2018–0005.

Registration to Attend and/or to Participate in the Meeting: If you wish to attend the public meeting, make an oral presentation at the meeting, or participate in the meeting, you must register using this link: *https://www.eventbrite.com/e/whistleblower-stakeholder-meeting-tickets-414876204897* or this link for registration in Spanish *https://www.eventbrite.com/e/reunion-para-partes-interesadas-sobre-los-denunciantes-que-son-trabajadores-tickets-414895803517* by close of business on October 12, 2022. Each participant will be allowed to speak for up to 5 minutes. If there is extra time at the end of the meeting, participants may be given extra time to speak. There is no fee to register for the public meeting. After reviewing the requests to present, OSHA will contact each participant prior to the meeting to inform them of the speaking order. We will provide Spanish-language translation.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information: Mr. Lee Martin, Director, OSHA Directorate of Whistleblower Protection Programs, U.S. Department of Labor; telephone: (202) 693–2199; email: *osha.dwpp@dol.gov.*

SUPPLEMENTARY INFORMATION:

A. Scope of Meeting

OSHA is interested in obtaining information from the public on key issues facing the agency's whistleblower program. This meeting is the tenth in a series of meetings requesting public input on this program. The agency is seeking suggestions on how it can improve the program. Please note that the agency does not have the authority to change the statutory language and requirements of the laws it enforces. In particular, the agency invites input on the following:

1. How can OSHA deliver better whistleblower customer service?

2. What kind of assistance can OSHA provide to help explain the Agency's whistleblower laws to employees and employers?

B. Request for Comments

Regardless of attendance at the public meeting, interested persons may submit written or electronic comments (see **ADDRESSES** above). Electronic comments include recorded oral comments. Comments may be submitted in any language. To permit time for interested persons to submit data, information, or views on the issues in the ''Scope of Meeting'' section of this notice, please submit comments by November 2, 2022, and include Docket No. OSHA–2018–0005. If you have questions regarding how to submit comments, please contact *osha.dwpp@dol.gov* or 202–693–2199.

C. Access to the Public Record

Electronic copies of this **Federal Register** notice are available at: *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, is also available on the Directorate of Whistleblower Protection Programs' web page at: *http://www.whistleblowers.gov.*

Authority and Signature

James S. Frederick, Deputy Assistant Secretary for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by section 11(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)); Secretary's Order 08–2020 (May 15, 2020).

Signed at Washington, DC.

James. S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–20260 Filed 9–19–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

[Docket No. OSHA–2013–0020]

Process Safety Management (PSM); Stakeholder Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of stakeholder meeting; updated date after postponement.

SUMMARY: On August 30, 2022, OSHA announced an informal stakeholder meeting regarding the rulemaking project for the Process Safety Management (PSM) standard, to be held on September 28, 2022. With this notice, OSHA is postponing the informal stakeholder meeting until October 12, 2022. OSHA is also reissuing the invitation to interested parties to participate in the informal stakeholder meeting. Additionally,

OSHA invites participants to provide public comments related to potential changes to the standard that OSHA is considering and is extending the deadline for submitting comments.

DATES: The stakeholder meeting will be held virtually from 10 a.m. to 4 p.m. ET, on Wednesday, October 12, 2022. Registration to participate in or observe the stakeholder meeting will be open until all spots are full. Written comments must be submitted by November 14, 2022.

ADDRESSES: The stakeholder meeting will be held virtually on Webex. If you wish to attend the meeting or provide public comment, please register online as soon as possible at *https://www.osha.gov/process-safety-management/background/2022stakeholdermtg.* If you are interested in providing public comments at the meeting, you must indicate that while registering. In order to accommodate many speakers, public commenters will be allowed approximately three minutes to speak. Although OSHA welcomes all comments and seeks to accommodate as many speakers as possible, it may not be possible to accommodate all stakeholder requests to speak at the meeting. Stakeholders who register to speak in advance of the meeting will receive confirmation and a schedule of speakers via email prior to the event. Those who cannot attend the meeting and those who are unable or choose not to make verbal comments during the meeting are invited to submit their comments in writing (see instructions in Section III below).

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Ms. Lisa Long, Director, Office of Engineering Safety, OSHA Directorate of Standards and Guidance, Room N–3621, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–2294, email: *long.lisa@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OSHA published the PSM standard, 29 CFR 1910.119,[1] in 1992 in response to several catastrophic chemical-release incidents that occurred worldwide. The PSM standard requires employers to implement safety programs that identify, evaluate, and control highly hazardous chemicals. Unlike some of OSHA's standards, which prescribe precisely what employers must do to comply, the PSM standard is ''performance-based,'' and outlines 14 management system elements for controlling highly hazardous chemicals. Under the standard, employers have the flexibility to tailor their PSM programs to the unique conditions at their facilities. For more information on the PSM standard, please visit *https://osha.gov/process-safety-management/background.*

Since its publication in 1992, the PSM standard has not been updated. The 2013 ammonium nitrate explosion at a fertilizer storage facility in West, Texas renewed interest in PSM. In response to this incident, on August 1, 2013, Executive Order (E.O.) 13650, *Improving Chemical Facility Safety and Security,* was signed. The E.O. directed OSHA and several other federal agencies to, among other things, modernize policies, regulations, and standards to enhance safety and security in chemical facilities by completing certain tasks, including: coordinating with stakeholders to develop a plan for implementing improvements to chemical risk managements practices, developing proposals to improve the safe and secure storage handling and sale of ammonium nitrate, and reviewing the PSM and Risk Management Plan (RMP) rules to determine if their covered hazardous chemical lists should be expanded. For more specifics on the Executive Order and OSHA's collaboration with other government agencies and stakeholders, please visit *https://www.osha.gov/chemical-executive-order.*

Additionally, the E.O. directed that within 90 days, OSHA should publish a Request for Information (RFI) to identify issues related to modernization of its PSM standard and related standards necessary to meet the goal of preventing major chemical accidents. OSHA published the RFI in December 2013, and subsequently initiated and completed a Small Business Advocacy Review Panel (SBAR) in June 2016. Following the SBAR panel, PSM was moved to the Long-Term Actions list on the Unified Agenda. OSHA has continued to work on the PSM standard rulemaking and PSM was placed back on the Unified Agenda in the spring of 2021. OSHA is holding this stakeholder meeting to reengage stakeholders and solicit comments on the modernization topics mentioned in the RFI and SBAR panel report, as well as any additional PSM-related issues stakeholders would like to raise. The list of modernization topics is listed below in Section II.

The Environmental Protection Agency (EPA) has a separate, pending proposal addressing RMP requirements. In the Clean Air Act Amendments of 1990, Congress required OSHA to adopt the PSM standard to protect workers and required EPA to protect the community and environment by issuing the RMP rule. The PSM and RMP rules were written to complement each other in accomplishing these Congressional goals. Since the E.O. 13650, EPA has published amendments to the RMP rule in 2017 and 2019. Any comments on the EPA's RMP proposal should be submitted in writing to the docket for that rulemaking and will not be discussed during OSHA's stakeholder meeting. More information regarding the RMP rule is available at *https://www.epa.gov/rmp.* OSHA and EPA will continue to coordinate as both agencies consider revisions to their respective rules.

II. Stakeholder Meeting

The meeting will feature a brief presentation from OSHA on the background of the PSM standard and some of the issues outlined in this notice. After the presentation, there will be time for registered commenters to provide verbal comments. PSM rulemaking topics are outlined in the lists below, but commenters may provide feedback on additional PSM-related issues. More information on most of the topics in the lists below can be found in the Small Entity Representative (SER) Background Document (docket no. OSHA–2013–0020–0107) and SER Issues Document (docket no. OSHA–2013–0020–0108) located on the PSM SBAR web page, *https://www.osha.gov/process-safety-management/sbrefa.* The purpose of the meeting is to gather information from stakeholders, and OSHA will not be responding to the comments during the meeting. The public may also submit written comments to the rulemaking docket (see Section III for instructions). More information on registration is provided above. The meeting will be recorded.

The potential changes to the scope of the current PSM standard that OSHA is considering include:

1. Clarifying the exemption for atmospheric storage tanks;

2. Expanding the scope to include oil-and gas-well drilling and servicing;

3. Resuming enforcement for oil and gas production facilities;

[1] Section 1910.119 is made applicable to construction work through 29 CFR 1926.64.

4. Expanding PSM coverage and requirements for reactive chemical hazards;

5. Updating and expanding the list of highly hazardous chemicals in Appendix A;

6. Amending paragraph (k) of the Explosives and Blasting Agents Standard (§ 1910.109) to extend PSM requirements to cover dismantling and disposal of explosives and pyrotechnics;

7. Clarifying the scope of the retail facilities exemption; and

8. Defining the limits of a PSM-covered process.

The potential changes to particular provisions of the current PSM standard that OSHA is considering include:

1. Amending paragraph (b) to include a definition of RAGAGEP;

2. Amending paragraph (b) to include a definition of critical equipment;

3. Expanding paragraph (c) to strengthen employee participation and include stop work authority;

4. Amending paragraph (d) to require evaluation of updates to applicable recognized and generally accepted as good engineering practices (RAGAGEP);

5. Amending paragraph (d) to require continuous updating of collected information;

6. Amending paragraph (e) to require formal resolution of Process Hazard Analysis team recommendations that are not utilized;

7. Expanding paragraph (e) by requiring safer technology and alternatives analysis;

8. Clarifying paragraph (e) to require consideration of natural disasters and extreme temperatures in their PSM programs, in response to E.O. 13990;

9. Expanding paragraph (j) to cover the mechanical integrity of any critical equipment;

10. Clarifying paragraph (j) to better explain ''equipment deficiencies;''

11. Clarifying that paragraph (l) covers organizational changes;

12. Amending paragraph (m) to require root cause analysis;

13. Revising paragraph (n) to require coordination of emergency planning with local emergency-response authorities;

14. Amending paragraph (o) to require third-party compliance audits;

15. Including requirements for employers to develop a system for periodic review of and necessary revisions to their PSM management systems (previously referred to as ''Evaluation and Corrective Action''); and

16. Requiring the development of written procedures for all elements specified in the standard, and to identify records required by the standard along with a records retention policy (previously referred to as ''Written PSM Management Systems'').

III. Submitting and Accessing Comments

Regardless of attendance at the stakeholder meeting, interested persons may submit written comments electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal. All comments, attachments, and other material must identify the agency's name and the docket number for this stakeholder meeting (OSHA–2013–0020). You may supplement electronic submissions by uploading document files electronically. All comments and additional materials must be submitted by November 14, 2022. All comments, including any personal information, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as Social Security Numbers and dates of birth.

To read or download comments or other material in the docket, go to *https://www.regulations.gov,* and search for docket no. OSHA–2013–0020. All documents in the docket are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Information on using the *https://www.regulations.gov* website to submit comments and access the docket is available at *https://www.regulations.gov/faq.*

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of document under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 08–2020 (85 FR 58393); and 29 CFR part 1911.

Signed at Washington, DC, September 8, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–20261 Filed 9–19–22; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., September 22, 2022.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Board Briefing, Share Insurance Fund Quarterly Report.

2. NCUA Rules and Regulations, Federal Credit Union Bylaws, Member Expulsion.

3. NCUA Rules and Regulations, Subordinated Debt.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703–518–6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2022–20388 Filed 9–16–22; 11:15 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0064]

Information Collection: NRC Form 790, ''Classification Record''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''NRC Form 790, ''Classification Record.''

DATES: Submit comments by October 20, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0064 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0064.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov*. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML22074A192. The supporting statement is available in ADAMS under Accession No. ML22206A195.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov*.

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''NRC Form 790, ''Classification Record.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 19, 2022, 87 FR 23277.

1. *The title of the information collection:* ''NRC Form 790, ''Classification Record.''
2. *OMB approval number:* 3150–0052.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Form 790.
5. *How often the collection is required or requested:* On occasion. NRC Form 790 is required each time an authorized classifier makes a classification determination to classify, declassify, or downgrade a document.
6. *Who will be required or asked to respond:* NRC licensees, licensees' contractors, and certificate holders who classify and declassify NRC information.
7. *The estimated number of annual responses:* 100.
8. *The estimated number of annual respondents:* 2.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 20.33.
10. *Abstract:* Completion of the NRC Form 790 is a mandatory requirement for NRC licensees, licensees' contractors, and certificate holders who classify and declassify NRC information in accordance with Executive Order 13526, ''Classified National Security Information,'' the Atomic Energy Act, and implementing directives. The NRC uses the information on the form to report statistics related to its security classification program on an annual basis to the Information Security Oversight Office.

Dated: September 14, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–20256 Filed 9–19–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0068]

Information Collection: NRC Form 244, ''Registration Certificate—Use of Depleted Uranium Under General License''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''NRC Form 244, ''Registration Certificate—Use of Depleted Uranium Under General License.''

DATES: Submit comments by October 20, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0068 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0068.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML22074A287. The supporting statement is available in ADAMS under Accession No. ML22220A231.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''NRC Form 244, ''Registration Certificate—Use of Depleted Uranium Under General License.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 27, 2022, 87 FR 32197.

1. *The title of the information collection:* ''NRC Form 244, ''Registration Certificate—Use of Depleted Uranium Under General License.'' ''.
2. *OMB approval number:* 3150–0031.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Form 244.
5. *How often the collection is required or requested:* On occassion.
6. *Who will be required or asked to respond:* Persons who receive, acquire, possess, or use depleted uranium.
7. *The estimated number of annual responses:* 20.6.
8. *The estimated number of annual respondents:* 20.6.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 11.7 (8.3 reporting + 1.4 recordkeeping + 2 third-party disclosure).
10. *Abstract:* The NRC regulations in part 40 of title 10 of the *Code of Federal Regulations,* establishes requirements for the receipt, possession, use and transfer of radioactive source and byproduct materials. Section 40.25 established a general license authorizing the use of depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device. The NRC Form 244 is used to report the receipt and transfer of depleted uranium, as required by § 40.25. The registration information required by the NRC Form 244 enables the NRC to make a determination on whether the possession, use, or transfer of depleted uranium source and byproduct material is in conformance with the NRC's regulations for the protection of public health and safety. General licensees can also use NRC Form 244 to update any of the information contained in the form, once the form is authorized by the NRC.

Dated: September 14, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–20255 Filed 9–19–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–106 and CP2022–110]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 22, 2022.

ADDRESSES: Submit comments electronically via the Commission's

Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–106 and CP2022–110; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 20 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 14, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca Upperman; *Comments Due:* September 22, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–20330 Filed 9–19–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. Title and purpose of information collection: Employer Reporting; 3220–0005.

Under section 9 of the Railroad Retirement Act (RRA) (45 U.S.C. 231h), and section 6 of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 356), railroad employers are required to submit reports of employee service and compensation to the RRB as needed for administering the RRA and RUIA. To pay benefits due on a deceased employee's earnings records or determine entitlement to, and amount of annuity applied for, it is necessary at times to obtain from railroad employers current (lag) service and compensation not yet reported to the RRB through the annual reporting process. The reporting requirements are specified in 20 CFR 209.6 and 209.7.

The RRB currently utilizes the following forms to collect information to obtain the required lag service and related information from railroad employers: Form AA–12, *Notice of Death and Request for Service Needed for Eligibility,* Form G–88A.1 (or its internet equivalent, Form G–88A.1 (internet)), *Request for Verification of Date Last Worked,* and Form G–88A.2 (or its internet equivalent, Form G–88A.2 (internet)), *Notice of Retirement and Request for Service Needed for Eligibility.* Form AA–12 obtains a report of lag service and compensation from the last railroad employer of a deceased employee. This report covers the lag period between the date of the latest record of employment processed by the RRB and the date an employee last worked, the date of death or the date the employee may have been entitled to benefits under the Social Security Act. The information is used by the RRB to determine benefits due on the deceased employee's earnings record. Form G–88A.1 is sent by the RRB via a computer-generated listing or transmitted electronically via the RRB's Employer Reporting System (ERS) to employers. ERS consists of a series of screens with completion instructions and collects essentially the same information as the approved manual version. Form G–88A.1 is used for the specific purpose of verifying information previously provided to the RRB regarding the date last worked by an employee. If the information is correct, the employer need not reply. If the information is incorrect, the employer is asked to provide corrected information. Form G–88A.2 is used by the RRB to secure lag service and compensation information when it is needed to determine benefit eligibility.

