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Presidential Documents

Title 3—

The President

Proclamation 10480 of October 17, 2022

50th Anniversary of the Clean Water Act

By the President of the United States of America

A Proclamation

Fifty years ago, the Congress passed the Clean Water Act of 1972, revolutionizing America's responsibility to protect and restore the vital waterways that sustain our communities, our economy, and our ecosystems.

Before this landmark legislation, America's waters were in crisis, often flooded and even on fire with toxic pollution and cancer-causing contaminants. Industrial waste and sewage threatened our drinking water, and wetlands disappeared at an alarming rate. The Clean Water Act met these challenges head-on, setting and enforcing national water quality standards, restricting pollution, and investing in wastewater treatment and better wetlands management.

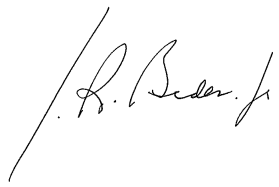
Five decades later, our Nation's waters are dramatically cleaner. Once dead rivers and lakes are now flourishing with wildlife. People have returned to boat, fish, and swim. Sacred waters that Tribal Nations have relied on for generations are clean again. This is a testament to the tireless partnerships that the Environmental Protection Agency has forged with State, local, and Tribal governments. It is a powerful tribute not only to the activists who first sounded the alarm, built a movement, and fought to pass this powerful law but also to the Americans everywhere who have since done so much to help enforce it, safeguarding our waterways and taking on polluters in court.

Today, we still face serious threats to clean water—from climate change-driven droughts and rising sea levels to long-standing environmental injustices that have left too many communities without safe drinking water. That is why my Administration restored Federal protections to hundreds of thousands of streams, wetlands, and waterways and is working across the Federal Government to combat pollution from deadly per- and polyfluoroalkyl substances. Our historic Bipartisan Infrastructure Law makes our Nation's biggest-ever investment in water, clearing legacy pollution, helping replace lead pipes across the country, and building more resilient infrastructure so that every child in America can turn on the faucet at home or school for safe drinking water. The Inflation Reduction Act takes America's most aggressive climate action ever, helping to protect the world's waterways long into the future.

As we celebrate the anniversary of this law, my Administration is more committed than ever to continuing its legacy, providing access to safe water, and restoring a healthier planet. The Clean Water Act is a powerful reminder of Americans' ability to make change for the better when we work together.

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 October 18, 2022, as the 50th Anniversary of the Clean Water Act. I call upon all Americans to observe this milestone, recognize the significant contribution the Clean Water Act has made to restoring our Nation's waters, consider the crucial role clean water plays in each of our lives, and recommit to protecting our shared water resources.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of October, 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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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. OCC–2022–0018]

RIN 1557–AF17

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1785]

RIN 7100–AG43

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Appraisals for Higher-Priced Mortgage Loans Exemption Threshold

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Bureau of Consumer Financial Protection (Bureau).

ACTION: Final rules, official interpretations, and commentary.

SUMMARY: The OCC, the Board, and the Bureau are finalizing amendments to the official interpretations for their regulations that implement section 129H of the Truth in Lending Act (TILA). Section 129H of TILA establishes special appraisal requirements for ''higher-risk mortgages,'' termed ''higher-priced mortgage loans'' or ''HPMLs'' in the agencies' regulations. The OCC, the Board, the Bureau, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Federal Housing Finance Agency (FHFA) (collectively, the Agencies) jointly issued final rules implementing these requirements, effective January 18, 2014. The Agencies' rules exempted, among other loan types, transactions of $25,000 or less, and required that this loan amount be adjusted annually based on any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). If there is no annual percentage increase in the CPI–W, the OCC, the Board, and the Bureau will not adjust this exemption threshold from the prior year. Additionally, in years following a year in which the exemption threshold was not adjusted because the CPI–W decreased, the threshold is calculated by applying the annual percentage increase in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Based on the CPI–W in effect as of June 1, 2022, the exemption threshold will increase from $28,500 to $31,000, effective January 1, 2023.

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

FOR FURTHER INFORMATION CONTACT:

OCC: MaryAnn Nash, Counsel, Chief Counsel's Office, (202) 649–6287; for persons who are deaf or hard of hearing TTY, (202) 649–5597.

Board: Lorna M. Neill, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

Bureau: Thomas Dowell, Senior Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) amended TILA to add special appraisal requirements for ''higher-risk mortgages.'' [1] In January 2013, the Agencies jointly issued a final rule implementing these requirements and adopted the term ''higher-priced mortgage loan'' (HPML) instead of ''higher-risk mortgage'' (the January 2013 Final Rule).[2] In July 2013, the Agencies proposed additional exemptions from the January 2013 Final Rule.[3] In December 2013, the Agencies issued a supplemental final rule with additional exemptions from the January 2013 Final Rule (the December 2013 Supplemental Final Rule).[4] Among other exemptions, the Agencies adopted an exemption from the new HPML appraisal rules for transactions of $25,000 or less, to be adjusted annually for inflation.

The OCC's, Board's, and Bureau's versions of the January 2013 Final Rule and December 2013 Supplemental Final Rule and corresponding official interpretations are substantively identical. The FDIC, NCUA, and FHFA adopted the Bureau's version of the regulations under the January 2013 Final Rule and December 2013 Supplemental Final Rule.[5]

The OCC's, Board's, and Bureau's regulations,[6] and their accompanying interpretations,[7] provide that the exemption threshold for smaller loans will be adjusted effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If there is no annual percentage increase in the CPI–W, the OCC, the Board, and the Bureau will not adjust the threshold amounts from the prior year.[8]

[1] Public Law 111–203, section 1471, 124 Stat. 1376, 2185–87 (2010), codified at TILA section 129H, 15 U.S.C. 1639h.

[2] 78 FR 10368 (Feb. 13, 2013).

[3] 78 FR 48548 (Aug. 8, 2013).

[4] 78 FR 78520 (Dec. 26, 2013).

[5] *See* NCUA: 12 CFR 722.3; FHFA: 12 CFR part 1222. Although the FDIC adopted the Bureau's version of the regulation, the FDIC did not issue its own regulation containing a cross-reference to the Bureau's version. *See* 78 FR 10368, 10370 (Feb. 13, 2013).

[6] 12 CFR 34.203(b)(2) (OCC); 12 CFR 226.43(b)(2) (Board); and 12 CFR 1026.35(c)(2)(ii) (Bureau).

[7] 12 CFR part 34, appendix C to subpart G, comment 203(b)(2)–1 (OCC); 12 CFR part 226, Supplement I, comment 43(b)(2)–1 (Board); and 12 CFR part 1026, Supplement I, comment 35(c)(2)(ii)–1 (Bureau).

[8] *See* 12 CFR part 34, appendix C to subpart G, comment 203(b)(2)–1 and –2 (OCC); 12 CFR part 226, Supplement I, comment 43(b)(2)–1 and –2

Continued

On November 30, 2016, the OCC, the Board, and the Bureau published a final rule in the **Federal Register** to memorialize the calculation method used by the Agencies each year to adjust the exemption threshold to ensure that the values for the exemption threshold keep pace with the CPI–W (HPML Small Dollar Adjustment Calculation Rule).[9] The HPML Small Dollar Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the OCC, Board, and Bureau will not adjust the exemption threshold from the prior year. The HPML Small Dollar Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2023 Adjustment and Commentary Revision

Effective January 1, 2023, the exemption threshold amount is increased from $28,500 to $31,000. This amount is based on the CPI–W in effect on June 1, 2022, which was reported on May 11, 2022 (based on April 2022 data).[10] The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 29 percent of the U.S. population. The CPI–W reported on May 11, 2022, reflects an 8.9 percent increase in the CPI–W from April 2021 to April 2022. Accordingly, the 8.9 percent increase in the CPI–W from April 2021 to April 2022 results in an exemption threshold amount of $31,000, after rounding. The OCC, the Board, and the Bureau are revising the commentaries to their respective regulations to add new comments as follows:

- Comment 203(b)(2)–3.x to 12 CFR part 34, appendix C to subpart G (OCC);
- Comment 43(b)(2)–3.x to Supplement I of 12 CFR part 226 (Board); and
- Comment 35(c)(2)(ii)–3.x to Supplement I of 12 CFR part 1026 (Bureau).

These new comments state that, from January 1, 2023, through December 31, 2023, the threshold amount is $31,000. These revisions are effective January 1, 2023.

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the agency finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[11] The amendments in this rule are technical and apply the method previously memorialized in the December 2013 Supplemental Final Rule and the HPML Small Dollar Adjustment Calculation Rule. For these reasons, the OCC, the Board, and the Bureau have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[12] As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[13] the Agencies reviewed this final rule. The Agencies have determined that this final rule does not create any new information collections or substantially revise any existing collections.

Unfunded Mandates Reform Act

The OCC analyzes proposed rules for the factors listed in Section 202 of the Unfunded Mandates Reform Act of 1995, before promulgating a final rule for which a general notice of proposed rulemaking was published.[14] As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary.

Bureau Congressional Review Act Statement

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Bureau Signing Authority

The Associate Director of Research, Markets, and Regulations, Janis K. Pappalardo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Grace Feola, Bureau **Federal Register** Liaison, for purposes of publication in the **Federal Register**.

List of Subjects

12 CFR Part 34

Accounting, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

12 CFR Part 226

Advertising, Appraisal, Appraiser, Consumer protection, Credit, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 1026

Advertising, Banks, Banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends 12 CFR part 34 as set forth below:

(Board); and 12 CFR part 1026, Supplement I, comment 35(c)(2)(ii)–1 and –2 (Bureau).

[9] *See* 81 FR 86250 (Nov. 30, 2016).

[10] The Bureau of Labor Statistics calculates consumer-based indices for each month but does not report those indices until the middle of the following month. As such, the most recently reported indices as of June 1, 2022 were reported on May 11, 2022 and reflect economic conditions in April 2022.

[11] 5 U.S.C. 553(b)(B).

[12] 5 U.S.C. 603(a), 604(a).

[13] 44 U.S.C. 3506; 5 CFR part 1320.

[14] 2 U.S.C. 1532.

PART 34— REAL ESTATE LENDING AND APPRAISALS

■ 1. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* and 5412(b)(2)(B) and 15 U.S.C. 1639h.

■ 2. In appendix C to subpart G, under *Section 34.203—Appraisals for Higher-Priced Mortgage Loans,* paragraph 34.203(b)(2) is revised to read as follows:

Appendix C to Subpart G—OCC Interpretations

* * * * *

Section 34.203—Appraisals for Higher-Priced Mortgage Loans

* * * * *

Paragraph 34.203(b)(2)

1. *Threshold amount.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 203(b)(2)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 203(b)(2)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 34.203(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

x. From January 1, 2023, through December 31, 2023, the threshold amount is $31,000.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 34.203(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 34.203(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 34.203(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 34.203 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 34.203 applies. *See* § 34.203(b) and (d)(7).

* * * * *

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 3. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l), and 1639h; Pub. L. 111–24, section 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 4. In Supplement I to part 226, under *Section 226.43—Appraisals for Higher-Risk Mortgage Loans,* paragraph 43(b)(2) is revised to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Section 226.43—Appraisals for Higher-Risk Mortgage Loans

* * * * *

Paragraph 43(b)(2)

1. *Threshold amount.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated in comment 43(b)(2)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 43(b)(2)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.43(b)(2), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

x. From January 1, 2023, through December 31, 2023, the threshold amount is $31,000.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 226.43(b)(2) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 226.43(b)(2) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.43(b)(2) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 226.43 with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 226.43 applies. *See* § 226.43(b) and (d)(7).

* * * * *

BUREAU OF CONSUMER FINANCIAL PROTECTION

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 5. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 6. In Supplement I to part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans,* paragraph 35(c)(2)(ii) is revised to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

Paragraph 35(c)(2)(ii)

1. *Threshold amount.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated in comment 35(c)(2)(ii)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 35(c)(2)(ii)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

x. From January 1, 2023, through December 31, 2023, the threshold amount is $31,000.

4. *Qualifying for exemption—in general.* A transaction is exempt under § 1026.35(c)(2)(ii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under § 1026.35(c)(2)(ii) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.35(c)(2)(ii) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of § 1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of § 1026.35(c) applies. *See* § 1026.35(c)(2) and (c)(4)(vii).

* * * * *

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

Grace Feola,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2022–22820 Filed 10–19–22; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Docket No. R–1783]

RIN 7100–AG41

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1013

Consumer Leasing (Regulation M)

AGENCY: Board of Governors of the Federal Reserve System (Board) and Bureau of Consumer Financial Protection (Bureau).

ACTION: Final rules, official interpretations, and commentary.

SUMMARY: The Board and the Bureau (collectively, the Agencies) are finalizing amendments to the official interpretations and commentary for the Agencies' regulations that implement the Consumer Leasing Act (CLA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the CLA by requiring that the dollar threshold for exempt consumer leases be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Under regulations adopted by the Agencies, if there is no annual percentage increase in the CPI–W, the Agencies will not adjust this exemption threshold from the prior year. Additionally, in years following a year in which the exemption threshold was not adjusted because the CPI–W decreased, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Based on the annual percentage increase in the CPI–W as of June 1, 2022, the exemption threshold will increase from $61,000 to $66,400 effective January 1, 2023. Because the Dodd-Frank Act also requires similar adjustments in the Truth in Lending Act's threshold for exempt consumer credit transactions, the Agencies are making similar amendments to each of their respective regulations implementing the Truth in Lending Act elsewhere in the Rules section of this issue of the **Federal Register**.

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

FOR FURTHER INFORMATION CONTACT:

Board: Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

Bureau: Thomas Dowell, Senior Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act increased the threshold in the CLA for exempt consumer leases, and the threshold in the Truth in Lending Act (TILA) for exempt consumer credit transactions,[1] from $25,000 to $50,000, effective July 21, 2011.[2] In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, these thresholds be adjusted annually for inflation by the annual percentage increase in the CPI–W, as published by the Bureau of Labor Statistics.[3] In April 2011, the Board issued a final rule amending Regulation M (which implements the CLA) consistent with these provisions of the Dodd-Frank Act, along with a similar final rule amending Regulation Z (which implements TILA) (collectively, the Board Final Threshold Rules).[4]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation M implementing the CLA, 12 CFR part 1013, substantially duplicating the Board's Regulation M.[5] Although the Bureau has the authority to issue rules to implement the CLA for most entities, the Board retains authority to issue rules under the CLA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation M continues to apply to those entities.[6]

The Agencies' regulations,[7] and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. They further provide that any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.[8] Since 2011, the Agencies have adjusted the Regulation M exemption threshold annually, in accordance with these rules.

On November 30, 2016, the Agencies published a final rule in the **Federal Register** to memorialize the calculation method used by the Agencies each year to adjust the exemption threshold to ensure that, as contemplated by section 1100E(b) of the Dodd-Frank Act, the values for the exemption threshold keep pace with the CPI–W (Regulation M Adjustment Calculation Rule).[9] The Regulation M Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the Agencies will not adjust the exemption threshold from the prior year. The Regulation M Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based

[1] Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. *See* 12 CFR 226.3(b)(1)(i) (Board) and 12 CFR 1026.3(b)(1)(i) (Bureau).

[2] Public Law 111–203, section 1100E, 124 Stat. 1376, 2111 (2010).

[3] *Id.*

[4] 76 FR 18349 (Apr. 4, 2011); 76 FR 18354 (Apr. 4, 2011).

[5] *See* 76 FR 78500 (Dec. 19, 2011); 81 FR 25323 (Apr. 28, 2016).

[6] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act provides that ''[s]ubsection (a) shall not apply to any person, to the extent that such person—(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business—(A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which—(i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' 12 U.S.C. 5519(b).

[7] 12 CFR 213.2(e)(1) (Board) and 12 CFR 1013.2(e)(1) (Bureau).

[8] *See* comments 2(e)–9 in Supplements I of 12 CFR parts 213 and 1013.

[9] *See* 81 FR 86256 (Nov. 30, 2016).

on the amount that would have resulted, after rounding.

II. 2023 Adjustment and Commentary Revision

Effective January 1, 2023, the exemption threshold amount is increased from $61,000 to $66,400. This amount is based on the CPI–W in effect on June 1, 2022, which was reported on May 11, 2022 (based on April 2022 data).[10] The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 29 percent of the U.S. population. The CPI–W reported on May 11, 2022 reflects an 8.9 percent increase in the CPI–W from April 2021 to April 2022. Accordingly, the 8.9 percent increase in the CPI–W from April 2021 to April 2022 results in an exemption threshold amount of $66,400, after rounding. The Agencies are revising the commentaries to their respective regulations to add new comment 2(e)–11.xiv to state that, from January 1, 2023 through December 31, 2023, the threshold amount is $66,400. These revisions are effective January 1, 2023.

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Agencies find that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[11] The amendments in this rule are technical and apply the method previously set forth in the Board Final Threshold Rules and the Regulation M Adjustment Calculation Rule. For these reasons, the Agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[12] As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[13] the Agencies reviewed this final rule. The Agencies have determined that this final rule does not create any new information collections or substantially revise any existing collections.

Bureau Congressional Review Act Statement

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Bureau Signing Authority

The Associate Director of Research, Markets, and Regulations, Janis K. Pappalardo, having reviewed and approved this document, is delegating the authority to sign this document electronically to Grace Feola, Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects

12 CFR Part 213

Advertising, Consumer leasing, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements.

12 CFR Part 1013

Administrative practice and procedure, Advertising, Consumer protection, Reporting and recordkeeping requirements, Truth in lending.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

■ 1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 section 1100E, 124 Stat. 1376.

■ 2. In Supplement I to part 213, under *Section 213.2—Definitions,* revise *2(e) Consumer Lease* to read as follows:

Supplement I to Part 213—Official Staff Interpretations

* * * * *

Section 213.2—Definitions

* * * * *

2(e) Consumer Lease.

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration

[10] The Bureau of Labor Statistics calculates consumer-based indices for each month but does not report those indices until the middle of the following month. As such, the most recently reported indices as of June 1, 2022 were reported on May 11, 2022 and reflect economic conditions in April 2022.

[11] 5 U.S.C. 553(b)(B).

[12] 5 U.S.C. 603(a) and 604(a).

[13] 44 U.S.C. 3506; 5 CFR part 1320.

or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 213.2(e).

9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated in comment 2(e)–11 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)–11 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

10. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

11. *Threshold.* For purposes of § 213.2(e)(1), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018 through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019 through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020 through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021 through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022 through December 31, 2022, the threshold amount is $61,000.

xiv. From January 1, 2023 through December 31, 2023, the threshold amount is $66,400.

* * * * *

BUREAU OF CONSUMER FINANCIAL PROTECTION

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation M, 12 CFR part 1013, as set forth below:

PART 1013—CONSUMER LEASING (REGULATION M)

■ 3. The authority citation for part 1013 continues to read as follows:

Authority: 15 U.S.C. 1604 and 1667f; Pub. L. 111–203 section 1100E, 124 Stat. 1376.

■ 4. In Supplement I to part 1013, under *Section 1013.2—Definitions,* revise *2(e)—Consumer Lease* to read as follows:

Supplement I to Part 1013—Official Interpretations

* * * * *

Section 1013.2—Definitions

* * * * *

2(e) Consumer Lease

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction is covered. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in the primary use.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure requirements of the regulation. However, a lease that imposes a penalty for not continuing the lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

ii. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 1013.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor, but excludes items such as:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, licenses, and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization or other entity.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home and in some cases to provide fire protection.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 1013.2(e).

9. *Threshold amount.* A consumer lease is exempt from the requirements of this part if the total contractual obligation exceeds the threshold amount in effect at the time of consummation. The threshold amount in effect during a particular time period is the amount stated in comment 2(e)–11 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 2(e)–11 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900. If a consumer lease is exempt from the requirements of this part because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount.

10. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

11. *Threshold.* For purposes of § 1013.2(e)(1), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018 through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019 through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020 through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021 through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022 through December 31, 2022, the threshold amount is $61,000.

xiv. From January 1, 2023 through December 31, 2023, the threshold amount is $66,400.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

Grace Feola,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2022–22818 Filed 10–19–22; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1784]

RIN 7100–AG42

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z)

AGENCY: Board of Governors of the Federal Reserve System (Board) and Bureau of Consumer Financial Protection (Bureau).

ACTION: Final rules, official interpretations, and commentary.

SUMMARY: The Board and the Bureau (collectively, the Agencies) are publishing final rules amending the official interpretations and commentary for the Agencies' regulations that implement the Truth in Lending Act (TILA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA by requiring that the dollar threshold for exempt consumer credit transactions be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Under regulations adopted by the Board and the Bureau, if there is no annual percentage increase in the CPI–W, the Board and the Bureau will not adjust this exemption threshold from the prior year. Additionally, in years following a year in which the exemption threshold was not adjusted because the CPI–W decreased, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. Based on the annual percentage increase in the CPI–W as of June 1, 2022, the exemption threshold will increase from $61,000 to $66,400 effective January 1, 2023. Because the Dodd-Frank Act also requires similar adjustments in the Consumer Leasing Act's threshold for exempt consumer leases, the Agencies are making similar amendments to each of their respective regulations implementing the Consumer Leasing Act elsewhere in the Rules section of this issue of the **Federal Register**.

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

FOR FURTHER INFORMATION CONTACT:

Board: Vivian W. Wong, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

Bureau: Thomas Dowell, Senior Counsel, Office of Regulations, Bureau of Consumer Financial Protection, at (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act increased the threshold in TILA for exempt consumer credit transactions,[1] and the threshold in the Consumer Leasing Act (CLA) for exempt consumer leases, from $25,000 to $50,000, effective July 21, 2011.[2] In addition, the Dodd-Frank Act requires that, on and after December 31, 2011, these thresholds be adjusted annually for inflation by the annual percentage increase in the CPI–W, as published by the Bureau of Labor Statistics.[3] In April 2011, the Board issued a final rule amending Regulation Z (which implements TILA) consistent with these provisions of the Dodd-Frank Act, along with a similar final rule amending Regulation M (which implements the CLA) (collectively, the Board Final Threshold Rules).[4]

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with this transfer of rulemaking authority, the Bureau issued its own Regulation Z implementing TILA, 12 CFR part 1026, substantially duplicating the Board's Regulation Z.[5] Although the Bureau has the authority to issue rules to implement TILA for most entities, the Board retains authority to issue rules under TILA for certain motor vehicle dealers covered by section 1029(a) of the Dodd-Frank Act, and the Board's Regulation Z continues to apply to those entities.[6]

The Agencies' regulations,[7] and their accompanying commentaries, provide that the exemption threshold will be adjusted annually effective January 1 of each year based on any annual percentage increase in the CPI–W that was in effect on the preceding June 1. They further provide that any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.[8] Since 2011, the Agencies have adjusted the Regulation Z exemption threshold annually, in accordance with these rules.

On November 30, 2016, the Agencies published a final rule in the **Federal**

[1] Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount. *See* 12 CFR 226.3(b)(1)(i) (Board) and 12 CFR 1026.3(b)(1)(i) (Bureau).

[2] Public Law 111–203, section 1100E, 124 Stat. 1376, 2111 (2010).

[3] *Id.*

[4] 76 FR 18354 (Apr. 4, 2011); 76 FR 18349 (Apr. 4, 2011).

[5] *See* 76 FR 79768 (Dec. 22, 2011); 81 FR 25323 (Apr. 28, 2016).

[6] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act provides that ''[s]ubsection (a) shall not apply to any person, to the extent that such person—(1) provides consumers with any services related to residential or commercial mortgages or self-financing transactions involving real property; (2) operates a line of business—(A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which—(i) the extension of retail credit or retail leases are provided directly to consumers; and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' 12 U.S.C. 5519(b).

[7] 12 CFR 226.3(b)(1)(ii) (Board) and 12 CFR 1026.3(b)(1)(ii) (Bureau).

[8] *See* comments 3(b)-1 in Supplements I of 12 CFR parts 226 and 1026.

Register to memorialize the calculation method used by the Agencies each year to adjust the exemption threshold to ensure that, as contemplated by section 1100E(b) of the Dodd-Frank Act, the values for the exemption threshold keep pace with the CPI–W (Regulation Z Adjustment Calculation Rule).[9] The Regulation Z Adjustment Calculation Rule memorialized the policy that, if there is no annual percentage increase in the CPI–W, the Agencies will not adjust the exemption threshold from the prior year. The Regulation Z Adjustment Calculation Rule also provided that, in years following a year in which the exemption threshold was not adjusted because there was a decrease in the CPI–W from the previous year, the threshold is calculated by applying the annual percentage change in the CPI–W to the dollar amount that would have resulted, after rounding, if the decreases and any subsequent increases in the CPI–W had been taken into account. If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly; if the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted, after rounding.

II. 2023 Adjustment and Commentary Revision

Effective January 1, 2023, the exemption threshold amount is increased from $61,000 to $66,400. This amount is based on the CPI–W in effect on June 1, 2022, which was reported on May 11, 2022 (based on April 2022 data).[10] The CPI–W is a subset of the CPI–U index (based on all urban consumers) and represents approximately 29 percent of the U.S. population. The CPI–W reported on May 11, 2022 reflects an 8.9 percent increase in the CPI–W from April 2021 to April 2022. Accordingly, the 8.9 percent increase in the CPI–W from April 2021 to April 2022 results in an exemption threshold amount of $66,400, after rounding. The Agencies are revising the commentaries to their respective regulations to add new comment 3(b)-3.xiv to state that, from January 1, 2023 through December 31, 2023, the threshold amount is $66,400. These revisions are effective January 1, 2023.

III. Regulatory Analysis

Administrative Procedure Act

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Agencies find that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[11] The amendments in this rule are technical and apply the method previously set forth in the Board Final Threshold Rules and the Regulation Z Adjustment Calculation Rule. For these reasons, the Agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[12] As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[13] the Agencies reviewed this final rule. The Agencies have determined that this final rule does not create any new information collections or substantially revise any existing collections.

Bureau Congressional Review Act Statement

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Bureau Signing Authority

The Associate Director of Research, Markets, and Regulations, Janis K. Pappalardo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Grace Feola, Bureau **Federal Register** Liaison, for purposes of publication in the **Federal Register**.

List of Subjects

12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

12 CFR Part 1026

Advertising, Banks, Banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), 1639(l), and 1639h; Pub. L. 111–24, section 2, 123 Stat. 1734; Pub. L. 111–203, 124 Stat. 1376.

■ 2. In Supplement I to part 226, under *Section 226.3—Exempt Transactions,* revise *3(b) Credit over applicable threshold amount* to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Section 226.3—Exempt Transactions

* * * * *

3(b) Credit over applicable threshold amount.

1. *Threshold amount.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 3(b)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–

[9] *See* 81 FR 86260 (Nov. 30, 2016).

[10] The Bureau of Labor Statistics calculates consumer-based indices for each month but does not report those indices until the middle of the following month. As such, the most recently reported indices as of June 1, 2022 were reported on May 11, 2022 and reflect economic conditions in April 2022.

[11] 5 U.S.C. 553(b)(B).

[12] 5 U.S.C. 603(a), 604(a).

[13] 44 U.S.C. 3506; 5 CFR part 1320.

W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 226.3(b), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018 through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019 through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020 through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021 through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022 through December 31, 2022, the threshold amount is $61,000.

xiv. From January 1, 2023 through December 31, 2023, the threshold amount is $66,400.

4. *Open-end credit.*

i. *Qualifying for exemption.* An open-end account is exempt under § 226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of §§ 226.6 (account-opening disclosures), 226.7 (periodic statements), 226.52 (limitations on fees), and 226.55 (limitations on increasing annual percentages rates, fees, and charges). For example:

(1) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this part apply to the account.

(2) Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 226.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 226.6 reflecting the current terms of the account. See also comment 3(b)–6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 226.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–8 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 226.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 226.3(b).

(2) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 226.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 226.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 226.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 226.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

(2) Same facts as in paragraph 4.iv.B(1) of this section except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 226.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

(3) Same facts as in paragraph 4.iv.B(1) of this section except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 226.3(b) exemption on April 1 of year two, the account does not qualify for a § 226.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.*

i. *Qualifying for exemption.* A closed-end loan is exempt under § 226.3(b) (unless the extension of credit is secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 226.46(b)(5)), if either of the following conditions is met.

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 226.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 226.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 226.3(b). See also comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.*

i. *Open-end credit.* For open-end accounts, if, after account opening, a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 226.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. See comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 226.15.

ii. *Closed-end credit.* For closed-end loans, if, after consummation, a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 226.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 226.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 226.23(a)(1) and the accompanying commentary. In contrast, if a closed-end loan that is exempt under § 226.3(b) is satisfied and replaced by a loan that is

secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 226.3(b) and the creditor must comply with all of the applicable requirements of this part. See comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 226.2(a)(19), the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 226.3(b)(2) does not apply if a security interest is taken by the creditor in any real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 226.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of $50,000, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of $50,000, the account ceases to be exempt under § 226.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph 8.i. of this section except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 226.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

* * * * *

BUREAU OF CONSUMER FINANCIAL PROTECTION

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 3. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 4. In Supplement I to part 1026, under *Section 1026.3—Exempt Transactions,* revise *3(b)—Credit Over Applicable Threshold Amount* to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.3—Exempt Transactions

* * * * *

3(b) Credit Over Applicable Threshold Amount

1. *Threshold amount.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 3(b)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of § 1026.3(b), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018 through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019 through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020 through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021 through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022 through December 31, 2022, the threshold amount is $61,000.

xiv. From January 1, 2023 through December 31, 2023, the threshold amount is $66,400.

4. *Open-end credit.*

i. *Qualifying for exemption.* An open-end account is exempt under § 1026.3(b) (unless secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of §§ 1026.6 (account-opening disclosures), 1026.7 (periodic statements), 1026.52 (limitations on fees), and 1026.55 (limitations on increasing annual percentage rates, fees, and charges). For example:

1. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this part apply to the account.

2. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 1026.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 1026.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 1026.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 1026.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 1026.6 reflecting the current terms of the account. See also comment 3(b)–6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 1026.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–8 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 1026.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under § 1026.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under § 1026.3(b).

2. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under § 1026.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a § 1026.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 1026.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 1026.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

2. Same facts as in paragraph 4.iv.B.*1* of this section except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 1026.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

3. Same facts as in paragraph 4.iv.B.*1* of this section except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a § 1026.3(b) exemption on April 1 of year two, the account does not qualify for a § 1026.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.*

i. *Qualifying for exemption.* A closed-end loan is exempt under § 1026.3(b) (unless the extension of credit is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in § 1026.46(b)(5)), if either of the following conditions is met:

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 1026.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 1026.3(b). See also comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.*

i. *Open-end credit.* For open-end accounts, if after account opening a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 1026.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. See comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 1026.15.

ii. *Closed-end credit.* For closed-end loans, if after consummation a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 1026.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 1026.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 1026.23(a)(1) and its commentary. In contrast, if a closed-end loan that is exempt under § 1026.3(b) is satisfied and replaced by a loan that is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 1026.3(b), and the creditor must comply with all of the applicable requirements of this part. See comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 1026.2(a)(19), the exemption in § 1026.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 1026.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 1026.3(b)(2) does not apply if a security interest is taken by the creditor in real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 1026.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of $50,000, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of $50,000, the account ceases to be exempt under § 1026.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph 8.i of this section except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 1026.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

Grace Feola,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2022–22819 Filed 10–19–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0852; Airspace Docket No. 19–AAL–43]

RIN 2120–AA66

Establishment of United States Area Navigation (RNAV) Route T–374; Kotzebue, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes United States Area Navigation (RNAV) route T–374 in the vicinity of Kotzebue, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, December 29, 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 JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 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: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it expands the availability of RNAV route structure in Alaska and improves the efficient flow of air traffic within the National Airspace System by lessening the dependency on ground based navigation.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2021–0852 in the **Federal Register** (86 FR 62756; November 12, 2021), establishing RNAV route T–374 in the vicinity of Kotzebue, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. No comments were received.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by establishing RNAV route T–374 in the vicinity of Kotzebue, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. The route is described below.

T–374: This action establishes T–374 extending between the Kotzebue, AK (OTZ), VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and the Fort Yukon, AK (FYU), VHF Omnidirectional Range/Tactical Air Navigational (VORTAC) navigational aids. T–374 provides an alternate routing for Colored Federal airways A–5 and B–4, as well as serving as a southern alternative, providing a lower Global Navigation Satellite System (GNSS) Minimum Enroute Altitude (MEA), to the existing T–233.