In addition, 20 CFR 209.12(b) requires all railroad employers to furnish the RRB with the home addresses of all employees hired within the last year (new-hires). Form BA–6a, *Form BA–6 Address Report* (or its internet equivalent, Form BA–6a (internet)) is used by the RRB to obtain home address information of employees from railroad

employers who do not have the home address information computerized and who submit the information in a paper format. The form also serves as an instruction sheet to railroad employers who submit the information electronically by CD–ROM. Completion of the forms is mandatory. Multiple responses may be filed by respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (87 FR 42216 on July 14, 2022) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employer Reporting.

OMB Control Number: 3220–0005.

Form(s) submitted: AA–12, G–88A.1, G–88A.1 (internet), G–88A.2, G–88A.2 (internet), BA–6a, BA–6a (internet), and BA–6a (email).

Type of request: Extension without change of a currently approved collection.

Affected public: Private sector; businesses or other for-profits.

Abstract: Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, railroad employers are required to report service and compensation for employees needed to determine eligibility to and the amounts of benefits paid.

Changes proposed: The RRB proposes no changes to Forms AA–12, G–88A.1 (internet), G–88A.2 (internet), Form BA–6a (internet), and Forms G–88A.1, G–88A.2 and BA–6a.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–12	60	5	5
G–88A.1	100	5	8
G–88A.1 Internet	260	4	17
G–88A.1 Internet (Class 1 railroads)	144	16	38
G–88A.2	100	5	8
G–88A.2 (Internet)	1,200	2.5	50
BA–6a (CD–ROM)	14	15	4
BA–6a (Email)	30	15	8
BA–6a (File Transfer Protocol)	10	15	3
BA–6a Internet (RR initiated)	250	17	71
BA–6a Internet (RRB initiated)	250	12	50
BA–6a Paper (RR initiated)	80	32	43
BA–6a Paper (RRB initiated)	250	32	133
Total	2,748		438

2. Title and purpose of information collection: Survivor Questionnaire; OMB 3220–0032.

Under section 6 of the Railroad Retirement Act (RRA) (45 U.S.C. 231e), benefits that may be due on the death of a railroad employee *or* a survivor annuitant include (1) a lump-sum death benefit (2) a residual lump-sum payment (3) accrued annuities due but unpaid at death, and (4) monthly survivor insurance payments. The requirements for determining the entitlement of possible beneficiaries to these benefits are prescribed in 20 CFR 234.

When the RRB receives notification of the death of a railroad employee or survivor annuitant, an RRB field office utilizes Form RL–94–F, Survivor Questionnaire, to secure additional information from surviving relatives needed to determine if any further benefits are payable under the RRA. Completion is voluntary. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (87 FR 42217 on July 14, 2022) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Survivor Questionnaire.

OMB Control Number: 3220–0032.

Form(s) submitted: RL–94–F.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or households.

Abstract: Under section 6 of the Railroad Retirement Act, benefits are payable to the survivors or the estates of deceased railroad employees. The collection obtains information used to determine if and to whom benefits are payable, such as a widow(er) due survivor benefits, an executor of the estate, or a payer of burial expenses.

Changes proposed: The RRB proposes the following to Form RL–94–F:

- On the cover page in the second paragraph: The address of the Department of the Treasury was updated to reflect the current mailing address.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
RL–94–F, Items 5–10, and 18	50	9	8
RL–94–F, Items 5–18	5,000	11	917
RL–94–F, Item 18 only	400	5	34
Total	5,450		959

3. Title and Purpose of information collection: Request for Medicare Payment; OMB 3220–0131. Under section 7(d) of the Railroad Retirement Act (45 U.S.C. 231f), the RRB administers the Medicare program for persons covered by the railroad retirement system. The collection obtains the information needed by Palmetto GBA, the Medicare carrier for railroad retirement beneficiaries, to pay claims for payments under part B of the Medicare program. Authority for collecting the information is prescribed in 42 CFR 424.32.

The RRB currently utilizes Forms G–740S, Patient's Request for Medicare Payment, along with Centers for Medicare & Medicaid Services Form CMS–1500, to secure the information necessary to pay part B Medicare Claims. Completion is required to obtain a benefit. One response is completed for each claim.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (87 FR 42218 on July 14, 2022) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Request for Medicare Payment.

OMB Control Number: 3220–0131.

Form(s) submitted: CMS–1500 and G–740S.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or households.

Abstract: The RRB administers the Medicare program for persons covered by the Railroad Retirement System. The collection obtains the information needed by Palmetto GBA, the RRB's carrier, to pay claims for services covered under part B of the program.

Changes proposed: The RRB proposes no changes to Form G–740S.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: See Justification (Item No. 12).

Total annual responses: 1.

Total annual reporting hours: 1.

4. Title and purpose of information collection: Employer's Deemed Service Month Questionnaire; OMB 3220–0156.

Section 3 (i) of the Railroad Retirement Act (RRA) (45 U.S.C. 231b), as amended by Public Law 98–76, provides that the Railroad Retirement Board (RRB), under certain circumstances, may deem additional months of service in cases where an employee does not actually work in every month of the year, provided the employee satisfies certain eligibility requirements, including the existence of an employment relation between the employee and his or her employer. The procedures pertaining to the deeming of additional months of service are found in the RRB's regulations at 20 CFR 210, Creditable Railroad Service.

The RRB utilizes Form GL–99, Employer's Deemed Service Months Questionnaire, to obtain service and compensation information from railroad employers to determine if an employee can be credited with additional deemed months of railroad service. Completion is mandatory. One response is required for each RRB inquiry.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (87 FR 42218 on July 14, 2022) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employer's Deemed Service Month Questionnaire.

OMB Control Number: 3220–0156.

Form(s) submitted: GL–99.

Type of request: Extension without change of a currently approved collection.

Affected public: Private Sector; Businesses or other for-profits.

Abstract: Under section 3(i) of the Railroad Retirement Act, the Railroad Retirement Board may deem months of service in cases where an employee does not actually work in every month of the year. The collection obtains service and compensation information from railroad employers needed to determine if an employee may be credited with additional months of railroad service.

Changes proposed: The RRB proposes no changes to Form GL–99.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
GL–99	2,000	2	67

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Kennisha Tucker at (312) 469–2591 or *Kennisha.Tucker@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–1275 or *Brian.Foster@rrb.gov.*

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.

Brian Foster,

Clearance Officer.

[FR Doc. 2022–20245 Filed 9–19–22; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95769; File No. SR–PHLX–2022–35]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rules 3100, 3301A and 3301B

September 14, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 9, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 Equity 4, Rules 3100, 3301A and 3301B[3] in light of planned changes to the System.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to Phlx Rules in the 3000 Series shall mean Rules in Phlx Equity 4.

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is preparing to introduce a new upgraded version of the OUCH Order entry protocol [4] that will enable the Exchange to make functional enhancements and improvements to specific Order Types [5] and Order Attributes.[6] Specifically, enhancements to OUCH will enable the Exchange to upgrade the logic and implementation of these Order Types and Order Attributes so that the features are more robust, streamlined, and harmonized across the Exchange's Systems and Order entry protocols. The Exchange developed OUCH with simplicity in mind, and therefore, it presently lacks certain complex order handling capabilities. By contrast, the Exchange specifically designed its RASH Order Entry Protocol [7] to support advanced functionality, including discretion, random reserve, pegging and routing. The introduction of OUCH upgrades will enable participants to utilize OUCH, in addition to RASH, to enter Order Types that require advanced functionality. Thus, the proposal does not seek to introduce new functionality, but rather, it offers to OUCH users advanced functionality that already exists for RASH users.

The Exchange plans to implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute.[8]

To support and prepare for the introduction of OUCH upgrades, the Exchange proposes to amend Rule 3301A pertaining to Order Types to specify that, going forward, OUCH may be used to enter certain Order Types together with certain Order Attributes, whereas now, Rule 3301A specifies that RASH and FIX, but not OUCH, may be used to enter such combinations of Order Types and Attributes. The Exchange also proposes to adjust the current functionality of the Pegging,[9] Reserve,[10] and Trade Now Order Attributes,[11] as described below, so that they align with how OUCH, once upgraded, will handle these Order Attributes going forward.

Changes to Use of Certain Order Types With Certain Order Attributes

Pursuant to Rule 3301A(b), the availability of certain Order Attributes for use with certain Order Types presently depends upon the particular Order entry protocol a participant uses to enter its Order. For Price to Comply and Price to Display Orders entered though OUCH, the Reserve Size, Primary Pegging and Market Pegging, and Discretion Attributes are not available to participants presently. For Non-Displayed Orders entered through OUCH, the Primary Pegging, Market Pegging, and Discretion Attributes are not available presently. The Exchange proposes to amend Rule 3301A(b) so that for each of the Order Types listed above, participants may utilize the corresponding Order Attributes when participants enter their Orders using the upgraded version of OUCH.

Meanwhile, for Non-Displayed Orders with the Midpoint Pegging Attribute, the behavior of such Orders presently varies, as set forth in Rule 3301B(d), based upon whether a participant uses OUCH/FLITE or RASH/FIX to enter them into the System. Going forward, the Exchange proposes to amend the Rule to reference the amended version Rule 3301B(d) (discussed below), which will describe variances in behavior involving Non-Displayed Orders with Midpoint Pegging which will no longer depend strictly upon the Order entry protocol associated with the Orders.

Changes to Midpoint Peg Post-Only Orders

Presently, the behavior of Midpoint Peg Post-Only Orders also varies depending upon whether a participant uses OUCH/FLITE or RASH/FIX/QIX to enter them into the System. Amendments to the Rule are needed because upgrades to OUCH will allow for OUCH to perform functions that are currently available only using RASH or FIX. The Exchange proposes to amend Rule 3301A(b)(6) so that variances in Midpoint Peg Post-Only Order behavior will occur going forward, not based upon use of any particular Order entry protocol, but instead based upon whether the Midpoint Peg Post-Only Order is ''Fixed,'' *i.e.,* the Order is pegged at the midpoint of the NBBO upon entry, and does not adjust with subsequent changes to the midpoint of the NBBO, or ''Managed,'' *i.e.,* the System adjusts the price of the Order after entry in accordance with changes to the midpoint of the NBBO.

Thus, whereas now, Rule 3301A(b)(6)(B) prescribes certain behavior for Midpoint Peg Post-Only Orders entered through RASH or FIX where the System will adjust the price after entry in accordance with shifts in the midpoint of the NBBO, the Exchange proposes to state that such behavior will apply to ''Managed Midpoint Peg Post-Only Orders,'' regardless of the Order entry protocol used to enter it. This proposed amendment reflects the fact that going forward, OUCH may be used to enter Managed Midpoint Peg Post-Only Orders.

Likewise, whereas now, Rule 3301A(b)(6)(B) prescribes different behavior for Midpoint Peg Post-Only Orders entered through OUCH or FLITE where the System does not adjust the price of the Order after entry in accordance with shifts in the midpoint of the NBBO, the Exchange proposes to state that such behavior will apply to ''Fixed Midpoint Peg Post-Only Orders,'' regardless of the Order entry protocol used to enter it. Similarly, the Exchange proposes to amend text describing the conditions under which the System will cancel these Orders back to participants as applying to Fixed Midpoint Peg Post Post-Only Orders, rather than Midpoint Peg Post-Only Orders entered through OUCH or FLITE.

[4] The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. See *https://www.nasdaqtrader.com/Trader.aspx?id=OUCH.*

[5] An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See* Equity 1, Section 1(e).

[6] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See id.*

[7] The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. See *http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.*

[8] The Exchange notes that its sister exchange, Nasdaq BX, Inc., filed a similar proposed rule changes with the Commission, *see* SR–BX–2022–012 (filed August 12, 2012), and The Nasdaq Stock Market, LLC plans to do so concurrently with this filing.

[9] *See* Rule 3301B(d).

[10] *See* Rule 3301B(h).

[11] *See* Rule 3301B(l).

Changes to Market Maker Peg Orders

Rule 3301B(b)(5)(A) presently provides that Market Maker Peg Orders may be entered through RASH or FIX only. The Exchange proposes to amend this provision to state that the upgraded version of OUCH may be used to enter such Orders going forward.

Changes to Pegging Order Attribute

In addition to the above, the Exchange proposes to amend Rule 3301B(d), which governs the Pegging Order Attribute, to account for the new capabilities of the upgraded version of OUCH.

As described in Rule 3301B(d), Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO. The Exchange offers three types of Pegging: Primary Pegging, Market Pegging, and Midpoint Pegging.[12] The behavior of each of these types of Pegged Orders currently varies based upon the particular Order entry protocol associated with their use. With the introduction of the upgraded version of OUCH, these variances will narrow, as OUCH will be capable of handling Pegged Orders similar to how RASH and FIX handle them. However, variances will not disappear entirely, as the upgraded version of OUCH will continue to handle Orders with Midpoint Pegging that the System cancels in response to changes to the Midpoint (''Fixed Midpoint Orders'') the same way that the current iteration of OUCH and FLITE handles them.

Indeed, pursuant to the proposed rule filing, the behavior of Pegged Orders will no longer vary strictly by the Order entry protocol that a participant uses; instead, variance will occur based upon whether the Pegged Orders are subject to management during their lifetimes, *i.e.,* the Exchange may adjust the prices of those Orders during their lifetimes. Managed Pegged Orders (''Peg Managed Orders'') will include Primary Pegged and Market Pegged Orders entered using OUCH, RASH, and FIX, as well as Midpoint Pegged Orders, entered using the same protocols, which the System may update in response to changes to the Midpoint (''Managed Midpoint Orders''). The Exchange will handle Managed Midpoint Orders differently from non-managed Orders, *i.e.,* Fixed Midpoint Orders, in like circumstances.

The specific proposed amendments that effectuate the above are as follows:

Existing Rule 3301B(d) states that if, at the time of entry, there is no price to which a Pegged Order, that has not been assigned a Routing Order Attribute, can be pegged, or pegging would lead to a price at which the Order cannot be posted, then the Order will not be immediately available on the Exchange Book and will be entered once there is a permissible price, provided, however, that the System will cancel the Pegged Order if no permissible pegging price becomes available within one second after Order entry.[13] This existing language applies to Primary, Market, and Midpoint Pegging Orders entered through RASH/FIX, but not Orders entered through OUCH/FLITE. The Exchange proposes to amend this provision of the Rule so that it applies to ''Peg Managed Orders,'' rather than ''Pegged Orders,'' which in practice will mean that the behavior it currently describes for Primary Pegged and Market Pegged Orders entered through RASH/FIX will also now apply to such Orders entered through the upgraded version of OUCH, as well as to Managed Midpoint Orders entered through RASH/FIX/upgraded OUCH.[14] Moreover, the proposed amended provision would provide for Managed Midpoint Orders that are not assigned a Routing Order Attribute (or a Time in Force of IOC) to behave similarly if the Inside Bid and Inside Offer are crossed (*i.e.,* the Managed Midpoint Order will not be immediately available on the Exchange Book unless and until a permissible price emerges within one second of entry (or other such time that the Exchange designates, at its discretion)).