The full route description of the new RNAV route is listed in ''The Amendment'' section, as set forth below.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of establishing RNAV route T–374 in the vicinity of Kotzebue, AK, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically

excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–374 Kotzebue, AK (OTZ) to Fort Yukon, AK (FYU) [New]		
Kotzebue, AK (OTZ)	VOR/DME	(Lat. 66°53′08.46″ N, long. 162°32′23.77″ W)
CIBDU, AK	WP	(Lat. 66°52′57.45″ N, long. 161°03′44.52″ W)
ZUBES, AK	WP	(Lat. 66°53′14.38″ N, long. 157°09′29.91″ W)
CUTIB, AK	WP	(Lat. 66°46′36.19″ N, long. 155°51′33.05″ W)
NINGE, AK	WP	(Lat. 66°45′28.85″ N, long. 155°24′12.50″ W)
WUNED, AK	WP	(Lat. 66°50′12.62″ N, long. 154°40′00.78″ W)
CEREX, AK	WP	(Lat. 66°43′14.18″ N, long. 153°00′37.00″ W)
WEPSI, AK	WP	(Lat. 66°51′22.94″ N, long. 151°52′10.42″ W)
Bettles, AK (BTT)	VOR/DME	(Lat. 66°54′18.03″ N, long. 151°32′09.18″ W)
Fort Yukon, AK (FYU)	VORTAC	(Lat. 66°34′27.31″ N, long. 145°16′35.97″ W)

* * * * *

Issued in Washington, DC, on October 5, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–22187 Filed 10–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0333; Airspace Docket No. 22–AGL–6]

RIN 2120–AA66

Amendment of VOR Federal Airway V–36; Northcentral United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends VHF Omnidirectional Range (VOR) Federal airway V–36 by establishing an airway segment within United States (U.S.) airspace over Lake Superior. The new V–36 airway segment replaces a similar segment that was inadvertently removed in a previous rulemaking action supporting NAV CANADA's Navigational Aid (NAVAID) Modernization Program. This action also supports cross border airway connectivity with NAV CANADA's V–36 airway between the Thunder Bay, ON, Canada, VOR/Distance Measuring Equipment (VOR/DME) and the Wawa, ON, Canada, VOR/DME NAVAIDs.

DATES: Effective date 0901 UTC, December 29, 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 JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 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: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it expands the availability of the VOR Federal airway route structure in the northcentral United States and improves the efficient flow of air traffic crossing the U.S./Canada border flying through U.S. and Canadian airspace.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0333 in the **Federal Register** (87 FR 19821; April 6, 2022), amending VOR Federal airway V–36. The proposed amendment replaces an airway segment that was inadvertently removed in a previous rulemaking action supporting NAV CANADA's NAVAID Modernization Program. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11G, dated August 19, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2021, and effective September 15, 2021. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E

airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by modifying V–36 to establish a segment of the airway over Lake Superior within U.S. airspace that was inadvertently removed in a previous rulemaking action. The modification of V–36 supports cross border connectivity of the airway with NAV CANADA's V–36 airway between the Thunder Bay VOR/DME and Wawa VOR/DME. The airway action is described below.

V–36: V–36 extends between the Wawa, ON, Canada, VOR/DME and the Sault Ste Marie, MI, VOR/DME; and between the Elmira, NY, VOR/DME and the intersection of the La Guardia, NY, VOR/DME 310° and Stillwater, NJ, VOR/DME 043° radials (NEION fix). The airspace within Canada is excluded. An airway segment is established within U.S. airspace that connects to NAV CANADA's V–36 airway segments between the Thunder Bay, ON, Canada, VOR/DME and the Wawa, ON, Canada, VOR/DME; providing cross border connectivity for the airway between the two NAVAIDs. As a result, V–36 will extend between the Thunder Bay, ON, Canada, VOR/DME and the Sault Ste Marie, MI, VOR/DME; and between the Elmira, NY, VOR/DME and the intersection of the La Guardia, NY, VOR/DME 310° and the Stillwater, NJ, VOR/DME 043° radials (NEION fix). The airspace within Canada will continue to be excluded.

The NAVAID radials listed in the V–36 description below are unchanged and stated in True degrees.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending VOR Federal airway V–36, to establish an airway segment inadvertently removed in a previous rulemaking action, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–36 [Amended]

From Thunder Bay, ON, Canada; Wawa, ON, Canada; to Sault Ste Marie, MI. From Elmira, NY; INT Elmira 110° and LaGuardia, NY, 310° radials; to INT LaGuardia 310° and Stillwater, NJ, 043° radials. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on October 6, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–22185 Filed 10–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0416; Airspace Docket No. 21–ANM–30]

RIN 2120–AA66

Revocation of Jet Route J–591; Bellingham, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Jet Route J–591 in the vicinity of Bellingham, WA, due to actions of NAV CANADA revoking the entire route in Canada, effective February 25, 2021.

DATES: Effective date 0901 UTC, December 29, 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 JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 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: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in

Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the air traffic service route structure in the northwest United States to maintain the efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2021–0416 in the **Federal Register** (86 FR 29530; June 2, 2021), revoking Jet Route J–591 in the vicinity of Bellingham, WA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

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 Jet Route listed in this document will be removed subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by revoking Jet Route J–591 due to NAV CANADA's actions revoking the route within Canada. The change is outlined below.

J–591: J–591 extended between the Whatcom, WA, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Kelowna, BC, Canada, navigational aids, excluding the segment within Canada, before NAV CANADA revoked the route within Canadian airspace in 2021. The route currently extends between the Whatcom VORTAC and the United States/Canada border. The route is revoked in its entirety.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of revoking Jet Route J–591 in the vicinity of Bellingham, WA, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–591 [Removed]

* * * * *

Issued in Washington, DC, on October 5, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–22186 Filed 10–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1132; Airspace Docket No. 19–AAL–66]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route T–241; Level Island, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) route T–241 in the vicinity of Level Island, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, December 29, 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 JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 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: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it expands the availability of RNAV in Alaska and improves the efficient flow of air traffic within the National Airspace System by lessening the dependency on ground based navigation.

History

The FAA published a notice of proposed rulemaking (NPRM) for Docket No. FAA–2021–1100 in the **Federal Register** (86 FR 71411; December 16, 2021), amending RNAV route T–241 in the vicinity of Level Island, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. No comments were received.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document will be published subsequently in FAA Order JO 7400.11.

Difference From the NPRM

In the NPRM, the LATCH, AK, route point was incorrectly listed as a waypoint (WP) instead of correctly identifying it as a Fix. This action corrects that error and lists the LATCH, AK, route point as a Fix. This correction is editorial only and does not change the alignment of RNAV route T–241.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending RNAV route T–241 in the vicinity of Level Island, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. The route amendment is described below.

T–241: T–241 extends between the LATCH, AK, Fix and the Level Island, AK (LVD), VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) navigational aid. The route is amended by extending it eastward from the Level Island VOR/DME navigational aid to the new ZIDRA, AK, WP. The unaffected portion of the route remains unchanged. The full route description of the amended route is listed in the amendments to part 71 set forth below.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of amending RNAV route T–241 in the vicinity of Level Island, AK, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–241 LATCH, AK to ZIDRA, AK [Amended]		
LATCH, AK	FIX	(Lat. 56°00′45.21″ N, long. 134°35′53.84″ W)
Level Island, AK (LVD)	VOR/DME	(Lat. 56°28′03.75″ N, long. 133°04′59.21″ W)
ZIDRA, AK	WP	(Lat. 56°30′41.67″ N, long. 132°28′52.38″ W)

* * * * *

Issued in Washington, DC, on October 5, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–22188 Filed 10–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2021–0650; Airspace Docket No. 21–AWP–11]

RIN 2120–AA66

Establishment of Restricted Area R–2511; Trona, CA

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

ACTION: Final rule.

SUMMARY: This action establishes restricted area R–2511 in the vicinity of Trona, CA in support of the Naval Air Warfare Center Weapons Division (NAWCWD), China Lake, CA. The restricted area is necessary to segregate the testing and evaluation of hazardous weapons systems, and other unproven aviation platforms in the early development cycle from non-participating aircraft.

DATES: Effective date 0901 UTC, December 29, 2022.

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:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes restricted area airspace in the vicinity of Trona, CA, to contain activities deemed hazardous to non-participating aircraft.

History

The FAA published a notice of proposed rulemaking (NPRM) for Docket No. FAA–2021–0650 in the **Federal Register** (86 FR 57611; October 18, 2021) proposing to establish restricted area R–2511 in the vicinity of Trona, CA, to support testing and training activities by the Naval Air Warfare Center Weapons Division (NAWCWD), China Lake, CA. R–2511 is needed to provide a connection between restricted areas R–2505 and R–2524 to segregate the testing and evaluation of hazardous weapons systems, and other unproven aviation platforms in the early development cycle from non-participating aircraft. NAWCWD will use R–2511 to contain free flight weapons systems as they transit from launch areas within R–2505 to target areas within R–2524, and/or from launch areas within R–2524 to target areas within R–2505. This airspace, situated between restricted areas R–2505 and R–2524, has been variously referred to as: Trona Pass, Trona Corridor, or Trona Gap.

Since 1995, the containment of military hazardous weapons system activities transiting the airspace between R–2505 and R–2524 was accomplished through the use of a controlled firing area (CFA) located in that airspace between R–2505 and R–2524. The FAA has determined that a CFA is not the appropriate type of special use airspace (SUA) for this activity because CFAs are not depicted on aeronautical charts, and because hazardous activity in a CFA must be immediately suspended upon observation or notification that a non-participating aircraft is approaching the area. Based on these criteria, a CFA is not practical for accommodating NAWCWD's mission requirements.

A restricted area is the appropriate type of SUA to safely segregate hazardous activities from non-participating aircraft operating in this area. Restricted areas are depicted on aeronautical charts allowing for ready identification by pilots. R–2511, which replaces the CFA, was designed with the same lateral and vertical parameters as the Trona CFA.

Interested parties were invited to submit comments on the NPRM. A total of 65 comments were posted to the *regulations.gov* website in response to the NPRM. Comments were received from the following organizations: Aircraft Owners and Pilots Association (AOPA); Centurion Flight Services; Golden State Air Charter; Loyd's Aviation; and, Soaring Society of America (SSA). In addition, 58 individuals submitted comments. Two individuals submitted their comment twice. The issues raised by the commenters are addressed below.

Discussion of Comments

Some commenters questioned the need for establishing R–2511 contending that there is already enough existing restricted airspace in the area which should be used to accomplish the NAWCWD's hazardous activities.

In response, the NAWCWD considered whether there are alternatives to the proposed R–2511 that might meet the Research, Development, Acquisition, Testing, and Evaluation (RDAT&E) and training mission requirements. To qualify, the SUA must be able to accommodate the flight profile requirements; the launch and target areas must have the supporting ground infrastructure needed to properly conduct RDAT&E events, score tests, and record results; the impact areas must be on government owned or controlled land; and the capability to

simulate various radio frequency (RF) threats to weapon and aircraft systems is required. Changing the dimensions of the current restricted areas R–2505 or R–2524 to fully accommodate the mission was not feasible because the NAWCWD does not own or manage the land under any proposed expansion of those areas.

The Navy also determined that using other existing restricted areas in the vicinity to conduct free flight weapons tests do not meet the screening requirements for appropriate ground infrastructure, and the capability to test the operation of systems in an RF-contested environment. The combined use of R–2511, R–2505, and R–2524 satisfies all of the above screening criteria to support the NAWCWD's testing and training needs. As discussed above, since 1995, these activities have been safely conducted by using the Trona CFA to connect R–2505 and R–2524. Because the CFA must be replaced, and the operation cannot be moved elsewhere, R–2511 is the appropriate solution to provide connectivity between R–2505 and R–2524.

Many commenters expressed concerns that R–2511 would impose a significant adverse impact on gliders and general aviation aircraft, traversing the Trona Pass. They noted that the Trona Pass is a key route between the Los Angeles Basin and points east and northeast. Further, some commenters wrote that R–2511 would have a dramatic impact on glider operations conducting cross-country flights through the Trona Pass. Gliders must operate at significantly higher altitudes in order to obtain the lift they need. In addition, the commenters asserted that the Trona Pass is the only safe path for gliders to return to their home base when convective weather prevents other transitions.

The FAA expects the impact to gliders and general aviation aircraft to be minimal. This is mainly due to the relatively infrequent use and short activation periods established for R–2511. By rule, R–2511 must be activated by Notice to Air Missions (NOTAM) issued at least 7-days in advance. Additionally, the airspace can only be activated between 0700–1700 hours, Monday–Friday. Activation is further limited to no more than two 2-hour periods per day, with a maximum annual usage of 36 days per year. This equates to a potential usage of 144 hours out of 8,760 hours per year, affording the aviation community the ability to plan flights around these limited activation times, as well as the option to fly beneath R–2511 when it is active, if conditions permit.

Commenters also expressed concerns that the NOTAM system is difficult for pilots to use to obtain pre-flight information on the status of SUAs, and that it is even more difficult to confirm the status of SUAs once airborne.

In 2019, the FAA created the NOTAM Modernization Initiative to make needed improvements to the NOTAM system. There is now a single FAA website called ''NOTAM Search'' that enables pilots to access all NOTAMs. NOTAM Search includes significant enhancements to the search process such as the ability to query applicable NOTAMs based on the planned route of flight, and to view only those NOTAMs that are effective during a specific time period. NOTAM search can be accessed at *https://notams.aim.faa.gov/notamSearch.* In addition, the FAA's SUA website provides SUA schedule data for the next 24 hour period. The SUA website can be accessed at *https://sua.faa.gov.* Finally, for R–2511, the FAA must issue the NOTAM 7-days in advance.

A number of commenters stated that the Los Angeles Visual Flight Rules (VFR) Sectional Aeronautical Chart should be updated to include additional annotations clarifying the limited activity and the means to verify the status of R–2511.

The Los Angeles VFR Sectional Aeronautical Chart does contain a table that lists all SUA covered by the chart. The table includes the altitudes, times of use, contact facility, and frequencies for each SUA area. Data pertinent to R–2511 will be added to the SUA table on the Los Angeles Sectional Aeronautical Chart. In addition a chart note will be added in the vicinity of R–2511 with a point of contact at Joshua Control Facility (JCF) (the FAA controlling agency) for R–2511 activity status.

Several commenters suggested that the FAA either renew the Trona CFA or establish a temporary flight restriction (TFR) instead of creating R–2511.

Renewing the CFA is not an option because, as described above, CFAs are not depicted on aeronautical charts, and the activity within a CFA must be immediately suspended if a non-participating aircraft approaches. This requirement is incompatible with the proponent's mission requirements. A restricted area is the appropriate SUA to contain this activity.

The FAA considered the use of TFRs in lieu of restricted airspace and found that the activity conducted in R–2511 does not meet the criteria for a TFR in accordance with 14 CFR part 91, General Operating and Flight Rules. Part 91 does not contain a specific TFR regulatory section that would cover the operations in R–2511. A restricted area is the appropriate designation to segregate hazardous activities from nonparticipating aircraft.

Other commenters stated that pilots tend to avoid restricted areas, even when they are not active. This can lead to unnecessary detours, and cause some pilots to avoid the airspace even when encountering difficulties, possibly resulting in safety concerns.

Due to the infrequent activation of R–2511, and the requirement that a NOTAM be issued at least 7-days in advance of activation, pilots should expect that the Trona Pass would be available for transit at all altitudes the majority of the time. However, the advance notification requirements should provide pilots sufficient time to plan flights around the times R–2511 is activated. Additionally, a note will be depicted on the Los Angeles Sectional Aeronautical Chart, in the vicinity of R–2511, with a Very High Frequency contact frequency for use in verifying the status of the restricted area.

Commenters stated that the proposed 6,000-foot MSL restricted area floor is too low for adequate terrain clearance and radio communication. Other commenters suggested raising the floor of R–2511 from 6,000 feet MSL to 9,000 feet MSL, or 14,000 feet MSL to provide increased terrain clearance for transiting below R–2511.

The Navy evaluated stratification of R–2511 altitudes but determined that it is not practical for mission accomplishment. Most weapons that will be launched across the corridor will vary their flight altitude, either climbing to establish a ''look-down'' aspect or, descending on their path toward their target. Additionally, the weapon's altitude is expected to vary somewhat based on the shooter aircraft's launch tolerances and weather conditions at the time.

Regarding communications coverage, the FAA controlling agency, JCF, and the Frequency Management Officer have no reports of radio communication issues. To ensure low-flying aircraft have good radio coverage to the east of Trona/China Lake (over Death Valley), even down as low as 1,000 feet AGL, JCF has three radio sites using 120.25 megahertz to communicate in the area of the Trona Pass. JCF monitors all three sites and transmits on the optimal site based on the aircraft's location. If necessary JCF also has tunable radios at other sites which could be used based on aircraft location.

Several commenters maintained that the restricted area, when active, poses a

safety risk to vehicular traffic on California State Highway (SR) 178 which lies beneath R–2511. The commenters were concerned that these experimental and unpredictable weapons could cause fallout and render SR 178 blocked or damaged, which would impact the Trona residents as SR 178 is the only road to and from the Searles Valley.

Experience with operations conducted in this area through the Trona CFA since 1995, reveals an excellent safety record with no history of operational incidents. There has been no documented impact to SR 178 or the surrounding area. R–2511 replaces the Trona CFA using the same operational safety requirements including: Weapons must be launched far enough within R–2505 or R–2524 so that a malfunction during this critical phase of flight results in a ground impact on military property; all weapons transiting R–2511 will have a Flight Termination System (FTS) capable of terminating the weapon's flight and ensuring it does not leave a predetermined corridor; and, weapon system health and status will be evaluated prior to launch and continuously throughout the flight. Typically, the FTS is activated by the Flight Termination Officer based on the missile's flight path and ''health'' as monitored by on-board telemetry systems. A weapon will not be allowed to enter R–2511 unless there is a high degree of certainty that it will safely transit through R–2511 and into its target area in R–2505 or R–2524.

A number of commenters expressed concern that the restricted area will block the Trona Pass, increasing the average flying time in the area by 20 minutes. This increase in flight times could have an adverse effect on time critical MEDEVAC and organ donor flights to and from Las Vegas.

The FAA provides priority handling to civil air ambulance flights when the pilot, in radio transmissions, verbally identifies the flight by stating ''MEDEVAC.'' The FAA will develop a Letter of Procedure (LOP) with the NAWCWD (the using agency) to define the specific terms regarding the recall of R–2511 by the FAA controlling agency when needed for MEDEVAC flights, emergencies, and weather deviations.

Two commenters wrote that once R–2511 is approved, there is nothing to stop the times of designation from being increased.

As described above, the activation of R–2511 is subject to specific limitations contained in the regulatory text. The airspace can only be activated between 0700–1700 hours, local time, Monday–Friday, by a NOTAM issued at least 7-days in advance. In addition, activation of R–2511 is limited to a maximum of 36 days per year and no more than two 2-hour periods per day. The provisions limiting the activation of R–2511 are written into the legal description of R–2511. Therefore, they cannot be changed arbitrarily. The provisions can only be amended by additional rulemaking action pursuant to 14 CFR part 73. This would require a new NPRM, which would include a 45-day public comment period, before any FAA decision to approve or disapprove the changes.

The Rule

This action amends 14 CFR part 73 by establishing restricted area R–2511 in the vicinity of Trona, CA, to support a request from NAWCWD, China Lake, CA.

R–2511 is located in the airspace between restricted areas R–2505 and R–2524 in an area informally known as the Trona Pass. R–2511 consists of the same lateral and vertical boundaries as the former uncharted Trona CFA. R–2511 replaces the CFA to provide a connection between R–2505 and R–2524. The designated altitudes extend from 6,000 feet mean sea level (MSL), to but not including 20,000 feet MSL. The time of designation is: Intermittent, 0700–1700, local time, Monday–Friday, as activated by a Notice to Air Missions (NOTAM) issued at least 7-days in advance. Activation is limited to no more than 36 days per year, and a maximum of two 2-hour blocks per day. R–2511 is a joint-use restricted area meaning that, when the operation for which the area was activated is completed, the restricted area will be returned to the controlling agency for access by other airspace users.

This rule does not change or modify any current military flight activities or weapons testing that already occurs in the existing airspace.

Regulatory Notices and Analyses

The FAA determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this rulemaking action of establishing restricted area R–2511, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this rulemaking action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. For this rulemaking action, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study. On May 3, 2022, and in accordance with FAA Order 1050.1F, paragraph 8–2—*Adoption of Other Agencies' NEPA Documents,* the FAA adopted Naval Air Weapons Center Weapons Division's (NAWCWD) Final Environmental Assessment (FEA) and Finding of No Significant Impact/Record of Decision (FONSI) for the establishment of R–2511, at the Naval Air Weapons Station China Lake (NAWSCL). NAWCWD finalized its FEA and signed the FONSI on April 28, 2022.

Establishment of R–2511 would confine or segregate activities considered hazardous to non-participating aircraft, defined as any aircraft (military or civilian) not actively involved in the research, development, acquisition, test, and evaluation (RDAT&E) activities within the restricted area, when activated. As the lead agency, the Navy prepared the FEA in accordance with the National Environmental Policy Act (NEPA). The Navy invited the FAA to participate as a cooperating agency based on FAA's jurisdiction by law over special use

airspace (SUA) which includes restricted areas as defined in FAA Order 7400.2. As a cooperating agency, the FAA coordinated the NEPA environmental impact analysis reviews closely with the Navy, and actively participated in the preparation of the Navy's FEA. In accordance with FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures,* and the Council on Environmental Quality's (CEQ) NEPA implementing regulations at 40 CFR part 1500, the FAA conducted an independent evaluation and analysis of the NAWCWD FEA and adopted it in support of FAA's decision to establish R–2511 for implementation of the Navy's proposed action. Based on the environmental impact analyses in the Navy's FEA, the FAA has determined that it's Proposed Action of establishing R–2511, and the Navy's use of R–2511, would not result in any significant environmental impacts.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.25 California [Amended]

■ 2. Section 73.25 is amended as follows:

* * * * *

R–2511 Trona, CA [New]

Boundaries. Beginning at lat. 35°37′30″ N; long. 117°35′33″ W; to lat. 35°40′30″ N; long. 117°25′03″ W; to lat. 35°36′00″ N; long. 117°16′55″ W; to lat. 35°36′00″ N; long. 117°26′03″ W; to lat. 35°27′40″ N; long. 117°26′03″ W; to the point of beginning.

Designated Altitudes. 6,000 feet MSL, to but not including, FL 200.

Time of Designation. Intermittent, 0700–1700 local time, Monday–Friday; as activated by NOTAM at least 7-days in advance. Activation limited to no more than 36 days per year, and a maximum of two 2-hour blocks each day.

Controlling Agency. FAA, Joshua Control Facility, Edwards Air Force Base, CA.

Using Agency. Naval Air Warfare Center Weapons Division, China Lake, CA.

* * * * *

Issued in Washington, DC, on October 17, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–22783 Filed 10–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2022–D–1126]

Laboratory Accreditation for Analyses of Foods; Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a guidance for industry entitled ''Laboratory Accreditation for Analyses of Foods: What You Need to Know About the FDA Regulation: Guidance for Industry—Small Entity Compliance Guide.'' The small entity compliance guide (SECG) is intended to help small entities comply with the final rule entitled ''Laboratory Accreditation for Analyses of Foods.''

DATES: The announcement of the guidance is published in the **Federal Register** on October 20, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–1126 for ''Laboratory Accreditation for Analyses of Foods: What You Need to Know About the FDA Regulation: Guidance for Industry—Small Entity Compliance Guide.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as

''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the SECG to the Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Element Building, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Stacie Hammack, Food and Feed Laboratory Operations, Office of Regulatory Affairs, Food and Drug Administration, 60 8th Street NE, Atlanta, GA 30309, 301–796–5817.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 3, 2021 (86 FR 68728), we issued a final rule establishing a program for the testing of food in certain circumstances by accredited laboratories, as required under the Federal Food, Drug, and Cosmetic Act (the final rule). Establishing this program will help FDA improve the safety of the U.S. food supply and protect U.S. consumers by helping to ensure that certain food testing of importance to public health is conducted subject to appropriate oversight and in accordance with appropriate model standards to produce reliable and valid test results. The final rule, which is codified at 21 CFR part 1, subpart R (21 CFR 1.1101 through 1.1201), became effective February 1, 2022.

We examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that the final rule will have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121, as amended by Pub. L. 110–28), we are making available the SECG to explain the actions that a small entity must take to comply with the rule.

We are issuing the SECG consistent with our good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 1, subpart R have been approved under OMB control number 0910–0898.

III. Electronic Access

Persons with access to the internet may obtain the SECG at *https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-rules-guidance-industry, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: October 14, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22706 Filed 10–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0867]

RIN 1625–AA00

Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipelines that will be removed from the floor of the Corpus Christi Shipping Channel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective from 7 p.m. on October 19, 2022, through 5 a.m. on October 22, 2022. For the purposes of enforcement, actual notice will be used from 7 p.m. on October 19, 2022, through October 20, 2022.

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule

without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone immediately to protect personnel, vessels, and the marine environment from potential hazards created by pipeline removal operations and lack sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with pipeline removal operations in the Corpus Christi Shipping Channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with pipeline removal operations occurring from 7 p.m. on October 19, 2022, through 5 a.m. on October 22, 2022, will be a safety concern for anyone within the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while pipelines are removed from the floor of the Corpus Christi Shipping Channel.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 7 p.m. on October 19, 2022, through 5 a.m. on October 22, 2022, and will be subject to enforcement from 7 p.m. to 5 a.m. of the next day, each day. The safety zone will encompass all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The pipeline will be removed along the floor of the Corpus Christi Shipping Channel. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450. The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The temporary safety zone will be enforced for a short period of only 9 hours each day. The rule does not completely restrict the traffic within a waterway and allows mariners to request 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 certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, and Environmental Planning, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone for navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipeline that will be removed from the floor of the Corpus Christi Shipping Channel. It is categorically excluded from further review under paragraph L60(c) Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165–REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0867 to read as follows:

§ 165.T08–0867 Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX.

(a) *Location.* The following area is a safety zone: all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W.

(b) *Effective period.* This section is effective from 7 p.m. on October 19, 2022, through 5 a.m. on October 22, 2022. This section is subject to enforcement from 7 p.m. to 5 a.m. of the next day, each day.

(c) *Regulations.* (1) According to the general regulations in § 165.23, entry into this temporary safety zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

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

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: October 14, 2022.

M.A. Cintron,

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

[FR Doc. 2022–22872 Filed 10–18–22; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 600, and 602

[Docket ID ED–2018–OPE–0076, ED–2018–OPE–0027]

RIN 1840–AD26, 1840–AD36, 1840–AD37, 1840–AD38

Student Assistance General Provisions, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Student Assistance General Provisions, The Secretary's Recognition of Accrediting Agencies, The Secretary's Recognition Procedures for State Agencies; Distance Education and Innovation; Corrections

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final rule; technical corrections.

SUMMARY: The Department of Education (Department or we) corrects the text in regulations issued under the Higher Education Act of 1965, as amended (HEA) and published in the **Federal Register** on: September 23, 2019, for provisions relating to Borrower Defense to Repayment and Financial Responsibility; November 1, 2019, for provisions relating to Accreditation, State Authorization, and the Student Assistance General Provisions; and September 2, 2020, for provisions relating to Distance Education and Innovation, Institutional Eligibility, and the Student Assistance General Provisions.

DATES: These corrections are effective October 20, 2022. The incorporation by reference of certain publications listed in this document is approved by the Director of the **Federal Register** as of October 20, 2022.

FOR FURTHER INFORMATION CONTACT: Gregory Martin, 400 Maryland Avenue SW, Room 2C–136, Washington DC 20202. Telephone: (202) 453–7535. Email: *Gregory.Martin@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Incorporation by Reference. In § 668.172(c)(1) of this correction, we reference the following accounting standard: Accounting Standards Codification (ASC) 205. ASC 205 provides standards on the presentation of financial statements. In § 668.23(d)(1), we reference the following accounting standard: Accounting Standards Codification

(ASC) 850. ASC 850 provides for accounting and reporting issues concerning related party transactions and relationships. These standards are available at *www.fasb.org,* registration required.

Summary of Corrections

The Department's Borrower Defense to Repayment Rule, published in the **Federal Register** on September 23, 2019, (84 FR 49788) contains the following errors:

1. The regulations in 34 CFR 668.175(c) mistakenly suggest that an institution that is not financially responsible may participate as a financially responsible institution by providing any of the financial protections included in 34 CFR 668.175(h). However, under Section 498(c) of the HEA, some options included in 34 CFR 668.175(h) do not make an institution financially responsible. To conform the regulations to the provisions of the HEA, the reference in 34 CFR 668.175(c) is corrected to refer only to the surety provisions in 34 CFR 668.175(h)(2)(i).

2. The audit requirements in 34 CFR 668.23(d) do not specify that the Supplemental Schedule is part of the audited financial statements submission, as required under 34 CFR 668.172(a) and Section 2 of Appendix A and B to subpart L of the General Provisions regulations, and do not cite the current audit guidance and accounting standards. This correction updates 34 CFR 668.23(d).

3. The financial ratios in 34 CFR 668.172(b) do not conform to the related revisions to the accounting terminology and to the definition of terms as specified in Appendices A and B to subpart L of the General Provisions regulations. This correction updates 34 CFR 668.172(b).

4. Two of the terms described in 34 CFR 668.172(c)(1), ''extraordinary gains and losses'', and ''income or losses from discontinued operations'' do not reflect changes in accounting standards. The accounting standards eliminated ''extraordinary gains and losses'' and modified the requirements for ''income and losses from discontinued operations.'' This correction updates 34 CFR 668.172(c) to conform to accounting standards.

The Department's Accreditation and State Authorization Rule, published in the **Federal Register** on November 1, 2019, (84 FR 58834) contained the following errors:

1. The regulations in 34 CFR 602.32(h)(4)(ii) relating, in part, to the disposition of an accrediting agency's recognition conflict with related provisions in 34 CFR 602.34, Advisory Committee meetings, and 34 CFR 602.36, Senior Department Official's decision. Under 34 CFR 602.23(h)(4)(iii), Department staff have the option to recommend that the senior Department official renew an agency with compliance reporting, but that option is not aligned with 34 CFR 602.34(g) and 34 CFR 602.36(e), which require continuing recognition pending submission of a compliance report. This correction updates 34 CFR 602 (h)(4)(ii) to conform with the provisions in 602.34(g) and 602.36(e). We note that we acknowledged that 34 CFR 602.32(h)(4)(ii) did not align with 602.36(e) at page 27437 of the proposed rule (84 FR 27404) and it was an oversight that we did not correct this inconsistency at that time. Additionally, allowing renewal under 34 CFR 602.32(h)(4)(ii), when there are noncompliant issues would violate section 496b(d) of the HEA (20 U.S.C. 1099b), which provides that no accrediting agency or association may be determined by the Secretary to be a reliable authority, unless the agency or association meets criteria established by the Secretary.

2. The eligible program regulations in 34 CFR 668.8(d)(4)(i) were not updated to conform to a related revision to 34 CFR 602.11. The amendment to § 602.11 revised the requirements for establishing the geographic area of an accrediting agency's activities that may cause accrediting agencies previously defined as ''regional agencies'' to be defined instead as agencies whose activities extend throughout the United States. This correction updates 34 CFR 668.8(d)(4)(i) to conform with the current provisions in 34 CFR 602.11 by referring to accrediting agencies that were defined as regional areas on October 1, 2007 rather than referring to agencies that were previously defined as ''regional.''

3. The provisional certification provisions in 34 CFR 668.13(c)(2)(i) erroneously reference paragraph (c)(1)(i) instead of paragraph (c)(1)(i)(A). The correction updates 34 CFR 668.13(c)(2)(i) with the correct cross-reference applicable to institutions seeking initial participation in the Title IV, HEA programs.

4. The provisional certification provisions in 34 CFR 668.13(c)(2)(ii) erroneously reference ''paragraphs (c)(1)(ii), (iii), (iv) or (e)(2)'' instead of referencing ''paragraphs (c)(1)(i)(B), (C), (D) or (c)(1)(ii).'' The correction updates 34 CFR 668.13(c)(2)(ii) with the correct cross-references.

5. The provisional certification provisions in 34 CFR 668.13(c)(2)(iii) erroneously reference paragraph (c)(1)(v) instead of paragraph (c)(1)(i)(E). The correction updates 34 CFR 668.13(c)(2)(iii) with the correct cross-reference.

6. The provisional certification provisions in 34 CFR 668.13(c)(1)(i)(E) erroneously reference 34 CFR part 603 instead of 34 CFR part 602. The correction updates 34 CFR 668.13(c)(1)(i)(E) with the correct cross-reference.

The Department's Distance Education and Innovation Rule, published in the **Federal Register** on September 2, 2020, (85 FR 54742) contained the following errors:

1. The amendatory instructions at the end of the rule mistakenly instructed the Office of the Federal Register to revise § 600.10(c)(1)(iii) with language that was supposed to amend paragraph (c)(1)(ii). Consequently, § 600.10(c)(1)(ii) was not amended and the substance of § 600.10(c)(iii) was instead removed from the regulations. This correction restores the text in paragraph (c)(1)(iii) relating to the Secretary's approval of short-term programs and revises paragraph (c)(1)(ii). These changes ensure that the language in § 600.10(c) reflects the language that the negotiated committee reached consensus on. For more information about the substance of the amendment to § 600.10(c)(2)(ii), please see discussion of this change in the Department's April 2, 2020, notice of proposed rulemaking (85 FR 18650).