Existing Rule 3301B(d) also states that if a Pegged Order has been assigned a Routing Order Attribute, but there is no permissible price to which the Order can be pegged at the time of entry, then the Exchange will reject it, except that the Exchange will accept a Displayed Order with Market Pegging and a Market or a Primary Pegged Order with a Non-Display Attribute at their respective limit prices in this circumstance. The Exchange again proposes to amend this provision so that it applies to Peg Managed Orders, rather than Pegged Orders. It also proposes to apply this provision to Managed Midpoint Orders that are assigned a Routing Order Attribute, if the Inside Bid and Inside Offer are crossed. Finally, as is explained further below, the Exchange proposes to delete the last two sentences of this paragraph, which describe the behavior of Orders with Midpoint Pegging, and move them to the end of the next paragraph, which also pertains to Orders with Midpoint Pegging. The Exchange proposes this organizational change for ease of readability.

As to the next paragraph of Rule 3301B(d), the Exchange proposes several changes. First, the Exchange proposes to delete the first sentence of this paragraph, which lists the Order entry protocols for which Primary Pegging and Market Pegging are presently available (RASH and FIX). This sentence is no longer needed because, as discussed above, the Exchange proposes to add a new sentence that specifies that all Peg Managed Orders will be available, not only through RASH and FIX, but also through OUCH, going forward. Second, the Exchange proposes to modify the second sentence of the paragraph, which presently states that for an Order entered through OUCH or FLITE with Midpoint Pegging, the Order will have its price set upon initial entry to the Midpoint, unless the Order has a limit price, and that limit price is lower than the Midpoint for an Order to buy (higher than the Midpoint for an Order to sell), in which case the Order will be ranked on the Exchange Book at its limit price. The Exchange proposes to apply this language to Midpoint Pegging Orders generally, rather than only Midpoint Pegging Orders entered through OUCH or FLITE, as it will apply to both Fixed Midpoint Orders and Managed Midpoint Orders. Third, the Exchange proposes to add and partially restate the following language from the preceding paragraph:

> In the case of an Order with Midpoint Pegging, if the Inside Bid and Inside Offer are locked, the Order will be priced at the locking price; and for Orders with Midpoint Pegging entered through OUCH or FLITE, if the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Order will not be accepted. However, even if the Inside Bid and Inside Offer are locked, an Order with Midpoint Pegging that locked an Order on the Exchange Book would execute. (Provided, however, that a Midpoint Peg Post-Only Order would execute or post as described in Rule 3301A(b)(6)(A)).

[12] *See* Rule 3301B(d) (defining ''Primary Pegging as pegging with reference to the inside quotation on the same side of the market, ''Market Pegging'' as pegging with reference to the inside quotation on the opposite side of the market, and ''Midpoint Pegging'' as pegging with reference to the midpoint between the inside bid and the inside offer).

[13] The Exchange may, in the exercise of its discretion, modify the length of this one second time period by posting advance notice of the applicable time period on its website.

[14] The Exchange also proposes to clarify that this provision applies to a Peg Managed Order that has not been assigned a Routing Order Attribute or a Time-in-Force of Immediate-Or-Cancel (''IOC''). This additional amendment makes it clear that IOC orders in this scenario will cancel immediately if no permissible pegging price is available upon Order entry, rather than waiting up to one second after Order entry to do so.

Specifically, the Exchange proposes to replace the phrase ''and for Orders with Midpoint Pegging entered through OUCH or FLITE'' with ''and for Fixed Midpoint Orders,'' because going forward, some Midpoint Pegging Orders entered through the upgraded version of OUCH will not behave in this manner; only Fixed Midpoint Orders will do so.[15]

The Exchange proposes to amend the next paragraph, which describes how the Exchange handles Orders with Midpoint Pegging entered through OUCH or FLITE where the Exchange does not adjust the prices of the Orders based on changes to the Inside Bid or Offer that occur after the Orders post to the Exchange Book. The Exchange proposes to amend this paragraph to state that it applies to Fixed Midpoint Orders (rather than Orders with Midpoint Pegging entered through OUCH or FLITE) and to state expressly that it applies to such Orders after they post to the Exchange Book.

The subsequent paragraph of Rule 3301B(d) describes how the Exchange handles Pegged Orders entered through RASH or FIX where the Exchange does adjust the prices of the Orders based on changes to the relevant Inside Quotation that occur after the Orders Post to the Exchange Book. Like the preceding paragraph, the Exchange proposes to amend this paragraph to state that it applies to Peg Managed Orders (rather than Orders entered through RASH or FIX with Pegging). The Exchange also proposes to amend text in this paragraph, which states that the Exchange will reject such an Order, if it assigned a Routing Order Attribute, and if the price to which it is pegged becomes unavailable or pegging would lead to a price at which it cannot be posted. The proposed amended language states that the Exchange will cancel such an Order back to the participant in these circumstances, rather than ''reject'' it; the use of the term ''cancel'' is more appropriate than ''reject'' in this provision insofar as the Exchange only rejects Orders upon entry, but thereafter, it cancels them. Consistent with amendments elsewhere in the proposal, the Exchange also proposes to state that Managed Midpoint Orders assigned a Routing Order Attribute will cancel back to the participant if the Inside Bid and Inside Offer become crossed. The Exchange also proposes to qualify the foregoing by noting that an Order with Market Pegging, or an Order with Primary Pegging and a Non-Display Attribute, will be re-entered at its limit price. Finally, the Exchange proposes to amend the subsequent text, which presently reads as follows:

> . . . if the Order is not assigned a Routing Order Attribute, the Order will be removed from the Exchange Book and will be re-entered once there is a permissible price, provided however, that the System will cancel the Pegged Order if no permissible pegging price becomes available within one second after the Order was removed and no longer available on the Exchange Book (the Exchange may, in the exercise of its discretion modify the length of this one second time period by posting advance notice of the applicable time period on its website).

The Exchange proposes to amend this text to specify that it applies to a ''Peg Managed Order,'' rather than simply an ''Order.'' Additionally in this clause, the Exchange proposes to add, after the phrase, ''if [a Peg Managed Order] is not assigned a Routing Order Attribute,'' the following text, for clarity: ''and the price to which it is pegged becomes unavailable, pegging would lead to a price at which the Order cannot be posted, or, in the case of a Managed Midpoint Order, if the Inside Bid and Inside Offer become crossed, ...'' The Exchange believes that these conditions are implicit in the existing Rule text and should be made explicit to avoid confusion. Insofar as this proposed amended text will now account for Managed Midpoint Orders, then the Exchange proposes to delete the following existing text, which will otherwise be duplicative:

> For an Order with Midpoint Pegging, if the Inside Bid and Inside Offer become crossed or if there is no Inside Bid and/or Inside Offer, the Order will be removed from the Exchange Book and will be re-entered at the new midpoint once there is a valid Inside Bid and Inside Offer that is not crossed; provided, however, that the System will cancel the Order with Midpoint Pegging if no permissible price becomes available within one second after the Order was removed and no longer available on the Exchange Book (the Exchange may, in the exercise of its discretion modify the length of this one second time period by posting advance notice of the applicable time period on its website).

Finally, the Exchange proposes to restate the paragraph of Rule 3301B(d) that describes Pegging Order collars. In pertinent part, this paragraph presently states that ''any portion of a Pegging Order that could execute, either on the Exchange or when routed to another market center, at a price of more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.'' The Exchange proposes to restate this text to account for the fact that under certain conditions, the System will cancel Pegging Orders before clearing liquidity inside the collar. For non-routable Pegged Orders, the System cancels these Orders prior to polling the Exchange Book for liquidity (even inside of the collar) when the combination of limit price, pegging, offset, discretionary price, discretionary pegging, and discretionary offset attributes would result in the Order attempting to post to the book or clear resting Orders beyond the collar price (even if such liquidity does not exist).[16] For routable Primary or Market Peg Orders, by contrast, the System will clear any liquidity inside of the collar before cancelling.[17] The Exchange proposes to more precisely describe this behavior with the following restated text:

> Any portion of a Pegging Order with a Routing attribute to buy (sell) that could execute, either on the Exchange or when routed to another market center, at a price of more than the greater of $0.25 or 5 percent higher (lower) than the NBO (NBB) at the time when the order reaches the System (the ''Collar Price''), will be cancelled. An Order entered without a Routing attribute will be cancelled if it would, as a result of the price determined by a Pegging or Discretionary Pegging attribute, execute or post to the Exchange Book at a price through the Collar Price.

Change to Reserve Attribute

The Exchange proposes to amend its rules governing the Reserve Order Attribute, at Rule 3301B(h) to state that when a Reserve Order is entered using OUCH with a displayed size of an odd lot, the System will reject the Order, whereas if such an order is entered using RASH or FIX, then as is the case now under the existing Rule, the System will accept the Order but with the full

[15] The Exchange also proposes to make a stylistic, non-substantive change to this text by deleting the phrase ''In the case of an Order with Midpoint Pegging.'' The Exchange believes this phrase is no longer needed due to the fact that the new paragraph to which it proposes to move the text clearly applies to Orders with Midpoint Pegging.

[16] For example, if NYSE is quoting $10.00 × $11.00 and a Displayed Sell Order of 100 shares is setting the NBO by resting on the Book at $10.05, then an incoming Primary Peg Buy order with a Limit Price of $10.75 and an Offset Value of $0.56 will be cancelled back without executing against the resting order at $10.05. The Primary Peg attribute initially sets the price of the Order at $10.00, then the offset amends the price to $10.56; the collar price is set to $10.05 + ($10.05 × 5%) = $10.5525, which is less than the price the incoming Order would attempt to book at.

[17] For example, if NYSE is quoting $10.00 × $11.00 and a Displayed Sell Order of 100 shares is setting the NBO by resting on the Book at $10.05, then an incoming Primary Peg Buy order of 200 shares with a Limit Price of $10.75, an Offset Value of $0.56, and the SCAN routing strategy will execute against the resting order before the remainder is cancelled before booking outside the collar price.

size of the Order Displayed. The Exchange believes that this new proposed behavior will benefit participants insofar as Reserve Orders entered with odd lot displayed sizes are often the product of errors. Rather than expose erroneous displayed sizes, OUCH will cancel the Orders and thus provide participants with an opportunity to correct their errors, or to validate their original choices, by re-entering the Reserve Order.

Change to Trade Now Attribute

The Exchange proposes to amend its rules governing the Trade Now Order Attribute, at Rule 3301B(l) to state that when the Trade Now Attribute is entered through RASH or FIX, and going forward, also through OUCH, the Trade Now Order Attribute may be enabled on an order-by-order or a port-level basis. In the next sentence in the paragraph, the existing text will continue to apply, but as to FLITE only, and not to OUCH. Thus, when entered through FLITE (but not OUCH), the Trade Now Order Attribute may be enabled on a port-level basis for all Order Types that support it, and for the Non-Displayed Order Type, also on an order-by-order basis.

The Exchange proposed to amend its rules governing Limit Up-Limit Down (''LULD'') functionality, at Rule 4120(a)(13)(E)(2)(a) to state that limit priced orders entered via the OUCH protocol, which are not assigned a Managed Pegging, Discretionary, or Reserve Attribute, shall be repriced upon entry only if the Price Bands are such that the price of the limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band. Additionally, the Exchange is proposing to amend Rule 4120(a)(13)(E)(2)(b) to state that limit-priced orders entered via RASH or FIX protocols, or via the OUCH protocol if assigned a Managed Pegging, Discretionary, or Reserve Attribute, the order shall be eligible to be repriced by the system multiple times if the Price Bands move such that the price of resting limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band.

The Exchange intends to implement the foregoing changes on October 10, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Generally speaking, it is consistent with the Act to amend the Rulebook to reflect upgrades to the Exchange's OUCH Order entry protocols. The planned upgrades will enable members to utilize OUCH in additional circumstances, including for the entry of: (1) Price to Comply and Price to Display Orders with the Reserve Size, Primary and Market Pegging, and Discretion Order Attributes; (2) Non-Displayed Orders with the Primary and Market Pegging, Midpoint Pegging (in scenarios described in amended Rule 3301B(d)), and Discretion Order Attributes; and (3) Market Maker Peg Orders.

Similarly, it is consistent with the Act to amend Rule 3301B(b)(6), which describes the behavior of Midpoint Peg Post-Only Orders, to reflect the fact that the planned upgrades to OUCH will enable its use for the entry of ''Managed'' Midpoint Peg Post-Only Orders—*i.e.,* those for which the System updates price after entry along with movements to the midpoint of the NBBO. Presently, members may enter Managed Midpoint Peg Post-Only Orders only through RASH or FIX. It is also consistent with the Act to refer to such Orders as ''Managed'' while referring to Midpoint Peg Post-Only Orders, whose prices do not change after entry, even if the NBBO midpoint shifts, as ''Fixed'' Midpoint Peg Post-Only Orders. This terminology will avoid confusion that would otherwise arise from the fact that OUCH may be used, going forward, to enter both types of Orders.

Likewise, the Exchange believes that its proposed amendments to the Pegging Order Attribute, at Rule 3301B(d), are consistent with the Act. The proposed amendments account for the fact that OUCH will become capable of use for the entry of Peg Managed Orders, including Managed Midpoint Orders, in addition to Fixed Midpoint Orders. The Exchange believes that it will be clearer and more coherent to describe the behavior of Pegged Orders and Orders with Midpoint Pegging in the Rule with regard to whether these Orders are ''Managed'' or ''Fixed,'' rather than with regard to the protocol used to enter them, especially as OUCH will be available for use in entering both Managed and Fixed Pegging Orders going forward. Additionally, proposed amendments to Rule 3301B(d) would reorganize the description of the behavior of various types of Pegged Orders so that it flows more logically and is more readily comprehensible. Finally, proposed changes would describe the behavior of Pegged Orders more comprehensively, by adding language that was mistakenly omitted from the Rule.

Meanwhile, the Exchange's proposal to restate the Rule's description of the price collar applicable to Pegged Orders is consistent with the Act because it accounts for the fact that under certain conditions, the System will cancel Pegging Orders before clearing liquidity inside the collar.

The Exchange's proposal is consistent with the Act to amend its Rule governing the Reserve Order Attribute, at Rule 3301B(h) to state that when a Reserve Order is entered using OUCH with a displayed size of an odd lot, the System will reject the Order. The Exchange believes that this new proposed behavior will benefit participants insofar as Reserve Orders entered with odd lot displayed sizes are often the product of errors. Rather than expose erroneous displayed sizes, OUCH will cancel the Orders and thus provide participants with an opportunity to correct their errors, or to validate their original choices, by re-entering the Reserve Order.

Additionally, the Exchange's proposal to amend its Rule governing the Trade Now Order Attribute, at Rule 3301B(l), is consistent with the Act, because it accounts for the fact that when entered through the upgraded version of OUCH, the Trade Now Order Attribute may be enabled on an order-by-order or a port-level basis.

Finally, the Exchange's proposal to amend its Rule governing the Limit Up-Limit Down Mechanism, at Rules 3100(a)(2)(E)(2)(a) and 4120(a)(2)(E)(2)(b) are consistent with the Act because the proposed amendments align with OUCH's capability going forward, once upgraded, to handle certain Order Types and Order Attributes similar to how RASH and FIX handle them. Additionally, as discussed above, variance will occur in certain Order Types based upon whether the orders are subject to management during their lifetimes.

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. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and Order entry protocols as well as those that amend and clarify the Exchange's Rules regarding its Order Attributes, are pro-competitive because they bolster the efficiency, functionality, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, none of the proposed changes will unduly burden intra-market competition among various Exchange participants. Participants will experience no competitive impact from its proposals, as these proposals will restate and reorganize portions of the Rule to reflect the upgraded capabilities of OUCH, as well as to render the descriptions of OUCH's new capabilities easier to read and understand.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [22] and Rule 19b–4(f)(6) thereunder.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PHLX–2022–35 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–2022–35. 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 a.m. and 3 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–2022–35 and should be submitted on or before October 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20270 Filed 9–19–22; 8:45 am]

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[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95770; File No. SR–NYSEAMER–2022–38]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Its Equities Price List

September 14, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 31, 2022, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Equities Price List (''Price List'') to eliminate obsolete fees for the Exchange's off-hours trading facility. The Exchange proposes to implement the fee changes effective September 1, 2022. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to eliminate obsolete fees for the Exchange's off-hours trading facility known as Crossing Session II (''CS II'').

The Exchange proposes to implement the fee changes effective September 1, 2022.

Background

Currently, the Exchange charges a fee of $0.0004 per share (both sides) for executions in CS II.[4] Fees for executions in CS II are capped at $100,000 per month per member organization.

The Exchange recently determined to decommission CS II and delete the rules governing the off-hours trading facility, effective September 1, 2022.[5] Since the Exchange will no longer be offering an after-hours trading session effective September 1, 2022, the Exchange accordingly proposes to delete the fees relating to CS II. To effectuate this change, the Exchange would delete Section IV of the Price List titled ''Fees for Off-Hours Trading Facility'' in its entirety as obsolete. Current Items V (Port Fees) and VI (ETP Fee) of the Price List would be re-numbered.

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed elimination of after-hours trading facility fees is reasonable because, effective September 1, 2022, the fees are no longer charged. The Exchange believes it is reasonable to delete obsolete fees from the Price List because it would streamline the Price List and reduce confusion as to which fees are applicable on the Exchange. The Exchange believes that amending the Price List to remove fees that are no longer charged would promote the protection of investors and the public interest because it would promote clarity and transparency in the Price List, thereby enabling market participants to navigate the Exchange's Price List more easily.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates its fees among its market participants because the obsolete after-hours trading facility fees that the Exchange proposes to eliminate would be eliminated in their entirety, and would no longer be available to any member organization in any form. Similarly, the Exchange believes the proposal equitably allocates fees among its market participants because elimination of obsolete fees would apply to all similarly-situated member organizations on an equal basis. All such member organizations would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal is not unfairly discriminatory because the proposed elimination of the obsolete fees would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating obsolete fees would no longer be available to any member organization on an equal basis. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of obsolete fees would make the Price List more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[8] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal relates solely to elimination of obsolete fees for a decommissioned after-hours trading facility and, as such, would not have any impact on intra- or inter-market competition because the proposed change is solely designed to accurately reflect the services that the Exchange currently offers, thereby adding clarity to the Price List.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[11] of the Act to determine whether the proposed rule

[4] *See* note 10, *supra.* [sic]

[5] *See* Securities Exchange Act Release No. 95499 (August 12, 2022), 87 FR 50894 (August 18, 2022) (SR–NYSEAMER–2022–35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delete Current Rule 7.39E).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) & (5).

[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–2022–38 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEAMER–2022–38. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2022–38, and should be submitted on or before October 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95768; File No. SR–NASDAQ–2022–051]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rules 4120, 4702 and 4703 in Light of Planned Changes to the System

September 14, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 9, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 Equity 4, Rules 4120, 4702 and 4703[3] in light of planned changes to the System.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is preparing to introduce a new upgraded version of the OUCH Order entry protocol[4] that will enable the Exchange to make functional enhancements and improvements to specific Order Types[5] and Order Attributes.[6] Specifically, enhancements to OUCH will enable the Exchange to upgrade the logic and implementation of these Order Types and Order Attributes so that the features are more robust, streamlined, and harmonized across the Exchange's Systems and Order entry protocols. The Exchange developed OUCH with simplicity in mind, and therefore, it presently lacks certain complex order handling capabilities. By contrast, the Exchange specifically designed its RASH Order Entry Protocol[7] to support advanced functionality, including discretion, random reserve, pegging and routing. The introduction of OUCH upgrades will enable participants to utilize OUCH, in addition to RASH, to enter Order Types that require advanced functionality. Thus, the proposal does not seek to introduce new functionality, but rather, it offers to OUCH users advanced functionality that already exists for RASH users.

The Exchange plans to implement its enhancement of the OUCH protocol

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to Nasdaq Rules in the 4000 Series shall mean Rules in Nasdaq Equity 4.

[4] The OUCH Order entry protocol is a proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. See *https://www.nasdaqtrader.com/Trader.aspx?id=OUCH.*

[5] An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to Nasdaq. *See* Equity 1, Section 1(a)(7).

[6] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the Exchange. *See id.*

[7] The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. *See http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.*

sequentially, by Order Type and Order Attribute.[8]

To support and prepare for the introduction of OUCH upgrades, the Exchange proposes to amend Rule 4702 pertaining to Order Types to specify that, going forward, OUCH may be used to enter certain Order Types together with certain Order Attributes, whereas now, Rule 4702 specifies that RASH, FIX, and QIX, but not OUCH, may be used to enter such combinations of Order Types and Attributes. The Exchange also proposes to adjust the current functionality of the Pegging,[9] Reserve,[10] and Trade Now Order Attributes,[11] as described below, so that they align with how OUCH, once upgraded, will handle these Order Attributes going forward.

Changes To Use of Certain Order Types With Certain Order Attributes

Pursuant to Rule 4702(b), the availability of certain Order Attributes for use with certain Order Types presently depends upon the particular Order entry protocol a participant uses to enter its Order. For Price to Comply and Price to Display Orders entered though OUCH, the Reserve Size, Primary Pegging and Market Pegging, and Discretion Attributes are not available to participants presently. For Non-Displayed Orders entered through OUCH, the Primary Pegging, Market Pegging, and Discretion Attributes are not available presently. The Exchange proposes to amend Rule 4702(b) so that for each of the Order Types listed above, participants may utilize the corresponding Order Attributes when participants enter their Orders using the upgraded version of OUCH.

Meanwhile, for Non-Displayed Orders with the Midpoint Pegging Attribute, the behavior of such Orders presently varies, as set forth in Rule 4703(d), based upon whether a participant uses OUCH/FLITE or RASH/FIX/QIX to enter them into the System. Going forward, the Exchange proposes to amend the Rule to reference the amended version Rule 4703(d) (discussed below), which will describe variances in behavior involving Non-Displayed Orders with Midpoint Pegging which will no longer depend strictly upon the Order entry protocol associated with the Orders.

Changes to Midpoint Peg Post-Only Orders

Presently, the behavior of Midpoint Peg Post-Only Orders also varies depending upon whether a participant uses OUCH/FLITE or RASH/FIX/QIX to enter them into the System. Amendments to the Rule are needed because upgrades to OUCH will allow for OUCH to perform functions that are currently available only using RASH, FIX, or QIX. The Exchange proposes to amend Rule 4702(b)(5) so that variances in Midpoint Peg Post-Only Order behavior will occur going forward, not based upon use of any particular Order entry protocol, but instead based upon whether the Midpoint Peg Post-Only Order is ''Fixed,'' *i.e.,* the Order is pegged at the midpoint of the NBBO upon entry, and does not adjust with subsequent changes to the midpoint of the NBBO, or ''Managed,'' *i.e.,* the System adjusts the price of the Order after entry in accordance with changes to the midpoint of the NBBO.

Thus, whereas now, Rule 4702(b)(5)(B) prescribes certain behavior for Midpoint Peg Post-Only Orders entered through RASH, QIX, or FIX where the System will adjust the price after entry in accordance with shifts in the midpoint of the NBBO, the Exchange proposes to state that such behavior will apply to ''Managed Midpoint Peg Post-Only Orders,'' regardless of the Order entry protocol used to enter it. This proposed amendment reflects the fact that going forward, OUCH may be used to enter Managed Midpoint Peg Post-Only Orders.

Likewise, whereas now, Rule 4702(b)(5)(B) prescribes different behavior for Midpoint Peg Post-Only Orders entered through OUCH or FLITE where the System does not adjust the price of the Order after entry in accordance with shifts in the midpoint of the NBBO, the Exchange proposes to state that such behavior will apply to ''Fixed Midpoint Peg Post-Only Orders,'' regardless of the Order entry protocol used to enter it. Similarly, the Exchange proposes to amend text describing the conditions under which the System will cancel these Orders back to participants as applying to Fixed Midpoint Peg Post Post-Only Orders, rather than Midpoint Peg Post-Only Orders entered through OUCH or FLITE.

Changes to Market Maker Peg Orders

Rule 4702(b)(7)(A) presently provides that Market Maker Peg Orders may be entered through RASH, FIX, or QIX only. The Exchange proposes to amend this provision to state that the upgraded version of OUCH may be used to enter such Orders going forward.

Changes to Pegging Order Attribute

In addition to the above, the Exchange proposes to amend Rule 4703(d), which governs the Pegging Order Attribute, to account for the new capabilities of the upgraded version of OUCH.

As described in Rule 4703(d), Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO. The Exchange offers three types of Pegging: Primary Pegging, Market Pegging, and Midpoint Pegging.[12] The behavior of each of these types of Pegged Orders currently varies based upon the particular Order entry protocol associated with their use. With the introduction of the upgraded version of OUCH, these variances will narrow, as OUCH will be capable of handling Pegged Orders similar to how RASH, FIX, and QIX handle them. However, variances will not disappear entirely, as the upgraded version of OUCH will continue to handle Orders with Midpoint Pegging that the System cancels in response to changes to the Midpoint (''Fixed Midpoint Orders'') the same way that the current iteration of OUCH and FLITE handles them.

Indeed, pursuant to the proposed rule filing, the behavior of Pegged Orders will no longer vary strictly by the Order entry protocol that a participant uses; instead, variance will occur based upon whether the Pegged Orders are subject to management during their lifetimes, *i.e.,* the Exchange may adjust the prices of those Orders during their lifetimes. Managed Pegged Orders (''Peg Managed Orders'') will include Primary Pegged and Market Pegged Orders entered using OUCH, RASH, FIX, and QIX, as well as Midpoint Pegged Orders, entered using the same protocols, which the System may update in response to changes to the Midpoint (''Managed Midpoint Orders''). The Exchange will handle Managed Midpoint Orders differently from non-managed Orders, *i.e.,* Fixed Midpoint Orders, in like circumstances.

The specific proposed amendments that effectuate the above are as follows.

Existing Rule 4703(d) states that if, at the time of entry, there is no price to which a Pegged Order, that has not been assigned a Routing Order Attribute, can be pegged, or pegging would lead to a price at which the Order cannot be

[8] The Exchange notes that its sister exchange, Nasdaq BX, Inc., filed a similar proposed rule changes with the Commission, *see* SR–BX–2022–012 (filed August 12, 2012), and Nasdaq PSX plans to do so concurrently with this filing.

[9] *See* Rule 4703(d).

[10] *See* Rule 4703(h).

[11] *See* Rule 4703(m)–(n).

[12] *See* Rule 4703(d) (defining ''Primary Pegging as pegging with reference to the inside quotation on the same side of the market, ''Market Pegging'' as pegging with reference to the inside quotation on the opposite side of the market, and ''Midpoint Pegging'' as pegging with reference to the midpoint between the inside bid and the inside offer).

posted, then the Order will not be immediately available on the Exchange Book and will be entered once there is a permissible price, provided, however, that the System will cancel the Pegged Order if no permissible pegging price becomes available within one second after Order entry.[13] This existing language applies to Primary, Market, and Midpoint Pegging Orders entered through RASH/QIX/FIX, but not Orders entered through OUCH/FLITE. The Exchange proposes to amend this provision of the Rule so that it applies to ''Peg Managed Orders,'' rather than ''Pegged Orders,'' which in practice will mean that the behavior it currently describes for Primary Pegged and Market Pegged Orders entered through RASH/FIX will also now apply to such Orders entered through the upgraded version of OUCH,[14] as well as to Managed Midpoint Orders entered through RASH/FIX/upgraded OUCH. Moreover, the proposed amended provision would provide for Managed Midpoint Orders that are not assigned a Routing Order Attribute (or a Time in Force of IOC) to behave similarly if the Inside Bid and Inside Offer are crossed (*i.e.,* the Managed Midpoint Order will not be immediately available on the Exchange Book unless and until a permissible price emerges within one second of entry (or other such time that the Exchange designates, at its discretion)).

Existing Rule 4703(d) also states that if a Pegged has been assigned a Routing Order Attribute, but there is no permissible price to which the Order can be pegged at the time of entry, then the Exchange will reject it, except that the Exchange will accept a Displayed Order with Market Pegging and a Market or a Primary Pegged Order with a Non-Display Attribute at their respective limit prices in this circumstance. The Exchange again proposes to amend this provision so that it applies to Peg Managed Orders, rather than Pegged Orders. It also proposes to apply this provision to Managed Midpoint Orders that are assigned a Routing Order Attribute, if the Inside Bid and Inside Offer are crossed. Finally, as is explained further below, the Exchange proposes to delete the last two sentences of this paragraph, which describe the behavior of Orders with Midpoint Pegging, and move them to the end of the next paragraph, which also pertains to Orders with Midpoint Pegging. The Exchange proposes this organizational change for ease of readability.

As to the next paragraph of Rule 4703(d), the Exchange proposes several changes. First, the Exchange proposes to delete the first sentence of this paragraph, which lists the Order entry protocols for which Primary Pegging and Market Pegging are presently available (RASH, QIX, and FIX). This sentence is no longer needed because, as discussed above, the Exchange proposes to add a new sentence that specifies that all Peg Managed Orders will be available, not only through RASH, QIX, and FIX, but also through OUCH, going forward. Second, the Exchange proposes to modify the second sentence of the paragraph, which presently states that for an Order entered through OUCH or FLITE with Midpoint Pegging, the Order will have its price set upon initial entry to the Midpoint, unless the Order has a limit price, and that limit price is lower than the Midpoint for an Order to buy (higher than the Midpoint for an Order to sell), in which case the Order will be ranked on the Exchange Book at its limit price. The Exchange proposes to apply this language to Midpoint Pegging Orders generally, rather than only Midpoint Pegging Orders entered through OUCH or FLITE, as it will apply to both Fixed Midpoint Orders and Managed Midpoint Orders. Third, the Exchange proposes to add and partially restate the following language from the preceding paragraph:

> In the case of an Order with Midpoint Pegging, if the Inside Bid and Inside Offer are locked, the Order will be priced at the locking price; and for Orders with Midpoint Pegging entered through OUCH or FLITE, if the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Order will not be accepted. However, even if the Inside Bid and Inside Offer are locked, an Order with Midpoint Pegging that locked an Order on the Nasdaq Book would execute (provided, however, that a Midpoint Peg Post-Only Order would execute or post as described in Rule 4702(b)(5)(A)).

Specifically, the Exchange proposes to replace the phrase ''and for Orders with Midpoint Pegging entered through OUCH or FLITE'' with ''and for Fixed Midpoint Orders,'' because going forward, some Midpoint Pegging Orders entered through the upgraded version of OUCH will not behave in this manner; only Fixed Midpoint Orders will do so.[15]

The Exchange proposes to amend the next paragraph, which describes how the Exchange handles Orders with Midpoint Pegging entered through OUCH or FLITE where the Exchange does not adjust the prices of the Orders based on changes to the Inside Bid or Offer that occur after the Orders post to the Exchange Book. The Exchange proposes to amend this paragraph to state that it applies to Fixed Midpoint Orders (rather than Orders with Midpoint Pegging entered through OUCH or FLITE) and to state expressly that it applies to such Orders after they post to the Exchange Book.