2. The accrediting agency regulations under 34 CFR 602.22(a)(1)(ii)(J) were not updated to conform to a related change made to the written arrangement provisions under 34 CFR 668.5(c)(3)(ii)(A). Current § 668.5(c)(3)(ii)(A) allows an ineligible institution or organization to provide more than 25 percent but less than 50 percent of an educational program in accordance with 34 CFR 602.22(a)(1)(ii)(J). However, accrediting agency approval of such an arrangement is required under 34 CFR 602.22(a)(1)(ii)(J). Notably, the negotiated rulemaking committee for the Distance Education and Innovation Rule reached consensus on the revisions to current § 668.5(c)(3)(ii)(A). This correction updates 34 CFR 602.22(a)(1)(ii)(J) to align with § 668.5(c)(3)(ii)(A), which is the language that the negotiated rulemaking committee agreed to.

Waiver of Proposed Rulemaking, Negotiated Rulemaking and Delayed Effective Date

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, the Department generally offers

interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)). There is good cause to waive rulemaking here as unnecessary.

Rulemaking is ''unnecessary'' in those situations in which ''the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *Utility Solid Waste Activities Group* v. *EPA,* 236 F.3d 749, 755 (D.C. Cir. 2001), *quoting* U.S. Department of Justice, *Attorney General's Manual on the Administrative Procedure Act* 31 (1947) and *South Carolina* v. *Block,* 558 F. Supp. 1004, 1016 (D.S.C. 1983). However, the regulatory changes in this document are necessary to correct errors and to make routine technical updates. Thus, the Department has determined that publication of a proposed rule is unnecessary under 5 U.S.C. 553(b)(B).

In addition, under section 492 of the HEA (20 U.S.C. 1098a), all regulations proposed by the Department for programs authorized under title IV of the HEA are subject to negotiated rulemaking requirements. Section 492(b)(2) of the HEA provides that negotiated rulemaking may be waived for good cause when doing so would be ''impracticable, unnecessary, or contrary to the public interest.'' There is likewise good cause to waive the negotiated rulemaking requirement in this case, since, as explained above, notice and comment rulemaking is unnecessary.

The APA generally requires that regulations be published at least 30 days before their effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). As previously stated, because the final regulations correct errors and make routine technical updates, there is good cause to waive the delayed effective date in the APA and make the final regulations effective upon publication.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.

Paperwork Reduction Act of 1995

The final regulations do not create any new information collection requirements.

Intergovernmental Review

The Student Assistance General Provisions, the Secretary's Recognition of Accrediting Agencies, and the Secretary's Recognition Procedures for State Agencies are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

Based on our own review, we have determined that the final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Federalism Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule may have federalism implications.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 602

Reporting and recordkeeping requirements.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Incorporation by reference, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

For the reasons discussed in the preamble, the Secretary of Education amends 34 CFR parts 600, 602, and 668 by making the following technical corrections:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.10 is amended by revising paragraphs (c)(1)(ii) and (iii) and the OMB control number at the end of the section to read as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) * * *

(1) * * *

(ii) For the first direct assessment program under 34 CFR 668.10 offered at each credential level, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary's approval.

(iii) For an undergraduate program that is at least 300 clock hours but less than 600 clock hours and does not

admit as regular students only persons who have completed the equivalent of an associate degree under 34 CFR 668.8(d)(3), obtain the Secretary's approval.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0012)

PART 602—THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES

■ 3. The authority citation for part 602 continues to read as follows:

Authority: 20 U.S.C. 1099b, unless otherwise noted.

■ 4. Section 602.22 is amended by revising paragraph (a)(1)(ii)(J) to read as follows:

§ 602.22 Substantive change.

* * * * *

(a) * * *

(1) * * *

(ii) * * *

(J) Entering into a written arrangement under 34 CFR 668.5 under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 percent but less than 50 percent of one or more of the accredited institution's educational programs.

* * * * *

■ 5. Section 602.32 is amended by revising paragraph (h)(4)(ii) to read as follows:

§ 602.32 Procedures for Department review of application for recognition or for change in scope, compliance reports, and increases in enrollment.

* * * * *

(h) * * *

(4) * * *

(ii) Recommending that the senior Department official approve, continue recognition with a compliance report-to be submitted to the Department within 12 months, continue recognition with a compliance report to be submitted to the Department with a deadline in excess of 12 months based on a finding of good cause and extraordinary circumstances, approve with monitoring or other reporting requirements, or deny, limit, suspend, or terminate recognition; and

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 6. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c–1, 1221–3, and 1231a, unless otherwise noted.

■ 7. Section 668.8 is amended by revising paragraph (d)(4)(i) to read as follows:

§ 668.8 Eligible program.

* * * * *

(d) * * *

(4) * * *

(i) Is provided by an institution that is accredited by a recognized accrediting agency or association that was defined as a regional accrediting agency or association on October 1, 2007, and has held such accreditation since October 1, 2007, or earlier; and

* * * * *

■ 8. Section 668.13 is amended by revising paragraphs (c)(1)(i)(E) and (c)(2)(i) through (iii) and the OMB control number at the end of the section to read as follows:

§ 668.13 Certification procedures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(E) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency according to the provisions contained in 34 CFR part 602; or

* * * * *

(2) * * *

(i) Not later than the end of the first complete award year following the date on which the Secretary provisionally certified the institution under paragraph (c)(1)(i)(A) of this section;

(ii) Not later than the end of the third complete award year following the date on which the Secretary provisionally certified the institution under paragraphs (c)(1)(i)(B), (C), and (D) or paragraph (c)(1)(ii) of this section; and

(iii) If the Secretary provisionally certified the institution under paragraph (c)(1)(i)(E) of this section, not later than 18 months after the date that the Secretary withdrew recognition from the institution's nationally recognized accrediting agency.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0022)

■ 9. Section 668.23 is amended by:

■ a. Revising paragraph (d)(1);

■ b. Adding paragraph (i);

■ c. Revising the OMB control number at the end of the section; and

■ d. Removing the authority citation at the end of the section.

The revisions and addition read as follows:

§ 668.23 Compliance audits and audited financial statements.

* * * * *

(d) * * *

(1) *General.* To enable the Secretary to make a determination of financial responsibility, an institution must, to the extent requested by the Secretary, submit to the Secretary a set of financial statements for its latest complete fiscal year, as well as any other documentation the Secretary deems necessary to make that determination. Financial statements submitted to the Secretary must include the Supplemental Schedule required under § 668.172(a) and Section 2 of Appendix A and B to subpart L of this part, and must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards, issued by the Comptroller General of the United States and other guidance contained in 2 CFR Part 200—Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards; or in audit guides developed by, and available from, the Department of Education's Office of Inspector General, whichever is applicable. As part of these financial statements, the institution must include a detailed description of related entities based on the definition of a related entity as set forth in Accounting Standards Codification (ASC) 850. The disclosure requirements under this provision extend beyond those of ASC 850 to include all related parties and a level of detail that would enable to Secretary to readily identify the related party. Such information may include, but is not limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.

* * * * *

(i) *Incorporation by reference.* The material listed in this paragraph (i) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at U.S. Department of Education and at the National Archives and Records Administration (NARA). Contact U.S. Department of Education at: Office of the General Counsel, 400 Maryland

Avenue SW, room 2C–136, Washington DC 20202; phone: (202) 401–6000;

https://www2.ed.gov/about/offices/list/ogc/index.html?src=oc. For information on the availability of this material at NARA, contact the Office of the Federal Register—email: *fr.inspection@nara.gov;* website: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the Financial Accounting Standards Board (FASB), 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856–5116; (203) 847–0700; *www.fasb.org.*

(1) Accounting Standards Codification (ASC) 850, Related Party Disclosures, Updated through September 10, 2018.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 1845–0038 10.

■ 10. Section 668.172 is amended by revising paragraphs (b), (c)(1), and (e) and the OMB control number at the end of the section to read as follows:

§ 668.172 Financial ratios.

* * * * *

(b) *Ratios.* The Primary Reserve, Equity, and Net Income ratios are defined under appendix A to this subpart for proprietary institutions, and under appendix B to this subpart for private non-profit institutions.

BILLING CODE 4000–01–P

(1) The ratios for proprietary institutions are:

(i) Primary Reserve Ratio

$$\frac{\text{Adjusted Equity}}{\text{Total Expenses and Losses}}$$

(ii) Equity Ratio

$$\frac{\text{Modified Equity}}{\text{Modified Assets}}$$

(iii) Net Income Ratio

$$\frac{\text{Income Before Taxes}}{\text{Total Revenue and Gains}}$$

(2) The ratios for private non-profit institutions are:

(i) Primary Reserve Ratio

$$\frac{\text{Expendable Net Assets}}{\text{Total Expenses without Donor Restrictions and Losses without Donor Restrictions}}$$

(ii) Equity Ratio

$$\frac{\text{Modified Net Assets}}{\text{Modified Assets}}$$

(iii) Net Income Ratio

$$\frac{\text{Change in Net Assets without Donor Restrictions}}{\text{Total Revenue without Donor Restrictions and Gains without Donor Restrictions}}$$

BILLING CODE 4000–01–C

(c) * * *

(1) Generally excludes income or losses from discontinued operations under Accounting Standards Codification 205, prior period adjustments, the cumulative effect of changes in accounting principles, and the effect of changes in accounting estimates;

* * * * *

(e) *Incorporation by reference.* The material listed in this paragraph (e) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C.

552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at U.S. Department of Education and at the National Archives and Records Administration (NARA). Contact U.S. Department of Education at: Office of the General Counsel, 400 Maryland Avenue SW, Room 2C–136, Washington DC 20202; phone: (202) 401–6000; *https://www2.ed.gov/about/offices/list/ogc/index.html?src=oc.* For information on the availability of this material at NARA, contact the Office of the Federal Register—email: *fr.inspection@nara.gov;* website: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the Financial Accounting Standards Board (FASB), 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856–5116; (203) 847–0700; *www.fasb.org.*

(1) Accounting Standards Update (ASU) 2016–02, Leases (Topic 842), (February 2016).

(2) Accounting Standards Codification (ASC) 205, Presentation of Financial Statements, Updated through August 9, 2021 (with taxonomy revisions as of January 26, 2022).

(Approved by the Office of Management and Budget under control number 1845–0022)

■ 11. Section 668.175 is amended by revising paragraph (c) to read as follows:

§ 668.175 Alternative standards and requirements.

* * * * *

(c) *Financial protection alternative for participating institutions.* A participating institution that is not financially responsible either because it does not satisfy one or more of the standards of financial responsibility under § 668.171(b), (c), or (d), or because of an audit opinion or going concern disclosure described under § 668.171(h), qualifies as a financially responsible institution by submitting an irrevocable letter of credit that is acceptable and payable to the Secretary, or providing other surety described under paragraph (h)(2)(i) of this section, for an amount determined by the Secretary that is not less than one-half of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, except that this requirement does not apply to a public institution.

* * * * *

[FR Doc. 2022–22822 Filed 10–19–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

[2900–AR72]

Delegated Authority to Settle Federal Tort Claims Act Administrative Tort Claims

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulation governing delegated authority to settle administrative tort claims pursuant to the Federal Tort Claims Act (FTCA) to $500,000. This regulation also amends the delegated authority to the Veterans Health Administration (VHA) to $5,000 to settle non-medical malpractice claims pursuant to the FTCA.

DATES: *Effective date:* This rule is effective October 20, 2022.

Applicability date: The provisions of this final rule shall apply to all VA FTCA settlements on or after the date of publication of this final rule in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Michael Newman, Chief Counsel, Office of the General Counsel (021), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–4900. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Title 28 of the Code of Federal Regulations, chapter 1, governs the Department of Justice (DOJ) and part 14 covers administration of claims under the Federal Tort Claims Act. The regulations in 28 CFR part 14, appendix A, Delegations of Settlement Authority, were amended by DOJ effective March 23, 2020 (85 FR 10267). The amendment increases the authority delegated to the Secretary of Veterans Affairs to settle administrative tort claims where the amount of settlement does not exceed $500,000. Previously delegated authority was limited to claims not exceeding $300,000. Presently, 38 CFR 14.600 reflects the delegated authority prior to March 23, 2020, which no longer applies to the Secretary's delegated authority. As a result of the DOJ delegation increasing the Secretary's settlement authority under the FTCA, 38 CFR 14.600 no longer accurately reflects the settlement authority of the General Counsel, Deputy General Counsel, and Chief Counsel, Torts Law Group or those authorized to act for them. Therefore 38 CFR 14.600 is amended to reflect this increase in delegated settlement authority.

In addition, effective May 21, 2020, VHA Directive 1093, *Delegation of Authority to Process Tort Claims,* was revised to increase delegated settlement authority for VISN and VA medical facility Directors. The Directive allows resolution of non-medical malpractice (personal injury or property damage) claims (''small claims'') asserting damages of $5,000 or less to be settled within the Directors' authority. Presently, 38 CFR 14.600 reflects the maximum delegated authority to the Directors as $2,500. Therefore 38 CFR 14.600 is amended to reflect this increase in VHA's delegated settlement authority.

Administrative Procedure Act

This final rule is a procedural rule that does not impose new rights, duties, or obligations on affected individuals but, rather, eliminates duplicate filings under the statutory requirement that agents and attorneys file a copy of a fee agreement ''with the Secretary.'' *See* 38 U.S.C. 5904(c)(2). Therefore, it is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553. *See* 5 U.S.C. 553(b)(A) and (d)(3). This rule merely acknowledges settlement authority increases of: (1) VA to settle FTCA administrative claims without DOJ approval; and (2) VHA to settle small claims.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule, because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. At a minimum, this rule will affect only: (1) Office of General Counsel (OGC) attorneys and paralegals settling FTCA administrative claims; and (2) VHA employees settling small claims. However, it will not have a significant economic impact on these individuals, as it will result in decreased involvement of DOJ and OGC. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility

analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

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

Assistance Listing

There are no Assistance Listing numbers and titles for the programs affected by this document.

Congressional Review Act

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

Unfunded Mandates

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

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on October 11, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 14 as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

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

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5901–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

■ 2. Amend § 14.600 by revising paragraphs (c)(1), (2), and (3) and (d)(1) and (2) and the parenthetical authority citation at the end of the section to read as follows:

§ 14.600 Federal Tort Claims Act—general.

* * * * *

(c) * * *

(1) To the Under Secretary for Health, the Deputy Under Secretary for Health, Veterans Integrated Service Network (VISN) Directors, and VA Medical Facility Directors; with respect to any non-medical malpractice claim for $5,000 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Deputy General Counsel, and Chief Counsel, Torts Law Group or those authorized to act for them with respect to any claim; provided that any award, compromise, or settlement in excess of $500,000 shall be effected only with the prior written approval of the Attorney General or his or her designee; provided further that whenever a settlement is effected in an amount in excess of $200,000 a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

(3) To the General Counsel, Deputy General Counsel, and Chief Counsel, Torts Law Group or those authorized to act for them with respect to any claim, provided that:

(i) Any award, compromise, or settlement in excess of $300,000 but not more than $500,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Chief Counsel, Torts Law Group; provided further that whenever a settlement is effected in an amount in excess of $200,000, a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice; and

(ii) Any award where, for any reason, the compromise of a particular claim, as a practical matter, will, or may control the disposition of a related claim in which the amount to be paid may exceed $300,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Chief Counsel, Torts Law Group; and

(iii) Any award, compromise, or settlement in excess of $500,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Chief Counsel, Torts Law Group; and with the prior written approval of the Attorney General or his or her designee.

(d) * * *

(1) To the Torts Law Group, with respect to any claim for $5,000 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Deputy General Counsel, and Chief Counsel, Torts Law Group with respect to any claim; provided that any award, compromise, or settlement in excess of $500,000 shall be effected only with the prior written approval of the Attorney General or his or her designee; provided further that whenever a settlement is effected in an amount in excess of $200,000, a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

(Authority: 28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, 2671–80; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

[FR Doc. 2022–22559 Filed 10–19–22; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

USPS Connect Local Mail

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) in various sections to add a new price category designed to enhance access to our delivery network at the local level to deliver envelopes the same-day or the next-day.

DATES: *Effective date:* January 22, 2023.

FOR FURTHER INFORMATION CONTACT: Krista Becker at (202) 268–7345 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: Currently, when business mailers who send documents locally with regular frequency wish to send documents for same-day or next-day delivery, they are directed to use a variety of services that were designed for end-to-end mailing over long distances and are priced accordingly.

The Postal Service initiated a Market Test, USPS Connect Local Mail™, (Docket No. MT2022–1, PRC Order No. 6038) on January 9, 2022, to offer improved access to the Postal Service network for local mailers that leveraged the Postal Service's ''last-mile'' infrastructure to create an economical new solution for customers.

USPS Connect Local Mail is a new commercial First-Class Mail® price category offering, designed to deliver items the same-day or the next-day via a designated delivery unit to every address served by that delivery unit where available.

The flat price is the same for the two USPS-produced envelopes offered by the Postal Service and a customer's own envelope. The USPS Connect Local Mail price category is intended to be used for documents and paper-based content only. USPS Click-N-Ship® or USPS API will be the required payment methods, providing the shipping label with a trackable Intelligent Mail® package barcode (IMpb®) and postage payment.

There are no extra services available with USPS Connect Local Mail. USPS Tracking Plus® additional mailing service will be available for USPS Connect Local Mail.

On October 11, 2022, the Postal Service filed a request with the Postal Regulatory Commission to make the USPS Connect Local Mail price category a permanent offering. Documents pertinent to the request are available in Docket No. MC2023–12.

The Postal Service believes this new offering will provide customers with a service that will enhance their mailing experience.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Letters, Flats, and Parcels

* * * * *

202 Elements on the Face of a Mailpiece

* * * * *

3.0 Placement and Content of Mail Markings

* * * * *

3.5 First-Class Mail and USPS Marketing Mail Markings

Mailpieces must be marked under the corresponding standards to show the class of service and/or price paid:

a. Basic Marking. The basic required marking that indicates the class or subclass which must be printed or produced as part of; directly below; or to the left of the permit imprint, meter imprint, or stamp as follows:

* * * * *

[Renumber items a2 through a4 as items a3 through a5 and add new item a2 to read as follows:]

2. ''USPS Connect Local Mail''

* * * * *

230 Commercial Mail First-Class Mail

233 Prices and Eligibility

1.0 Prices and Fees

1.1 Price Application

[Revise the text of 1.1 to read as follows:]

Except for USPS Connect Local Mail under 1.2.3, postage is based on the price that applies to the weight of each addressed piece.

1.2 Price Computation for First-Class Mail Letters and Flats

* * * * *

1.2.2 Flats

[Revise the text of 1.2.2 to read as follows:]

Except for USPS Connect Local Mail under 1.2.3, First-Class Mail flats prices are charged per ounce up to the maximum of 13 ounces. Any fraction of an ounce is considered a whole ounce. For example, if a piece weighs 1.2 ounces, the weight (postage) increment is 2 ounces.

[Add new 1.2.3 to read as follows:]

1.2.3 USPS Connect Local Mail

USPS Connect Local Mail price is not based on weight, but is charged a flat price regardless of actual weight (up to 13 ounces) of the mailpiece.

[Revise the heading and text of 1.3 to read as follows:]

1.3 First-Class Mail Prices

For prices of all First-Class Mail price categories under 1.2, see Notice 123—Price List.

[Delete 1.4 in its entirety and renumber 1.5 through 1.7 as 1.4 through 1.6.]

* * * * *

2.0 Content Standards for First-Class Mail

2.1 General

[Revise the text of 2.1 to read as follows:]

Except for restricted material as described in 601.8.0 or USPS Connect Local Mail under 7.0, any mailable item may be mailed as First-Class Mail.

* * * * *

3.0 Basic Eligibility Standards for First-Class Mail

3.1 Description of Service

3.1.1 Service Description

[Revise the text of 3.1.1 by adding a new second sentence to read as follows:]

* * * USPS Connect Local Mail is a price category of First-Class Mail with an expected same-day or next day delivery service. * * *

* * * * *

[Add new 7.0 to read as follows:]

7.0 USPS Connect Local Mail

USPS Connect Local Mail mailings are subject to the following criteria:

a. No minimum volume requirement.

b. Pieces must not exceed flat-size dimensions under 201.4.1.

c. USPS Connect Local Mail price category is designed to be used for documents and paper-based contents only.

d. Two USPS-produced USPS Connect Local Mail envelopes are offered by the Postal Service or a customer may use their own envelope.

e. Postage must be paid under 234.1.2.

f. Pieces are subject to specific marking requirements under 202.3.5.

g. Mailings must be addressed and entered at the designated entry unit by the critical entry time for same day delivery.

h. There are no extra services available with USPS Connect Local Mail.

i. USPS Tracking Plus® additional mailing service will be available for USPS Connect Local Mail.

* * * * *

234 Postage Payment and Documentation

1.0 Basic Standards for Postage Payment

[Revise the text of 1.0 by renumbering the current text as 1.1 and adding a new 1.2 to read as follows:]

1.1 General

First-Class Mail presorted and automation postage must be paid with precanceled stamps, metered postage, or permit imprints. All pieces in a mailing must be paid with the same method unless otherwise permitted by standard or Business Acceptance Solutions authorization. Permit imprints may be used for mailings of nonidentical-weight pieces only if authorized by the director, Business Acceptance Solutions (see 608.8.0 for address).

1.2 USPS Connect Local Mail

USPS Connect Local Mail mailings must be paid with USPS Click-N-Ship or USPS API.

* * * * *

235 Mail Preparation

1.0 General Definition of Terms

* * * * *

[Add new 1.6 to read as follows:]

1.6 USPS Connect Local Mail

There are no sorting requirements for USPS Connect Local Mail pieces.

* * * * *

[Add a new 9.0 to read as follows:]

9.0 Preparing USPS Connect Local Mail

USPS Connect Local Mail envelopes provided by the USPS must be used only for USPS Connect Local Mail priced pieces.

* * * * *

236 Enter and Deposit

1.0 Deposit

* * * * *

1.2 Time and Location of Deposit

[Revise the text of 1.2 by renumbering the current text as 1.2.1 and adding new 1.2.2 to read as follows:]

1.2.1 General

First-Class Mail paid at Presorted or any automation prices must be deposited at locations and times designated by the postmaster. Metered mail must be deposited in locations under the jurisdiction of the licensing Post Office except as permitted in 604.4.6.3. Permit imprint mail must be deposited under 604.5.0 or 705.

1.2.2 USPS Connect Local

USPS Connect Local Mail pieces must be mailed at the designated entry unit.

* * * * *

Index

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U

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[Add ''USPS Connect Local Mail, 233'' alphabetically under ''U''.]

* * * * *

Notice 123, Price List

[Add USPS Connect Local Mail price category under the commercial First-Class Mail section.]

* * * * *

Ruth B. Stevenson,

Chief Counsel, Ethics and Legal Compliance.

[FR Doc. 2022–22726 Filed 10–19–22; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0412; FRL–9818–02–R9]

Determinations of Attainment by the Attainment Date, California Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards and Marginal for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a determination that the Nevada County (Western part) and Ventura County areas in California, both classified as Serious for the 2008 ozone National Ambient Air Quality Standards (NAAQS), attained the 2008 ozone NAAQS by the July 20, 2021 attainment date. The EPA is also finalizing a determination that six areas in California classified as Marginal for the 2015 ozone NAAQS, attained the 2015 ozone NAAQS by the August 3, 2021 attainment date. These six areas are: Butte County, Calaveras County, San Luis Obispo (Eastern part), Sutter Buttes, Tuolumne County, and Tuscan Buttes. Our final determination of attainment is based on the exclusion of exceedances of the 2008 and 2015 ozone NAAQS that occurred on multiple days in 2018 and 2020, because the exceedances were due to exceptional events. We are also finalizing our determination that the requirement for the State to have contingency measures for Reasonable Further Progress (RFP) and attainment for the 2008 ozone NAAQS for the Nevada County (Western part) and Ventura nonattainment areas will no longer apply, because the contingency measures will never be needed given the attainment of the NAAQS by the attainment date. This action fulfills the EPA's statutory obligation to determine whether these ozone nonattainment areas attained the NAAQS by the relevant attainment dates.

DATES: The effective date of this rule is November 21, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–EPA–R09–OAR–2022–0412. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available 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: Laura Lawrence, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; By phone: (415) 972–3407 or by email: *lawrence.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' means the EPA.

Table of Contents

I. Summary of the Proposed Action
II. Public Comment Period and Final Action
III. Summary of Final Action
IV. Statutory and Executive Order Reviews

I. Summary of the Proposed Action

On July 14, 2022,[1] the EPA proposed to determine that two areas classified as Serious nonattainment for the 2008 ozone National Ambient Air Quality Standards (NAAQS or ''standards'') attained the standards by their July 21, 2021 attainment date, and that six areas classified as Marginal for the 2015 ozone standards attained the standards by their August 3, 2021 attainment date.[2] The EPA proposed these findings to fulfill our statutory obligation under Clean Air Act (CAA or the Act) section 181(b)(2) to determine whether areas with attainment dates in 2021 attained the relevant standards by their applicable attainment dates. These proposed determinations were based on complete, quality-assured and certified ozone air quality monitoring data for the 2018–2020 calendar years, and based on the exclusion of certain exceedances of the 2008 and 2015 ozone NAAQS that occurred on multiple days in 2018 and 2020, because the exceedances were due to exceptional events.

Specifically, we proposed to determine than the Ventura County and the Nevada County (Western part) (or ''Western Nevada County'') areas attained the 2008 ozone NAAQS by the Serious area attainment date of July 20, 2021, and that the Butte County, Calaveras County, San Luis Obispo (Eastern part) (or ''Eastern San Luis Obispo''), Sutter Buttes, Tuloumne County, and Tuscan Buttes areas attained the 2015 ozone NAAQS by the Marginal area attainment date of August 3, 2021. A summary of the actions proposed for the two areas classified Serious for the 2008 ozone NAAQS is provided in Table 1 of this document, and a summary of the actions proposed for the six areas classified Marginal for the 2015 ozone NAAQS is provided in Table 2 of this document.

TABLE 1—2008 OZONE NAAQS SERIOUS NONATTAINMENT AREA ACTION SUMMARY [a]

2008 NAAQS nonattainment area	2018–2020 design value (ppm)	2008 NAAQS attained by the Serious attainment date?
Nevada County (Western part)	0.075	Attained.
Ventura County	0.075	Attained.

[a] The data shown exclude exceedances due to exceptional events.

TABLE 2—2015 OZONE NAAQS MARGINAL NONATTAINMENT AREA ACTION SUMMARY [a]

2015 NAAQS nonattainment area	2018–2020 design value (ppm)	2015 NAAQS attained by the Marginal attainment date?
Butte County	[b] 0.070	Attained.
Calaveras County	0.069	Attained.
San Luis Obispo (Eastern part)	0.070	Attained.
Sutter Buttes	0.070	Attained.
Tuolumne County	0.070	Attained.
Tuscan Buttes	0.070	Attained.

[a] The data shown exclude exceedances due to exceptional events.

[b] The average percent completeness for one of the monitors in Butte County, located in Paradise, CA, is 88 percent due to a power loss caused by regional California wildfires. Per 40 CFR part 50, appendix U, 4(c) the California Air Resources Board (CARB) submitted a request to the Regional Administrator for Region 9 to count missing data for 79 days between November 8, 2018, and January 25, 2019, towards the minimum data completeness requirements. This request was approved and results in data completeness over 90 percent on average over the three-year period of 2018–2020 for the site; therefore, this design value is considered valid. For more information regarding the Paradise monitor data certification and the state's request, see the Technical Support Document for the proposed action and data certification letters included in the docket.

In our proposed rule, we also proposed to determine that, if the proposed determinations of attainment by the attainment date were finalized for the Ventura County and Western Nevada County nonattainment areas, then the requirement for the State to have contingency measures for failure to meet RFP and failure to attain for the 2008 ozone NAAQS would no longer apply, because contingency measures would never be needed given the attainment of the NAAQS by the attainment date (see section II.D of the proposed rule).

Our proposed rule includes additional information about ozone air pollution, the NAAQS, and the statutory and regulatory bases for making these proposed determinations of attainment. Our proposed rule and the Technical Support Document (TSD) accompanying the proposed rule also include additional information about the relevant nonattainment areas, information about areas of Indian Country within the nonattainment areas, and additional information about the data considered for this action.

II. Public Comment Period and Final Action

The public comment period for the EPA's July 14, 2022 proposal closed on August 15, 2022. We received no comments on our proposal.

Pursuant to section 181(b)(2)(A) of the CAA and 40 CFR 51.1303, the EPA is making final determinations that the Serious nonattainment areas listed in Table 1 attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2021, and the Marginal nonattainment areas listed in Table 2 attained the 2015 ozone NAAQS by the applicable attainment date of August 3, 2021. Once effective, this final action satisfies the EPA's obligation pursuant to CAA section 181(b)(2)(A) to determine, based on an area's air quality as of the attainment date, whether the area attained the standard by the applicable attainment date. This determination also establishes that, in

[1] 87 FR 42126 (July 14, 2022).

[2] The 2008 and 2015 ozone NAAQS are both 8-hour standards; the 2008 ozone NAAQS was set at a level of 0.075 ppm (73 FR 16436, March 27, 2008), and the 2015 ozone NAAQS was set at a level of 0.070 ppm (80 FR 65291, October 26, 2015).

accordance with CAA section 181(b)(2)(A), the area will not be reclassified for failure to attain by the applicable attainment date.

The EPA is also making a final determination that the requirement for the Western Nevada County and Ventura nonattainment areas to have contingency measures for failure to meet RFP and failure to attain the 2008 ozone NAAQS by the attainment date no longer applies, because contingency measures can never be triggered given the attainment of the NAAQS by the attainment date. This finding will not prevent the EPA, in the event that an area subsequently violates the NAAQS, from exercising its authority under the CAA to address violations of the NAAQS.[3] Our proposed rule has more information about the EPA's rationale for these actions.

These determinations of attainment do not constitute a redesignation to attainment under CAA section 107(d)(3). The EPA may redesignate an area if a state meets additional statutory criteria, including the EPA approval of a state plan demonstrating maintenance of the air quality standard for 10 years after redesignation, as required under CAA section 175A. As for all NAAQS, the EPA is committed to working with states that choose to submit redesignation requests for areas that are attaining the 2008 and 2015 ozone NAAQS.

III. Summary of Final Action

For the reasons set forth in our proposed rule and summarized in this document, we are determining that:

- The Ventura County and Western Nevada County nonattainment areas attained the 2008 ozone NAAQS by the July 20, 2021 attainment date;
- The Butte County, Calaveras County, Eastern San Luis Obispo County, Sutter Buttes, Tuolumne County, and Tuscan Buttes nonattainment areas attained the 2015 ozone NAAQS by the August 3, 2021 attainment date; and
- The CAA requirement for the SIP to provide for contingency measures for attainment and RFP will no longer apply to the Ventura County and Western Nevada County nonattainment areas for the 2008 ozone NAAQS.

As noted in section II of this document, we are not taking action to redesignate any area to attainment. The EPA would consider a redesignation to attainment for these areas following a submittal by the State of a formal redesignation request and maintenance plan.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www2.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 and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This rule does not impose any new information collection burden under the PRA not already approved by the OMB.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

E. Executive Order 13132, Federalism

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

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, 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.''

The EPA has identified tribal areas within three of the nonattainment areas covered by this action, that would be potentially affected by this action. Specifically, the Butte County, Calaveras County, and Tuolumne County nonattainment areas addressed in this action include areas of Indian country located within the nonattainment area boundaries. A full list of tribes in these nonattainment areas is found in section I.D of the proposed action and in the TSD accompanying the proposed action.

The EPA has concluded that this action may have tribal implications for these tribes for the purposes of Executive Order 13175, but would not impose substantial direct costs upon the tribes, nor would it preempt tribal law. The determinations we are finalizing in this rule apply throughout the nonattainment area, including on tribal lands within the nonattainment areas. As noted in our proposed rule, and in section II of this document, the nonattainment areas, including the tribal lands within the nonattainment areas, will remain designated nonattainment and will retain their existing classifications.

At the time of our proposed action, the EPA notified the tribes located within the boundaries of the nonattainment areas addressed in this action, and we plan to notify them of this final action. Because this action did not change the tribe's existing nonattainment designation or classification, we did not offer government-to-government consultation on our proposed action, however, as stated in our proposed action, the EPA would initiate government-to-government consultation at the request of any tribe. The EPA did not receive any requests for consultation on this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

[3] See *Bahr* v *Regan,* 6 F.4th 1059, 1085 (9th Cir. 2021); see also 42 U.S.C. 7407(d)(3).

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

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

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

CAA 181(b)(2)(A) directs the Administrator to determine, within 6 months following the applicable attainment date, and based on the area's design value as of the attainment date, whether the area attained the standard by that date. There is no information in the record indicating that this action would be inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

K. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability. The rule makes factual determinations for specific entities and does not directly regulate any entities. The determination of attainment by the attainment date does not in itself create any new requirements beyond what is mandated by the CAA.

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 19, 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 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, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 6, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, part 52, chapter 1, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.282 is amended by adding paragraph (n) to read as follows:

§ 52.282 Control strategy and regulations: Ozone.

* * * * *

(n) *Determinations of attainment by the attainment date.* Effective November 21, 2022.

(1) *Determinations of attainment by the attainment date.* The EPA has determined that the Nevada County (Western part) and Ventura County Serious nonattainment areas in California attained the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of July 20, 2021, based upon complete, quality-assured and certified data for the calendar years 2018–2020.