The subsequent paragraph of Rule 4703(d) describes how the Exchange handles Pegged Orders entered through RASH, QIX, or FIX where the Exchange does adjust the prices of the Orders based on changes to the relevant Inside Quotation that occur after the Orders Post to the Exchange Book. Like the preceding paragraph, the Exchange proposes to amend this paragraph to state that it applies to Peg Managed Orders (rather than Orders entered through RASH, QIX, or FIX with Pegging). The Exchange also proposes to amend text in this paragraph which states that the Exchange will reject such an Order, if it assigned a Routing Order Attribute, and if the price to which it is pegged becomes unavailable or pegging would lead to a price at which it cannot be posted. The proposed amended language states that the Exchange will cancel such an Order back to the participant in these circumstances, rather than ''reject'' it; the use of the term ''cancel'' is more appropriate than ''reject'' in this provision insofar as the Exchange only rejects Orders upon entry, but thereafter, it cancels them. Consistent with amendments elsewhere in the proposal, the Exchange also proposes to state that Managed Midpoint Orders assigned a Routing Order Attribute will cancel back to the participant if the Inside Bid and Inside Offer become crossed. The Exchange also proposes to qualify the foregoing by noting that an Order with Market Pegging, or an Order with Primary Pegging and a Non-Display Attribute, will be re-entered at its limit price. Finally, the Exchange proposes to amend the subsequent text, which presently reads as follows:

[13] The Exchange may, in the exercise of its discretion, modify the length of this one second time period by posting advance notice of the applicable time period on its website.

[14] The Exchange also proposes to clarify that this provision applies to a Peg Managed Order that has not been assigned a Routing Order Attribute or a Time-in-Force of Immediate-Or-Cancel (''IOC''). This additional amendment makes it clear that IOC orders in this scenario will cancel immediately if no permissible pegging price is available upon Order entry, rather than waiting up to one second after Order entry to do so.

[15] The Exchange also proposes to make a stylistic, non-substantive change to this text by deleting the phrase ''In the case of an Order with Midpoint Pegging.'' The Exchange believes this phrase is no longer needed due to the fact that the new paragraph to which it proposes to move the text clearly applies to Orders with Midpoint Pegging.

''. . . if the Order is not assigned a Routing Order Attribute, the Order will be removed from the Nasdaq Book and will be re-entered once there is a permissible price, provided however, that the System will cancel the Pegged Order if no permissible pegging price becomes available within one second after the Order was removed and no longer available on the Nasdaq Book (the Exchange may, in the exercise of its discretion modify the length of this one second time period by posting advance notice of the applicable time period on its website).''

The Exchange proposes to amend this text to specify that it applies to a ''Peg Managed Order,'' rather than simply an ''Order.'' Additionally in this clause, the Exchange proposes to add, after the phrase, ''if [a Peg Managed Order] is not assigned a Routing Order Attribute,'' the following text, for clarity: ''and the price to which it is pegged becomes unavailable, pegging would lead to a price at which the Order cannot be posted, or, in the case of a Managed Midpoint Order, if the Inside Bid and Inside Offer become crossed, ...'' The Exchange believes that these conditions are implicit in the existing Rule text and should be made explicit to avoid confusion. Insofar as this proposed amended text will now account for Managed Midpoint Orders, then the Exchange proposes to delete the following existing text, which will otherwise be duplicative:

''For an Order with Midpoint Pegging, if the Inside Bid and Inside Offer become crossed or if there is no Inside Bid and/or Inside Offer, the Order will be removed from the Exchange Book and will be re-entered at the new midpoint once there is a valid Inside Bid and Inside Offer that is not crossed; provided, however, that the System will cancel the Order with Midpoint Pegging if no permissible price becomes available within one second after the Order was removed and no longer available on the Exchange Book (the Exchange may, in the exercise of its discretion modify the length of this one second time period by posting advance notice of the applicable time period on its website).''

Finally, the Exchange proposes to restate the paragraph of Rule 4703(d) that describes Pegging Order collars. In pertinent part, this paragraph presently states that ''any portion of a Pegging Order that could execute, either on the Exchange or when routed to another market center, at a price of more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.'' The Exchange proposes to restate this text to account for the fact that under certain conditions, the System will cancel Pegging Orders before clearing liquidity inside the collar. For non-routable Pegged Orders, the System cancels these Orders prior to polling the Exchange Book for liquidity (even inside of the collar) when the combination of limit price, pegging, offset, discretionary price, discretionary pegging, and discretionary offset attributes would result in the Order attempting to post to the book or clear resting Orders beyond the collar price (even if such liquidity does not exist).[16] For routable Primary or Market Peg Orders, by contrast, the System will clear any liquidity inside of the collar before cancelling.[17] The Exchange proposes to more precisely describe this behavior with the following restated text:

Any portion of a Pegging Order with a Routing attribute to buy (sell) that could execute, either on the Exchange or when routed to another market center, at a price of more than the greater of $0.25 or 5 percent higher (lower) than the NBO (NBB) at the time when the order reaches the System (the ''Collar Price''), will be cancelled. An Order entered without a Routing attribute will be cancelled, if it would, as a result of the price determined by a Pegging or Discretionary Pegging attribute, execute or post to the Exchange Book at a price through the Collar Price.

Change to Reserve Attribute

The Exchange proposes to amend its rules governing the Reserve Order Attribute, at Rule 4703(h) to state that when a Reserve Order is entered using OUCH with a displayed size of an odd lot, the System will reject the Order, whereas if such an order is entered using RASH or FIX, then as is the case now under the existing Rule, the System will accept the Order but with the full size of the Order Displayed. The Exchange believes that this new proposed behavior will benefit participants insofar as Reserve Orders entered with odd lot displayed sizes are often the product of errors. Rather than expose erroneous displayed sizes, OUCH will cancel the Orders and thus provide participants with an opportunity to correct their errors, or to validate their original choices, by re-entering the Reserve Order.

Change to Trade Now Attribute

The Exchange proposes to amend its rules governing the Trade Now Order Attribute, at Rule 4703(m) to state that when the Trade Now Attribute is entered through RASH or FIX, and going forward, also through OUCH, the Trade Now Order Attribute may be enabled on an order-by-order or a port-level basis. In the next sentence in the paragraph, the existing text will continue to apply, but as to FLITE only, and not to OUCH. Thus, when entered through FLITE (but not OUCH), the Trade Now Order Attribute may be enabled on a port-level basis for all Order Types that support it, and for the Non-Displayed Order Type, also on an order-by-order basis.

The Exchange intends to implement the foregoing changes during the end of the Third Quarter or early in the Fourth Quarter of 2022. However, certain new functionality that will involve management of OUCH by the System may not be available until the Exchange completes upgrades to System, which the Exchange currently expects will occur in mid-2023. The Exchange will issue an Equity Trader Alert at least 7 days in advance of implementing the changes set forth in the proposal. The Alert will specify which functionalities will not be available initially, pending the System upgrade. The Exchange will issue another Equity Trader Alert at least 7 days in advance of implementing the remaining changes, once the requisite System upgrade is complete.

Change to Limit Up-Limit Down Mechanism

The Exchange proposed to amend its rules governing Limit Up-Limit Down (''LULD'') functionality, at Rule 4120(a)(13)(E)(2)(a) to state that limit priced orders entered via the OUCH protocol, which are not assigned a Managed Pegging, Discretionary, or Reserve Attribute, shall be repriced upon entry only if the Price Bands are such that the price of the limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band. Additionally, the Exchange is proposing to amend Rule 4120(a)(13)(E)(2)(b) to state that limit-priced orders entered via RASH or FIX protocols, or via the OUCH protocol if assigned a Managed Pegging, Discretionary, or Reserve Attribute, the order shall be eligible to be repriced by the system multiple times if the Price Bands move such that the price of resting limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band.

[16] For example, if NYSE is quoting $10.00 × $11.00 and a Displayed Sell Order of 100 shares is setting the NBO by resting on the Book at $10.05, then an incoming Primary Peg Buy order with a Limit Price of $10.75 and an Offset Value of $0.56 will be cancelled back without executing against the resting order at $10.05. The Primary Peg attribute initially sets the price of the Order at $10.00, then the offset amends the price to $10.56; the collar price is set to $10.05 + ($10.05 × 5%) = $10.5525, which is less than the price the incoming Order would attempt to book at.

[17] For example, if NYSE is quoting $10.00 × $11.00 and a Displayed Sell Order of 100 shares is setting the NBO by resting on the Book at $10.05, then an incoming Primary Peg Buy order of 200 shares with a Limit Price of $10.75, an Offset Value of $0.56, and the SCAN routing strategy will execute against the resting order before the remainder is cancelled before booking outside the collar price.

The Exchange intends to implement the foregoing changes on November 14, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Generally speaking, it is consistent with the Act to amend the Rulebook to reflect upgrades to the Exchange's OUCH Order entry protocols. The planned upgrades will enable members to utilize OUCH in additional circumstances, including for the entry of: (1) Price to Comply and Price to Display Orders with the Reserve Size, Primary and Market Pegging, and Discretion Order Attributes; (2) Non-Displayed Orders with the Primary and Market Pegging, Midpoint Pegging (in scenarios described in amended Rule 4703(d)), and Discretion Order Attributes; and (3) Market Maker Peg Orders.

Similarly, it is consistent with the Act to amend Rule 4702(b)(5), which describes the behavior of Midpoint Peg Post-Only Orders, to reflect the fact that the planned upgrades to OUCH will enable its use for the entry of ''Managed'' Midpoint Peg Post-Only Orders—*i.e.,* those for which the System updates price after entry along with movements to the midpoint of the NBBO. Presently, members may enter Managed Midpoint Peg Post-Only Orders only through RASH, QIX, or FIX. It is also consistent with the Act to refer to such Orders as ''Managed'' while referring to Midpoint Peg Post-Only Orders, whose prices do not change after entry, even if the NBBO midpoint shifts, as ''Fixed'' Midpoint Peg Post-Only Orders. This terminology will avoid confusion that would otherwise arise from the fact that OUCH may be used, going forward, to enter both types of Orders.

Likewise, the Exchange believes that its proposed amendments to the Pegging Order Attribute, at Rule 4703(d), are consistent with the Act. The proposed amendments account for the fact that OUCH will become capable of use for the entry of Peg Managed Orders, including Managed Midpoint Orders, in addition to Fixed Midpoint Orders. The Exchange believes that it will be clearer and more coherent to describe the behavior of Pegged Orders and Orders with Midpoint Pegging in the Rule with regard to whether these Orders are ''Managed'' or ''Fixed,'' rather than with regard to the protocol used to enter them, especially as OUCH will be available for use in entering both Managed and Fixed Pegging Orders going forward. Additionally, proposed amendments to Rule 4703(d) would reorganize the description of the behavior of various types of Pegged Orders so that it flows more logically and is more readily comprehensible. Finally, proposed changes would describe the behavior of Pegged Orders more comprehensively, by adding language that was mistakenly omitted from the Rule.

Meanwhile, the Exchange's proposal to restate the Rule's description of the price collar applicable to Pegged Orders is consistent with the Act because it accounts for the fact that under certain conditions, the System will cancel Pegging Orders before clearing liquidity inside the collar.

The Exchange's proposal is consistent with the Act to amend its Rule governing the Reserve Order Attribute, at Rule 4703(h) to state that when a Reserve Order is entered using OUCH with a displayed size of an odd lot, the System will reject the Order. The Exchange believes that this new proposed behavior will benefit participants insofar as Reserve Orders entered with odd lot displayed sizes are often the product of errors. Rather than expose erroneous displayed sizes, OUCH will cancel the Orders and thus provide participants with an opportunity to correct their errors, or to validate their original choices, by re-entering the Reserve Order.

Additionally, the Exchange's proposal to amend its Rule governing the Trade Now Order Attribute, at Rule 4703(m), is consistent with the Act, because it accounts for the fact that when entered through the upgraded version of OUCH, the Trade Now Order Attribute may be enabled on an order-by-order or a port-level basis.

Finally, the Exchange's proposal to amend its Rule governing the Limit Up-Limit Down Mechanism, at Rules 4120(a)(12)(E)(2)(a) and 4120(a)(12)(E)(2)(b) are consistent with the Act because the proposed amendments align with OUCH's capability going forward, once upgraded, to handle certain Order Types and Order Attributes similar to how RASH and FIX handle them. Additionally, as discussed above, variance will occur in certain Order Types based upon whether the orders are subject to management during their lifetimes.

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. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and Order entry protocols as well as those that amend and clarify the Exchange's Rules regarding its Order Attributes, are pro-competitive because they bolster the efficiency, functionality, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, none of the proposed changes will unduly burden intra-market competition among various Exchange participants. Participants will experience no competitive impact from its proposals, as these proposals will restate and reorganize portions of the Rule to reflect the upgraded capabilities of OUCH, as well as to render the descriptions of OUCH's new capabilities easier to read and understand.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[22] and Rule 19b–4(f)(6) thereunder.[23]

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2022–051 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–2022–051. 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 a.m. and 3 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–2022–051 and should be submitted on or before October 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Deputy Secretary.

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BILLING CODE 8011–01–P

description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95772; File No. SR–GEMX–2022–08]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Port-Related Fees at Options 7, Section 6

September 14, 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 GEMX, LLC (''GEMX'' 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 Options 7, Section 6, as described further below. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/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 Options 7, Section 6 to (i) prorate port fees for the first month of service, (ii) clarify that port fees for cancelled services will continue to be charged for the remainder of month, (iii) clarify that Disaster Recovery Port Fees are not charged for market data ports listed in Options 7, Section 6C(iii), and (iv) clarify that Nasdaq Testing Facility (''NTF'') ports are provided at no cost.

Currently, the Exchange does not prorate port connectivity fees. 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

[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.

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 make clarifying changes to Options 7, Section 6C(iv). First, the Exchange proposes to clarify that Disaster Recovery Port Fees are not charged for the ports listed in Options 7, Section 6C(iii). The market data ports in Options 7, Section 6C(iii) are provided at no cost and the Exchange does not charge a Disaster Recovery Port Fee for these ports. Second, the Exchange proposes 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 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 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 (i) clarify the Exchange's existing practice to provide NTF ports at no cost in Options 7, Section 6C(iv), codifying existing practice where it is not expressly stated in the Rule, and (ii) clarify the Exchange's existing practice not to charge a Disaster Recovery Port Fee for ports listed in Options 7, Section 6C(iii). 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 changes to Options 7, Section 6C(iv) to clarify that the Exchange does not charge a Disaster Recovery Port Fee for ports listed in Options 7, Section 6C(iii) and to clarify 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

[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.

[9] *Supra* note 4.

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 changes to clarify that the Exchange does not charge a Disaster Recovery Port Fee for ports listed in Options 7, Section 6C(iii) and to clarify that NTF ports are provided at no cost are designed to expressly state existing practices without changing their operation and, therefore, the Exchange believes that the proposed changes 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–GEMX–2022–08 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–GEMX–2022–08. 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–GEMX–2022–08 and should be submitted on or before October 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20275 Filed 9–19–22; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95773; File No. SR–NYSE–2022–41]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

September 14, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 31, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to increase the NYSE Crossing Session II monthly per member organization fee cap. The Exchange proposes to implement the fee changes effective September 1, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to increase the NYSE Crossing Session II (''CS II'') monthly per member organization fee cap.

The Exchange proposes to implement the fee changes effective September 1, 2022.

Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

As the Commission itself has recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [5] Indeed, equity trading is currently dispersed across 16 exchanges,[6] 31 alternative trading systems,[7] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 20% of the market.[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

To respond to this competitive environment, the Exchange has established incentives for its member organizations to utilize the Exchange's after-hours crossing session.[10] The proposed fee change is designed to revise the incentives for CS II in order to facilitate after-hours trading following the decommissioning of the Exchange's affiliates' after-hours facility, as described below.

Proposed Rule Change

Currently, the Exchange charges a fee of $0.0004 per share (both sides) for executions in CS II.[11] Fees for executions in CS II are capped at $200,000 per month per member organization.

The Exchange proposes to increase the monthly cap per member organization to $300,000. The $0.0004 per share fee for executions in CS II would remain unchanged and would be subject to the proposed $300,000 per month per member organization cap.

The Exchange proposed increasing the cap to reflect the decommissioning of the off-hours facility offered by the Exchange's affiliate NYSE American LLC (''NYSE American''), effective September 1, 2022.[12] The Exchange recently filed to adopt a new Rule 7.39 governing its off-hours trading facility based on NYSE American Rule 7.39E that would permit Exchange member organizations to enter aggregate-price coupled orders for securities, including UTP securities, listed and traded on NYSE.[13] With the decommissioning of the NYSE American facility, the Exchange anticipates that the NYSE American ETP Holders that utilize the NYSE American off-hours facility, all of whom are also NYSE member organizations, would be in a position to transition to CS II. The NYSE American off-hours facility was subject to a $100,000 cap per month, equivalent to the proposed increase. No member organization qualifies for the Exchange's current fee cap. The Exchange further notes that it does not know how much order flow member organizations choose to route to off-exchange venues in the after-hours market.[14]

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[16] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

As discussed above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17] While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 51808, 84FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[6] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] CS II runs on the Exchange from 4 p.m. to 6:30 p.m. eastern time and handles member organization crosses of baskets of securities of aggregate-priced buy and sell orders. *See* NYSE Rule 7.39.

[11] *See* note 10, *supra.*

[12] *See* Securities Exchange Act Release No. 95499 (August 12, 2022), 87 FR 50894 (August 18, 2022) (SR–NYSEAMER–2022–35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delete Current Rule 7.39E).

[13] *See* Securities Exchange Act Release No. 95498 (August 12, 2022), 87 FR 50906 (August 18, 2022) (SR–NYSE–2022–37) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New Rule 7.39 and Delete Current Rules 900–907).

[14] The Exchange also proposes the non-substantive correction of inserting a missing parenthesis following ''member organization.''

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) & (5).

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [18]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes, including with respect to after-hours crossing sessions. Accordingly, competitive forces constrain exchange transaction fees that relate to after-hours crossing orders. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to maintain a cap for member organizations that are particularly active during CS II in view of the decommissioning of the after-hours session on the Exchange's affiliate NYSE American. The Exchange anticipates that member organization volume that would have participated on NYSE American's after-hours session could migrate to CS II, and the proposal represents a reasonable attempt to encompass an increase in volume by particularly active member organizations. As noted above, the fee subject to the cap would remain unchanged. The Exchange notes that the last time this cap was changed was 2015.[19]

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates its fees among its market participants. The Exchange is not proposing to adjust the fee for executions in CS II, which will remain at the current level for all market participants. Rather, by capping executions for all member organizations in CS II at an adjusted level that reflects the decommissioning of the NYSE American after-hours session and the anticipated migration of volume from NYSE American to the NYSE, the proposal would encourage member organizations to send additional orders to the Exchange's after-hours trading session. The Exchange notes that the proposed cap of $300,000 reflects the combination of the current NYSE cap of $200,000 and the current NYSE American cap of $100,000. As noted, the same member organizations that participate in CS II participated in the NYSE American after-hours session, and the Exchange anticipates that these member organizations will send additional volume to CS II, which can accept aggregate-price coupled orders for securities, including UTP securities, listed and traded on NYSE, following the decommissioning of the NYSE American after-hours facility.[20] As proposed, all similarly situated member organizations will be subject to the same fee structure to participate in CS II and access to the Exchange's market will continue to be offered on fair and non-discriminatory terms.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The Exchange believes that the proposed increase in the monthly fee cap for CS II transactions is not unfairly discriminatory because the proposal would be provided on an equal basis to all member organizations that choose to utilize the after-hours facility, who would all be eligible for the proposed cap on an equal basis. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the higher cap would be applied to all similarly situated member organizations, who would all be eligible for the same cap on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. Further, as noted, the Exchange believes the proposal would provide an incentive for member organizations to send additional orders to CS II following the decommissioning of the NYSE American after-hours facility, which would benefit member organizations that would only need to send after-hours orders to a single facility for all tapes.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[21] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the increase in the fee cap for member organizations that are particularly active in CS II would not burden competition because it would apply to all member organizations on equal, fair and non-discriminatory terms. In addition, as noted, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to the Exchange's after-hours facility following the decommissioning of NYSE American's after-hours facility. The Exchange anticipates that member organizations will send additional volume to CS II, which can accept aggregate-price coupled orders for securities, including UTP securities, listed and traded on NYSE. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [22]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed change would continue to incentivize market participants to direct after-hours order flow to the Exchange. Greater two-sided liquidity in the after-hours trading session benefits all market participants. The current credit and the proposed cap would continue to be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the change on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send

[18] *See* Securities Exchange Act Release No. 75793 (August 32, 2015), 80 FR 53600 (September 04, 2015) (SR–NYSE–2015–37) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Price List to Raise the NYSE Crossing Session II Fee Cap).

[19] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[20] *See* Rule 7.39.

[21] 15 U.S.C. 78f(b)(8).

[22] Regulation NMS, 70 FR at 37498–99.

their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer after-hours trading sessions and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[23] of the Act and subparagraph (f)(2) of Rule 19b–4[24] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–41 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2022–41. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–41, and should be submitted on or before October 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20267 Filed 9–19–22; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(2).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95775; File No. SR–PEARL–2022–35]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Remove Certain Credits

September 14, 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, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'') to remove two monthly credits associated with Trading Permit[3] and non-transaction fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Exchange Rule 100.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange commenced operations in February 2017 [4] and adopted its initial fee schedule that waived fees for Trading Permits to trade on the Exchange.[5] In 2018, as the Exchange's market share increased,[6] the Exchange adopted a nominal fee for Trading Permits along with a tiered-volume based fee credit, known as the Trading Permit Fee Credit, and a Monthly Volume Credit.[7] The Exchange established the Trading Permit Fee Credit to continue to attract order flow and increase membership by lowering the costs for Members.[8]

The Exchange believes that the Trading Permit Fee Credit and Monthly Volume Credit have served their purpose of incentivizing market participants to trade on the Exchange as the Exchange's market share continues to grow and increase since the credits were established.[9] Therefore, the Exchange now proposes to remove the two monthly credits associated with Trading Permit and non-transaction fees from the Fee Schedule.

Monthly Volume Credit

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the credits applicable to the Monthly Volume Credit for Members. The Exchange established the Monthly Volume Credit in 2018 [10] to encourage Members to send increased Priority Customer [11] order flow to the Exchange, which the Exchange applied as a metric to the assessment of non-transaction fees for that Member. During the period when the Monthly Volume Credit was in effect (as further described below), the Exchange applied a different Monthly Volume Credit depending on whether the Member connected to the Exchange via the FIX Interface [12] or MEO Interface.[13] During the period when the Monthly Volume Credit was in effect, the Exchange assessed the Monthly Volume Credit to each Member that had executed Priority Customer volume along with that of its affiliates,[14] not including Excluded Contracts,[15] of at least 0.30% of MIAX Pearl-listed Total Consolidated Volume (''TCV''),[16] as set forth in the following table:

Type of member connection	Monthly volume credit
Member that connects via the FIX Interface	$250
Member that connects via the MEO Interface	1,000

If a Member connected via both the MEO Interface and FIX Interface and qualified for the Monthly Volume Credit based upon its Priority Customer volume, the greater Monthly Volume Credit would apply to such Member. During the periods when the Monthly Volume Credit was in effect, the Monthly Volume Credit was a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the Monthly Volume Credit. The Exchange established the Monthly Volume Credit when it first launched operations to encourage Members to increase their order flow by providing a credit to those that exceeded a volume threshold. The Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share even without the Monthly Volume Credit.[17]

Trading Permit Fee Credit

The Exchange proposes to amend Section (3)(b) of the Fee Schedule to remove the Trading Permit fee credit that is denoted in footnote ''*'' below the Trading Permit fee table. During periods when the Trading Permit fee credit was in effect, the Trading Permit fee credit was applicable to Members that connected via both the MEO and FIX Interfaces. Members who connected via both the MEO and FIX Interfaces were assessed the rates for both types of Trading Permits, but these Members received a $100 monthly credit towards

[4] *See* MIAX PEARL Successfully Launches Trading Operations, dated February 6, 2017, *available at https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_02062017.pdf.*

[5] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR–PEARL–2017–10).

[6] The Exchange experienced a monthly average trading volume of 3.94% for the month of March 2018. *See* Market at a Glance, *available at www.miaxoptions.com* (last visited (August 29, 2022).

[7] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[8] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[9] The Exchange experienced a monthly average trading volume of 4.75% for the month of August 2022 (as of August 29, 2022). *See* Market at a Glance, *supra* note 6.

[10] *See supra* note 7.

[11] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

[12] The term ''FIX Interface'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[13] The term ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[14] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[15] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[16] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

[17] *See, generally,* Fee Schedule, Section (1)(a).

the Trading Permit fees applicable to the MEO Interface. The Exchange proposes to remove the Trading Permit fee credit and delete footnote ''*'' from Section (3)(b) of the Fee Schedule.

The Exchange established the Trading Permit fee credit when it first launched operations to attract order flow and increase membership by lowering the costs for Members that connect via the MEO Interface and FIX Interface. The Exchange believes the Trading Permit fee credit has achieved its purpose and the Exchange believes that it is appropriate to remove this credit in light of the current operating conditions and membership population on the Exchange.

Implementation and Procedural History

The proposed rule change will be immediately effective. The Exchange initially filed this proposal to remove the two monthly credits associated with Trading Permit and non-transaction fees on July 1, 2021, with the proposed fees being immediately effective.[18] In that proposal, the Exchange also proposed to increase its Trading Permit fees. Between August 2021 and August 2022, the Exchange withdrew and refiled the proposed rule change, each time to meaningfully attempt to provide additional justification for the proposed fee changes, provide enhanced details regarding the Exchange's cost methodology or to supplement its competition based arguments.[19] The Commission received three comment letters from one commenter on the various filings.[20] The Exchange withdrew its latest proposal and submits this proposal to only remove the two monthly credits associated with Trading Permit and non-transaction fees. The Exchange does not propose to amend its Trading Permit fees in this filing.

The proposed changes will be effective beginning September 1, 2022.

2. Statutory Basis

The Exchange believes that its proposal to amend the Fee Schedule is consistent with Section 6(b) of the Act[21] in general, and furthers the objectives of Section 6(b)(4) of the Act[22] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

The proposed changes to the Fee Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[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'. . . .''[23]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine 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.''[24]

The Exchange believes its proposal to remove the Monthly Volume Credit is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to achieve the extra credits associated with the Monthly Volume Credit for submitting Priority Customer volume to the Exchange and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Monthly Volume Credit from the Fee Schedule for business and competitive reasons. The Exchange established the Monthly Volume Credit when it first launched operations to encourage Members to increase their order flow by providing a credit to those that exceeded a volume threshold. The Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share even without the Monthly Volume Credit.[25]

The Exchange believes its proposal to remove the Trading Permit fee credit for Members that connect via both the MEO Interface and FIX Interface is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to receive the credit and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Trading Permit fee credit for business and competitive reasons. The Exchange established the Trading Permit fee credit to lower the costs for Members that connect via the MEO Interface and/or FIX Interface as a means to attract order flow and memberships after the Exchange first launched operations. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[26] the Exchange believes that the proposed rule change would not impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the removal of the Monthly Volume Credit and Trading Permit fee credit will not place certain market participants at a relative disadvantage to other market participants because, in order to attract order flow when the Exchange first launched operations, the Exchange established these credits to lower the

[18] *See* Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 (SR–PEARL–2021–32).

[19] *See* Securities Exchange Act Release Nos. 92797 (August 27, 2021), 86 FR 49399 (September 2, 2021) (SR–PEARL–2021–32) (''Suspension Order 1''); 93555 (November 10, 2021), 86 FR 64254 (November 17, 2021) (SR–PEARL–2021–54); 93895 (January 4, 2022), 87 FR 1217 (January 10, 2022) (SR–PEARL–2021–59); 94287 (February 18, 2022), 87 FR 10837 (February 25, 2022) (SR–PEARL–2022–05) (''Suspension Order 2''); 94696 (April 12, 2022), 87 FR 22987 (April 18, 2022) (SR–PEARL–2022–09); 94993 (May 26, 2022), 87 FR 33518 (June 2, 2022) (SR–PEARL–2022–23); SR–PEARL–2022–28; *and* Securities Exchange Act Release No. 95419 (August 4, 2022), 87 FR 48702 (August 10, 2022 (SR–PEARL–2022–30).

[20] *See* Letters from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 28, 2021, March 15, 2022, and May 9, 2022.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4) and (5).

[23] *See NetCoalition,* 615 F.3d at 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)).

[24] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[25] *See* Fee Schedule, Section (1)(a).

[26] 15 U.S.C. 78f(8).

initial fixed cost for Members. The Exchange now believes that it is appropriate to remove these credits in light of the current operating conditions, including the Exchange's overall membership and the current type and amount of volume executed on the Exchange. The Exchange believes that the Exchange's current rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share.

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share. Therefore, no exchange possesses significant pricing power regarding memberships or in the execution of multiply-listed equity and exchange-traded fund (''ETF'') options order flow. Over the course of 2021 and 2022, the Exchange's market share has fluctuated between approximately 3–6% of the U.S. equity options industry.[27] The Exchange is not aware of any evidence that a market share of approximately 3–6% provides the Exchange with anti-competitive pricing power when it comes to competition for memberships. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue memberships in response to fee changes. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract and retain memberships on the Exchange. Lastly, the proposed fee change will not impact intermarket competition because it will apply to all Members equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[28] and Rule 19b–4(f)(2)[29] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2022–35 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–PEARL–2022–35. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2022–35 and should be submitted on or before October 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20269 Filed 9–19–22; 8:45 am]

BILLING CODE 8011–01–P

[27] *See supra* note 6.

[28] 15 U.S.C. 78s(b)(3)(A)(ii).

[29] 17 CFR 240.19b–4(f)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–780, OMB Control No. 3235–0733]

Submission for OMB Review; Comment Request; Extension: Rule 194

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 Commission Rule of Practice 194, (17 CFR 240.194), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule of Practice 194 provides a process for security-based swap dealers and major security-based swap participants (collectively, ''SBS Entity'') to make an application to the Commission for an order permitting an associated person who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the SBS Entity. Rule of Practice 194 specifies the process for obtaining relief from the statutory prohibition in Exchange Act Section 15F(b)(6), including by setting forth the required showing, the form of application and the items to be addressed with respect to associated persons that are natural persons. An SBS Entity is not required to file an

application under Rule of Practice 194 with respect to certain associated persons that are subject to a statutory disqualification, as provided for in paragraph (h) of Rule of Practice 194. To meet those requirements, however, the SBS Entity is required to file a notice with the Commission.

It is estimated that approximately 50 entities may fit within the definition of security-based swap dealer and up to five entities may fit within the definition of major security-based swap participant—55 SBS Entities in total. The Commission anticipates that, on an average annual basis, only a small fraction of the natural persons at an SBS Entity would be subject to a statutory disqualification. Accordingly, based on available data, the Commission estimates that, on an average annual basis, the Commission would receive up to five applications in accordance with Rule of Practice 194 with respect to associated persons that are natural persons, and five notices pursuant to proposed Rule of Practice 194(h) with respect to associated persons that are natural persons. The Commission estimates that the average time necessary for an SBS Entity to research the questions, and complete and file an application under Rule of Practice 194 with respect to associated persons that are natural persons is approximately 30 hours, for a total of approximately 150 burden hours per year for all SBS Entities. The Commission estimates that approximately five SBS Entities will provide notices pursuant to Rule of Practice 194(h) for one natural person each on an average annual basis taking approximately 6 hours per notice, for a total of approximately 30 burden hours per year for all SBS Entities providing the notices for an estimated five natural persons. As such, the combined estimated annual hour burden for all SBS Entities to complete applications and notices pursuant to Rule of Practice 194 is approximately 180 hours per year (150 + 30).

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 20, 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 14, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20254 Filed 9–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95774; File No. SR–PEARL–2022–30]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Remove Certain Credits and Increase Trading Permit Fees

September 14, 2022.