(2) *Determinations of attainment by the attainment date.* The EPA has determined that the Butte County, Calaveras County, San Luis Obispo (Eastern part), Sutter Buttes, Tuolumne County, and Tuscan Buttes Marginal nonattainment areas in California attained the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of August 3, 2021, based upon complete, quality-assured and certified data for the calendar years 2018–2020.

[FR Doc. 2022–22192 Filed 10–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2022–0501; FRL–10106–02–R9]

Determination of Attainment by the Attainment Date But for International Emissions for the 2015 Ozone National Ambient Air Quality Standard; Imperial County, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA or ''Agency'') is determining that the Imperial County nonattainment area would have attained the 2015 ozone national ambient air quality standard (NAAQS) by the August 3, 2021 ''Marginal'' area attainment date, but for emissions emanating from outside the United States. As a result of this final action, the Imperial County nonattainment area will no longer be subject to the Clean Air Act (CAA) requirements pertaining to reclassification upon failure to attain and therefore will remain classified as a Marginal nonattainment area for the 2015 ozone NAAQS. This action discharges the EPA's statutory obligation to determine whether the Imperial County ozone nonattainment area attained the NAAQS by the attainment date.

DATES: This final action is effective on November 21, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2022–0501. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available 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: Ginger Vagenas, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3964, or by email at *vagenas.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION:
Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Summary of the Proposed Action
II. Public Comment
III. Final Action
IV. Statutory and Executive Order Reviews

I. Summary of the Proposed Action

On August 15, 2022, the EPA proposed to determine, based on a demonstration submitted by the State of California, that the Imperial County nonattainment area [1] would have attained the 2015 ozone NAAQS [2] by the ''Marginal'' area attainment date of August 3, 2021, but for emissions emanating from outside of the United States (specifically, from Mexico), and therefore is not subject to the CAA requirements pertaining to reclassification upon failure to attain.[3] This demonstration, entitled ''Imperial County Clean Air Act Section 179B(b) Analysis for the 70 ppb 8-Hour Ozone Standard,'' was submitted by the California Air Resources Board (CARB) on August 16, 2021. CARB submitted additional information on November 24, 2021. Using several lines of evidence, CARB evaluated whether, and the extent to which, ambient ozone levels in Imperial County are affected by emissions emanating from northern Mexico.

In our proposed rule, we provided background information on the ozone standard, area designations and related SIP requirements for Marginal ozone nonattainment areas under the CAA, and information on the provisions of CAA section 179B, entitled ''International Border Areas.'' We also provided our analysis of CARB's demonstration and the rationale for our conclusion that Imperial County would have attained the 2015 ozone NAAQS, but for emissions emanating from Mexico. We stated that, if our proposed determination were to be finalized, the EPA's obligation under CAA section 181(b)(2)(A) to determine whether the area attained by its attainment date would not apply and the area would not be reclassified. The area would remain designated nonattainment and thus the State would continue to comply with applicable requirements for a Marginal ozone nonattainment area.

Please see our proposed rule for more information concerning the background for this action and for a more detailed discussion of the rationale for our determination that Imperial County would have attained the 2015 ozone NAAQS by the Marginal area attainment date of August 3, 2021, but for emissions emanating from Mexico.

II. Public Comment

The public comment period on the proposed rule opened on August 15, 2022, the date of its publication in the **Federal Register**, and closed on September 14, 2022. We did not receive any public comments.

III. Final Action

For the reasons discussed in detail in the proposed rule and summarized herein, the EPA is taking final action under CAA section 179B(b) to determine, consistent with our evaluation of the ''Imperial County Clean Air Act Section 179B(b) Analysis for the 70 ppb 8-Hour Ozone Standard,'' that the Imperial County nonattainment area would have attained the 2015 ozone NAAQS by the Marginal area attainment date of August 3, 2021, but for emissions emanating from Mexico. Therefore, the EPA's obligation under section 181(b)(2)(A) to determine whether the area attained by its attainment date no longer applies. The area will not be reclassified and will remain a Marginal nonattainment area.

IV. Statutory and Executive Order Reviews

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

This action is exempt from review by the Office of Management and Budget because it responds to the CAA requirement to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date.

B. Paperwork Reduction Act (PRA)

This rulemaking does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget. This action does not contain any information collection activities and serves only to make final a determination that the Imperial County Marginal nonattainment area would have attained the 2015 ozone standard by the August 3, 2021 attainment date but for international emissions.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The determination that the Imperial County Marginal nonattainment area would have attained the 2015 ozone standard by the August 3, 2021 attainment date but for international emissions does not in and of itself create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal Government and the states for purposes of implementing the NAAQS is established under the CAA.

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

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA has identified two tribal areas located within the Imperial County nonattainment area, which is the subject of this action determining the area would have attained the 2015 ozone NAAQS, but for emissions emanating from outside the United States. The EPA invited the Quechan Tribe of the Fort Yuma Indian

[1] The Imperial County nonattainment area for the 2015 ozone standard includes the entire county. Both the Quechan Tribe of the Fort Yuma Indian Reservation and the Torres Martinez Desert Cahuilla Indians have lands within Imperial County. A precise description of the Imperial County ozone nonattainment area is contained in 40 CFR 81.305.

[2] Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight. On October 26, 2015, the EPA revised the NAAQS for ozone to establish a new 8-hour ozone standard. 80 FR 65452. In that action, the EPA promulgated identical revised primary and secondary ozone standards designed to protect public health and welfare that specified an 8-hour ozone level of 0.070 parts per million (ppm). Because the 2015 primary and secondary NAAQS for ozone are identical, for convenience, the EPA refers to them in the singular as ''the 2015 ozone NAAQS'' or as ''the standard.''

[3] 87 FR 50030.

Reservation and the Torres Martinez Desert Cahuilla Indians to engage in government-to-government consultation in advance of our proposed action and communicated with the tribes after the Agency issued the proposed rule. The EPA did not receive any requests to consult on this action.

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

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA's evaluation of this issue is contained in the section of the preamble to the proposed rule titled ''Environmental Justice Considerations.''

K. Congressional Review Act (CRA)

This rulemaking is exempt from the CRA because it is a rulemaking of particular applicability. The rulemaking makes factual determinations for specific entities and does not directly regulate any entities. The determination of attainment does not in itself create any new requirements beyond what is mandated by the CAA.

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 19, 2022. Filing a petition for reconsideration by the Administrator of this final action 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 6, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–22276 Filed 10–19–22; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 87, No. 202
Thursday, October 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–2022–1246; Project Identifier MCAI–2022–00675–T]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes. This proposed AD was prompted by a report of uncommanded setting of the barometric reference in both primary flight displays (PFDs) due to the architecture of data communication of the Control I/O modules, which interconnect the display controllers to the air data system. This proposed AD would require installing updated Primus EPIC software, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 5, 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 National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this material on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1246.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1246; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email *hassan.m.ibrahim@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1246; Project Identifier MCAI–2022–00675–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206 231 3653; email *hassan.m.ibrahim@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2022–05–04, effective May 25, 2022 (ANAC AD 2022–05–04) (also referred to as the MCAI), to correct an unsafe condition for certain Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 IGW, –100 SR, –200 STD, –200 LR, –200 IGW, airplanes. Model ERJ 190–100 SR airplanes are not certificated by the FAA

and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a report of uncommanded setting of the barometric reference in both PFDs due to the architecture of data communication of the Control I/O modules, which interconnect the display controllers to the air data system. The possibility of erroneous indications for both pilots, combined with possible adverse meteorological conditions could result in an increase of flightcrew workload. The FAA is proposing this AD to address this condition, which could interfere with the decisions taken by the flightcrew during critical phases of flight, and possibly result in reduced controllability of the airplane. See the MCAI for additional background information.

Relationship Between This Proposed AD and AD 2020–05–21

This NPRM would not supersede AD 2020–05–21, Amendment 39–19871 (85 FR 15940, March 20, 2020) (AD 2020–05–21). ANAC AD 2022–05–04 specifies that accomplishment of that AD ''covers the accomplishment of [terminates] ANAC AD 2019–10–01'' (which corresponds to FAA AD 2020–05–21). Accomplishment of the proposed actions of this AD on an airplane would then terminate all of the requirements of AD 2020–05–21 for that airplane only. The FAA concurs with ANAC with issuing a stand-alone AD to address the changes in the MCAI.

Related Service Information Under 1 CFR part 51

ANAC AD 2022–05–04 specifies procedures for installing updated Primus EPIC software. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

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 ANAC AD 2022–05–04 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate ANAC AD 2022–05–04 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with ANAC AD 2022–05–04 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information required by ANAC AD 2022–05–04 for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2022–1246 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 121 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
8 work-hours × $85 per hour = $680	$0	$680	$82,280

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.): Docket No. FAA–2022–1246; Project Identifier MCAI–2022–00675–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 5, 2022.

(b) Affected ADs

This AD affects AD 2020–05–21, Amendment 39–19871 (85 FR 15940, March 20, 2022) (AD 2020–05–21).

(c) Applicability

This AD applies to Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2022–05–04, effective May 25, 2022 (ANAC AD 2022–05–04).

(d) Subject

Air Transport Association (ATA) of America Code 31, Instruments.

(e) Unsafe Condition

This AD was prompted by a report of uncommanded setting of the barometric reference in both primary flight displays due to the architecture of data communication of the Control I/O modules, which interconnect the display controllers to the air data system. The FAA is issuing this AD to address this condition, which could interfere with the decisions taken by the flightcrew during critical phases of flight, and possibly result in reduced controllability of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2022–05–04.

(h) Exceptions to ANAC AD 2022–05–04

(1) Where ANAC AD 2022–05–04 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Alternative methods of compliance (AMOC)'' section of ANAC AD 2022–05–04 does not apply to this AD.

(3) Where paragraph (d) of ANAC AD 2022–05–04 states, ''You must use the following service information for the installation of the Primus EPIC software versions 25.9, 27.4 and 27.4.0.1 as required by this AD,'' replace that text with ''You must use the following service information for the installation of the Primus EPIC software versions 25.9, 27.4 and 27.4.0.1, as applicable, except as provided in paragraphs (a)(1) through (6) of ANAC AD 2022–05–04.''

(i) Terminating Action for AD 2020–05–21

Accomplishing the actions required by this AD on an airplane terminates all requirements of AD 2020–05–21 for that airplane only.

(j) No Reporting Requirement

Although the service information referenced in ANAC AD 2022–05–04 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(k) 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 (l)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(l) Additional Information

(1) For ANAC AD 2022–05–04, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email *pac@anac.gov.br;* website *anac.gov.br/en/.* You may find this ANAC AD on the ANAC website at *sistemas.anac.gov.br/certificacao/DA/DAE.asp.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1246.

(2) For more information about this AD, contact Hassan Ibrahim, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3653; email *hassan.m.ibrahim@faa.gov.*

Issued on September 26, 2022.

Christina Underwood,

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

[FR Doc. 2022–21448 Filed 10–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1238; Project Identifier MCAI–2022–00741–T]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022–09–15, which applies to all Dassault Aviation Model FALCON 2000 and FALCON 2000EX airplanes. AD 2022–09–15 requires relocating affected servo-valves and revising the existing airplane flight manual (AFM) to provide temporary information necessary to operate airplanes fitted with at least one affected brake servo-valve. This AD was prompted by a determination that replacing certain brake servo-valves is necessary to address the unsafe condition. This proposed AD would continue to require the actions in AD 2022–09–15 and would require replacing an affected part with a serviceable part, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also limit or prohibit the installation of affected brake servo-valves. 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 December 5, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–1238; 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.

Material Incorporated by Reference:

• For the EASA AD identified in this NPRM, you may 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.* It is also available at regulations.gov under Docket No. FAA–2022–1238. Or,

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *Tom.Rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

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–2022–1238; Project Identifier MCAI–2022–00741–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 Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *Tom.Rodriguez@faa.gov.* 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, issued EASA Emergency AD 2022–0068–E, dated April 14, 2022 (EASA Emergency AD 2022–0068–E) (also referred to as the MCAI), to correct an unsafe condition for all Dassault Aviation Model FALCON 2000 and FALCON 2000EX airplanes. The FAA issued corresponding AD 2022–09–15, Amendment 39–22035 (87 FR 29217, May 13, 2022) (AD 2022–09–15), for all Dassault Aviation Model FALCON 2000 and FALCON 2000EX airplanes. AD 2022–09–15 requires relocating affected servo-valves and revising the existing AFM to provide temporary information necessary to operate airplanes fitted with at least one affected brake servo-valve. The FAA issued AD 2022–09–15 to prevent temporary failure of the brake servo-valves, which could lead to reduced braking performance during landing including degraded or dissymmetric braking, possibly resulting in reduced control of the airplane, lateral excursion of the runway, and consequent damage to the airplane.

Actions Since AD 2022–09–15 Was Issued

EASA Emergency AD 2022–0068–E requires the replacement of all affected brake servo-valves within 12 months. The preamble to FAA AD 2022–09–15 explained that the planned compliance time for that replacement would have allowed enough time to provide notice and opportunity for prior public comment on the merits of the action. Therefore, AD 2022–09–15 did not require the replacement, and was considered to be interim action pending the FAA's consideration of further rulemaking to mandate the replacement of all affected brake servo-valves.

This proposed AD was prompted by a determination that replacing certain brake servo-valves is necessary and reports of brake system failures during landing. Subsequent investigation determined the root cause to be a brake servo-valve failure. A batch of brake servo-valves has been identified during airplane production and maintenance with an internal oil type that does not meet the manufacturer's cold temperature specifications, which can lead to their failure. The FAA is proposing this AD to prevent temporary failure of the brake servo-valves, which could lead to reduced braking performance during landing including degraded or dissymmetric braking, possibly resulting in reduced control of the airplane, lateral excursion of the runway, and consequent damage to 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 2022–09–15, this proposed AD would retain all of the requirements of AD 2022–09–15. Those requirements are referenced in EASA Emergency AD 2022–0068–E, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

This proposed AD would require EASA Emergency AD 2022–0068–E, which was approved for incorporation by reference as of May 31, 2022 (87 FR 29217, May 13, 2022). 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 of the requirements of AD 2022–09–15. This proposed AD would also require replacing affected brake servo-valves.

EASA Emergency AD 2022–0068–E requires operators to ''inform all flight crews'' of revisions to the AFM, and thereafter to ''operate the aeroplane accordingly.'' However, this proposed AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this proposed AD to operate the airplane according to the revised AFM would be redundant and unnecessary.

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 retain the incorporation by reference of EASA Emergency AD 2022–0068–E by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA Emergency AD 2022–0068–E 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 Emergency AD 2022–0068–E 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 Emergency AD 2022–0068–E. Service information required by EASA Emergency AD 2022–0068–E for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2022–1238 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 441 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
Relocation	10 work-hours × $85 per hour = $850	$0	$850	$374,850
AFM revision	1 work-hour × $85 per hour = $85	0	85	37,485
Replacement	10 work-hours × $85 per hour = $850	11,690	12,540	5,530,140

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2022–09–15, Amendment 39–22035 (87 FR 29217, May 13, 2022); and

■ b. Adding the following new AD:

Dassault Aviation: Docket No. FAA–2022–1238; Project Identifier MCAI–2022–00741–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 5, 2022.

(b) Affected ADs

This AD replaces AD 2022–09–15, Amendment 39–22035 (87 FR 29217, May 13, 2022) (AD 2022–09–15).

(c) Applicability

This AD applies to all Dassault Aviation Model FALCON 2000 and FALCON 2000EX airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by a determination that replacing certain brake servo-valves is necessary and reports of brake system failures during landing. The FAA is issuing this AD to prevent temporary failure of the brake servo-valves, which could lead to reduced braking performance during landing including degraded or dissymmetric braking, possibly resulting in reduced control of the airplane, lateral excursion of the runway, and consequent damage to the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) Emergency AD 2022–0068–E, dated April 14, 2022 (EASA Emergency AD 2022–0068–E).

(h) Exceptions to EASA Emergency AD 2022–0068–E

(1) Where paragraphs (1) and (2) of EASA Emergency AD 2022–0068–E refer to its effective date, this AD requires using May 31, 2022 (the effective date of AD 2022–09–15).

(2) Where paragraph (4) of EASA Emergency AD 2022–0068–E refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (2) of EASA Emergency AD 2022–0068–E specifies to ''inform all flight crews, and, thereafter, operate the aeroplane accordingly,'' this AD does not require those actions as those actions are already required by existing FAA operating regulations (see 14 CFR 91.9, 91.505, and 121.137).

(4) The ''Remarks'' section of EASA Emergency AD 2022–0068–E does not apply to this AD.

(i) No Reporting

Although the service information referenced in EASA Emergency AD 2022–0068–E specifies to submit certain information and send removed parts to the manufacturer, this AD does not include that requirement.

(j) Additional FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch send it to the attention of the person identified in paragraph (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 Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) For EASA Emergency AD 2022–0068–E, 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–2022–1238.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *Tom.Rodriguez@faa.gov.*

Issued on September 22, 2022.

Christina Underwood,

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

[FR Doc. 2022–20982 Filed 10–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1248; Project Identifier MCAI–2022–00609–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 a report that during flight and fatigue testing it was detected that some fasteners installed in the center wing box (CWB) rotated inside their fastener holes. This proposed AD would require replacing affected fasteners and applying additional head nut cap protection at the front and rear spars in the CWB, 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 December 5, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–1248; 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.

Material Incorporated by Reference:

- 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;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available in the AD docket at regulations.gov under Docket No. FAA–2022–1248.

- 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.

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–2022–1248; Project Identifier MCAI–2022–00609–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 2022–0080, dated May 9, 2022 (EASA AD 2022–0080) (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 a report that during flight and fatigue testing it was detected that some fasteners installed in the CWB rotated inside their fastener holes. Investigation revealed there was insufficient friction for the application. The FAA is proposing this AD to address fasteners installed in the CWB rotating inside their fastener holes, which if not corrected, could lead to loss of a fastener clamping and cracking of the nut sealant cover, possibly resulting, in case of lightning strike, in a fuel tank explosion and consequent loss of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0080 specifies procedures for replacing affected fasteners installed on the left-hand and right-hand CWB at the front and rear spar areas and for adding head nut cap protection at the front and rear spars in the CWB. 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 the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0080 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 2022–0080 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0080 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 2022–0080 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 2022–0080. Service information required by EASA AD 2022–0080 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1248 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
83 work-hours × $85 per hour = $7,055	$7,500	$14,555	$436,650

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2022–1248; Project Identifier MCAI–2022–00609–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 5, 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 2022–0080, dated May 9, 2022 (EASA AD 2022–0080).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that during flight and fatigue testing it was detected that some fasteners installed in the center wing box (CWB) rotated inside their fastener holes. The FAA is issuing this AD to address fasteners installed in the CWB rotating inside their fastener holes, which if not corrected, could lead to loss of a fastener clamping and cracking of the nut sealant cover, possibly resulting, in case of lightning strike, in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) 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 2022–0080.

(h) Exceptions to EASA AD 2022–0080

(1) Where EASA AD 2022–0080 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0080 is does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) 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 (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

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

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0080, dated May 9, 2022.

(ii) Reserved.

(3) For EASA AD 2022–0080, 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.*

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

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

Issued on September 28, 2022.

Christina Underwood,

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

[FR Doc. 2022–21449 Filed 10–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1296; Project Identifier MCAI–2022–00628–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) 2020–20–05 and AD 2022–09–16, which apply to certain Airbus SAS Model A318 series; A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N; A320 series; and A321 series airplanes. AD 2020–20–05 and AD 2022–09–16 require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2020–20–05 and AD 2022–09–16, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require the actions in AD 2022–09–16 and require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. This proposed AD would also revise the applicability to include additional airplanes. 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 December 5, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1296; 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.

Material Incorporated by Reference:

- For EASA 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* under Docket No. FAA–2022–1296.

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–2022–1296; Project Identifier MCAI–2022–00628–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 2020–20–05, Amendment 39–21261 (85 FR 65197, October 15, 2020) (AD 2020–20–05), and

AD 2022–09–16, Amendment 39–22036 (87 FR 31943, May 26, 2022) (AD 2022–09–16), which apply to all Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes; Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes. AD 2020–20–05 and AD 2022–09–16 require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations. The FAA issued AD 2020–20–05 and AD 2022–09–16 to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

Actions Since AD 2020–20–05 and AD 2022–09–16 Were Issued

Since the FAA issued AD 2020–20–05 and AD 2022–09–16, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0085, dated May 12, 2022 (EASA AD 2022–0085) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A318–111, A318–112, A318–121, A318–122, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A319–151N, A319–153N, A319–171N, A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, A320–273N, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, A321–232, A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N, and A321–272NX airplanes. EASA AD 2022–0085 superseded EASA AD 2020–0036R1, dated June 24, 2020 (EASA AD 2021–0140) (which corresponds to FAA AD 2020–20–05) and EASA AD 2021–0140, dated June 14, 2021 (which corresponds to FAA AD 2022–09–16). Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after February 2, 2022, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0085 specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require EASA AD 2021–0140, which the Director of the Federal Register approved for incorporation by reference as of June 30, 2022 (87 FR 31943, May 26, 2022).

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 described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would retain the requirements of AD 2022–09–16. This proposed AD would also expand the applicability and require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2022–0085 described previously, as proposed for incorporation by reference. Any differences with EASA AD 2022–0085 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the IBR of EASA AD 2021–0140 and incorporate EASA AD 2022–0085 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0140 and EASA AD 2022–0085 in their 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 2021–0140 or EASA AD 2022–0085 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0140 or EASA AD 2022–0085. Service information required by EASA AD 2021–0140 and EASA AD 2022–0085 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1296 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to

airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional FAA Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this proposed AD affects 1,864 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2022–09–16 to be $7,650 (90 work-hours × $85 per work-hour).

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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 AD 2020–20–05, Amendment 39–21261 (85 FR 65197, October 15, 2020); and AD 2022–09–16, Amendment 39–22036 (87 FR 31943, May 26, 2022); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2022–1296; Project Identifier MCAI–2022–00628–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 5, 2022.

(b) Affected ADs

This AD replaces AD 2020–20–05, Amendment 39–21261 (85 FR 65197, October 15, 2020) (AD 2020–20–05); and AD 2022–09–16, Amendment 39–22036 (87 FR 31943, May 26, 2022) (AD 2022–09–16).

(c) Applicability

This AD applies to Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before February 2, 2022.

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

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, 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) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2022–09–16, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 10, 2020: Except as specified in paragraph (h) of this AD, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0140, dated June 14, 2021 (EASA AD 2021–0140). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2021–0140

This paragraph restates the requirements of paragraph (h) of AD 2022–09–16, with no changes.

(1) Where EASA AD 2021–0140 refers to its effective date, this AD requires using June 30, 2022 (the effective date of AD 2022–09–16).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0140 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0140 specifies revising ''the approved [aircraft maintenance program] AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0140 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0140, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraph (4) of EASA AD 2021–0140 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0140 does not apply to this AD.

(i) Retained Provisions for Alternative Actions or Intervals, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2022–09–16, with no changes. After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0140.

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

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0085, dated May 12, 2022 (EASA AD 2022–0085). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2022–0085

(1) Where EASA AD 2022–0085 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0085 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2022–0085 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0085 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0085, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0085 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2022–0085 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0085.

(m) Additional FAA AD Provisions

The following provisions also apply to this AD:

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

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

(ii) AMOCs approved previously for AD 2022–09–16 are approved as AMOCs for the corresponding provisions of EASA AD 2021–0140 that are required by paragraph (g) of this AD.

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

(n) Related Information

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

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on November 25, 2022.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0085, dated May 12, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on June 30, 2022 (87 FR 31943, May 26, 2022).

(i) European Union Aviation Safety Agency (EASA) AD 2021–0140, dated June 14, 2021.

(ii) [Reserved]

(5) For the EASA ADs identified in this AD, 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 these EASA ADs on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on October 3, 2022.

Christina Underwood,

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

[FR Doc. 2022–22047 Filed 10–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1295; Project Identifier MCAI–2021–01181–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 all Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This proposed AD was prompted by a report of a nose landing gear (NLG) sliding tube rupture that led to a NLG collapse. This proposed AD would require inspection of certain NLG and main landing gear (MLG) sliding tubes and applicable corrective actions and eventual replacement of all affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also prohibit the installation of affected parts under certain conditions.

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 December 5, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1295; 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.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 00•0; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2022–1295.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Manuel Hernandez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 562–627–5256; email *Manuel.F.Hernandez@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–2022–1295; Project Identifier MCAI–2021–01181–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 Manuel Hernandez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 562–627–5256; email *Manuel.F.Hernandez@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 2021–0236, dated October 29, 2021 (EASA AD 2021–0236) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A318 series airplanes, Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The MCAI states that NLG sliding tube rupture, leading to NLG collapse during taxiing, occurred on a Model A320 airplane. Investigations identified overheat damage on that NLG, caused by incorrect accomplishment of a repair on the chromium-plated diameter of the sliding tube during the last NLG overhaul. Further investigations identified a batch of NLG and MLG sliding tubes that are possibly affected by a similar condition, which, if not detected and corrected, could lead to NLG or MLG structural failure and subsequent collapse of the gears, possibly resulting in damage to the airplane and injury to occupants. The MCAI requires inspections of affected parts, applicable corrective actions, and eventual replacement of all affected parts.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1295.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0236 specifies procedures for a detailed inspection of the visible chrome surface of affected NLG and MLG sliding tubes for any discrepancies (cracks), a magnetic particle inspection (MPI) and Barkhausen noise inspection (BNI) of affected parts for any discrepancies (cracks), an MPI, eventual replacement of affected parts, and corrective actions. Corrective actions include immediate replacement of the NLG or MLG sliding tube or shock absorber. 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 described 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 2021–0236 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD This proposed AD would also prohibit the installation of affected parts under certain conditions.

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 2021–0236 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0236 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 2021–0236 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0236. Service information required by EASA AD 2021–0236 for compliance will be available at regulations.gov under Docket No. FAA–2022–1295 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,825 airplanes of U.S. registry. Currently, there are no affected U.S.-registered airplanes that would need the required actions because the affected part is not installed on any U.S.-registered airplanes. U.S.-registered airplanes therefore would need to comply with only the parts prohibition specified in this proposed AD.

If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with the required actions in this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost *	Cost per product
50 work-hours × $85 per hour = $4,250	$0	$4,250

* The FAA has received no definitive data on which to base the cost estimates for the replacement parts specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2022–1295; Project Identifier MCAI–2021–01181–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by December 5, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

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

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

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

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

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by a report of a nose landing gear (NLG) sliding tube rupture leading to a NLG collapse. The FAA is issuing this AD to address NLGs and main landing gears (MLGs) that may have been subject to the incorrect accomplishment of a repair, which, if not detected and corrected, could lead to NLG or MLG structural failure and subsequent collapse of the gears, possibly resulting in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) of this AD: Comply with all required actions and compliance times specified in, and in

accordance with, EASA AD 2021–0236, dated October 29, 2021 (EASA AD 2021–0236).

(h) Exceptions to EASA AD 2021–0236

(1) Where EASA AD 2021–0236 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2021–0236 specifies to do a detailed visual inspection, replace the text ''the instructions of the AOT'' with ''paragraphs 4.2.2.2 and 4.2.2.5 of the AOT.''

(3) Where paragraph (2) of EASA AD 2021–0236 specifies to do an magnetic particle inspection (MPI) and a Barkhausen noise inspection (BNI), replace the text ''the instructions of the AOT'' with ''paragraphs 4.2.2.3 and 4.2.2.6 of the AOT.''

(4) Where paragraph (3) of EASA AD 2021–0236 specifies that ''if discrepancies are detected on an affected part'' for this AD discrepancies include cracking and heat damage.

(5) Where the service information referenced in EASA AD 2021–0236 specifies to quarantine parts, this AD does not require that action.

(6) The ''Remarks'' section of EASA AD 2021–0236 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0236 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) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(k) Related Information

For more information about this AD, contact Manuel Hernandez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 562–627–5256; email *Manuel.F.Hernandez@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0236, dated October 29, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0236, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on October 3, 2022.

Christina Underwood,

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

[FR Doc. 2022–22053 Filed 10–19–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. DOT–OST–2022–0109]

RIN 2105–AF10

Enhancing Transparency of Airline Ancillary Service Fees

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department proposes to require U.S. air carriers, foreign air carriers, and ticket agents to clearly disclose passenger-specific or itinerary-specific baggage fees, change fees, and cancellation fees to consumers whenever fare and schedule information is provided to consumers for flights to, within, and from the United States. The Department also proposes to require these entities to clearly disclose passenger-specific or itinerary-specific fees for adjacent seating whenever fare and schedule information is provided to consumers traveling with young children on flights to, within, and from the United States, and make these fees transactable. The Department further proposes to require that carriers provide useable, current, and accurate information regarding baggage fees, change fees, cancellation fees, and adjacent seating fees if any to ticket agents that sell or display the carrier's fare and schedule information. This rulemaking implements the Executive order on Promoting Competition in the American Economy, which directs the Department to take various actions to promote the interests of American workers, businesses, and consumers, including considering initiating a rulemaking to ensure that consumers have ancillary fee information at the time of ticket purchase.

DATES: Comments should be filed by December 19, 2022. Late-filed comments will be considered to the extent practicable. Petitions for a hearing pursuant to 14 CFR 399.75(b)(1) must also be filed by December 19, 2022.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2022–0109 by any of the following methods:

- *Federal eRulemaking Portal:* go to *https://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Commenters using this method of delivery should contact Docket Services at 202–366–9826 or 202–366–9317 before delivery to ensure staff is available to receive the delivery.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2022–0109 or the Regulation Identifier Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone can search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents and comments received, go to *https://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Ryan Patanaphan, Senior Trial Attorney or Blane A. Workie, Assistant General Counsel, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–9342, 202–366–7152 (fax), *ryan.patanaphan@dot.gov* or *blane.workie@dot.gov* (email).

SUPPLEMENTARY INFORMATION:

A. Background

In 2014, the Department issued a notice of proposed rulemaking (NPRM) titled ''Transparency of Airline Ancillary Service Fees and Other Consumer Protection Issues.'' 79 FR 29970 (May 23, 2014). In the 2014 NPRM, the Department proposed to enhance consumer protections through various means, including the disclosure of certain airline ancillary service fees. In 2017, noting the significant comments received regarding the proposal on ancillary service fees in the 2014 NPRM, the Department issued a supplemental notice of proposed rulemaking (SNPRM) titled ''Transparency of Airline Ancillary Service Fees.'' 82 FR 7536 (Jan. 19, 2017).

In the 2017 SNPRM, the Department proposed to require fees for a first and second checked bag and a carry-on bag be disclosed at all points of sale wherever fare and schedule information is provided to consumers. The Department further proposed that carriers [1] distribute useable, current, and accurate fee information to ticket agents that receive and distribute the carrier's fare and schedule information, including Global Distribution Systems (GDS). The Department also proposed that the information provided by carriers be detailed enough to allow ticket agents to disclose fees as itinerary-specific or customer-specific (*i.e.,* fees that are differentiated based on factors specific to the passenger or proposed itinerary) charges. However, the SNPRM did not propose to require that consumers be able to purchase these ancillary services through ticket agents (*i.e.,* did not propose transactability).

The Department withdrew the SNPRM on December 14, 2017. In the notice of withdrawal of proposed rulemaking, 82 FR 58778 (Dec. 14, 2017), the Department stated that its existing requirements provide consumers information regarding fees for ancillary services and noted that the withdrawal was consistent with Executive Order (E.O.) 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' which has since been revoked.[2]

On July 9, 2021, the President issued E.O. 14036, ''Promoting Competition in the American Economy,'' which launched a whole-of-government approach to strengthen competition. E.O. 14036 includes 72 initiatives by more than a dozen Federal agencies to promptly tackle some of the most pressing competition problems across our economy. It directed the Department to take various actions to foster competition and promote the interests of American workers, businesses, and consumers. Specifically, section 5, paragraph(m)(i)(F) of E.O. 14036 states that ''[t]he Secretary of Transportation shall: . . . not later than 90 days after the date of this order, consider initiating a rulemaking to ensure that consumers have ancillary fee information, including ''baggage fees,'' ''change fees,'' and ''cancellation fees,'' at the time of ticket purchase.'' This rulemaking implements section 5, paragraph(m)(i)(F) of E.O. 14036.[3]

B. Need for a Rulemaking

The Department regularly receives input from stakeholder groups, including airlines and consumer advocacy groups, regarding air transportation-related concerns. Consumer advocates have consistently stated to the Department that there is a market failure in air transportation pricing because consumers are unable to determine the true cost of air travel prior to ticket purchase. They have also raised concerns about the lack of competition in the industry. The Department's full fare rule in 14 CFR 399.84 is designed to ensure the price stated is the entire price required to be paid by the consumer for air transportation. In the context of the full fare rule, air transportation is the transport of the passenger on an aircraft from one location to another location and includes all charges the passenger must pay for this service. The existing regulation does not require that the full fare quoted include the many kinds of ancillary fees consumers may pay for optional services. Consumer advocates have asserted that a lack of passenger specific information regarding fees for ancillary services at the time of ticket purchase is causing a market failure by limiting the ability of consumers to understand the true cost of the travel that they are looking to purchase and to compare pricing between carriers and travel options. Many services or products traditionally included in the price of an airline ticket such as checked baggage and meals are now sold separately. Ancillary service means any optional service related to air travel provided by a carrier, for a fee, beyond passenger air transportation. Such service includes, but is not limited to, checked or carry-on baggage, ticket change and cancellation, advance seat selection, access to in-flight entertainment program, and in-flight beverages, snacks, or meals.