On July 26, 2022, MIAX PEARL, LLC (''MIAX Pearl'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to remove certain credits and increase trading permit fees. The proposed rule change was published for comment in the **Federal Register** on August 10, 2022.[3]

On August 31, 2022, MIAX Pearl withdrew the proposed rule change (SR–PEARL–2022–30).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20274 Filed 9–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95771; File No. SR–ISE–2022–19]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Port-Related Fees at Options 7, Section 7

September 14, 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 ISE, LLC (''ISE'' 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 Options 7, Section 7, as described further below. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Options 7, Section 7 to (i) prorate port fees for the first month of service, (ii) clarify that port fees for cancelled services will continue to be charged for the remainder of month, (iii) clarify that Disaster Recovery Port Fees are not charged for market data ports listed in Options 7, Section 7C(iii), and (iv) clarify that Nasdaq Testing Facility (''NTF'') ports are provided at no cost.

Currently, the Exchange does not prorate port connectivity fees. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95419 (August 4, 2022), 87 FR 48702.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 make clarifying changes to Options 7, Section 7C(iv). First, the Exchange proposes to clarify that Disaster Recovery Port Fees are not charged for the ports listed in Options 7, Section 7C(iii). The market data ports in Options 7, Section 7C(iii) are provided at no cost and the Exchange does not charge a Disaster Recovery Port Fee for these ports. Second, the Exchange proposes 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 Rules to provide increased clarity to market participants.

[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.*

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 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 (i) clarify the Exchange's existing practice to provide NTF ports at no cost in Options 7, Section 7C(iv), codifying existing practice where it is not expressly stated in the Rule, and (ii) clarify the Exchange's existing practice not to charge a Disaster Recovery Port Fee for ports listed in Options 7, Section 7C(iii). 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 changes to Options 7, Section 7C(iv) to clarify that the Exchange does not charge a Disaster Recovery Port Fee for ports listed in Options 7, Section 7C(iii) and to clarify that NTF ports are provided at no cost, merely codify and clarify existing practices of the Exchange.

[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.

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 changes to clarify that the Exchange does not charge a Disaster Recovery Port Fee for ports listed in Options 7, Section 7C(iii) and to clarify that NTF ports are provided at no cost are designed to expressly state existing practices without changing their operation and, therefore, the Exchange believes that the proposed changes 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.

[9] *Supra* note 4.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

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–ISE–2022–19 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–ISE–2022–19. 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–ISE–2022–19 and should be submitted on or before October 11, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20273 Filed 9–19–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17621; Mississippi Disaster Number MS–00148 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Mississippi dated 09/14/2022.

Incident: Jackson Water Crisis.

Incident Period: 08/30/2022 and continuing.

DATES: Issued on 09/14/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 06/14/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Hinds

Contiguous Counties:

Mississippi: Claiborne, Copiah, Madison, Rankin, Simpson, Warren, Yazoo.

[12] 17 CFR 200.30–3(a)(12).

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.040
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for economic injury is 176210.

The States which received an EIDL Declaration #17621 are Mississippi.

(Catalog of Federal Domestic Assistance Number 59008.)

Isabella Guzman,

Administrator.

[FR Doc. 2022–20308 Filed 9–19–22; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2022–0047]

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and one extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA

Comments: https://www.reginfo.gov/public/do/PRAMain. Submit your comments online referencing Docket ID Number [SSA–2022–0047].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, *Email address: OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2022–0047].

SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than October 20, 2022. Individuals can obtain copies of these OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov*.

1. Application for Lump Sum Death Payment—20 CFR 404.390–404.392—0960–0013. SSA uses Form SSA–8 to collect information needed to authorize payment of the lump sum death payment (LSDP) to a widow, widower, or children as defined in section 202(i) of the Social Security Act (Act). Respondents complete the application for this one-time payment through use of the paper form, or personal interview with an SSA employee either via telephone, or in a field office. For all personal interviews (either telephone or in-person), we collect the information via our electronic Modernized Claim System (MCS) screens. When a respondent completes the paper Form SSA–8, they mail it back to SSA. Respondents are applicants for the LSDP.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–8 (MCS Version)	733,254	1	9	109,988	* $28.01	** 21	*** $10,269,222
SSA–8 (Paper Version)	5,747	1	10	958	* 28.01		*** 26,834
Totals	739,001			110,946			*** 10,296,056

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure by averaging the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Representative Payee Evaluation Report—20 CFR 404.2065 & 416.665—0960–0069. Sections 205(j) and 1631(a)(2) of the Act state that SSA may authorize payment of Social Security benefits or Supplemental Security Income (SSI) payments to a representative payee on behalf of individuals unable to manage, or direct the management of, those funds themselves. SSA requires certain appointed representative payees to report once each year on how they used or conserved those funds. Some representative payees, such as natural or adoptive parents of minor children or spouses of beneficiaries, are generally not required to complete this report. When a representative payee fails to adequately report to SSA, SSA conducts a face-to-face interview with the payee and completes Form SSA–624–F5, Representative Payee Evaluation Report, to determine the continued suitability of the representative payee to serve as a payee. In addition to interviewing the representative payee, we also interview the recipient, and custodian (if other than the payee), to confirm the information the payee provides, and to ensure the payee is meeting the recipient's current needs. However, we do not require the interviews to be face-to-face with non-representative payees. The respondents are individuals or organizations serving as representative payees for individuals receiving Title II benefits or Title XVI payments, and who fail to comply with SSA's statutory

annual reporting requirement, and the recipients for whom they act as payee.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes)	Total annual opportunity cost (dollars) ****
SSA–624–F5 (Individuals)	6,537	1	30	3,269	* $28.01	*** 21	**** $155,652
SSA–624–F5 (State and Local Government)	38	1	30	19	* 21.58	*** 24	**** 734
SSA–624–F5 (Businesses)	263	1	30	132	* 14.80	*** 24	**** 3,508
Totals	6,838			3,420			**** 159,894

* We based these figures on the average U.S. worker's hourly wages (*https://www.bls.gov/oes/current/oes_nat.htm*), State and Local Government Social and Human Services Assistants (*https://www.bls.gov/oes/current/oes211093.htm*), and Personal Care and Service Workers (*https://www.bls.gov/oes/current/oes399099.htm*), as reported by Bureau of Labor Statistics data.

** We based this figure by averaging the FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** We based these figures on the average FY 2022 wait times for field offices, based on SSA's current management information data.

**** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Application for Benefits Under the Italy-U.S. International Social Security Agreement—20 CFR 404.1925—0960–0445. As per the November 1, 1978 totalization agreement between the United States (U.S.) and Italian Social Security agencies, residents of Italy filing an application for U.S. Social Security benefits directly with one of the Italian Social Security agencies must complete Form SSA–2528–IT. SSA uses Form SSA–2528–IT to establish age, relationship, citizenship, marriage, death, military service, or to evaluate a family bible or other family record when determining eligibility for U.S. benefits. The Italian Social Security agencies assist applicants in completing Form SSA–2528–IT, and then forward the application to SSA for processing. The respondents are individuals living in Italy who wish to file for U.S. Social Security benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–2528–IT	462	1	20	154	$28.01 *	$4,314**

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Request for Social Security Statement—20 CFR 404.810—0960–0466. Section 205(c)(2)(A) of the Act requires the Commissioner of SSA to establish and maintain records of wages paid to, and amounts of self-employment income derived by, each individual, as well as the periods in which such wages were paid, and such income derived. An individual may complete and mail Form SSA–7004 to SSA to obtain a Statement of Earnings or Quarters of Coverage, or they may access their statement online using *my* Social Security. SSA uses the information from Form SSA–7004 to identify a respondent's Social Security earnings records; extract posted earnings information; calculate potential benefit estimates; produce the resulting Social Security statements; and mail them to the requesters. The respondents are Social Security number holders requesting information about their Social Security earnings records and estimates of their potential benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–7004	32,936	1	5	2,745	$28.01 *	$76,887 **

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. Agency/Employer Government Pension Offset Questionnaire—20 CFR 404.408(a)—0960–0470. When an individual is concurrently receiving Social Security spousal, or surviving spousal, benefits and a government pension, the individual may have the amount of Social Security benefits reduced by the government pension amount. This is the Government Pension Offset (GPO). SSA uses Form SSA–L4163 to collect accurate pension information from the Federal or State government agency paying the pension for purposes of applying the pension offset provision. SSA uses this form only when (1) the claimant does not have the information; and (2) the pension-paying agency has not cooperated with the claimant. Respondents are State government agencies, which have information SSA needs to determine if the GPO applies, and the amount of offset.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–L4163	2,911	1	3	146	$21.13 *	$3,085 **

* We based this figure on the median hourly salary of State Agencies Information and Record Clerks hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes434199.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. Beneficiary Recontact Report—20 CFR 404.703 & 404.705—0960–0502. SSA investigates recipients of disability payments to determine their continuing eligibility for payments. Research indicates recipients may fail to report circumstances that affect their eligibility. Two such cases are: (1) when parents receiving disability benefits for their child marry; and (2) the removal of an entitled child from parents' care. SSA uses Form SSA–1588–SM to ask mothers or fathers about both their marital status and children under their care, to detect overpayments and avoid continuing payment to those are no longer entitled. Respondents are recipients of mothers' or fathers' Social Security benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–1588–SM	72,565	1	5	6,047	* $28.01	** $169,376

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

7. Complaint Form for Allegations of Discrimination in Programs or Activities Conducted by the Social Security Administration—0960–0585. SSA uses Form SSA–437 to investigate and formally resolve complaints of discrimination based on disability, race, color, national origin (including limited English language proficiency), sex (including sexual orientation and gender identity), age, religion, or retaliation for having participated in a proceeding under this administrative complaint process in connection with an SSA program or activity. Individuals who believe SSA discriminated against them on any of the above bases may file a written complaint of discrimination. SSA uses the information to: (1) identify the complaint; (2) identify the alleged discriminatory act; (3) establish the date of such alleged action; (4) establish the identity of any individual(s) with information about the alleged discrimination; and (5) establish other relevant information that would assist in the investigation and resolution of the complaint. Respondents can submit the form or written complaint via mail or email. Respondents are individuals who believe SSA, or SSA employees, contractors, or agents, discriminated against them in connection with programs or activities conducted by SSA.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–437	500	1	60	500	* $19.86	** $9,930

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

8. Private Printing and Modification of Prescribed Application and Other Forms—20 CFR 422.527—0960–0663. 20 CFR 422.527 of the Code of Federal Regulations requires a person, institution, or organization (third-party entities) to obtain approval from SSA prior to reproducing, duplicating, or privately printing any application or other form the agency owns. To obtain SSA's approval, entities must make their requests in writing using their company letterhead, providing the required information set forth in the regulation. SSA uses the information to: (1) ensure requests comply with the law and regulations, and (2) process requests from third-party entities who want to reproduce, duplicate, or privately print any SSA application or other SSA form. SSA employees review the requests and provide approval via email or mail to the third-party entities. The respondents are third-party entities who submit a request to SSA to reproduce, duplicate, or privately print an SSA-owned form.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
20 CFR 422.527	10	15	10	25	* $16.17	** $404

* We based this figure on the median hourly salary of third-party Personal Care and Service occupations hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes390000.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

9. Technical Updates to Applicability of the Supplemental Security Income (SSI) Reduced Benefit Rate for Individuals Residing in Medical Treatment Facilities—20 CFR 416.708(k)—0960–0758. Section 1611(e)(1)(A) of the Act specifies residents of public institutions are ineligible for SSI. However, Sections 1611(e)(1)(B) and (G) of the Act list certain exceptions to this provision, making it necessary for SSA to collect information about SSI recipients who enter or leave a medical treatment facility or other public or private institution. SSA's regulation 20 CFR 416.708(k) establishes the reporting guidelines that implement this legislative requirement. SSA uses this information collection to determine SSI eligibility or the benefit amount for SSI recipients who enter or leave institutions. SSA personnel collect this information directly from SSI recipients, or from someone reporting on their behalf. An SSI recipient who enters an institution may be unable to report; therefore, a family member sometimes makes this report on behalf of the recipient. When contacting SSA, the recipient, or family member of the recipient, provides the name of the institution, the date of admission, and the expected date of discharge. The respondents are SSI recipients who enter or leave an institution, or individuals reporting on their behalf.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Technical Updates Statement/Institutional Residents Screens	225,566	1	7	26,316	$19.86 *	19 **	$1,941,216 ***

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2022 wait times for teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

10. Statement for Determining Continuing Entitlement for Special Veterans Benefits (SVB)—0960–0782. Title VIII of the Act provides for the payment of Special Veterans benefits (SVB) to certain World War II veterans who reside outside of the U.S. SSA regularly reviews individuals' claims for SVB to determine their continued eligibility and correct payment amounts. Individuals living outside the U.S. receiving SVB must report to SSA any changes that may affect their benefits. These include changes such as: (1) a change in mailing address or residence;

(2) an increase or decrease in a pension, annuity, or other recurring benefit; (3) a return or visit to the U.S. for a calendar month or longer; or (4) an inability to manage benefits. SSA uses Form SSA–2010–F6, to collect this information. All beneficiaries have face-to-face interviews with the Federal Benefits Unit (FBU) every year who assist them in completing this form. Respondents are SVB beneficiaries living outside the U.S.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–2010–F6	85	1	20	28	$28.01 *	$784 **

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

11. Waiver of Supplemental Security Income Payment Continuation—20 CFR 416.1400–416.1422—0960–0783. SSI recipients who wish to discontinue their SSI payments while awaiting a determination on their appeal complete Form SSA–263, Waiver of Supplemental Security Income Payment Continuation, to inform SSA of this decision. SSA collects the information to determine whether the SSI recipient meets the provisions of the Social Security Act regarding waiver of payment continuation and as proof respondents no longer want their payments to continue. Respondents are recipients of SSI payments who wish to discontinue receipt of payment while awaiting a determination on their appeal.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA–263	3, 676	1	5	306	$11.70 *	21 **	$18,638 ***

* We based this figure on the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2022factsheet.pdf*).

** We based this figure by averaging the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: September 14, 2022.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2022–20244 Filed 9–19–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Guidance on Sound Incentive Compensation Policies

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on the renewal of an information collection as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and a respondent is 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 renewal of an information collection titled, ''Guidance on Sound Incentive Compensation Policies.''

DATES: Written comments should be submitted by November 21, 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, Office of the Comptroller of the Currency, Attention: 1557–0245, 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 ''1557–0245'' 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.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' drop down menu, and click on ''Information Collection Review.'' 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 ''1557–0245'' or ''Guidance on Sound Incentive Compensation Policies.'' 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, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, 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 *et seq.*), Federal agencies must obtain approval from 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 and/or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of the collection of information set forth in this document.

Title: Guidance on Sound Incentive Compensation Policies.

OMB Number: 1557–0245.

Description: Under the guidance, each large national bank and Federal savings association should: (i) have policies and procedures that identify and describe the role(s) of the personnel and units authorized to be involved in developing and administering incentive compensation arrangements, identify the source of significant risk-related factors, establish appropriate controls governing these factors to help ensure their reliability, and identify the individual(s) and unit(s) whose approval is necessary for the establishment or modification of incentive compensation arrangements; (ii) create and maintain sufficient documentation to permit an audit of the organization's processes for developing and administering incentive compensation arrangements; (iii) have any material exceptions or adjustments to the incentive compensation arrangements established for senior executives approved and documented by its board of directors; and (iv) have its board of directors receive and review, on an annual or more frequent basis, an assessment by management of the effectiveness of the design and operation of the organization's incentive compensation system in providing risk-taking incentives that are consistent with the organization's safety and soundness. The principles discussed in the guidance will vary with the size and complexity of a banking organization, and monitoring methods for small banks are not directly addressed by these four policies and procedures in the guidance.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents for Yearly Maintenance: 1,093 (38 large banks; 1,055 small banks).

Estimated Number of Respondents for Setup: 1 large bank; 1 small bank.