Certain members of Congress and State governments representing constituents have expressed support for full, more specific, disclosure of ancillary service fees. Certain members of Congress have also sponsored legislation on this topic.[4] Further, the

[1] The Department uses the term ''carrier'' or ''airline'' to refer to air carriers and foreign air carriers, as such terms are defined in 49 U.S.C. 40102(a)(2) and (a)(21).

[2] President Biden issued E.O. 13992, ''Revocation of Certain Executive Orders Concerning Federal Regulation,'' on January 20, 2021, which revoked E.O. 13771 and certain other Executive orders.

[3] This rulemaking also addresses section 5, paragraph (m)(i)(B) of E.O.14036. That section directed the Department to promote enhanced transparency and consumer safeguards, as appropriate and consistent with applicable law, including through potential rulemaking, enforcement actions, or guidance documents, with the aims of enhancing consumer access to airline flight information so that consumers can more easily find a broader set of available flights, including by new or lesser known airlines; and ensuring that consumers are not exposed or subject to advertising, marketing, pricing, and charging of ancillary fees that may constitute an unfair or deceptive practice or an unfair method of competition.

[4] See, *e.g.,* Letter from Representative Nita M. Lowey to Secretary Elaine Chao (Dec. 8, 2017) and Letter from Pennsylvania Attorney General Josh Shapiro and attorneys general from 15 other states and the District of Columbia to Secretary Elaine L. Chao (Dec. 20, 2017). See also section 203 of S. 3222, Airline Passengers' Bill of Rights (introduced by Senators Blumenthal, Markey, Whitehouse, Wyden, and Casey on November 17, 2021) at *https://www.congress.gov/bill/117th-congress/senate-bill/3222/text?r=7&s=1,* proposing to mandate that DOT require airlines, online travel agencies (OTAs), metasearch engines and other ticket agents that provide flight search tools disclose all applicable taxes and ancillary fees at any point in which the fare is shown and in telephone communication with a prospective consumer in the U.S. at any point in which the cost of the air transportation is disclosed. See also The Unfriendly Skies: Consumer Confusion Over Airline Fees, Staff Report of Minority Staff of Senate Commerce Committee (August 6, 2015) at *https://www.blumenthal.senate.gov/imo/media/doc/8%206%2015%20FINAL%20Airline%20Report.pdf,* finding that ancillary fees, such as

Continued

Joint Explanatory Statement of the 2018 Consolidated Appropriations Act requested that the Department work in collaboration with industry, consumers and other stakeholders to establish guidelines on transparency of airline ancillary fees.[5] Subsequently, the Department tasked the Aviation Consumer Protection Advisory Committee (ACPAC) with examining this issue.[6] The ACPAC heard from several consumer advocacy groups, including Travelers United, the National Consumers League, and the Global Business Travel Association regarding this issue. Consumer organizations that presented to the ACPAC stressed the importance of ensuring consumers can accurately and easily compare travel costs, inclusive of ancillary fees, and they recommended that ancillary fee information should be clearly displayed early in consumer purchase decisions.[7] The 2020 ACPAC recommended that the Department should remain vigilant to ensure compliance with the transparency requirements that currently exist.[8] Prior DOT advisory committees have also addressed the issue of ancillary service fee transparency. In 2010, the Future of Aviation Advisory Committee advised generally that DOT ''should ensure transparency in air carrier pricing, including ancillary fees.'' [9] In 2012, the Advisory Committee on Aviation Consumer Protection adopted this recommendation and added that all participants in the airfare and fee distribution system should be guided by principles of transparency, providing choices and offers that meet consumer needs, and knowing the full price before purchase.[10] Then in 2015, the Advisory Committee on Aviation Consumer Protection recommended that DOT require change/cancellation fees be clear and displayed before ticket purchase.[11] Consumer advocates had asserted that such fees had become significant and difficult to ascertain.[12]

Most recently, in June 2022, the ACPAC again addressed the issue of transparency of airline ancillary service fees.[13] During the meeting, DOT solicited comment on the key topics of this NPRM (namely, which ancillary service fees are critical for consumers, airlines sharing data regarding critical ancillary service fees with ticket agents, and how to best display this information to consumers). DOT also solicited comment on whether fees for certain ancillary services should be disclosed at the first point in a search process where a fare is listed.

Consumer advocates expressed the view that because most passengers travel once per year or less, they may not be aware of certain ancillary service fees, such as those related to seat selection.[14] Advocates also argued that the practice of ''drip pricing,'' in which sellers advertise a portion of the full price and then reveal additional charges over time tends to lock consumers into engaging with a given seller, and reduces competition, because the customer has invested time and energy into the purchasing process and thus is less likely to abandon the purchase entirely and re-institute a fuller search for options.[15]

This NPRM builds on the Department's final rule in 2011 regarding the disclosure of ancillary service fees by carriers and ticket agents. 76 FR 23110 (April 25, 2011). The 2011 final rule requires carriers to list on their website all ancillary service fees on a page that is directly linked from their main websites. The Department allows carriers to display the fees for ancillary services in a range, except for baggage information. For baggage, the Department requires that carriers provide specific baggage fee information to enable the consumer to determine the cost of the baggage. In addition, carriers and ticket agents are required to disclose, upon displaying the result of an itinerary search, that baggage fees may apply and refer the consumer to the location on the airlines' or ticket agents' website where the consumer can review baggage fee information to determine the fees that would apply to him or her. While the Department considers the disclosure requirements in its 2011 final rule to be a step in the right direction, based on feedback from consumer advocacy groups and others since publication of the 2011 final rule, DOT has determined that these requirements were insufficient and did not fully provide transparency of ancillary services and products.

Since the issuance of the 2011 final rule, consumer advocacy organizations have regularly reported to the Department that consumers often find the process of determining the baggage fees that apply to them to be a complicated and time-consuming process. In 2019, during a meeting of the Aviation Consumer Protection Advisory Committee, two consumer organizations underscored the difficulties faced by consumers in determining the total cost of air travel.[16] Consumer advocates maintain that consumers are confused by the complex charts that carriers and ticket agents provide to consumers to determine their baggage fees. In September 2017, the Government Accountability Office (GAO) noted that consumer group representatives stated that it has become ''increasingly difficult for consumers to compare airfare ticket prices, fees, and associated rules, and understand what is included in their purchases.'' [17] In December 2017, after the Department withdrew its January 2017 SNPRM on transparency of airline ancillary fees, a coalition of 16

change and cancellation penalties, are increasingly less transparent regarding the true cost of air travel and recommending more transparency from the airline industry.

[5] *https://www.congress.gov/congressional-record/2018/03/22/house-section/article/H2697-1* at page H2872.

[6] See *https://www.regulations.gov/document/DOT-OST-2018-0190-0001.*

[7] See Summary of April 4, 2019 ACPAC Meeting 10–16, available at *https://www.regulations.gov/document/DOT-OST-2018-0190-0019;* see also Summary of September 24, 2020 ACPAC Meeting 19–20, available at *https://www.regulations.gov/document/DOT-OST-2018-0190-0025.*

[8] Report of the Aviation Consumer Protection Advisory Committee 5 (Dec. 31, 2020), available at *https://www.transportation.gov/individuals/aviation-consumer-protection/acpac-report-secretary-transportation-december-31-2020.*

[9] The Future of Aviation Advisory Committee, Final Report 36 (Apr. 11, 2011), available at *https://www.transportation.gov/highlights/future-aviation-advisory-committee/faac-final-report.*

[10] Report of the Advisory Committee on Aviation Consumer Protection 7–8 (Oct. 22, 2012), available at *https://www.transportation.gov/airconsumer/ACACP/1st-ACACP-Report-22OCT2012.*

[11] Record of Meeting, Ninth Meeting of the Advisory Committee on Aviation Consumer Protection 3 (Sept. 1, 2015), available at *https://www.transportation.gov/airconsumer/ACACP/9th-meeting-Sept-1/record.*

[12] See Record of Meeting, Eighth Meeting of the Advisory Committee on Aviation Consumer Protection 3–5 (June 23, 2015), available at *https://www.transportation.gov/sites/dot.gov/files/docs/resources/individuals/aviation-consumer-protection/285976/acacp-record-8th-meeting-23june2015.pdf;* see also Record of Meeting, Ninth Meeting of the Advisory Committee on Aviation Consumer Protection (Sept. 1, 2015).

[13] See *https://www.transportation.gov/airconsumer/ACPAC/June2022Meeting.* A webcast of the meeting is available to view on the ACPAC website. Speakers' materials have been posted to the ACPAC docket at *www.regulations.gov;* docket DOT–OST–2018–0190. On the second day of the meeting, the ACPAC addressed the separate but related issue of availability of airline flight information.

[14] Presentation of FlyersRights, available at *https://www.regulations.gov/document/DOT-OST-2018-0190-0046.*

[15] Id.; see also Presentation of American Antitrust Institute, available at *https://www.transportation.gov/airconsumer/ACPAC/June2022Meeting/webcast* (Day 1 morning session), and Federal Trade Commission, ECONOMIC ANALYSIS OF HOTEL RESORT FEES, (Jan. 2017), available at *https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resort-fees/p115503_hotel_resort_fees_economic_issues_paper.pdf.*

[16] See Summary of April 4, 2019 ACPAC Meeting 11–13, available at *https://www.regulations.gov/document/DOT-OST-2018-0190-0019.*

[17] GAO 17–756, Commercial Aviation: Information on Airline Fees for Optional Services (September 2017), p. 33 at *https://www.gao.gov/assets/gao-17-756.pdf.*

States' attorney generals urged the Department to reverse its decision, stating that they ''regularly hear reports from consumers in [their] states who are confused and frustrated by these fees, which significantly alter the total cost of travel.'' [18] The Department also receives consumer complaints that reflect the confusion consumers experience regarding fees for baggage. Further, consumer advocates contend that the ancillary services and fees that airlines post on their websites are not useful to consumers to determine the cost of travel because airlines generally provide a range of fees for ancillary services aside from baggage. Airlines acknowledge that the fees for ancillary services often vary based on various factors such as the type of aircraft used, the flight on which a passenger is booked, or the time at which a passenger pays for the service or product. The requirements to provide specific baggage fee information and a range of fees for other ancillary services have not been as helpful to consumers in determining the true cost of travel as the Department had anticipated when issuing its final rule in 2011.

The Department receives hundreds of consumer complaints each year regarding change fees, cancellation fees,[19] and seating fees.[20] The complaints regarding seating fees have included complaints from consumers who state that they were not provided seats next to their young child on a flight. Congress instructed the Department to review airline seating policies and consider establishing a policy directing airlines to have policies to enable children who are 13 years of age or younger to sit with a family member over the age of 13 at no additional cost.[21] In July 2022, the Department issued a ''Notice Encouraging U.S. Airlines to Have Policies That Enable Children to Be Seated Adjacent to an Accompanying Adult to the Maximum Extent Practicable and at No Additional Cost.'' [22] In the notice, the Department provides that airlines should do everything that they can to ensure the ability of parents to sit next to their young children, including allowing every young child to sit next to a parent without charging fees for adjacent seating. It is also worth noting that consumer comments in the 2014 NPRM strongly supported Department action on disclosure of ancillary service fees.[23]

Based on a review of consumer complaints, comments received in the 2014 NPRM, feedback received from consumer advocacy organizations, and the work of various advisory committees, the Department believes that many consumers continue to be unsatisfied with the level of disclosures they receive regarding ancillary service fees. The Department believes, based on a review of consumer complaints and discussions at past advisory committee meetings, that the current disclosure requirements are not sufficient. It is difficult for consumers to determine the best and most cost-effective flights when fee information for essential services such as ticket changes or cancellations, family seating, or baggage is not readily available. There is a need for a rulemaking on transparency of airline ancillary fees to address difficulties that consumers have in finding ancillary service fee information, which limits consumers' ability to determine the true cost of travel and to adequately compare airline pricing. In issuing this rulemaking, the Department intends to protect consumers from hidden and deceptive fees and enable them to determine the true cost of travel in an effective and efficient manner when they price shop for air transportation.

C. Statutory Authority

The Department is issuing this rulemaking pursuant to its statutory authority in 49 U.S.C. 41712 to prohibit unfair and deceptive practices in air transportation and the sale of air transportation. A practice is ''unfair'' to consumers if it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.[24] A practice is ''deceptive'' to consumers if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter. A matter is material if it is likely to have affected the consumer's conduct or decision with respect to a product or service.[25] Proof of intent is not necessary to establish unfairness or deception.[26] The elements of unfair and deceptive is further elaborated by the Department is its guidance document.[27]

Pursuant to its authority under section 41712, the Department proposes to require that airlines and ticket agents disclose bag fees for a first and second checked bag and a carry-on bag, family seating fees for a young child traveling with an adult, as well as change and cancellation fees and policies whenever fare and schedule information is provided to a consumer in response to a passenger-specific or anonymous itinerary search on a website marketed to U.S. consumers where air transportation is advertised or sold. This includes, but is not limited to, the first place a fare is stated in search results. The Department's tentative basis for concluding that the practices this NPRM would prohibit are unfair and deceptive is articulated in the paragraphs that follow.

Bag Fees

The Department tentatively considers not displaying bag fees, which have historically been included in the airfare (*i.e.,* fee for first and second checked bag and carry-on bag) but are now often broken out from the airfare, in a passenger-specific manner whenever fare and schedule information is provided to be an unfair practice because it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.

The substantial injury this practice is likely to cause is the additional time spent searching to find the total cost of travel and any additional funds spent on air transportation that might have been avoided if the consumer had been able to determine the true cost of travel up front and readily select the best price. This harm is not reasonably avoidable even with the disclosures mandated in the 2011 final rule that improved consumer access to first and second checked bag and carry-on bag fee

[18] Letter from Pennsylvania Attorney General Josh Shapiro and attorneys general from 15 other states and the District of Columbia to Secretary Elaine L. Chao (Dec. 20, 2017).

[19] The Department's Office of Aviation Consumer Protection (OACP) received over 550 complaints regarding change and cancellation fees in 2021. The Department has not determined what share of these complaints are from individuals who were unaware of the fees or unable to find information on the fees and what share was from individuals who generally did not like having to pay a fee.

[20] OACP received over 140 complaints regarding seat fees in 2021. The Department has not determined what share of these complaints are from individuals who were unaware of the fees or unable to find information on the fees and what share was from individuals who generally did not like having to pay a fee.

[21] *See* 49 U.S.C. 42301 note prec. (Section 2309 of the FAA Extension, Safety, and Security Act of 2016, Public Law 114–190 (July 15, 2016)).

[22] See *https://www.transportation.gov/individuals/aviation-consumer-protection/family-seating/June-2022-notice.*

[23] See comments submitted in the 79 FR 29970 (May 23, 2014). The docket for the 2014 NPRM, which can be accessed at *https://www.regulations.gov/search?filter=DOT-OST-2014-0056.* See also 82 FR 7536, 7537 (Jan. 19, 2017) describing comments received in 2014 NPRM as ''Over 450 consumers clearly supported additional requirements relating to disclosure of ancillary service fees while fewer than ten commented in opposition to additional disclosure requirements.''

[24] 14 CFR 399.79(b)(1).

[25] 14 CFR 399.79(b)(2).

[26] 14 CFR 399.79(c).

[27] 87 FR 52677 (August 28, 2022).

information by requiring those fees to be displayed on airlines' and ticket agents' websites. Airlines and ticket agents continue to disclose bag fees in a static format in complex charts that are confusing to consumers and that are not readily available at the moment consumers need the information to comparison shop. Further, in connection with complex itineraries, interline tickets, and even some code-share flights, consumers are still reporting confusion regarding the total cost of baggage fees. The harm that consumers experience is not outweighed by benefits to consumers or competition because consumer confusion about applicable bag fees harms, rather than benefits, competition. The Department believes that the disclosure of passenger-specific fees whenever fare and schedule information is provided would promote informed buyers, enhance competition, and lower prices.

The practice of not displaying passenger-specific fees for first and second checked bags and carry-on bags when fare and schedule information is provided is also deceptive in that it misleads consumers into believing the total purchase price from one carrier or ticket agent is cheaper than that of another when that may not be the case. This belief is reasonable as carriers and agents often display only the air fare and not these bag fees during an itinerary search. As carriers have different policies regarding the fees and limitations imposed to transport baggage, and because variation within each carrier depends on the fare category purchased or the status of the passenger, the current requirement that carriers and ticket agents provide a generic notice that ''fees for baggage may apply'' during the booking process is not providing consumers sufficient notice of the total cost of the air transportation. In addition, although carriers and ticket agents are required to inform consumers during the booking process about where consumers can see baggage fees, consumers are often diverted to complex charts that are confusing, prolong the consumer's process of evaluating itineraries and fares for purchase, and may ultimately not be instructive for many consumers in determining the bag fee that would apply to them. The cost of the first and second checked bag and carry-on bag is often material to consumers, as knowing such costs in conjunction with the ticket price is likely to affect the consumer's purchase decisions. According to the GAO, since airlines first imposed checked baggage fees, the number of checked bags per passenger has declined. GAO also explains that checked baggage fees have led to greater amounts of carry-on baggage.[28]

Change and Cancellation Fees and Policies

The Department tentatively considers the practice of not clearly disclosing passenger-specific change and cancellation fees and policies during the ticket purchase process to be an unfair practice because it causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.

The Department currently requires the disclosure of these fees on or with the ticket.[29] However, this requirement means that consumers often receive information about these fees after the purchase of the ticket is already made (*i.e.,* upon receipt of the ticket confirmation), which is not sufficient disclosure. The practice of not disclosing these fees early in the process and prior to ticket purchases causes substantial injury to consumers in that passengers may purchase tickets without adequate notice that they could incur significant fees to change or cancel their tickets, that they are not entitled to a refund in the original form of payment if they do cancel, or that there are other restrictions on their ability to change or cancel their tickets. These harms are not reasonably avoidable if the carrier or ticket agent does not provide disclosures on their cancellation or change policies during booking. Carriers may have separate web pages that contain such policy and fee information, but this information may be in a range, so consumers may not know the specific change or cancellation fee that would apply to them. Moreover, even if not in a range, change and cancellation policies and fees may not be simple to understand, as fare categories, passenger status, ticket type (*e.g.,* award ticket purchases), and other factors may impact the applicable change and cancellation fees and policies. Further, because the cancellation and change fee information is not provided during the booking process, consumers would need to interrupt their booking process to search for the information and extend the time needed to complete a booking. The harm that consumers experience is not outweighed by benefits to consumers or competition because, like baggage fees, consumer surprise or confusion about applicable change and cancellation fees after airfare purchase harms, rather than benefits, competition. The Department believes that the disclosure of passenger-specific or non-passenger-specific change and cancellation fees whenever fare and schedule information is provided would promote informed buyers, enhance competition, and lower prices.

The Department also tentatively considers the practice of not displaying change and cancellation fees when fare and schedule information is provided to be deceptive. Without proper notice, consumers acting reasonably would be misled with respect to the change and cancellation policies that apply to their ticket and may believe that change or cancellations are possible at no fee or at a reduced fee. The Department has received complaints from consumers expressing surprise at the high level of the fees that have been imposed, in some cases, cancellation or change fees are higher than the fare paid by the consumer. Comments in a prior DOT rulemaking on ancillary fees also support the importance of disclosure of change and cancellation fees to consumers.[30] The change and cancellation fees are therefore material because they could affect the consumer's decision on whether to purchase an airline ticket and if so, which airline to select. As such, the Department is of the tentative view that not displaying change and cancellation fees when fare and schedule information is provided is deceptive.

Family Seating Policies and Fees

For similar reasons, the Department tentatively considers the lack of fee disclosure for adjacent seating when fare and schedule information is provided and restrictions on purchasing those seats at all point of sale to be an unfair practice for those traveling with a young child. This lack of disclosure and transactability of family seating information causes or is likely to cause substantial injury, which is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition.

The practice causes substantial harm to consumers in that passengers may face situations in which they are unexpectedly separated from their children on flights or must pay

[28] GAO 10–785, Commercial Aviation: Consumers Could Benefit from Better Information about Airline-Imposed Fees and Refundability of Government-Imposed Taxes and Fees (July 14, 2010) at *https://www.gao.gov/assets/gao-10-785.pdf.*

[29] See 14 CFR 253.7.

[30] See comments submitted in the docket for the 2014 NPRM, which can be accessed at *https://www.regulations.gov/search?filter=DOT-OST-2014-0056.*

unexpected fees to remain with their children. Also, despite information about carrier family seating policies being available on airlines' websites, the harm is not reasonably avoidable because a reasonable consumer would not believe that it is necessary to pay fees to be seated next to his or her young child and would not know to search for this information on an airline's website before purchasing the ticket. Even if the family seating fee is disclosed when fare and schedule information is provided that alone would not be sufficient. Transactability is necessary because consumers are not able to save the seat or lock in the price for adjacent seating at the time of ticket purchase.

The number of family seating complaints that the Department receives against airlines is low [31] but these consumers note being confused about the seating policies and fees that apply to them and the harm that they face is significant. A substantial harm may be demonstrated by a large amount of harm to a small number of people.[32] The likelihood of consumers being unexpectedly separated from their children on flight may increase when consumers purchase their tickets from a ticket agent without realizing that the fare category (*e.g.,* basic economy) or the method of booking (*e.g.,* the ticket agent arranged for separate bookings for each family member) selected did not adequately enable them to ensure adjacent seats. The need to consult a separate web page during the booking process also presents the potential for increased confusion and a prolonging of the ticket purchase process. The Department looks at this element from the perspective of an ordinary consumer acting reasonably under the totality of the circumstances. Further, DOT concludes that the harm is not outweighed by benefits to consumers or competition. The Department believes that the disclosure of the family seating fees when fare and schedule information is provided and the ability to purchase those seats at all points of sale would promote informed buyers, enhance competition, and lower prices.

The Department also tentatively considers failing to disclose potential family seating fees when fare and schedule information is provided to be a deceptive practice.[33] The lack of such fee information is likely to mislead consumers into believing that families will be able to be seated next to their children free of charge. It would also be a deceptive practice to disclose the family seating fees but then not allow consumers to purchase those adjacent seats at all points of sale. The inability to purchase those seats immediately could mislead consumers as prices for seats are often dynamic and change based on availability and time of purchase. As evidenced by the consumer complaints the Department has received on this issue, the Department concludes that consumers have a reasonable belief that young children will be allocated a seat near a parent or guardian traveling with the child, and that the cost of ensuring adjacent seats with a child is material to consumers.

49 U.S.C. 40101(a)(4)

In carrying out aviation economic programs, including issuing this rulemaking under 49 U.S.C. 41712, the Department considers the factors identified in 49 U.S.C. 40101 as being in the public interest and consistent with public convenience and necessity. Under 49 U.S.C. 40101(a)(4), the Department is required to consider the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices as being in the public interest. The Department is also required by section 40101(a)(12) to consider as being in the public interest encouraging, developing, and maintaining an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices. This rulemaking proposes to improve the transparency of airline pricing through the increased disclosure of bag fees, change and cancellation fees, and family seating policies during the ticket purchase process. As carriers vary on their policies for such fees and such information is often not provided during the purchase process, consumers of air transportation may have difficulty comparing the actual and potential costs of accessing the air transportation between different carriers. By improving this transparency, this rulemaking would allow for better comparisons of airline ticket pricing, of which these fees are often a critical component, thereby encouraging price competition.

D. Unfair or Deceptive Practice Request for a Hearing

For the reasons discussed in the Statutory Authority section, the Department has tentatively concluded that the practice of not displaying applicable fees for first and second checked bags and carry-on bags during the ticket purchase process is both unfair and deceptive. For the reasons discussed in the Statutory Authority section, the Department has also tentatively concluded that the lack of disclosure regarding ticket change and cancellation fees and policies and family seating information during the ticket purchase process presents an unfair and deceptive practice.

Pursuant to the Department's regulation at 14 CFR 399.75(b)(1), any interested party may file a petition to hold a hearing on the proposed rule prior to the close of the comment period. As stated in the **DATES** section, petitions must therefore be received by December 19, 2022.

The Department's regulations 14 CFR 399.75(b)(2) provide that the Department will grant a petition if the petitioner makes a clear and convincing showing that granting the petition is in the public interest. Factors considered in determining whether a petition is in the public interest include: (1) Whether the proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute or that may not satisfy the requirements of the Information Quality Act; (2) whether the ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment; (3) whether the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule; (4) whether the requested hearing would advance the

[31] In calendar year 2017, .38% of complaints (44 complaints) filed with the Department by consumers against U.S. airlines concerned family seating. In calendar year 2018, .51% of air travel service complaints (46 complaints) against U.S. airlines concerned family seating. In calendar year 2019, 2.4% of air travel service complaints (230 family seating complaints) against U.S. airlines concerned family seating. This increase corresponded with the efforts of a consumer advocacy group to encourage air travelers to file complaints with the Department if they were dissatisfied with an experience related to family seating. Fewer than .5% of the air travel service complaints against U.S. airlines filed with the Department in calendar years 2020 and 2021 concerned family seating—.46% of complaints (165 family seating complaints) in calendar year 2020 and .46% of complaints (94 family seating complaints) in calendar year 2021.

[32] The Federal Trade Commission (FTC) previously noted that ''it is well established that substantial injury may be demonstrated by a showing of a small amount of harm to a large number of people, as well as a large amount of harm to a small number of people.'' See Opinion of the Commission, *In the Matter of LabMD, Inc.* (July 19, 2016) at 9 available at *https://www.ftc.gov/system/files/documents/cases/160729labmd-opinion.pdf* (''LabMD''). The Department's statutory authority to prohibit unfair practices was modeled on section 5 of the FTC Act.

[33] ''Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.'' See FTC 1983 Policy Statement on Deception, available at *https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.*

consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations required by § 399.75; and (5) whether the hearing would unreasonably delay completion of the rulemaking. DOT must also provide an explanation of the basis for the decision on a petition. (14 CFR 399.75(b)(3))

Summary of the Proposed Regulatory Provisions

The Department is proposing to increase the protections provided to consumers as provided in the summary table below.

Subject	Proposal
Covered entities	The NPRM applies to: (1) U.S. air carriers; (2) foreign air carriers; (3) ticket agents that sell airline tickets, whether traditional brick-and-mortar travel agencies, corporate travel agents, or online travel agencies; and (4) metasearch sites that do not sell airline tickets but display airline flight search options directly to consumers.
Airline Ancillary Service Fees Critical to Consumer Decision.	The ancillary services that the Department has identified as being critical to consumers when they choose among air transportation options are as follows: first and second checked bag, one carry-on bag, changing or canceling a reservation, and adjacent seating when traveling with a young child.
Disclosure of Baggage Fees	The Department is proposing to require carriers and ticket agents to disclose fees for a first and second checked bag and a carry-on bag during the booking process when fare and schedule information is provided (typically first page of search results).
Disclosure of Change and Cancellation Fees and Policies.	The Department is proposing to require carriers and ticket agents to disclose change and cancellation fees and policies to consumers during the booking process when fare and schedule information is provided (typically first page of search results).
Disclosure of Family Seating Fees and Policies	The Department is proposing to require carriers and ticket agents to disclose the seat fees applicable for passengers 13 or under to be seated next to an accompanying adult in the same class of service during the booking process when fare and schedule information is provided (typically first page of search results).
Timing of Online Disclosures	The Department proposes to require that first and second checked bag fee, the carry-on bag fee, the change and cancellation fee and the family seating fee be disclosed at the first point in a search process where a fare is listed in connection with a specific flight itinerary.
Passenger-specific information	The Department is proposing that the fee information disclosed to a consumer for critical ancillary services be expressed as passenger-specific information if a consumer conducts a passenger-specific itinerary search. • A passenger-specific itinerary search refers to a search that takes into account a characteristic of the passenger that may impact ancillary service fees to be charged (*e.g.,* military status, frequent flyer status, method of payment, etc.) • An anonymous itinerary search refers to a search that does not take into account passenger characteristics that may have an impact on ancillary service fees to be charged.
Web site and Mobile Displays	The Department is proposing to require that the fees for ancillary services that are critical to a consumer's purchasing decision be disclosed to consumers using airlines' or ticket agent's websites and mobile web sites.
In-Person or Telephone Disclosures of Airline Ancillary Service Fees.	The Department is proposing to require that specific fee information for a first and second check bag, one carry-on item, the canceling or changing of a reservation, and a passenger 13 or under to obtain a seat next to an accompanying adult be provided for each itinerary for which a fare is quoted to a consumer during an in-person or telephone inquiry.
Sharing of Airline Ancillary Service Fee Information with Ticket Agents.	Airlines would be required to distribute fee information for critical ancillary services to ticket agents that sell or display the airlines' fare and schedule information. The proposal specifies that the information provided to agents be usable, accurate and accessible in real-time.
Prohibition on Fee if Required Disclosure is Not Provided.	Collecting a fee from consumers for critical ancillary services without disclosure of this fee during the search process would be deemed an unfair and deceptive practice.
Transactability	The Department is proposing that carriers and ticket agents enable family seating fees to be transactable at all points of sale.
Compliance/Implementation Period	Six-month implementation period to display a first and second checked bag fee, a carry-on bag fee, change and cancellation fee, and family seating fee (if any), to consumers whenever fare and schedule information is provided.

Notice of Proposed Rulemaking

Covered Entities

In this NPRM, the Department proposes to require entities that advertise or sell air transportation to consumers in the United States to disclose, prior to ticket purchase, the fees for ancillary services that are critical to a consumer's purchasing decision. This means that the proposed requirement would apply to U.S. air carriers; foreign air carriers; ticket agents that sell airline tickets, whether traditional brick-and-mortar travel agencies, corporate travel agents, or online travel agencies (OTA); and metasearch sites that display airline flight search options directly to consumers. However, Global Distribution Systems (GDSs) would not be covered by this proposal as GDSs arrange for air transportation but do not sell or display a carrier's fare to consumers. The Department solicits comment on whether the covered entities should be broader or more limited in scope. For example, regarding ticket agents who sell air transportation, should the proposed requirement to display information about certain critical ancillary services exclude corporate travel agents because the display content is typically negotiated by the business involved?

The airlines and ticket agents that are covered by this rulemaking do not need to be physically present in the United States. Given the expansion of e-commerce, in many cases, airlines and ticket agents can advertise and sell airline tickets to U.S. consumers

without being physically located in the U.S. This NPRM would apply not only to airlines or ticket agents that are physically located in the U.S., but also to those that have a website marketed to consumers in the United States and display schedule, fare, and availability information for flights within, to, or from the United States. To determine whether a website is marketed to U.S. consumers, a variety of factors would be considered—for example, whether the website is in English, whether the seller of air transportation displays prices in U.S. dollars or has an option on its website that differentiates sites or pages designed for the United States. The Department requests comment on other factors that may be indicative of the airline or ticket agent doing business in the United States.

Because ticket agents cannot provide ancillary service fee information to consumers unless the information is first provided by carriers to ticket agents, the NPRM proposes to require air carriers and foreign air carriers to provide the fee information for critical ancillary services to all ticket agents that sell or display the carrier's fare and schedule information. While fare, schedule, and availability information are currently provided by the airlines to the GDSs, and by GDSs to the agents that display and sell to consumers, information about the cost of ancillary services is not typically shared. This NPRM would not require airlines to use GDSs to provide ancillary fee information to ticket agents that display or sell airline tickets to consumers although they would be free to do so if they wish. The Department's focus is on ensuring that information about critical airline ancillary services reach consumers using the travel agent channel, regardless of process used, because a significant portion of airline tickets are purchased indirectly through ticket agents. The Department seeks comment on whether the Department should require that carriers provide fee information about critical ancillary services to GDSs. Why or why not?

Airline Ancillary Service Fees Critical to Consumer Decision

This rulemaking is intended to ensure that fee information about ancillary services that are critical to a consumer's decision making is disclosed at all points of sale prior to ticket purchase. The Department considers the cost of certain ancillary services to be important to consumers when they choose among air transportation options. Ancillary service means any service related to air travel provided by a carrier, for a fee, beyond passenger air transportation (*i.e.,* the transport of the passenger on an aircraft from one location to another excluding optional services such as baggage, internet, and advance seat assignment). Ancillary service fees can include charges for things that have traditionally been included in the price of a ticket such as first and second checked bags or meals. It can also include services that airlines have typically charged separate from the airline ticket for many years, such as changing or canceling a reservation.

The ancillary services that the Department has identified as being critical to consumers when they choose among air transportation options are as follows: first and second checked bag, one carry-on item, changing or canceling a reservation, and adjacent seating when traveling with a young child. The fees that consumer commenters to the Department's 2014 NPRM most commonly identified as being of critical importance were baggage, seat assignments and change or cancellation fees. These are also the top three most common ancillary service complaints received by the Department. With regard to seat assignments, although there are fewer complaints about seat assignments for passengers traveling with small children, the complaints illustrate the critical importance parents and guardians place on ensuring that their children are seated next to them. We request comment on whether the Department's list of critical ancillary services should be expanded or reduced. Are there particular ancillary service fees (or set of fees) that have a material impact on the total price paid by the consumer or are of particular importance to consumers? What are the benefits and potential challenges to expanding or reducing the Department's list of critical ancillary services? Comments that are most useful provide information regarding the reasons why additional disclosures should or should not be required. The Department also seeks comment on how to address future adoption by airlines of additional ancillary service fees and how to ensure their disclosure to the extent that they are of critical importance to consumers.

Types of Proposed Disclosures

1. First and Second Checked Bag and Carry-On Bag

The Department is proposing to require that carriers and ticket agents disclose fees for a first and second checked bag and a carry-on bag on the first page displayed when a consumer conducts a search for air transportation. This would replace the existing requirement to provide a generic notice during the booking process about baggage fees and a link to where the baggage fees can be found on the carrier's website. The fees would need to be adjusted to accurately reflect the itinerary of the passenger, the fare category selected, and the fees applicable to the passenger if the consumer has conducted a passenger-specific itinerary search. In instances where the carrier or ticket agent website displays multiple fare categories (*e.g.,* basic economy, restricted economy, flexible economy, and business class) for the same itinerary, the NPRM would require the carrier and ticket agent to also display the bag fees applicable to each fare category. Display of the baggage fee by links or rollovers is not permitted but we request comment on whether it should be permitted. The proposed rule would also clarify that airlines and ticket agents may choose to offer ancillary service packages or bundles that include bag fees, alongside the standalone bag fees that would be required to be displayed under this rulemaking.[34]

The proposal to disclose baggage fees does not apply to air-tour packages advertised or sold online by ticket agents if the air transportation component is not finalized and the carrier providing air transportation is not known at the time of booking. However, ticket agents in such situations would need to disclose that additional airline fees for baggage may apply and that those fees may be reduced or waived based on the passenger's frequent flyer status, method of payment or other consumer characteristic. When the identity of the carrier providing the air transportation becomes known, the ticket agent would need to provide the specific baggage fee information for the carrier to not only prospective customers, but also those who purchased the air-tour package before the identity of the carrier became known. We request comment on whether this exception for certain air-tour packages adequately addresses concerns of air-tour package sellers. We also request comment on whether such an exception adequately protects consumers.

[34] While the Department recognizes that here is the potential for confusion when both a standalone fee and a bundled fare are displayed if the airline or ticket agent does not do an adequate job of designing its website interface, but we would expect that these entities would be incentivized to clearly label what is included in any packaged bundles, and the separate bag fee information would allow consumers to know whether the package bundle is priced appropriately to suit their needs (or whether the consumer is better off purchasing the bag alone).

2. Change and Cancellation Policies and Fees

This rulemaking proposes making change and cancellation fees and policies more apparent to consumers when they book tickets. Under the proposal, carriers and ticket agents would have to display the fee to change a reservation and the fee to cancel a reservation on the first page that appears when a consumer conducts a search for air transportation and a fare is quoted. The fee information would need to be specific to each fare category displayed and adjusted based on passenger-specific information provided by the consumer. For example, if the fare category displayed requires a $50 fee to change the ticket, then the website should display the change fee for the itinerary and fare category as ''$50.'' If the consumer's status entitles the consumer to no change fees, then the website should display ''$0'' as the applicable change fee for the itinerary, provided that the consumer has entered passenger-specific information that meets the criteria for no change fees. Display of the cancellation and change fee by links or rollovers is not permitted but we request comment on whether it should be permitted.

In addition to the change and cancellation fees, the Department is proposing to require that carriers and ticket agents provide information about certain aspects of their change and cancellation policies to consumers on the first page that appears when a consumer conducts a search. This information, which may be provided using links or pop-ups adjacent to the pertinent fee, would consist of: (1) a brief summary of the cancellation policy applicable to the consumer's chosen itinerary and fare category, taking into account the consumer's passenger-specific information provided, and (2) a brief summary of the ticket change policies applicable to the consumer's chosen itinerary and fare category, adjusted for the passenger-specific information provided. These brief summaries should provide consumers clear, adequate notice of the rules attached to the chosen itinerary and fare category, including whether ticket changes or cancellations are allowed (as well as when and in what circumstances they are allowed), the form that refunds or airline credits may be provided (*e.g.,* travel voucher or a credit to the original form of payment), any prohibitions or conditions that may limit the ability to change or cancel a ticket, and other information. The Department seeks comment on this proposal. Should the Department require change fees be disclosed as proposed? If so, how should the Department address the potential need for a consumer to also pay a fare difference between the old and new tickets brought about by dynamic pricing models [35] many carriers employ? Does the material change in fare that occurs with many ticket changes being a potentially larger component of the overall price relative to the change fee itself represent a more confusing situation for consumers? Should the Department only require change fees be disclosed, or should it also require cancellation fees to be disclosed as proposed? Should the Department allow the proposed disclosures to be provided later in the ticket purchase process than proposed in this NPRM? Are there preferred methods for presenting the change and cancellation policy information?

This rulemaking also proposes to require that carriers and ticket agents with websites marketed to U.S. consumers where they sell air transportation display on the last page of the booking process (before the consumer clicks a button that executes the purchase or reservation) a brief statement on whether the carrier or ticket agent permits the consumer's booking to be cancelled without penalty within 24 hours, or whether the carrier or ticket agent permits the consumer to hold the reservation without payment for 24 hours. Under 14 CFR 259.5(b)(4), carriers must currently either permit consumers to cancel their tickets within 24 hours of purchase without penalty, or, alternatively, allow consumers to hold their reservations at the quoted fare for 24 hours without payment, provided that the purchase or reservation is made at least one week before the flight's departure. The policy that the carrier chooses must be disclosed in its customer service plan pursuant to 14 CFR 259.5. The Department is now proposing that the carrier's chosen policy also be disclosed on the last page of the booking process. Although ticket agents are not required to develop customer service plans under 14 CFR 259.5, this rulemaking would also require ticket agents to disclose the ticket agent's policy for allowing consumers to cancel their reservations without penalty soon after purchase or for allowing consumers to hold their reservation without purchase for a specified period. If carriers or ticket agents offer both alternatives, which they are not required to do so, then this information should be disclosed to consumers. The Department seeks comment on this additional disclosure.

3. Seat Assignment Policies and Fees for Families Traveling With Young Children

The Department is of the tentative view that disclosure of an advance seat assignment fee at the beginning of a booking process is generally not needed because airlines are required to provide a seat with the cost of the air transportation. However, advance seat assignments are of critical importance to families traveling with young children. While these families may not need a guarantee of a particular seat in advance, they are looking for a guarantee that at least one accompanying adult would be seated next to a young child.

Section 2309 of the FAA Extension, Safety, and Security Act of 2016 required the Department to review U.S. airline family seating policies and, if appropriate, establish a policy directing all air carriers providing scheduled passenger interstate or intrastate air transportation to establish policies that enable a child, who is age 13 or under on the date an applicable flight is scheduled to occur, to be seated in a seat adjacent to the seat of an accompanying family member over the age of 13, to the maximum extent practicable and at no additional cost.'' Section 2309 provides for an exception when assignment to an adjacent seat would require an upgrade to another cabin class or a seat with extra legroom or seat pitch for which additional payment is normally required. In response to section 2309, the Department's Office of Aviation Consumer Protection issued a notice urging airlines to do everything that they can to ensure the ability of a parent to sit next to his or her young child, including allowing every young child to sit next to a parent, without charging fees for adjacent seating.[36]

To the extent airlines do charge fees for a young child to sit next to a parent, the Department is proposing to require carriers and ticket agents to disclose these fees to consumers alongside the quoted fare for each itinerary. More specifically, the NPRM proposes that carriers and ticket agents disclose alongside the fare the seat fee, if any, that could be imposed for aa child age 13 or under to be seated adjacent (*i.e.,* directly next to, and uninhibited by an

[35] A dynamic pricing model implements price differentiation for the airline seat and generally increases the price of the service as fewer seats are available and decreases the price of the service when more seats are available.

[36] See *https://www.transportation.gov/individuals/aviation-consumer-protection/family-seating/June-2022-notice.*

aisle or other obstruction) to an accompanying adult in the same class of service, so that consumers are informed on the potential ticket costs. If the carrier does not impose a fee for children 13 or under to be seated next to an accompanying adult, no seat fee disclosure would be required for the carrier's flights. If the carrier does impose fees for children to be assigned seats next to an accompanying adult, then the carrier or ticket agent's website should disclose the fee to select a seat that is part of a pair of available adjacent seats. Display of the fee by links or rollovers is not permitted but we request comment on whether it should be permitted.

The proposal to disclose the fee for adjacent seating for those traveling with a young child whenever fare and schedule information is provided is intended to be performance-based. The Department is not prescribing a particular way for the regulated entities to comply but notes that there are several acceptable means of compliance. For example, to ensure that a consumer receives family seating information as part of the itinerary search results and accompanying fare quotations, a carrier or ticket agent could decide to enable consumers to disclose that a passenger 13 or under will be traveling prior to initiating an itinerary search. A carrier or ticket agent could alternatively decide to display family seating fees for all itinerary searches, regardless of whether a consumer disclosed that a passenger was 13 or under. As another alternative, carriers that do not impose a fee for children 13 or under to be seated next to an accompanying adult would not be obligated to provide any family seating disclosures during the itinerary search and selection process.

As the Department is aware that seat fees can fluctuate frequently, the Department is proposing that family seating fees that are quoted during the itinerary selection process be transactable at the point of ticket purchase, including on ticket agent websites. (See section on ''Sharing of Airline Ancillary Service Fee Information with Ticket Agents'', below.)

The Department seeks comment on its proposed disclosures to assist families traveling with young children. Should the Department permit these disclosures to be provided later during the booking process, such as after the stage when a consumer inputs passenger name and age information? Should the Department be more prescriptive about family seat fee disclosure requirements (*e.g.,* requiring that websites be modified to enable consumers to indicate whether a passenger will be 13 or under prior to initiating the search)? Are there technical or other practical considerations for requiring that family seating fees be disclosed and transactable? Should disclosure be limited to fees or would additional information regarding airline family seating policies be useful to consumers during the ticket purchase process? What disclosure should be required, if any, when no adjacent seats are available at the time of the consumer's ticket purchase? The Department welcomes responses to these questions.

Online Disclosures of Airline Ancillary Service Fees

1. Timing of Online Disclosures

During the 2022 ACPAC meeting, DOT solicited information on the appropriate timing of disclosure for ancillary service fees (*e.g.,* at the time of an initial display of schedule information, or at other times during the booking process, or at the end of the process before a final purchase). The ACPAC member representing consumers observed that in order to minimize problems with drip pricing, consumers should have information on critical ancillary service fees early in the process; however, he also noted that providing early information on all ancillary fees could lead to consumers being overwhelmed.[37] Specifically, he opined that baggage fees, change/cancellation fees, and seat reservation fees were the biggest ''pain points'' for consumers that should be disclosed early. Similarly, a consumer advocacy organization suggested that fees for carry-on and checked bags, as well as change/cancellation fees and on-time/cancellation statistics, should be displayed on the first page where a price is quoted.[38]

This rulemaking proposes that if a U.S. or foreign air carrier or ticket agent has a website marketed to U.S. consumers where it advertises or sells air transportation, the carrier and ticket agent would disclose the first and second checked bag fee, the carry-on bag fee, the change and cancellation fee, and the seat fee for a child 13 or under to be seated next to an accompanying adult, at the first point in a search process where a fare is listed in connection with a specific flight itinerary. It is important that a consumer be provided fee information for critical ancillary services at the same time as the fare information is being provided to enable the consumer to make an informed purchasing decision. We believe that requiring disclosure during the search process benefits consumers because information disclosed at the last minute may result in some consumers deciding to revisit all the travel arrangements already made and possibly begin the reservation process again to look for flights again.

Regarding disclosure of the fee for a child 13 or under to be seated adjacent to an accompanying adult, the Department is proposing to require carriers and ticket agents enable consumers to purchase the seat fee that is disclosed during the itinerary search at the same time as the ticket purchase. Prices for advance seat assignments are often dynamic and change based on availability and time of purchase. While carriers are prohibited from increasing the change and cancellation fee, the first and second checked bag fee, and the carry-on bag fee after the ticket has been purchased,[39] this is not the case for a seat assignment fee. Carriers are allowed to increase the price of an advance seat assignment until the seat assignment itself is purchased. The Department seeks comment on the timing of the proposed online fee disclosures in this rulemaking.

2. Passenger-Specific Information

The Department is proposing that the fee information disclosed to a consumer for critical ancillary services be expressed as passenger-specific charges if the consumer elects to provide passenger-specific information to the carrier or ticket agent, such as frequent flyer type, payment method, or military status. For example, a passenger who is active in the military may be entitled to an additional piece of checked luggage free of charge, or a passenger who has qualified at the highest tier of a carrier's frequent flyer program may be entitled to a maximum checked luggage weight

[37] Comment of John Breyault (Day 1 a.m. session).

[38] Presentation of FlyersRights, available at *https://www.regulations.gov/document/DOT-OST-2018-0190-0046.*

[39] See 14 CFR 253.7, which prohibits carriers from imposing monetary penalties on passengers unless the passenger receives conspicuous written notice on or with the ticket. See also *Guidance on Price Increases of Ancillary Services and Products not Purchased with the Ticket* (December 28, 2011). In that guidance, the Department announced that with respect to fees for ancillary services that were not purchased with the air transportation, it would only enforce the prohibition on post-purchase price increases for carry-on bags and first and second checked bags. The application of the prohibition of the post-purchase price increase was also at issue in a lawsuit filed by two airlines against the Department. The court considered the rule as applied under the December 28, 2011, guidance and upheld the Department's rule prohibiting post-purchase price increases as it is currently being applied. *Spirit Airlines, Inc.,* v. *U.S. Dept. of Transportation* (D.C. Cir. July 24, 2012), slip op. at 20–21. Petition for Writ of Certiorari denied on April 1, 2013.

limit of 70 pounds per piece. The carrier or ticket agent would know that a consumer is conducting a passenger-specific itinerary search if the consumer has entered this passenger-specific information either prior to initiating the itinerary search, or if the consumer has logged into his or her account on the carrier or ticket agent's website, provided that the consumer's user profile contains the passenger-specific information.

If the consumer conducting a search elects not to provide passenger-specific information to the carrier or ticket agent (*i.e.,* the consumer conducts an ''anonymous itinerary search''), then the Department is proposing to require carriers and ticket agents to disclose the fees for these ancillary services as itinerary-specific charges. Itinerary-specific refers to variations in fees that depend on, for example, geography, travel dates, cabin (*e.g.,* first class, economy), and ticketed fare class (*e.g.,* full fare ticket—Y class). It is essentially an anonymous search. The Department seeks comment on the benefits, risks, and practicability of the proposed distinction between anonymous itinerary searches and passenger-specific searches, as described above.

3. Opt-Out Option

This NPRM does not propose to permit airlines and ticket agents to enable consumers to opt out of receiving fee information for critical ancillary services during the search process. The Department seeks comment on whether it should allow carriers and ticket agents to provide consumers an opt-out option from receiving ancillary service fee information that would otherwise be required. Opt-out options could potentially include the choice to opt out of seeing all baggage fee information that would otherwise be required to be displayed (first and second checked bag and carry-on bag), to opt out of seeing fee information related to changing or canceling a reservation, to opt out of seeing seat fee information for a child traveling with an adult, or to opt out of seeing some of those fees. We anticipate that fee information for critical ancillary services will improve the decisions made by consumers but seek comment on whether the volume of information proposed to be displayed would assist or overwhelm consumers and whether or not an opt-out provision would be beneficial to consumers. Is an opt-out provision needed to ensure that consumers can avoid receiving ancillary service fee information that is of no interest to them? We are also interested in learning what impact, if any, lack of an opt-out provision has on the speed of search results or particular display options an airline or ticket agent may provide. For commenters advocating an opt-out option, we also request information about how to define requirements for opt-out options that would adequately protect consumers and ensure any opt-out option is not confusing or abused, for example, preventing opt-outs accomplished through a ''click wrap'' or ''browser wrap'' tactic that does not represent a meaningful, intentional choice. The Department may consider adopting an opt-out provision in the final rule upon review of comments received and on further consideration by the Department.

4. Website and Mobile Displays

The Department is proposing to require that the fees for ancillary services that are critical to a consumer's purchasing decision be disclosed to consumers using airlines' or ticket agent's websites and mobile websites. Consumers in increasing numbers are using mobile devices to book travel. The Department believes that it is important that the same disclosures that would be provided on airlines' and ticket agents' desktop websites be provided on mobile websites. The Department seeks comment on whether it should also consider specific fee disclosure requirements for airlines' or ticket agents' mobile applications (apps). The Department seeks comment on whether the proposed disclosure requirements should also extend to airline and ticket agent mobile apps, and whether there are any practical distinctions between information accessed on mobile websites and mobile apps. It would be helpful to the Department for commenters to provide data on the percentage of tickets booked on mobile applications, mobile websites, and desktop websites, or other usage statistics that are relevant.

The Department is proposing to allow carriers and ticket agents limited flexibility in how information on ancillary services is displayed on desktop and mobile websites. Although this proposal would require carriers and ticket agents to display information for certain baggage fees, change fees, cancellation fees, and family seating fees at the first point in a search process where a fare is listed in connection with a specific flight itinerary, it permits the use of links or rollovers for other pieces of information. The Department seeks comment on whether links and rollovers would provide the necessary flexibility to allow for design displays that would enhance the user experience and encourage innovation as technology changes. Are additional flexibilities needed to ensure the display of ancillary service fee information does not result in screen clutter? Do rollovers work on mobile devices that have no cursor to hover over a link? Considering the screen size of mobile devices, would the proposed display requirement work on mobile platforms? Will there be a danger of too much unnecessary information creating confusion if fees that are not under consideration are displayed and are there ways the ''too much information'' can be mitigated? The Department also requests that commenters provide information as to whether hyperlink or other disclosures not adjacent to the fare on mobile sites would or would not be effective. Should the disclosure requirements be limited to websites accessed through desktop applications and not apply to those accessed through mobile applications?

In-Person or Telephone Disclosures of Airline Ancillary Service Fees

In addition to the online disclosures proposed by this rulemaking, the Department is proposing similar disclosures for tickets purchased using offline means (*i.e.,* tickets purchased by telephone or at the ticket counter). Under the proposal, ticket agents and carriers would have to disclose to consumers purchasing tickets in-person or on the phone the specific baggage fees, change fees, cancellation fees, and family seating fees that apply to an itinerary for which a fare is quoted to the consumer, adjusted based on the passenger's frequent flyer status, method of payment, or other consumer characteristic. During a given encounter (phone call, visit), the Department is proposing that a ticket agent or carrier not wait until after the consumer has decided to make the reservation or purchase the ticket to disclose the baggage fees, change fees, cancellation fees or family seating fees that may apply. Instead, the disclosure would be required to be made at the time that the schedule information is being provided to the consumer during the ''information'' and ''decision-making'' portion of the conversation. In essence, a carrier or ticket agent would not be in compliance if it were to provide a quote for a ticket price over the phone or in-person without also providing the baggage, change, cancellation, and family seating fees that apply.

The Department seeks comment on its proposals that carriers and ticket agents inform consumers of the bag fees, change and cancellation fees, and family seating fees that apply when consumers attempt to purchase airline tickets offline, in person, or on the phone. The

Department is also interested in obtaining input on alternative options for providing such fee information on the phone or in person (*e.g.,* explaining that fees may apply and referring the consumer to the carrier or ticket agent's website, provided that the website is accessible to consumers with disabilities).

Sharing of Airline Ancillary Service Fee Information With Ticket Agents

1. Ticket Agents That Sell or Display Airline Fare and Schedule Information

Under this proposal, airlines would be required to distribute fee information for critical ancillary services to ticket agents that sell or display the airlines' fare and schedule information. Carriers would not be required to distribute ancillary service fee information to any ticket agent to whom the carrier does not choose to distribute its fare, schedule, and availability information. In other words, if a carrier does not share fare information with a ticket agent, then this proposal would not require that carrier to share ancillary service fee information with that ticket agent.

Also, under this proposal, the method and channels that carriers use to distribute fee information to ticket agents would be left to the discretion of the carrier.[40] The Department is not proposing to require carriers to distribute ancillary service fee information to GDSs because GDSs arrange for air transportation and do not sell or display a carrier's tickets directly to consumers. By not requiring that ancillary service fee information be provided to GDSs, the Department is attempting to minimize government interference with business relationships. However, carriers are free to distribute this information to GDSs if they choose to do so. GDSs may provide the lowest cost and most efficient way of distributing this information to ticket agents that sell or display the carrier's ancillary services. Most ticket agents currently receive airline fare information through GDSs and rely on GDSs as an efficient source of data. Using GDSs may facilitate display of critical airline ancillary services. Airlines and ticket agents would have to work in good faith to come to agreement on the method used to transmit the ancillary service fee information.

The Department solicits comment on its preliminary decision not to require airlines to share ancillary service fee data with GDSs. Should the Department require carriers to distribute the ancillary service fee information to all ticket agents, including GDSs, to which the carrier provides fare, schedule, and availability information? How would OTAs and metasearch sites receive ancillary service fee information from multiple airlines and disclose that information to consumers if airlines do not provide that information to GDSs? The Department is striving to find the most beneficial disclosure rule for consumers while avoiding any adverse impact on innovations in the air transportation marketplace, contract negotiations between carriers and their distribution partners, and a carrier's ability to set its own fees and fares in response to its own commercial strategy and market forces.

2. Usable, Accurate and Current (Dynamic) Ancillary Service Fee Information

The Department is proposing that U.S. and foreign air carriers provide ticket agents ancillary service fee information that is usable, accurate, and accessible in real-time. It would not be sufficient for carriers to provide static pricing to ticket agents. Under this NPRM, carriers would be expected to facilitate the ability of ticket agents to access certain baggage fee, change fee, and cancellation fee information in a non-static, dynamic fashion. The Department does not prescribe the method that carriers would use to distribute the information as it wants to minimize government interference and encourage innovation. A carrier may choose to distribute ancillary fee information through GDSs if it provides the lowest and most efficient way to comply, given that many airlines and ticket agents use GDSs today. In the United States, three GDSs (Sabre, Travelport and Amadeus) distribute the airline product for the ticket agent channel, and most airlines use the GDSs to distribute their products to ticket agents, including corporate travel agents that sell the higher revenue tickets. In the alternative, airlines may choose to distribute the ancillary fee information through direct connections between airline reservations systems and ticket agent systems. Another option may be to distribute ancillary fee information using the International Air Transport Association's (IATA) New Distribution Capability (NDC), which is essentially an XML-based technical standard for use in airline distribution. The Department would expect airlines to work in good faith with ticket agents to come to agreement on the method used to transmit the ancillary service fee information.

Under this proposal, carriers would not be required to provide information to ticket agents about individual customers but rather the itinerary-specific and passenger-specific information that would impact the fee for a critical ancillary service. The Department expects that carriers and ticket agents would modify how searches for flights are done to allow consumers to identify any passenger-specific factors that may impact the fees that consumers might pay for critical ancillary services. This would enable consumers to better understand the total cost of the air transportation to them.

Prohibition on Fee if Required Disclosure Is Not Provided

Under this proposal, the practice of collecting a fee from consumers for critical ancillary services without disclosure of this fee during the search process would be deemed an unfair and deceptive practice in violation of 49 U.S.C. 41712. Any fee that has been unlawfully imposed and collected would need to be refunded to consumers by the seller of the air transportation.

Transactability

The 2017 SNPRM did not propose that ancillary service fees be transactable. At the 2022 ACPAC meeting, representatives of the travel technology industry recommended that the Department require ancillary fee information to be provided to ticket agents in a transactable format so that consumers would not have to engage in a separate transaction to complete the full purchase of air travel.[41] Airlines stressed that they value transparency of fare and ancillary fee information across all channels, and argued that fee information is often made available to GDSs and third-party sellers, but that

[40] Industry stakeholders have expressed their views on information distribution in meetings with the Department. In a meeting with OACP on December 15, 2021, American Airlines offered its view that, while it supports expanded disclosure of ancillary service fees, it cautioned the Department against requiring that the distribution of such information be made through specific channels, such as global distribution systems. In a meeting with OACP on February 23, 2022, the Travel Technology Association (TravelTech) noted that ancillary fee information can only be provided by ticket agents to the extent they receive it from carriers. Travel Tech indicated that its members may engage in bilateral agreements with airlines to present certain ancillary rule information to consumers and in some cases may enable consumers to buy a pre-paid seat through their websites.

[41] See presentations of ASTA, Travel Tech, and Amadeus, and Skyscanner, available at *https://www.transportation.gov/airconsumer/ACPAC/June2022Meeting/webcast* (Day 1 afternoon session).

information may not be adequately transmitted to consumers.[42]

The Department is not proposing to require that certain ancillary services (*i.e.,* first and second checked bag, one carry-on item, and changing or canceling a reservation) be transactable at all points of sale. Requiring transactability at all points of sale would mean requiring airlines to permit online travel agencies to sell these ancillary services. The Department is of the tentative view that this is unnecessary, given the regulatory limitations placed on increasing these fees following a ticket purchase, as discussed above.

The Department has not identified evidence of consumer harm resulting from a lack of transactability of baggage, change, or cancellation fees. A consumer would pay a change or cancellation fee only if the consumer makes a change or cancels a reservation. There is nothing to transact at the time of ticket purchase. Also, the change and cancellation fee that a consumer would pay cannot increase after ticket purchase. As for baggage, a consumer is not harmed from not being able to pay a fee to transport a first checked bag, a second checked bag or a carry-on item at the time of ticket purchase because sellers of air transportation cannot increase the fees for these items beyond what existed at the time that the consumer purchased the airline ticket. The Department's existing rule regarding baggage fee price increases and related enforcement policy ensures that the price to transport a first checked bag, a second checked bag, or a carry-on item does not increase following the ticket purchase and before the consumer has the opportunity to purchase baggage transportation services.

Regarding seat assignment fees for a child 13 or under to be seated next to an accompanying adult, the Department is proposing a requirement that ticket agents disclose fees for specific seat assignments. Such a proposal, without transactability, would cause consumers to be presented with seat assignment options that they cannot purchase immediately during the booking process, but which could change by the time a consumer attempts to purchase the seat. There is a risk that consumers would be confused by being presented a seat assignment that they cannot obtain at the advertised price. As such, the Department is proposing to require that carriers and ticket agents make seat fees for a child 13 or under to be seated next to an accompanying adult to be transactable at the time the ticket purchase is made. DOT has encouraged airlines not to impose such a charge, but to the extent they do impose such charges, the proposed rule would require disclosure and transactability. This rulemaking may further incentivize airlines not to charge fees for a young child to sit next to an accompanying adult. The Department welcomes comment on whether airlines' response to this rulemaking would include reducing or eliminating such charges. Also, the Department solicits comment on requiring airlines to disclose that they charge fees for adjacent seating without disclosing the amount and requiring that it be transactable as proposed.

Impact on Existing Requirements

This proposed rule, if adopted, would require carriers and ticket agents to provide passenger-specific baggage fee information (if passenger-specific information is provided by the consumer) for one carry-on item and a first and second checked bag at the first point in a search process where a fare is listed in connection with a specific flight itinerary. The regulation in 14 CFR 399.85(b) requires carriers and ticket agents to state that baggage fees may apply on the first screen where a fare quotation is available and refer consumers to a page on their websites where this information may be obtained. We are tentatively of the view that there would no longer be a need for such a requirement except for certain ticket agent displays related to air tour packages that are unable to provide customer-specific baggage fee information.

In addition to amending 14 CFR 399.85(b), we are considering eliminating the requirement in 14 CFR 399.85(c) regarding disclosure of bag fee information on e-ticket confirmations as it may be of limited use. Current requirements in 14 CFR 399.85(c) provide that carriers and ticket agents must include specific fee information for first and second checked bags and a carry-on item on all e-ticket confirmations for air transportation, and the fee information must take into account factors such as frequent flyer status that affect those charges. Under the proposed rule, consumers would have already received this information during the search process. We request comment on whether there is any benefit in retaining the requirements in 14 CFR 399.85(c) if the proposed requirement to display passenger-specific baggage fee information is adopted.

Also, under the existing regulation in 14 CFR 399.85(a), carriers must promptly and prominently disclose any increase in bag fees and changes in bag allowances on the homepages of their websites for at least three months after the change becomes effective. This NPRM does not propose substantive changes to this requirement and proposes only language changes to clarify the scope of websites the regulation is intended to impact. These proposed changes to 14 CFR 399.85(a) are intended to make the regulation more consistent with other regulations related to carrier and ticket agent websites. We request comment on whether the notice provision in 14 CFR 399.85(a) of the existing regulation would still be useful to consumers if this NPRM is adopted as final.

The Department is also proposing to amend 14 CFR 399.88, which states that any seller of scheduled air transportation within, to, or from the United States is prohibited from increasing the price after the air transportation has been purchased by the consumer, except in the case of an increase in a government-imposed tax or fee if the potential for an increase was disclosed as required prior to purchase. Under 14 CFR 399.88, the prohibition on increasing the price includes increases in fees for ancillary services such as those for checked baggage, carry-on baggage, advance or upgraded seating assignments, pillows and blankets, and meals, regardless of whether these items are purchased along with the air transportation. However, in December 2011, the Department announced that with respect to fees for ancillary services that were not purchased with the air transportation, it would only enforce the prohibition on post-purchase price increases for carry-on bags and first and second checked bags.[43] The application of the prohibition of the post-purchase price increase was also at issue in a lawsuit filed by two airlines against the Department. The court considered the rule as applied under the December 28, 2011, guidance and upheld the Department's rule prohibiting post-purchase price increases as it is currently being applied.[44]

The Department is proposing to amend § 399.88 to be consistent with how it is currently being applied. This rulemaking does not propose changes to

[42] See, *e.g.,* presentations of IATA, American and Delta, available at *https://www.regulations.gov/document/DOT-OST-2018-0190.*

[43] See also *Guidance on Price Increases of Ancillary Services and Products not Purchased with the Ticket* (December 28, 2011).

[44] *Spirit Airlines, Inc.,* v. *U.S. Dept. of Transportation* (D.C. Cir. July 24, 2012), slip op. at 20–21. Petition for Writ of Certiorari denied on April 1, 2013.

the existing prohibition in § 399.88 against increasing the price of air transportation after its purchase, nor does it propose additional ancillary services beyond baggage that has traditionally been included in the price of a ticket to be frozen at the time of ticket purchase. In other words, the proposed amendment to § 399.88 would continue to require sellers of scheduled air transportation to apply the bag fee policies and fees that existed at the time the ticket is purchased for the first and second checked bag and carry-on item. For example, if the standard first checked bag fee at the time of ticket purchase is $30 when purchased in advance, $50 when purchased at the airport, and free for an elite frequent flyer, then the passenger would not pay a bag fee if he or she maintains the elite frequent flyer status on the date of travel. However, if the passenger does not maintain the same status and pays for the bag at the airport, the passenger would pay $50 for the first checked bag. The Department seeks comment on its amendment of § 399.88. Should the Department require that the price for ancillary services not purchased with the ticket be frozen beyond first and second checked bag and a carry-on item? For example, should it extend to fees for all baggage (including fees for oversized or overweight bags) or all ancillary services that have been identified as being critical to a consumer's purchasing decision?

Further, the Department is proposing non-substantive changes to the current requirement in 14 CFR 399.84(a) that when a carrier or ticket agent quotes a price in advertising or a solicitation, the price should be the total fare, inclusive of taxes and fees. The proposed changes consist of minor changes to § 399.84(a) to promote readability, as well as additional language to accommodate the ancillary fee disclosures proposed in this NPRM. More specifically, we are proposing that if a consumer wishes to view ancillary service fees such as bag fees incorporated into the total quoted price during an itinerary search, carriers and ticket agents would be permitted to display the total price of the transportation, inclusive of mandatory taxes and fees and the consumer's selected ancillary service fees, more prominently than a price that includes only all mandatory charges. The Department is seeking comment on this clarification to 14 CFR 399.84(a). Again, these language adjustments are not intended to make substantive changes to the full fare rule.