Estimated Burden per Respondent: 520 hours for large banks (480 hours for set up; 40 hours for yearly maintenance); 120 hours for small banks (60 hours for set up; 30 hours for yearly maintenance).

Total Annual Burden: 33,740 hours.

Frequency of Response: Annually.

All comments will be considered in formulating the subsequent submission and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup 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. 2022–20302 Filed 9–19–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Ensuring Responsible Development of Digital Assets; Request for Comment

AGENCY: Departmental Offices, Treasury.

ACTION: Request for comment.

SUMMARY: This notice invites interested members of the public to provide input pursuant to The Executive Order of March 9, 2022, ''Ensuring Responsible Development of Digital Assets.'' In particular, the Department invites comments on the digital-asset-related illicit finance and national security risks as well as the publicly released action plan to mitigate the risks.

DATES: Comments must be received on or before November 3, 2022.

ADDRESSES: You may submit comments via the Federal eRulemaking Portal: *www.regulations.gov.* Follow the instructions on the website for submitting comments.

In general, all comments will be available for inspection at *www.regulations.gov.* Comments, including attachments and other supporting materials, are part of the public record. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Jon Fishman, Assistant Director, Office of Strategic Policy, Terrorist Financing and Financial Crimes, 202–622–5856, *jonathan.fishman@treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 14067 of March 9, 2022, ''Ensuring Responsible Development of Digital Assets'' (hereafter ''Executive Order'') (87 FR 14143; March 14, 2022), outlines principal U.S. policy objectives with respect to digital assets.[1] These principal policy objectives are:

1. Protection of consumers, investors, and businesses in the United States.

2. Protection of United States and global financial stability and the mitigation of systemic risk.

3. Mitigation of illicit finance and national security risks posed by misuse of digital assets.

4. Reinforcement of U.S. leadership in the global financial system and in technological and economic competitiveness, including through the responsible development of payment innovations and digital assets.

[1] *https://www.federalregister.gov/documents/2022/03/14/2022-05471/ensuring-responsible-development-of-digital-assets.*

5. Promotion of access to safe and affordable financial services.

6. Support of technological advances that promote responsible development and use of digital assets.

Section 7(a) provides that digital assets have facilitated sophisticated cybercrime-related financial networks and activity, including through ransomware activity. The growing use of digital assets in financial activity heightens risks of crimes such as money laundering, terrorist and proliferation financing, fraud and theft schemes, and corruption. These illicit activities highlight the need for ongoing scrutiny of the use of digital assets, the extent to which technological innovation may impact such activities, and exploration of opportunities to mitigate these risks through regulation, supervision, public-private engagement, oversight, and law enforcement.

Section 7(c) directs the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of National Intelligence, and the heads of other relevant agencies shall develop a coordinated action plan based on the Strategy's conclusions for mitigating the digital-asset-related illicit finance and national security risks addressed in the updated strategy. The action plan shall address the role of law enforcement and measures to increase financial services providers' compliance with anti-money laundering and countering the financing of terrorism (AML/CFT) obligations related to digital asset activities.

II. Objective

In September 2022, the Treasury Department submitted this action plan to the White House and publicly released the report. The digital asset ecosystem is rapidly evolving, and the Department of the Treasury is committed to continuing to monitor emerging risks in partnership with other U.S. government agencies, foreign governments, and the private sector, which will inform other potential actions to mitigate these risks. Through this request for comment (RFC), Treasury is requesting input from the public to understand the public's view on the emerging risks as well as what actions the U.S. government and Treasury Department should take to mitigate the risks. Through this RFC, Treasury also seeks to further understand how public-private collaboration may improve efforts to address the risks.

III. Request for Comments

Treasury welcomes input on any matter that commenters believe is relevant to Treasury's ongoing efforts to assess the illicit finance risks associated with digital assets as well as the ongoing efforts to mitigate the risks. Commenters are encouraged to address any or all of the following questions, or to provide any other comments relevant to the development of the report. When responding to one or more of the questions below, please note in your response the number(s) of the questions to which you are responding. In all cases, to the extent possible, please cite any public data related to or that support your responses. If data are available, but non-public, describe such data to the extent permissible.

A. Illicit Finance Risks

1. Has Treasury comprehensively defined the illicit financing risks associated with digital assets? Please list any key illicit financing risks that we have not raised in this Action Plan or the National Risk Assessment.

2. How might future technological innovations in digital assets present new illicit finance risks or mitigate illicit finance risks?

3. What are the illicit finance risks related to non-fungible tokens?

4. What are the illicit finance risks related to decentralized finance (DeFi) and peer-to-peer payment technologies?

B. AML/CFT Regulation and Supervision

1. What additional steps should the United States government take to more effectively deter, detect, and disrupt the misuse of digital assets and digital asset service providers by criminals?

2. Are there specific areas related to AML/CFT and sanctions obligations with respect to digital assets that require additional clarity?

3. What existing regulatory obligations in your view are not or no longer fit for purpose as it relates to digital assets? If you believe some are not fit for purpose, what alternative obligations should be imposed to effectively address illicit finance risks related to digital assets and vulnerabilities?

4. What regulatory changes would help better mitigate illicit financing risks associated with digital assets?

5. How can the U.S. government improve state-state and state-federal coordination for AML/CFT regulation and supervision for digital assets?

6. What additional steps should the U.S. government consider to combat ransomware?

7. What additional steps should the U.S. government consider to address the illicit finance risks related to mixers and other anonymity-enhancing technologies?

8. What steps should the U.S. government take to effectively mitigate the illicit finance risks related to DeFi?

C. Global Implementation of AML/CFT Standards

1. How can Treasury most effectively support consistent implementation of global AML/CFT standards across jurisdictions for digital assets, including virtual assets and virtual asset service providers (VASP)?

2. Are there specific countries or jurisdictions where the U.S. government should focus its efforts, through bilateral outreach and technical assistance, to strengthen foreign AML/CFT regimes related to virtual asset service providers?

D. Private Sector Engagement and AML/CFT Solutions

1. How can Treasury maximize public-private and private-private information sharing on illicit finance and digital assets?

2. How can the U.S. Department of the Treasury, in concert with other government agencies, improve guidance and public-private communication on AML/CFT and sanctions obligations with regard to digital assets?

3. How can Treasury encourage the use of collaborative analytics to address illicit financing risks associated with digital assets while also respecting due process and privacy?

4. What technological solutions designed to improve AML/CFT and sanctions compliance are being used by the private sector for digital assets? Can these technologies be employed to better identify and disrupt illicit finance associated with digital assets and if so, how?

5. Are there additional steps the U.S. Government can take to promote the development and implementation of innovative technologies designed to improve AML/CFT compliance with respect to digital assets?

6. How can law enforcement and supervisory efforts related to countering illicit finance in digital assets better integrate private sector resources?

7. How can Treasury maximize the development and use of emerging technologies like blockchain analytics, travel rule solutions, or blockchain native AML/CFT solutions, to strengthen AML/CFT compliance related to digital assets?

8. How can financial institutions offering digital assets better integrate

controls focused on fiat currency and digital asset transaction monitoring and customer identification information to more effectively identify, mitigate, and report illicit finance risks?

E. Central Bank Digital Currencies (CBDC)

1. How can Treasury most effectively support the incorporation of AML/CFT controls into a potential U.S. CBDC design?

IV. Notes

The term ''digital asset'' refers to all CBDCs, regardless of the technology used, and to other representations of value, financial assets and instruments, or claims that are used to make payments or investments, or to transmit or exchange funds or the equivalent thereof, that are issued or represented in digital form through the use of distributed ledger technology. Some examples of digital assets include cryptocurrencies, stablecoins, and CBDCs. Regardless of the label used, a digital asset may be, among other things, a security, a commodity, a derivative, or other financial product. Digital assets may be exchanged across digital asset trading platforms, including centralized and decentralized finance platforms, or through peer-to-peer technologies.[2]

The term ''virtual asset'' refers to a subset of digital assets that does not include CBDCs or representations of other financial assets, such as digitized representations of existing securities or deposits.

The term ''virtual asset service provider'' as defined by FATF, means any natural or legal person who is not covered elsewhere under the FATF Recommendations, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

i. exchange between virtual assets and fiat currencies;

ii. exchange between one or more forms of virtual assets;

iii. transfer of virtual assets;

iv. safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and

v. participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

Scott Rembrandt,

Deputy Assistant Secretary, Office of Terrorist Financing and Financial Crimes, U.S. Department of the Treasury.

[FR Doc. 2022–20279 Filed 9–19–22; 8:45 am]

BILLING CODE 4810–AK–P

[2] *https://www.federalregister.gov/documents/2022/03/14/2022-05471/ensuring-responsible-development-of-digital-assets.*

DEPARTMENT OF THE TREASURY

Request for Information—State Small Business Credit Initiative (SSBCI) Technical Assistance Funds

AGENCY: Departmental Offices, Treasury.

ACTION: Request for information.

SUMMARY: The State Small Business Credit Initiative (SSBCI) provides funds to States, Territories, the District of Columbia, and Tribal governments to enable these jurisdictions to support programs for small businesses. The Department of the Treasury (Treasury) is authorized to provide up to $500 million in support for small business technical assistance (TA) programs. Treasury invites the public to comment on how Treasury can use its authorities to fund TA to very small businesses (VSBs) and business enterprises owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses) [1] applying to SSBCI credit and investment programs and other jurisdiction and Federal programs that support small businesses. Responses may be used to inform Treasury's future actions.

DATES: Responses must be received by October 20, 2022 to be assured of consideration.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* All comments should be captioned with ''SSBCI Request for Information Comments.'' Please include your name, organization (if applicable), and email addresses. Where appropriate, a comment should include a short executive summary. In general, comments received will be posted on *http://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Jeffrey Stout, at (866) 220–9050 or *ssbci_information@treasury.gov.* Further information may be obtained from the SSBCI website, *https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci.*

SUPPLEMENTARY INFORMATION:

Purpose: This request for information (RFI) offers the public the opportunity to provide information on effective approaches for the delivery of TA through SSBCI. Specifically, Treasury requests information on how it can most effectively use its authority under 12 U.S.C. 5708(e)(1) and (3) to provide funds to jurisdictions and to contract with legal, accounting, and financial advisory firms to provide TA to qualifying businesses applying to SSBCI credit and investment programs run by jurisdictions and other jurisdiction and Federal programs that support small businesses.

Background: The American Rescue Plan Act of 2021 (ARPA) reauthorized and amended the Small Business Jobs Act of 2010 (SSBCI statute) to provide $10 billion to fund SSBCI as a response to the economic effects of the COVID–19 pandemic.[2] Specifically, ARPA provided over $9 billion to fund small business programs of eligible jurisdictions (*i.e.,* states, the District of Columbia, territories, and Tribal governments) and up to $500 million for TA to qualifying businesses. Under the SSBCI statute (12 U.S.C. 5708(e)), Treasury may deploy the $500 million for TA in three ways: [3]

- *TA funding to eligible jurisdictions:* Treasury may provide funds to eligible jurisdictions to carry out a TA plan under which a jurisdiction will provide legal, accounting, and financial advisory services, either directly or contracted with legal, accounting, and financial advisory firms, with priority given to SEDI-owned businesses, to VSBs and SEDI-owned businesses applying for SSBCI capital programs and other jurisdiction or Federal programs that support small businesses.
- *TA funding to the Minority Business Development Agency (MBDA):* Treasury may transfer amounts to the MBDA so that the MBDA may use such amounts in a matter it determines appropriate, including through contracting with third parties, to provide TA to SEDI-owned businesses applying to SSBCI capital programs and

[1] SEDI-owned businesses are defined and described in SSBCI guidance. *See* State Small Business Credit Initiative Technical Assistance Grant Program Guidelines, *https://home.treasury.gov/system/files/136/SSBCI-Technical-Assistance-Guidelines-April-2022.pdf;* State Small Business Credit Initiative Capital Program Policy Guidelines, *https://home.treasury.gov/system/files/256/SSBCI-Capital-Program-Policy-Guidelines-November-2021.pdf.*

[2] ARPA, Public Law 117–2, sec. 3301, codified at 12 U.S.C. 5701 *et seq.* SSBCI was originally established in title III of the Small Business Jobs Act of 2010. Information about SSBCI is available at: *https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci.*

[3] 12 U.S.C. 5708(e).

other jurisdiction or Federal programs that support small businesses.

• *TA funding to TA providers:* Treasury may contract with legal, accounting, and financial advisory firms (with priority given to SEDI-owned businesses), to provide TA to SEDI-owned businesses applying to SSBCI capital programs and other jurisdiction or Federal programs that support small businesses.

Treasury previously allocated $200 of the $500 million in TA funding to an SSBCI TA Grant Program to support jurisdictions' TA plans and $100 million to the MBDA.[4] This RFI relates specifically to how Treasury might allocate additional funding to jurisdictions or contract with TA providers.

How to Comment: This RFI is for information and planning purposes only and should not be construed as a solicitation or as an obligation on the part of Treasury. We ask respondents to address the Key Questions listed below. You do not need to address every question and should focus on those where you have views or relevant expertise. Please clearly indicate which questions you are addressing in your response. You may provide detailed suggestions and examples. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

Guidance for Submitting Documents: We ask that each respondent include their name, organization (if applicable), and email addresses.

Key Questions:

1. *Gaps in TA to small businesses.* What gaps exist in the types and availability of TA to small businesses that seek small business financing? In particular, Treasury is considering the following gaps:

• across the business life cycle—seed, early stage, intermediate, and established;

• across the capital continuum between debt and venture capital/equity financing;

• across different industries (for example, do small manufacturing businesses face different hurdles than small businesses in other industries?); and

• across different geographies and regions.

2. *Most effective method to deploy TA funding.* How can the deployment of TA funding under 12 U.S.C. 5708(e)(1) and (3) most effectively impact VSBs and SEDI-owned businesses in communities throughout the United States?

3. *Considerations for a competitive TA grant program.* If Treasury conducted a program to provide competitive grants to jurisdictions, in addition to the existing pre-allocated SSBCI TA Grant Program, what criteria should Treasury consider in selecting recipients and sizing awards?

4. *Considerations for contracting.* If Treasury contracted with legal, accounting, and financial advisory firms to provide TA to qualifying SEDI-owned businesses under 12 U.S.C. 5708(e)(3), what types of entities are best positioned to provide TA to address gaps in TA availability? Please provide specific examples.

5. *Leveraging TA funding.* How could the Federal TA funding crowd in and leverage private, nonprofit, and philanthropic funds for the same purposes? Are there existing private sector, nonprofit, and philanthropic funded TA services for VSBs and SEDI-owned businesses and how could Treasury's efforts leverage that funding?

6. *Other comments.* Do you have any other comments on any aspect of the deployment of the TA funding under 12 U.S.C. 5708(e)(1) and (3)?

Jeffrey Stout,

Director, SSBCI.

[FR Doc. 2022–20326 Filed 9–19–22; 8:45 am]

BILLING CODE 4810–AK–P

[4] *See Treasury Announces Plans to Deploy $300 Million in Technical Assistance to Underserved Entrepreneurs and Very Small Businesses through the State Small Business Credit Initiative* (April 28, 2022), *https://home.treasury.gov/system/files/136/SSBCITA-Release-4-28-22.pdf.*

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Federal Register

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Tuesday, September 20, 2022

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CFR PARTS AFFECTED DURING SEPTEMBER

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LIST OF PUBLIC LAWS

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H.R. 5754/P.L. 117–175
Patient Advocate Tracker Act (Sept. 16, 2022; 136 Stat. 2107)

S. 3103/P.L. 117–176
Eliminating Limits to Justice for Child Sex Abuse Victims Act of 2022 (Sept. 16, 2022; 136 Stat. 2108)

S. 4785/P.L. 117–177
To extend by 19 days the authorization for the special assessment for the Domestic Trafficking Victims' Fund. (Sept. 16, 2022; 136 Stat. 2109)

Last List August 29, 2022

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