As stated in 14 CFR 399.84(a), carriers and ticket agents may state separately charges included within the single total price on their websites, but such charges may not be false or misleading, may not be displayed more prominently than the total price, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge. Consistent with this requirement, advertisements that state discounts in the form of percentage-off sales must refer to a discount off the total price to be paid by the consumer for the ticket, unless the airline or ticket agent explicitly states that the discount is based on only a portion of the fare. For example, an advertisement that indicates air transportation is on sale for a percentage off but does not apply the discount to the total price would be misleading if it did not specify that it is a percentage off only the ''base'' fare or other fare component. When the terms ''flight,'' ''ticket,'' or ''fare'' are used in an advertisement stating a percentage off, a reasonable consumer would understand that the percentage off applies to the total price of the transportation. The Department is of the view that it would be an unfair and deceptive practice for an airline or ticket agent to advertise discounts off a ''flight,'' ''ticket,'' or ''fare,'' without disclosing in the first instance that the discount is only applied to a component of the total price (*e.g.,* the ''base'' fare). The practice is unfair in that consumers are likely to encounter higher charges than expected, which can multiply if a consumer relies on the promotional discount for multiple passengers on an itinerary. The harm is not easily avoided due to a lack of clarity in the advertising language that carriers use. The Department has also not identified any benefits to consumers or to competition from this practice. The practice is also deceptive in that the carriers' advertising is likely to mislead consumers into believing that the discount will be applied to the entire ticket price (*i.e.,* the full fare), rather than only a portion of the price to be paid. The belief that a discount applies to the total price when the advertisement provides a discount off of the ''flight,'' ''ticket,'' ''fare,'' or other terms of this nature, is reasonable. The total required charge that a consumer will be made to pay for air transportation is also material. The Department is also concerned that there is lack of clarity about the meaning of the term ''base'' fare. In some cases, even offering a discount off the ''base fare'' may be misleading if, without more clarity, the discount only applies to a portion of the carrier-imposed charges, and not the total amount of carrier-imposed charges (*i.e.,* the fare for the transportation plus carrier-imposed charges such as fuel surcharges and other mandatory carrier fees). The Department solicits comment on defining base fare to mean all of the carrier-imposed charges included within the total price. The Department is soliciting comment on whether the full fare regulation should be amended to provide greater clarity on this type of advertising.

Compliance Period

The Department is tentatively of the view that a six-month implementation period from the issuance date of a final rule would be appropriate for carriers and ticket agents to display a first and second checked bag fee, a carry-on bag fee, change and cancellation fee, and family seating fees to consumers whenever fare and schedule information is provided online. It also provides sufficient time to train agents to provide fee information for critical ancillary services to consumers when providing fare and schedule information in person or over the phone. It also takes into account the time needed for carriers to share ancillary service fee information with ticket agents.

In proposing this implementation period, the Department also considered the time that would be needed for airlines and ticket agents to organize ancillary fee data and reprogram and test their websites. Separately, the Department considers the time needed to determine how ancillary service fee information will be distributed from carriers to ticket agents. At the June 2022 ACPAC meeting, one airline representative indicated that broadly speaking, sharing ancillary fee data with ticket agents is not technologically difficult and could be accomplished within a short time frame.[45] If this proposal were to become a final rule, we would anticipate carriers will work in good faith with ticket agents to ensure that the distribution method and details are worked out well in advance of the display deadline. We request comment on whether the Department should impose a date certain by which carriers must share ancillary service fee information with ticket agents.

We also seek comment on whether proposed implementation periods are too lengthy or too short. If the proposed implementation periods are either too lengthy or too short, how long of an

[45] Remark of American Airlines, available at June 28 and 29, 2022 Meeting of the Aviation Consumer Protection Advisory Committee (ACPAC) | U.S. Department of Transportation (Day 1 afternoon session).

implementation period would be appropriate and why?

Regulatory Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The Office of Management and Budget has determined that this proposed rule is a significant regulatory action under Executive Order 12866 and requires an assessment of potential benefits and costs. Accordingly, the Department has prepared a regulatory impact analysis for the proposed rule, summarized in this section and available in the docket.

The proposed rule changes how U.S. air carriers, foreign air carriers, and ticket agents disclose information about certain ancillary fees for flights and changes how certain customers can purchase assigned seats. Ancillary fees are fees for optional services provided by a carrier beyond passenger air transportation. The proposed rule would require carriers and ticket agents to show baggage fees, ticket change fees, and ticket cancellation fees when they first show fares and schedules to consumers searching for flights. The proposed rule would also require the seating fees for children 13 or under to be shown by airlines and ticket agents that display or sell tickets whenever fare and schedule information is provided. In addition, the Department is proposing that consumers be able to transact (*i.e.,* purchase) these fees from airlines and ticket agents that sell tickets. Finally, the proposed rule would require carriers and ticket agents to provide the same ancillary fee information to consumers buying tickets in person or on the phone.

The regulatory impact analysis uses a basic economic model of asymmetric information as a framework for evaluating the proposed rule. Due to a lack of data and other significant uncertainties, it is not possible to evaluate the effects of the proposed rule quantitatively.

The rulemaking would yield societal benefits if it leads to reduced deadweight loss from inaccurate price calculations or reduced search costs. Inaccurate price calculations lead to overconsumption and can distort consumer perceptions in ways that confer a competitive advantage to producers who produce a lower-quality product. While we lack information to estimate benefits, we calculated a hypothetical example range using methods from earlier rulemakings. At the same time, the rulemaking could conceivably lead to crowding out of relevant information for some consumers. The potential effect represents an offset to benefits, and it is possible that it equals or outweighs the benefits. Thus, it is not possible to quantify at this time whether the proposed rule yields benefits that exceed costs.

The primary costs of the proposed rule are the costs that carriers and ticket agents would incur to share ancillary fee data, modify websites, and allow transactability for assigned seats for children 13 or under. These costs include startup implementation costs as well as ongoing costs. Third parties involved in data exchange, such as global distribution systems (GDSs)) and direct-channel companies, would incur costs as well despite not being directly regulated by the rule. Because these entities are already starting to upgrade systems for market reasons, the cost properly associated with the proposed rule is the cost of requiring them to upgrade earlier than they would without the rule.

Table 1 summarizes the results of the analysis and the potential economic effects of the proposed rule.

TABLE 1—SUMMARY OF ANNUAL ECONOMIC EFFECTS

Item	Annual amount
Benefits:	
Gross benefits:	
Reduction in deadweight loss due to increased accuracy in consumers' price calculations ..	See illustrative example in regulatory impact analysis (RIA).
Reduction in search costs for consumers seeking information on ancillary fees.	See illustrative example in RIA.
Reduction in surprise costs and anxiety for passengers traveling with children	Not estimated.
Market feedback effects (enhanced price and quality combinations)	Not estimated.
Offsets to gross benefits:	
Increase in search costs for consumers seeking information on items displaced by new disclosures.	Not estimated.
Total benefits	Indeterminate.
Costs:	
Implementation and contract negotiation costs for carriers, ticket agents, GDS companies, and direct-connect companies to display ancillary fees and allow transactability for assigned seats for children 13 or under.	See illustrative example in RIA.
Ongoing costs for carriers to provide data	See illustrative example in RIA.
Ongoing costs for carriers and ticket agents to exchange and maintain ancillary fee information for offline and in-person purchases.	Not estimated.
Total costs	Not estimated.
Transfers:	
Gains in consumer surplus (from airlines back to consumers)	Indeterminate.
Net benefits	Indeterminate.

Table 2 summarizes the key uncertainties for quantifying or monetizing the economic effects of the proposed rule. The same uncertainties that prevent the estimation of primary impacts preclude the assessment of potential secondary effects, including effects on airfares, ancillary fees, ancillary services, or GDS contracts with carriers and ticket agents. The Department seeks comment on these issues, as well as on potential implementation costs of the proposed rule and the potential changes on consumer search costs and decision-making.

TABLE 2—SUMMARY OF KEY UNCERTAINTIES FOR QUANTIFYING ECONOMIC EFFECTS

Item	Annual amount
Benefits:	
Gross benefits:	
Reduction in deadweight loss due to increased accuracy in consumers' price calculations ..	• Amount of price mistake. • Number of passengers who do not incorporate full information into price calculation. • Number of passengers who would choose not to use ancillary services with full price information versus those who would forgo air travel altogether.
Reduction in search costs for consumers seeking information on ancillary fees	• Amount of time saved. • Number of consumers who would save time shopping for airline fares.
Reduction in surprise costs and anxiety for passengers traveling with children	• Number of consumers unaware of ancillary fees.
Offsets to gross benefits:	
Increase in search costs for consumers seeking information on items displaced by new disclosures.	• Increase in search time. • Number of consumers who experience increased search time.
Costs:	
Implementation and ongoing costs for carriers, ticket agents, GDS companies, and direct-connect companies to display ancillary fees and allow transactability for assigned seats for children 13 or under.	• Needed changes to websites. • Needed changes to programming.
Ongoing costs for carriers and ticket agents to exchange and maintain ancillary fee information for offline and in-person purchases.	• Amount of training required to enable ticket agents to use ancillary fee information.
Transfers:	
Gains in consumer surplus (from airlines back to consumers)	• Extent to which existing industry pricing practices increase producer surplus (profits).

Executive Order 13132 (Federalism)

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This NPRM does not propose any requirement that (1) has substantial direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, (2) imposes substantial direct compliance costs on State and local governments, or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because none of the options on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

Regulatory Flexibility Act

When a Federal agency is required to publish a notice of proposed rulemaking (5 U.S.C. 553), the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the agency to conduct an initial regulatory flexibility analysis (IRFA). An IRFA describes the impact of the rule on small entities (5 U.S.C. 603). An IRFA is not required if the agency head certifies that a rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605).

The Department has prepared an IRFA for this proposed rule, summarized in this section and available at regulations.gov under Docket No. DOT–OST–2022–0109.

The proposed rule would have some impact on U.S. air carriers, foreign air carriers and ticket agents that qualify as small entities. It would also have some impact on Global Distribution Systems (GDSs), but none of the three major GDS companies in the market (Amadeus, Sabre, and Travelport) qualify as small businesses.

A carrier is a small entity if it provides air transportation exclusively with small aircraft, defined as any aircraft originally designed to have a maximum passenger capacity of 60 seats or less or a maximum payload capacity of 18,000 pounds or less, as described in 14 CFR 399.73. In 2020, 28 carriers meeting these criteria reported passenger traffic data to the Bureau of Transportation Statistics.[46]

A ticket agent is a small entity if it has total annual revenues below $22 million.[47] This amount excludes funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions, but includes commissions received. In 2017, the latest year with available data, 7,827 travel agency establishments had annual revenues of less than $25 million.[48] This number overestimates the number of small entities because some establishments may have annual revenues greater than $22 million.

The proposed rule could have impacts on small entities because carriers and ticket agents would incur costs to modify websites and upgrade systems to exchange ancillary fee data. Because the Department could not estimate these costs reliably, it could not determine whether the proposed rule would impose a significant impact on a substantial number of small entities. The Department seeks comment on the potential implementation costs of the proposed rule for small entities.

[46] Bureau of Transportation Statistics. No date. ''T1: U.S. Air Carrier Traffic and Capacity Summary by Service Class.'' *https://transtats.bts.gov/.*

[47] See *https://www.sba.gov/document/support—table-size-standards,* NAICS Code 561510.

[48] U.S. Census Bureau. 2022. ''Economic Census.'' *https://www.census.gov/programs-surveys/economic-census.html.*

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. The Department invites interested parties to comment on the information collection requirements contained in this document. As prescribed by the PRA, the requirement will not go into effect until OMB has approved the requirement.

This NPRM proposes three new information collections: (1) U.S. air carriers, foreign air carriers, and ticket agents must disclose, during the booking process, applicable fee information for the first and second checked baggage and for carry-on baggage, applicable fee and policy information for changing and cancelling reservations, and, for bookings that involve a passenger 13 or under, the seat fee, if any, for the child passenger to be seated next to an accompanying adult; (2) air carriers, foreign air carriers, and ticket agents must disclose their policy on 24-hour ticket hold or cancellation; and (3) air carriers and foreign air carriers must ensure that partner carriers and ticket agents receive information regarding certain baggage fees, change and cancellation fees and policies, and family seating fee so that the partner carriers and ticket agents can accurately provide such information to consumers and so that the family seating fee can be transactable at the point of ticket purchase.

For each of the information collections, the title, a description of the respondents, and an estimate of the burdens are set forth below:

1. *Requirement that U.S. air carriers, foreign air carriers, and ticket agents disclose, during the booking process, the applicable fee information for the first and second checked baggage, one carry-on bag, the applicable fee and policy information for changing and canceling reservation, and the seat fee, if any, for a passenger 13 or under to be seated next to an accompanying adult.*

Title: Disclosure of Ancillary Fees and Policies During the Air Transportation Booking Process:

Respondents: U.S. carriers, foreign air carriers, and ticket agents that sell or display carrier fare and schedule information to consumers in the United States.

Number of Respondents: We estimate that as many as 206 U.S. air carriers and foreign air carriers and as many as 600 ticket agents may be impacted by this requirement. Our estimate is based on the following information and assumptions: Ticket agents includes online travel agencies (OTAs), brick-and-mortar travel agencies, corporate travel agencies, and tour operators that market airline tickets. There may be approximately 9,500 travel agencies and over 2,500 tour operators in the United States, although not all of those entities market air transportation online to consumers in the United States. In addition, most ticket agents rely on global distribution systems (GDSs) to create online fare and schedule displays. GDSs and entities that create or develop and maintain their own online fare and schedule displays, such as many of the impacted carriers and the largest travel agents, will incur some planning, development, and programming costs to reprogram their systems to provide online displays of fare and schedule information that includes baggage fee information on their websites. For these reasons, we assume that about five percent of United States ticket agents, including GDSs and large travel agencies, or as many as 600 ticket agents, would be impacted by this requirement. Many smaller carriers also rely on GDSs to create online fare and schedule displays so our estimate of 206 impacted carriers may be overstated.

Estimated Annual Burden on Respondents: Approximately 80 hours per respondent. Our estimate is based on the following information and assumptions: the primary costs to respondents for the disclosure requirement would arise from programming, data management, website modification, and other related costs to carriers and ticket agents to display the required ancillary fee information. Revising website displays in this manner would likely be similar to the revisions that carriers and ticket agents needed to make to their websites to comply with the requirement to include all taxes and fees in fare displays (''full fare rule''), as prescribed by the Enhanced Airline Passenger Protections II rulemaking.[49] In that rulemaking, the Department estimated that compliance with the full fare rule would require approximately 80 hours per respondent.[50]

The burdens in this rulemaking are expected to be incurred one time by regulated entities. Once the modifications required by this information collection have been incorporated into the websites of regulated entities, we do not expect that this information collection will impose additional ongoing costs, such as website maintenance, for regulated entities who have been operating websites prior to the promulgation of this rulemaking. As currently proposed, this rulemaking would not require the creation of new websites by regulated entities that did not already maintain websites for the purpose of selling air transportation. For those entities selling air transportation through other means, such as by phone, the rule would require that such entities inform consumers about certain ancillary service fees at the time a fare is quoted. Due to the relatively marginal increase in time needed to orally convey the information required by this information collection, the burden of this information collection with respect to offline purchases of air transportation is expected to be minimal.

Estimated Total Annual Burden: Approximately 64,480 hours for all respondents (based on an assumption of 16,480 hours for carriers and 48,000 hours for ticket agents). Based on an estimated mean hourly wage of $45.90 for web and digital interface designers,[51] this results in a total annual cost of $2,959,632 ($756,432 for carriers and $2,203,200 for ticket agents).

Frequency: Once information is incorporated into website displays, this rulemaking would not require further modifications to websites. Ongoing website costs (such as for maintenance) are expected to be unchanged by this rulemaking.

2. Requirement that U.S. air carriers, foreign air carriers, and ticket agents disclose on their websites 24-hour hold or cancellation policies.

Title: Disclosure of 24-hour hold or cancellation policy on carrier and ticket agent websites during the booking process.

Respondents: U.S. carriers, foreign air carriers, and ticket agents that sell or display carrier fare and schedule information to consumers in the United States.

Number of Respondents: We estimate that the same regulated entities impacted by Information Collection 1 would be impacted by this requirement. Our estimates include 206 U.S. air carriers and foreign air carriers and as many as 600 ticket agents.

Estimated Annual Burden on Respondents: Approximately 80 hours per respondent. The primary costs to respondents would arise from the design, programming, and modification of websites to display 24-hour hold and

[49] 76 FR 23110 (Apr. 25, 2011).

[50] See Regulatory Impact Analysis on page 59, available at *https://www.regulations.gov/document?D=DOT-OST-2010-0140-2046.*

[51] *https://www.bls.gov/oes/current/oes151255.htm.*

cancellation policy information, which is primarily static, prior to the ticket purchase. This rulemaking would not require the creation of new websites by regulated entities that did not already maintain websites for the purpose of selling air transportation.

Estimated Total Annual Burden: This information collection would result in an estimated annual burden of 48,360 hours (based on an assumption of 12,360 hours for carriers and 36,000 hours for ticket agents).

3. *Requirement that U.S. air carriers and foreign air carriers ensure that partner carriers and ticket agents receive information regarding certain baggage fees, change and cancellation fees and policies, and family seating fee so the partner carriers and ticket agents can accurately provide such information to consumers.*

Title: Disclosure of baggage and other fee information to partner carriers and ticket agents.

Respondents: U.S. air carriers and foreign air carriers that provide fare, schedule, and availability information to ticket agents to sell or display flights within, to, or from the United States.

Number of Respondents: We estimate that approximately 206 carriers will be impacted by this requirement. This includes foreign carriers that may not serve the United States on their own equipment but may sell connecting itineraries between the United States and a foreign point, when at least one of the foreign-to-foreign segments is operated by the foreign carrier.

Estimated Annual Burden on Respondents: Approximately 16 hours per respondent. The proposed information collection would require carriers to either distribute baggage fee and family seating information or make the specific policies, including the calculation of baggage and seat fees applicable for passenger-specific itineraries, available to third parties. Carriers selling tickets in the United States already display baggage and ancillary fee information on their websites, as required by existing regulation (14 CFR 399.85(d)). This information includes the use of baggage fee calculators and other tables accessible to consumers. The rulemaking would require that this information be made available in such a way that partner carriers and ticket agents have access to this information in a non-static, dynamic format such that the partner carriers and ticket agents can disclose baggage fee and family seating information to consumers during each itinerary search and to allow for the purchase of a seat fee for a child passenger at the same time as the ticket purchase. Because partner carriers already have mechanisms to share this information with third parties, the additional modifications that would be required by this information collection are not expected to be significant. Moreover, carriers already share this information with each other (*i.e.,* partner carriers) to facilitate codeshare and interline ticketing. This potential burden of sixteen hours per respondent, as referenced here, may overestimate the actual burden for most carriers.

Estimated Total Annual Burden: This information collection would result in an estimated annual burden of 3,296 hours. Based on an estimated mean hourly wage of $46.46 for computer programmers,[52] this results in a total cost of approximately $153,132.

The Department invites interested persons to submit comments on any aspect of each of these information collections, including the following: (1) The necessity and utility of the information collection, (2) the accuracy of the estimate of the burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of collection without reducing the quality of the collected information. Comments submitted in response to this NPRM will be summarized or included, or both, in the request for OMB approval of these information collections.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. As described elsewhere in the preamble, this proposed rule would have no such effect on State, local, and tribal governments or on the private sector. Therefore, the Department has determined that no assessment is required pursuant to UMRA.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. Id. Paragraph 4(c)(6)(i) of DOT Order 5610.1C provides that ''actions relating to consumer protection, including regulations'' are categorically excluded. The purpose of this rulemaking is to enhance protections for air travelers and to improve the air travel experience. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Signed this 25th day of September 2022, in Washington, DC.

Peter Paul Montgomery Buttigieg,

Secretary of Transportation.

List of Subjects in 14 CFR Part 399

Air carriers, Consumer protection, Enforcement.

For the reasons stated in the preamble, DOT proposes to amend 14 CFR chapter II, subchapter F, as follows:

PART 399—STATEMENTS OF GENERAL POLICY

■ 1. The authority citation for part 399 continues to read as follows:

Authority: 49 U.S.C. 41712, 40113(a).

■ 2. Revise § 399.80(s) to read as follows:

§ 399.80 Unfair and deceptive practices of ticket agents.

* * * * *

(s) Failing to disclose and offer web based discount fares to prospective passengers who contact the agent through other channels (*e.g.,* by telephone or in the agent's place of business) and indicate that they are unable to use the agent's website due to a disability and failing to disclose ancillary service fee information (as required by § 399.85) to prospective passengers who contact the agent through other channels (*e.g.,* by telephone or in the agent's place of business). The disclosure of ancillary service fee information (as required by § 399.85) must be made at the time that the schedule information is being provided to the consumer.

■ 3. Revise § 399.84(a) to read as follows:

[52] *https://www.bls.gov/oes/current/oes151251.htm.*

§ 399.84 Price advertising and opt-out provisions.

(a) The Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for passenger air transportation, a tour (*i.e.,* a combination of air transportation and ground or cruise accommodations) or tour component (*e.g.,* a hotel stay) that must be purchased with air transportation that states a price for such air transportation, tour, or tour component to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless the price stated is the entire price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component.

(1) Charges included within the single total price listed (*e.g.,* government taxes) may be stated separately or through links or ''pop ups'' on websites that display the total price, but such charges may not be false or misleading, may not be displayed prominently, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge.

(2) An airline or ticket agent may display a price that includes all mandatory charges and one or more ancillary service fees more prominently than a price that only includes all mandatory charges.

* * * * *

■ 4. Revise § 399.85 to read as follows:

§ 399.85 Notice of ancillary service fees.

(a) *Definitions.* For purposes of this section, the following definitions apply:

Ancillary service fee means the fee charged for any optional service the U.S. or foreign air carrier provides beyond passenger air transportation. Such fees may include, but are not limited to, charges for checked or carry-on baggage, canceling or changing a reservation, advance seat selection, in-flight beverages, snacks and meals, lounge access, bedding or other amenities, or seat upgrades.

Ancillary service package means a package or bundle of one or more ancillary services offered for sale by a carrier or ticket agent. Such packages are typically offered after the consumer has selected an itinerary and fare category during the booking process. Carriers and ticket agents are not required to offer ancillary service packages.

Anonymous itinerary search means a search conducted on the website of a U.S. carrier, a foreign air carrier, or ticket agent, that does not take into account information specific to a characteristic of the passenger that impacts the ancillary service fees to be charged or other parameters relevant to these fees (*e.g.,* size and weight limitations on baggage).

Consumer or *user* means the person who uses the website of a U.S. carrier, a foreign carrier, or ticket agent, to search for and/or purchase air transportation. ''Consumer'' or ''user'' may also refer to a person who seeks to obtain information about air transportation, whether through a website or other means.

Passenger-specific itinerary search means a search conducted on the website of a U.S. carrier, foreign air carrier, or ticket agent that takes into account information specific to a characteristic of the passenger that may impact the ancillary service fees to be charged or other parameters relevant to these fees (*e.g.,* size and weight limitations on baggage). Such information could include the passenger's status in the airline's frequent flyer program, the passenger's military status, or the passenger's status as a holder of a particular credit card. An itinerary search is ''passenger-specific'' when a user has provided passenger-specific information prior to conducting the search, including when conducting previous searches if the information is cached, or if the user conducts a search while logged into the search website and the operating entity of that website has passenger-specific information as part of the user's profile.

(b) *Online fee disclosures of baggage.* Each U.S. air carrier, foreign air carrier, and ticket agent that has a website marketed to U.S. consumers where it advertises or sells air transportation must accurately display (or cause to be displayed) the fee that applies, if any, to an itinerary for a first checked bag, a second checked bag, and a carry-on bag. The fees must be included on the first page displayed when a consumer conducts a search for air transportation when fare and schedule information is shown. Display of the baggage fee by links or rollovers is not permitted. Ancillary service fees other than those referenced in this paragraph (b) may also be displayed on the same page, at the carrier or ticket agent's discretion. All fees displayed must be the total to be paid by the consumer for the ancillary service.

(1) Consumers must be offered both the option to conduct a passenger-specific itinerary search and the option to conduct an anonymous itinerary search. For passenger-specific itinerary searches, the fees required to be displayed under this paragraph (b) must be adjusted to reflect accurately the itinerary of the passenger, the fare category displayed or selected, and the status of the passenger. For anonymous itinerary searches, the fees required to be displayed under this paragraph (b) must be adjusted to reflect accurately the itinerary of the passenger and the fare category displayed or selected, without taking into account passenger-specific information.

(2) If the carrier or ticket agent displays multiple fare categories for the same flight in response to an itinerary search (*e.g.,* the search results page displays basic economy, restricted economy, flexible economy, and business class fares simultaneously for the same flight), the carrier or ticket agent must display the bag fees applicable to each fare category associated with that fee. In circumstances where a particular fare category prohibits the checking of a bag or the carriage of a carry-on bag, the carrier or ticket agent must indicate that the item is prohibited under the fare category and display the penalty, if applicable, for carrying on or checking the item.

(3) If the carrier does not display any fee for a first or second checked or carry-on bag at the time the consumer searches for and purchases air transportation, the carrier may not impose a fee on the consumer for a checked or carry-on bag following the ticket purchase. If a ticket agent does not display any fee for a checked or carry-on bag at the time the consumer searches for and purchases air transportation, the ticket agent must promptly refund the consumer for any bag fee the carrier imposes on the consumer for the itinerary.

(4) In displaying the applicable bag fee required by this paragraph (b), each U.S. carrier, foreign air carrier, or ticket agent, must display the weight and dimension limitations that the carrier imposes for each checked bag and carry-on bag. Such limitation information may be displayed using links or pop-ups adjacent to the display of the bag fee. For passenger-specific itinerary searches, the weight and dimension limitations must be adjusted to the level applicable to the passenger based on the passenger-specific information provided.

(5) If a carrier or ticket agent offers for sale an ancillary service package that includes baggage, it may display the package and the package price in addition to the standalone bag fees, if any, already required under paragraph (b)(1) of this section.

(6) For air-tour packages sold online by ticket agents where the carrier

providing air transportation is not known at the time of booking, ticket agents are not required to provide specific baggage fee information as required by this paragraph (b). In such cases, the ticket agent must clearly and prominently disclose on the first screen in which the ticket agent offers a package fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and that those fees may be reduced or waived based on the passenger's frequent flyer status, method of payment, or other consumer characteristic. Once the carrier providing air transportation for an air-tour package is known, the ticket agent must provide baggage fee information as prescribed by this paragraph (b) both to prospective consumers and to consumers who purchased the air-tour package before the identity of the carrier providing the air transportation became known.

(c) *Online disclosure of cancellation and change fees.* Each U.S. carrier, foreign air carrier, and ticket agent that has a website marketed to U.S. consumers where it advertises or sells air transportation must accurately display, on the first page when a consumer conducts a search for air transportation and fare and schedule information is shown, the applicable fee for the consumer to change the reservation and cancel the reservation. Display of the cancellation and change fee by links or rollovers is not permitted. The fee displayed must be specific to each fare category displayed and adjusted based on passenger-specific information provided by the consumer. The carrier or ticket agent must also display the following information, which may be with the use of links or pop-ups adjacent to the pertinent fee:

(1) A summary of the applicable cancellation policy for the itinerary displayed, adjusted based on the consumer's passenger-specific and itinerary-specific information provided, if applicable; and

(2) A summary of the applicable ticket change policy for the itinerary displayed, adjusted based on the consumer's passenger-specific and itinerary-specific information provided, if applicable.

(d) *Online disclosure of 24-hour change and cancellation policy.* Each U.S. carrier, foreign air carrier, and ticket agent that has a website marketed to U.S. consumers where it sells air transportation must display a statement, before the consumer can execute his or her purchase or reservation of air transportation, indicating whether the consumer's booking can be cancelled without penalty within 24 hours of booking, or whether the consumer has the option to hold the reservation for 24 hours at the quoted price without executing the purchase, consistent with the carrier or ticket agent's policy and, for carriers, consistent with 14 CFR 259.5(b)(4).

(e) *Online disclosure and transactability of family seating fee.* Each U.S. carrier, foreign air carrier, and ticket agent that has a website marketed to U.S. consumers where it advertises or sells air transportation must disclose to each consumer seeking to purchase air transportation in which at least one passenger is 13 years of age or under, wherever fare and schedule information is provided, the fee, if any, for the passenger age 13 years or under to be seated adjacent to the seat of an accompanying adult in the same class of service. This fee must be displayed alongside the quoted fare associated with each itinerary search result. Display of the family seating fee by links or rollovers is not permitted. Each U.S. carrier, foreign air carrier, and ticket agent that has a website marketed to U.S. consumers where it sells air transportation must also enable the consumer to select and purchase the seat at the time the seat fee is disclosed if the consumer chooses to do so.

(f) *Disclosures for tickets not purchased online.* For tickets purchased by consumers in the United States in person or by phone, each U.S. carrier, foreign carrier, and ticket agent must disclose to consumers the baggage fees, change fees, cancellation fees, and family seating fees (*i.e.,* the fee for a passenger 13 or under to obtain a seat next to an accompanying adult, if the carrier imposes such a fee and the consumer's intended booking includes a passenger age 13 or under) that apply at the time a fare is quoted for an itinerary. The fees disclosed must be adjusted based on passenger-specific information provided by the consumer.

(g) *Changes in baggage fees.* If a U.S. or foreign air carrier has a website marketed to U.S. consumers where it advertises or sells air transportation, the carrier must promptly and prominently disclose any increase in its fee for carry-on or first and second checked bags and any change in the first and second checked bags or carry-on allowance for a passenger on the homepage of that website (*e.g.,* provide a link that says ''changed bag rules'' or similarly descriptive language and takes the consumer from the homepage directly to a pop-up or a place on another web page that details the change in baggage allowance or fees and the effective dates of such changes). Such notice must remain on the homepage for at least three months after the change becomes effective.

(h) *Disclosures of baggage fees on e-ticket confirmations.* A U.S. carrier, a foreign air carrier, an agent of either, or a ticket agent that advertises or sells air transportation in the United States, must include information regarding the passenger's free baggage allowance and/or the applicable fee for a carry-on bag and the first and second checked bag on all e-ticket confirmations for air transportation within, to or from the United States. The requirement in this paragraph (h) applies to all tickets sold on a website marketed to U.S. consumers where the carrier or agent advertises or sells such air transportation, including the summary page at the completion of an online purchase and a post-purchase email confirmation.

(1) Carriers must provide this information in the e-ticket confirmation. Ticket agents may provide this information in text form in the e-ticket confirmations or through a hyperlink to the specific location on airline websites or their own website where this information is displayed.

(2) The fee information provided for a carry-on bag and the first and second checked bag must be expressed as specific charges taking into account any passenger-specific factors that affect those charges.

(i) *Website disclosure of all ancillary service fees.* If a U.S. or foreign air carrier has a website marketed to U.S. consumers where it advertises or sells air transportation, the carrier must prominently disclose on its website information on ancillary service fees available to a passenger purchasing air transportation. Such disclosure must be clear, with a conspicuous link from the carrier's homepage directly to a page or a place on a page where all such ancillary services and related fees are disclosed. In general, fees for particular services may be expressed as a range; however, baggage fees must be expressed as specific charges taking into account any factors (*e.g.,* frequent flyer status, early purchase) that affect those charges.

(j) *Fee information distribution to ticket agents.* (1) For air transportation within, to, or from the United States, each U.S. and foreign air carrier that provides fare, schedule, and availability information to ticket agents to sell or display the carrier's flights directly to consumers, must provide such ticket agents useable, current, and accurate information of the fee rules for a first checked bag, a second checked bag, one

carry-on bag, canceling a reservation, and changing a reservation. The information provided by the carrier must be sufficient to enable the ticket agent to comply with the baggage disclosure requirements in paragraph (b) of this section and the change and cancellation disclosure requirements in paragraph (c) of this section. Carriers have no obligation to ensure that these fees are transactable by ticket agents; and

(2) For air transportation within, to, or from the United States, each U.S. and foreign air carrier that provides fare, schedule, and availability information to ticket agents to sell or display the carrier's flights directly to consumers must provide such ticket agents useable, current, and accurate information of the fee rules for aircraft seats if the carrier charges a fee for a child, who is age 13 or under on the date an applicable flight is scheduled to occur, to be seated in a seat adjacent to the seat of an accompanying adult. The aircraft seat fee information must be detailed enough to enable the ticket agent to disclose the applicable fees for adjacent seats for each flight in the itinerary of a child, who is age 13 or under on the date an applicable flight is scheduled to occur, as set forth in paragraph (e) of this section. Carriers must ensure that seat fees are transactable by ticket agents.

(k) *Unfair and Deceptive Practice.* The Department considers the failure to provide and adhere to the disclosures required by this section to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712. The Department also considers the practice of collecting a fee from consumers for critical ancillary services (*i.e.,* first and second checked bags, one carry-on item, canceling or changing a reservation, adjacent seats when traveling with a child who is 13 years of age or under) without disclosure of this fee when fare and schedule information is provided to be an unfair and deceptive practice in violation of 49 U.S.C. 41712. Any fee that has been collected from consumers for critical ancillary services must be refunded to consumers by the seller of the air transportation if disclosures required by this section were not provided.

■ 5. Revise § 399.88(a) to read as follows:

§ 399.88 Prohibition on post-purchase price increase.

(a) It is an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 for any seller of scheduled air transportation within, to or from the United States, or of a tour (*i.e.,* a combination of air transportation and ground or cruise accommodations), or tour component (*e.g.,* a hotel stay) that includes scheduled air transportation within, to or from the United States, to increase the ticket price of that air transportation, tour or tour component or to apply revised price rules for a first checked bag, a second checked bag, and one carry-on bag to a consumer, after the air transportation has been purchased by the consumer, except in the case of an increase in a government-imposed tax or fee. A purchase is deemed to have occurred when the full amount agreed upon has been paid by the consumer.

* * * * *

[FR Doc. 2022–22214 Filed 10–19–22; 8:45 am]

BILLING CODE 4910–9X–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Trade Regulation Rule on Commercial Surveillance and Data Security

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is extending the deadline for filing comments on its advance notice of proposed rulemaking (''ANPR'') regarding whether the Commission should prescribe new trade regulation rules or other regulatory alternatives concerning commercial surveillance and data security practices that are prevalent and unfair or deceptive.

DATES: The deadline for comments on the advance notice of proposed rulemaking published August 22, 2022 (87 FR 51273) is extended. Comments must be received on or before November 21, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Commercial Surveillance ANPR, R111004'' on your comment, and file your comment online at *https://www.regulations.gov.* If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James Trilling, 202–326–3497; Peder Magee, 202–326–3538; Olivier Sylvain, 202–326–3046; or *commercialsurveillancerm@ftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Comment Period Extension

On August 22, 2022 (87 FR 51273), the Commission published in the **Federal Register** an advance notice of proposed rulemaking concerning Trade Regulation Rule on Commercial Surveillance and Data Security (''ANPR''), with an October 21, 2022 deadline for filing comments. The Commission published the ANPR to seek public comments on the prevalence of commercial surveillance and data security practices that are unfair or deceptive acts or practices under the Federal Trade Commission Act and whether the Commission should prescribe new trade regulation rules or other regulatory alternatives to address them. Interested parties have subsequently requested an extension of the public comment period to give them additional time to respond to the ANPR's requests for comment.[1]

The Commission agrees that allowing additional time for filing comments in response to the ANPR would help facilitate the creation of a more complete record. The Commission has therefore decided to extend the comment period for 31 days, to November 21, 2022. A 31-day extension will provide commenters adequate time to address the issues raised in the ANPR.

II. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 21, 2022. Write ''Commercial Surveillance ANPR, R111004'' on the comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website. The Commission strongly encourages you to submit your comment online through the *https://www.regulations.gov* website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write ''Commercial Surveillance ANPR, R111004'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary,

[1] *See* Cmt. of NTCA—The Rural Broadband Association, Docket ID FTC–2022–0053 (Oct. 6, 2022), *https://www.regulations.gov/comment/FTC-2022-0053-0142;* Cmt. of Am. Escrow Ass'n et al., Docket ID FTC–2022–0053 (Sept. 26, 2022), *https://www.regulations.gov/comment/FTC-2022-0053-0105.*

600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not contain sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

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

Visit the FTC website to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before November 21, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/siteinformation/privacy-policy.*

By direction of the Commission, Commissioner Wilson abstaining.

April J. Tabor,

Secretary.

[FR Doc. 2022–22813 Filed 10–19–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF STATE

22 CFR Part 51

[Public Notice 11299]

RIN 1400–AF10

Passports: Form DS–3053 Statement of Consent; Consular Reports of Birth Abroad (CRBA)

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department proposes to amend its rule regarding minor passport applications to allow a non-applying parent to sign the statement of consent before a notary public *or* a passport specialist at one of the public passport agency/center counters located within the United States. Department of State Form DS–3053, which is used to obtain the written consent from the parent or legal guardian of a minor passport applicant when they cannot be present at the time the application is executed, is being revised to be consistent with this rulemaking. This proposal also amends the rule by removing from the list of acceptable documentary evidence of sole authority/custody a Consular Report of Birth Abroad (CRBA) listing only the applying parent. Finally, this rulemaking updates the authority citation for the regulations.

DATES: The Department of State will accept comments until December 19, 2022.

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

- Visit the *Regulations.gov* website at: *https://www.regulations.gov* and search for the docket number DOS–2021–0001.
- *Email: PassportOfficeofAdjudicationGeneral@state.gov.* You must include RIN 1400–AF10 in the subject line of your message.
- All comments should include the commenter's name, the organization the commenter represents, if applicable, and the commenter's address. If the Department is unable to read your comment for any reason, and cannot contact you for clarification, the Department may not be able to consider your comment. After the conclusion of the comment period, the Department will publish a Final Rule (in which it will address relevant comments) as expeditiously as possible.

FOR FURTHER INFORMATION CONTACT: Kelly Cullum, Office of Adjudication, Passport Services, (202) 485–8800, or email *PassportOfficeofAdjudicationGeneral@state.gov.*

SUPPLEMENTARY INFORMATION: When applying for a U.S. passport on behalf of a minor under the age of 16, the minor's parents or legal guardians must both execute the passport application, unless the applying parent can demonstrate sole authority to obtain the passport. Currently, if one of the parents or legal guardians does not execute the passport application, the non-applying parent must submit a notarized statement/affidavit consenting to the issuance of a passport for the minor, along with a copy of the parent's identification. Feedback from parents and legal guardians indicates that the notarization of the document can be a difficult requirement to meet and adds more time and expense to the application process. Additionally, when the non-applying parent appears at a passport agency/center counter to complete the statement of consent, they must be turned away and sent to a notary public.

The Department proposes to amend 22 CFR 51.28(a)(3)(i) and (a)(4)(i) and (ii) to allow the non-applying parent or legal guardian to sign a statement of consent before a passport specialist at one of the public passport agency/center counters located within the United States as an alternative to signing it before a notary public when an application is pending at a passport agency/center or overseas post. This counter service will be offered free of charge. This proposal further amends § 51.28(a)(4)(ii) to clarify that where one parent authorizes a person to apply in loco parentis on behalf of a minor, they must demonstrate that they have sole legal authority to execute the passport application on behalf of that minor or that exigent or special family circumstances exist.

This proposal also amends 22 CFR 51.28(a)(3)(ii) by removing from the list of acceptable documentary evidence of sole authority/custody a Consular Report of Birth Abroad (CRBA) listing only the applying parent, because a CRBA is a citizenship document and not by itself evidence of sole authority/custody.

Regulatory Findings

Administrative Procedure Act

The Department of State is publishing this rulemaking as a proposed rule and is providing 60 days for public comment.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. This gives greater flexibility to the parents and legal guardians of minor children applying for U.S. passports. Only individuals, and no small entities, apply for passports.

Unfunded Mandates Act of 1995

This rulemaking will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 12866

This proposed rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department does not anticipate that demand for passport services will change as a result of this rule change. The service described in this rulemaking will be offered free of charge.

The Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive order. The Department finds that the cost of this rulemaking to the public is expected to be minimal, and in fact provides a potential benefit to non-applying parents who may now sign a consent statement before a passport specialist free of charge (while retaining the option of signing before a notary).

Executive Order 13563—Improving Regulation and Regulatory Review

The Department of State has considered this proposed rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Orders 12372 and 13132—Federalism

This regulation 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Executive Order 13175—Consultation With Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of E.O. 13175 do not apply to this proposed rule.

Paperwork Reduction Act

The information collection contained in this proposed rule is pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35, and relates to Office of Management and Budget (OMB) Control Number 1405–0129. As part of this rulemaking, the Department is seeking comment on the administrative burden associated with this collection of information. This proposed rule will result in a change in the design of the DS–3053, the form associated with this collection of information.

Department of State Form DS–3053, which is used to obtain the written consent from the parent or legal guardian of a minor passport applicant when they cannot be present at the time the application is executed, is being revised to be consistent with this rulemaking, to allow the non-applying parent or legal guardian to sign a statement of consent before a notary public *or* a passport specialist at one of the public passport agency/center counters located within the United States as an alternative to requiring a notarized statement when an application is pending at a passport agency/center.

OMB Control No. 1405–0129, Statement of Consent: Issuance of a U.S. Passport to a Minor Under the Age 16 was last revised on December 15, 2020. The estimated burden is 20 minutes. The Department does not anticipate an increase in burden; however, in addition to comments on the proposed rule itself, the public is invited to comment on the estimated burden.

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Non-Applying Parents of Minor Passport Applicants Execution of Form DS–3053 Statement of Consent.

(3) *Agency form numbers:* DS–3053 Statement of Consent.

(4) *Affected public:* This information collection will be used by non-applying parents of minor passport applicants.

(5) *An estimate of the total number of respondents:* The Department estimates that the yearly total of respondents age 17 and under is 416,478.

(6) *An estimate of the total annual public burden (in hours) associated with the collection:* The average burden associated with the DS–3053 Statement of Consent information collection is estimated to be 20 minutes per respondent. The Department estimates the total annual burden for this information collection to be 138,826 hours.

(7) *Submit comments to the Department of State by the following methods:*

Department of State:

- *Web:* Persons with access to the internet may view this document and provide comments by going to the *regulations.gov* website at: *https://www.regulations.gov/index.cfm.* Search for Docket No. DOS–2021–0001 or for RIN 1400–AF10.
- *Email: PassportOfficeofAdjudicationGeneral@state.gov:* You must include the DS form number, information collection title, and the OMB control number in any correspondence.

(8) We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this proposed rule are public record. Before including any

detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: This information collection will enable non-applying parents to provide consent to passport issuance to minor applicants before a notary public (current rule) or before either a notary public or a counter passport specialist (proposed rule).

Methodology:

The form introduced by this information collection will be made available online on the Department's website and upon request at participating passport agencies and must be submitted to the Department as noted in this rulemaking.

List of Subjects in 22 CFR Part 51

Passports.

Accordingly, for the reasons set forth in the preamble, 22 CFR part 51 is proposed to be amended as follows:

PART 51—PASSPORTS

■ 1. The authority citation for part 51 is revised to read as follows:

Authority: 8 U.S.C. 1104, 1185, 1185n (Pub. L. 108–458, 118 Stat. 3638, 3823), 1504, and 1714; 22 U.S.C. 211a, 212, 212a, 212b, 213, 213n (Div. B, Sec. 1000(a)(7) [Div. A, Title II, Sec. 236], Pub. L. 106–113, 113 Stat. 1536, 1501A–430), 214, 214a, 217a, 218, 2651a, 2671(d)(3), 2705, 2714, 2714a, 2721, and 3926; 26 U.S.C. 6039E; 31 U.S.C. 9701; 34 U.S.C. 21501–21510; 42 U.S.C. 652(k); E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570; 34 U.S.C. 21501–21510; 26 CFR 301.6039E–1.

■ 2. Amend § 51.28 by:
■ a. Revising paragraph (a)(3)(i);
■ b. Removing paragraph (a)(3)(ii)(B);
■ c. Redesignating paragraphs (a)(3)(ii)(C) through (G) as paragraphs (a)(3)(ii)(B) through (F);
■ d. In newly redesignated paragraph (a)(3)(ii)(E), removing the period and adding ''; and'' in its place; and
■ e. Revising paragraphs (a)(4)(i) and (ii).

The revisions read as follows:

§ 51.28 Minors.

(a) * * *

(3) * * *

(i) A written statement or affidavit from the non-applying parent or legal guardian, if applicable, consenting to the issuance of the passport, and signed before a notary public or a passport specialist at a public passport agency/center counter operated by the Department of State.

* * * * *

(4) * * *

(i) A person may apply in loco parentis on behalf of a minor under age 16 by submitting a written statement or affidavit from both parents or each legal guardian, if any, specifically authorizing the application, and signed before a notary public or a passport specialist at a public passport agency/center counter operated by the Department of State.

(ii) If only one parent or legal guardian provides the written statement or affidavit, the applicant must provide documentary evidence that an application may be made by one parent or legal guardian, consistent with this section.

* * * * *

Rachel M. Arndt,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2022–22758 Filed 10–19–22; 8:45 am]

BILLING CODE 4710–25–P

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for Domestic Mailing Services Products

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: On October 7, 2022, the Postal Service (USPS®) filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective January 22, 2023. This proposed rule contains the revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) that we would adopt to implement the changes coincident with the price adjustments.

DATES: Submit comments on or before November 21, 2022.

ADDRESSES: Mail or deliver written comments to the Manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''January 2023 Domestic Mailing Services Proposal.'' Faxed comments are not accepted.

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Krista Becker at (202) 268–7345, Samie Rehman at (202) 268–7023, Karen Key at (202) 268–7492, or Doriane Harley at (202) 268–2537.

SUPPLEMENTARY INFORMATION: Proposed prices are available under Docket No. R2023–1 on the Postal Regulatory Commission's website at *www.prc.gov.*

The Postal Service's proposed rule includes changes to prices, mail classification updates, product simplification efforts, and minor revisions to the DMM.

Discount for Marketing Mail Flats on SCF Pallets

Currently, the Postal Service offers discounts for Carrier Route, High Density, High Density Plus, and Saturation Flats on 5-Digit or 5-Digit Scheme (direct) containers. Similar discounts would now be offered to flat-shaped Marketing Mail pieces on SCF Pallets. This proposed discount will be applicable to Automation and Nonautomation (3-Digit and 5-Digit Presort) Flats, Carrier Route Flats, High Density Flats, High Density Plus Flats and Saturation Flats on SCF Pallets regardless of the entry (None, DNDC, and DSCF). This preparation assures that no bundle sorting is required prior to the final processing plant.

Eliminate Zip Coding of Mailing Lists and Correction of Mailing Lists as AMS Products

Currently, the Postal Service offers mailing list services for manual correction of name and address on occupant lists and manual sorting of mailing lists on cards by 5-digit ZIP Code.

The Postal Service is proposing to discontinue these two services due to low volume usage and the availability of other Address Management products that allows more efficient access to the same information in an electronic format.

Elimination of Legacy Extra Service Labels

In an attempt to reduce duplicate labels, the Postal Service is eliminating the following legacy labels: PS 153 Signature Confirmation, PS 3800 Certified Mail, PS 3813 Insured Mail $500 and under, and PS 3813–P Insured Mail over $500. These labels will be replaced with IMpb compliant versions. Mailers that continue to use the eliminated labels will be subject to the IMpb Noncompliance Fee.

2023 Mailing Promotions

The Postal Service has been incenting mailers to integrate mobile technology and use innovative print techniques in commercial mail since 2012. These promotions have become an integral way for industry to try new things and innovate their mail campaigns. A 2023 Promotions Calendar is planned with opportunities for mailers to receive a postage discount by applying treatments or integrating technology in their mail campaigns.

These proposed revisions will provide consistency within postal products and add value for customers.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

500 Additional Mailing Services

503 Extra Services

1.0 Basic Standards for All Extra Services

* * * * *

1.7 Forms and Labels

* * * * *

[Add new 1.7.5 to read as follows:]

1.7.5 Legacy Extra Service Labels

Certain legacy extra service labels are no longer valid and have been replaced with IMpb compliant versions that have a tracking number beginning with ''92'' or higher. Mailers using noncompliant versions of the following extra service labels will be subject to the IMpb Noncompliance Fee (see Notice 123—Price List):

a. PS 153 Signature Confirmation
b. PS 3800 Certified Mail
c. PS 3813 Insured Mail $500 and under
d. PS 3813–P Insured Mail over $500

* * * * *

507 Mailer Services

Overview

* * * * *

[Revise the heading ''8.0 Mailing List Services'' to read as follows:]

8.0 Address Management System

* * * * *

[Replace current section 8.0 with new text to read as follows:]

8.0 Address Management System

8.1 Address Management System Products and Fees

For Address Management System (AMS) products and fees, see Notice 123—Price List.

8.1.2 Carrier Route Information System

The official city delivery scheme, called the Carrier Route Information System, is available to mailers.

8.1.3 Address Changes to Election Boards and Voter Registration Commissions

For the designated fee, the USPS provides address changes to election boards and voter registration commissions.

8.2 Election Boards and Voter Registration Commissions

8.2.1 General

Election boards or voter registration commissions may use the ''Return Service Requested'' endorsement and/or the National Change of Address Linkage System (NCOA^{Link}) to maintain current address lists.

8.2.2 Fee Assessment

The fee for address changes provided to election boards and voter registration commissions is assessed for each Form 3575 submitted. The fee is collected on a per card basis regardless of the number of changes made on the card and whether the change concerns a person on the board's or commission's list of registrants. Instead of the actual forms, the USPS may supply facsimiles of the forms or copies of the information they contain at no additional fee.

8.2.3 Procedure

Election boards or voter registration commissions using permanent registration may obtain residential change-of-address information from Forms 3575:

a. An authorized official of the board or commission must sign and submit to the manager, address management systems (district), a written request that lists the Post Offices for which change-of-address information is desired.

b. If the request is approved, an agreement must be obtained from and signed by an authorized official of the board or commission detailing the terms under which the change-of-address information is to be released.

c. The board or commission receives the requested information from the postmasters of the listed Post Offices and pays those postmasters the applicable fees.

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

8.0 Preparing Pallets

* * * * *

8.10 Pallet Presort and Labeling

* * * * *

8.10.3 USPS Marketing Mail or Parcel Select Lightweight—Bundles, Sacks, or Trays

* * * * *

[Revise the text of 8.10.3e to read as follows]

e. SCF, required, permitted for bundles, sacks, and trays. Pallet may contain carrier route, automation price, and/or Presorted price mail for the 3-digit ZIP Code groups in L005, or L051 for Parcel Select Lightweight sacks. Mailers may, at their option, place AADC trays on SCF pallets when the tray's ''label to'' 3-digit ZIP Code (from L801) is within that SCF's service area. Mailers may also, at their option, place mixed ADC or mixed AADC trays, labeled per L010, on an SCF pallet entered at the SCF facility responsible for the processing of mixed ADC or mixed AADC trays for that NDC/ASF facility. The SCF Pallet discount applies to 3-Digit, 5-Digit, Carrier Route, High Density, High Density Plus, Saturation (including EDDM—Not Retail) USPS Marketing Mail flat shaped pieces on a SCF pallet entered at an Origin (None), DNDC, or DSCF entry. SCF pallet

discount does not apply to Marketing Mail letters or parcels. Labeling: * * * * * * * * * * *

Notice 123 (Price List)

[Revise prices as applicable.]

* * * * * *

Ruth B. Stevenson,

Chief Counsel, Ethics & Legal Compliance.

[FR Doc. 2022–22742 Filed 10–19–22; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2022–0785, FRL–10210–01–R2]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program; Diesel Opacity Cutpoints

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the State Implementation Plan (SIP) submitted by the New Jersey Department of Environmental Protection (NJDEP) in 2009 for New Jersey's motor vehicle inspection and maintenance (I/M) program. A final rule for this proposal would complete EPA's action on this submitted SIP revision and maintain consistency between the State adopted rules and the federally approved New Jersey SIP.

DATES: Written comments must be received on or before November 21, 2022.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2022–0785 at *https://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.* 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: Reema Loutan, Technology, Transportation, and Radiation Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3760, or by email at *Loutan.Reema@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is the EPA proposing?
II. What is the purpose of the submitted rules?
III. What are the EPA's conclusions?
IV. Statutory and Executive Order Reviews

I. What action is the EPA proposing?

The EPA is proposing to approve a revision to the New Jersey State Implementation Plan (SIP), submitted by New Jersey on July 20, 2009, pertaining to New Jersey's motor vehicle inspection and maintenance (I/M) program. This July 20, 2009 SIP revision submittal consisted of rules and rule amendments to the New Jersey Department of Environmental Protection's rules at N.J.A.C. Title 7, Chapter 27, Subchapter 14, titled ''Control and Prohibition of Air Pollution from Diesel-Powered Motor Vehicles (Diesel-Powered Motor Vehicle Inspection and Maintenance Program),'' at sections 14.2, 14.4 and 14.6, and related amendments to the ''Sampling and Analytical Procedures'' at N.J.A.C. Title 7, Chapter 27B, Subchapter 4, titled ''Air Test Method 4: Testing Procedures for Diesel-Powered Motor Vehicles,'' at section 4.5. Section 7:27B–4.5, which provided for an alternative smoke opacity test standard for model year 1973 and older diesel-powered motor vehicles, has since been rescinded. New Jersey adopted these amendments to encourage increased diesel engine maintenance and repairs, thereby reducing the amount of particulate matter (PM) and other pollutants emitted from diesel engines. Rules approved into the SIP must be enforceable (*see* CAA section 110(a)(2)), must not interfere with applicable CAA requirements including attainment of the national ambient air quality standards (NAAQS) or reasonable further progress toward attaining the NAAQS (*see* CAA section 110(*l*)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (*see* CAA section 193). When submitted in 2009, EPA deferred acting on this SIP revision. However, since the 2009 SIP submittal, New Jersey has made several amendments to its I/M program to improve program performance, and a subsequent SIP revision for the diesel opacity program was approved by EPA and supersedes the July 20, 2009, SIP revision submittal. *See 83 FR 21174* (May 9, 2018).

Consistent with EPA's 2018 approval of the State's current opacity cutpoint regulations, the rules in the 2009 SIP submission meet CAA requirements and are consistent with relevant guidance regarding SIP revisions and the enforceability of state rules. The standards set forth in the rules listed above are more stringent than the opacity standards set forth in the EPA's guidance to states.[1] Further, while EPA's 1999 guidance establishes recommendations for states to uniformly establish opacity standards, states have authority under CAA section 209(d) to establish their own in-use standards for motor vehicles.

II. What is the purpose of the submitted rules?

Emissions of PM, including PM equal to or less than 2.5 microns in diameter ($PM_{2.5}$) and PM equal to or less than 10 microns in diameter (PM_{10}), contribute to harmful impacts to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations for controlling PM emissions. On July 20, 2009, New Jersey submitted to EPA a revision to its SIP pertaining to revisions to the New Jersey I/M program. The 2009 submittal consisted of rules and rule amendments to the New Jersey Department of

[1] *See* ''Guidance to States on In-Use Smoke Test Procedure for Highway Heavy-Duty Diesel Vehicles,'' EPA OAR, April 3, 1997, and ''Guidance to States on Smoke Opacity Cutpoints to be used with the SAE J1667 In-Use Smoke Test Procedure,'' EPA OAR, February 25, 1999.

Environmental Protection's rules regarding diesel opacity cutpoints, visible smoke standard for diesel-powered trucks and buses, and exemptions for emergency vehicles. A subsequently approved SIP revision, submitted to the EPA on September 16, 2016, implemented changes to New Jersey's I/M program that include procedures for diesel exhaust after-treatment checks, repealed the rolling acceleration smoke opacity test and the power brake smoke opacity test, and retained only the snap acceleration smoke opacity test.

In addition to the rule changes, NJDEP identified emission reduction credits associated with the program in the July 20, 2009, SIP revision. The EPA is not proposing to approve any emission reduction SIP credit under this rule, for this purpose, at this time, but the State may resubmit a SIP revision to recognize the SIP credit if and when fully developed, available, complete, and quantifiable. There are research efforts supporting the development of emissions quantification methods for heavy-duty inspection and maintenance programs.

III. What are the EPA's Conclusions?

The EPA's review of the materials submitted indicates that New Jersey has revised its I/M program in accordance with the requirements of the CAA and 40 CFR part 51. The EPA is proposing to approve the rules and rule amendments to the New Jersey Department of Environmental Protection's rules proposed in the July 20, 2009, SIP revision for N.J.A.C. 7:27–14 and 7:27B–4, with the acknowledgement that this program is superseded by the current New Jersey diesel program that was approved by the EPA on May 9, 2018 (83 FR 21174). The CAA gives states the discretion in program planning to implement programs of the state's choosing as long as necessary emission reductions are met.

IV. 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. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the 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 proposed 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 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, this proposed rule, addressing New Jersey opacity standards for diesel-powered motor vehicles is not approved to apply on any Indian reservation land or in any other area where 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 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, Particulate matter, Reporting and recordkeeping requirements.

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2022–22224 Filed 10–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0704; FRL–10224–01–R9]

Partial Approval, Conditional Approval, and Partial Disapproval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve in part, conditionally approve in part, and disapprove in part a state implementation plan (SIP) revision submitted by the State of Nevada pursuant to the requirements of the Clean Air Act (CAA or ''Act'') for the implementation, maintenance, and enforcement of the 2012 national ambient air quality standards (NAAQS) for particulate matter less than 2.5 micrometers in diameter ($PM_{2.5}$). As part of this action, we are proposing to reclassify certain regions of the State for emergency episode planning purposes with respect to $PM_{2.5}$. We are also proposing to approve an exemption from emergency episode planning requirements for $PM_{2.5}$ for the Nevada Division of Environmental Protection (NDEP) and Washoe County. Finally, we are proposing to approve two new definitions and four regulatory revisions into the Nevada SIP. We are taking comments on this proposal and, after considering any comments submitted, plan to take final action.

DATES: Written comments must be received on or before November 21, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0704 at *https://www.regulations.gov.* For comments submitted at *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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3856, *kelly.thomasp@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA.

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I. The EPA's Approach to the Review of Infrastructure SIP Submissions

The EPA is proposing action on a SIP submittal from Nevada that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the primary and secondary 2012 $PM_{2.5}$ NAAQS. The requirement for states to submit a SIP revision of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submittals ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submittals are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submittals, and the requirement to make the submittals is not conditioned upon the EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submittal must address.

The EPA has historically referred to these SIP submittals made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submittals. Although the term ''infrastructure SIP'' does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submittal from submittals that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment SIP'' submittals to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submittals required to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NSR) permit program submittals to address the permit requirements of CAA, title I, part D.

Historically, the EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in other cases conveying interpretations that have already been developed and applied to individual SIP submittals for particular elements.[1] The EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (''2013 Infrastructure SIP Guidance'').[2] The EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, the EPA describes the duty of states to make infrastructure SIP submittals to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. The EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submittals.[3] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, the EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submittals need to address certain issues and need not address others. Accordingly, the EPA reviews each infrastructure SIP submittal for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submittals. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, the EPA reviews infrastructure SIP submittals to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Infrastructure SIP Guidance explains the EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in the EPA's evaluation of infrastructure SIP submittals because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, the EPA's review of infrastructure SIP submittals with respect to the prevention of significant

[1] We note, however, that nothing in the CAA requires the EPA to provide guidance or to promulgate regulations for infrastructure SIP submittals. The CAA directly applies to states and requires the submittal of infrastructure SIP submittals, regardless of whether or not the EPA provides guidance or regulations pertaining to such submittals. The EPA elects to issue such guidance in order to assist states, as appropriate.

[2] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[3] The EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submittals to address section 110(a)(2)(D)(i)(I). The EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, the EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether the EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

deterioration (PSD) program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C, title I of the Act and the EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and regulated NSR pollutants, including greenhouse gases. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 Code of Federal Regulations (CFR) 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions the EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, the EPA's review of a state's infrastructure SIP submittal focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, the EPA evaluates whether the state has a SIP-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submittal, however, the EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and the EPA's regulations that pertain to such programs.

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submittal is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA and existing provisions for PSD programs that may be inconsistent with current requirements of the EPA's ''Final NSR Improvement Rule.'' [4] Thus, the EPA believes it may approve an infrastructure SIP submittal without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submittal even if it is aware of such existing provisions.[5] It is important to note that the EPA's approval of a state's infrastructure SIP submittal should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

The EPA's approach to the review of infrastructure SIP submittals is to identify the CAA requirements that are logically applicable to that submittal. The EPA believes that this approach to the review of a particular infrastructure SIP submittal is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and the EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when the EPA evaluates adequacy of the infrastructure SIP submittal. The EPA believes that a better approach is for states and the EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, the EPA's 2013 Infrastructure SIP Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submittal for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, the EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes the EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[6] Section 110(k)(6) authorizes the EPA to correct errors in past actions, such as past approvals of SIP submittals.[7] Significantly, the EPA's determination that an action on a state's infrastructure SIP submittal is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude the EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submittal, the EPA believes that section 110(a)(2)(A) may be among the statutory bases that the EPA relies upon in the course of addressing such deficiency in a subsequent action.[8]

[4] 67 FR 80186, December 31, 2002, as amended by 72 FR 32526, June 13, 2007.

[5] By contrast, the EPA notes that if a state were to include a new provision in an infrastructure SIP submittal that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then the EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[6] For example, the EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 76 FR 21639, April 18, 2011.

[7] The EPA has used this authority to correct errors in past actions on SIP submittals related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536, December 30, 2010. The EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664, July 25, 1996 and 62 FR 34641, June 27, 1997 (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051, November 3, 2009 (corrections to Arizona and Nevada SIPs).

[8] See, *e.g.,* the EPA's disapproval of a SIP submittal from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344, July 21, 2010 (proposed disapproval of director's discretion provisions); 76 FR 4540, January 26, 2011 (final disapproval of such provisions).

II. Background

A. Statutory Framework

Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must include. The infrastructure SIP elements required by section 110(a)(2) are as follows:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate pollution abatement and international air pollution.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local government and regional agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, PSD, and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submittal of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation and participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: Section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment NSR), and Section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address requirements for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

B. Regulatory History

On January 15, 2013, the EPA promulgated a revised primary NAAQS for $PM_{2.5}$, (''the 2012 $PM_{2.5}$ NAAQS''), triggering a requirement for states to submit infrastructure SIPs by December 15, 2015. The revised standard lowered the annual $PM_{2.5}$ NAAQS to 12.0 micrograms per cubic meter ($\mu g/m^3$) to provide increased protection against health effects associated with long- and short-term exposures (including premature mortality, increased hospital admissions and emergency department visits, and development of chronic respiratory disease).[9]

III. State Submittal

A. Infrastructure SIP Submittal

The NDEP made a submittal addressing the infrastructure SIP requirements for the 2012 $PM_{2.5}$ NAAQS on December 11, 2015 (''Nevada's Infrastructure SIP Submittal'').[10] It included separate sections for Clark County [11] and Washoe County.[12] We refer to each individual section as that agency's or County's portion of the submittal. In accordance with CAA section 110(k)(1)(B), the infrastructure SIP became complete by operation of law on June 11, 2016.

As noted in each respective portion of the submittal, the NDEP, Clark County, and Washoe County all provided public notice and an opportunity for public comment prior to finalizing each portion of the infrastructure SIP submittal. Additionally, each agency either held or offered to hold a public hearing as part of the public notice and comment period. Notice, hearing, and adoption dates for each portion of the submittal are shown in Table 1. We find that these submittals meet the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102.

TABLE 1—NOTIFICATION AND OPPORTUNITIES FOR PUBLIC COMMENT ON THE NEVADA SIP

Agency	Submittal	Start of public notice	Hearing date	Adoption date
NDEP	Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2012 Annual Primary Fine Particulate Matter NAAQS.	October 19, 2015	None [a]	December 11, 2015.
Clark County Board of Commissioners.	Clark County Portion of the State Implementation Plan to Meet the $PM_{2.5}$ SIP Requirements of the Clean Air Act Section 110(a)(2).	June 20, 2015	August 18, 2015	August 18, 2015.
Washoe County District Board of Health.	The Washoe County Portion of the Nevada State Implementation Plan to Meet the $PM_{2.5}$ Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2).	September 21, 2015	October 22, 2015	October 22, 2015.

[a] The hearing was tentatively scheduled for November 19, 2015, but cancelled because no one requested a hearing.

B. New and Revised Rules

In its December 11, 2015 letter transmitting the Nevada Infrastructure SIP Submittal, the NDEP included several new and revised rules for incorporation into the Nevada SIP.[13] Along with the new and revised rules, the NDEP included documentation of the public comment period, which began on September 14, 2015; the public hearing, on October 14, 2015; and proof of adoption by the State Environmental Commission.

1. What rules did the State submit

Table 2 provides a list of the new and revised rules, which are included in the docket for this rulemaking.

[9] 78 FR 3086 (January 15, 2013).

[10] Letter and enclosures from David Emme, Administrator, NDEP, to Jared Blumenfeld, Regional Administrator, EPA Region IX, RE: The Nevada State Implementation Plan for the 2012 Annual Primary Fine Particulate Matter NAAQS, dated December 11, 2015, with enclosures including the Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2012 Annual Primary Fine Particulate Matter NAAQS, dated December 11, 2015.

[11] Letter from Lewis Wallenmeyer, Director, Clark County Department of Air Quality, to David Emme, Administrator, NDEP, Subject: the Clark County Portion of the $PM_{2.5}$ State Implementation Plan, dated August 20, 2015, including the enclosed Clark County Portion of the State Implementation Plan to Meet the $PM_{2.5}$ SIP Requirements of the Clean Air Act Section 110(a)(2), dated August 2015.

[12] Letter from Charlene Albee, Director, Washoe County Health District, to Dave Emme, Administrator, Nevada Division of Environmental Protection, Subject: $PM_{2.5}$ State Implementation Plan for the 2012 Annual NAAQS, dated December 4, 2015, with enclosures, including: the Washoe County Portion of the Nevada State Implementation Plan to Meet the $PM_{2.5}$ Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), dated October 22, 2015.

[13] See Enclosure NDEP 2012 $PM_{2.5}$ NAAQS Infrastructure SIP, December 11, 2015, Nevada Division of Environmental Protection Regulatory Amendments for Approval into the Applicable Nevada SIP.

TABLE 2—NEW AND REVISED RULES SUBMITTED BY NEVADA FOR ADOPTION INTO THE SIP

Agency	Nevada Administrative Code (NAC) rule No.	New/previous EPA rule approval	Adoption date	Submittal date	Rule title
Nevada Environmental Commission.	445B.1349	New	10/27/2015	12/11/2015	Definition of "$PM_{2.5}$ emissions".
	445B.1355	New	10/27/2015	12/11/2015	Definition of "PM_{10} emissions".
	Revision to 445B.2203	May 8, 2007 (72 FR 25971).	10/27/2015	12/11/2015	Emissions of particulate matter: Fuel-burning equipment.
	Revision to 445B.2207	March 27, 2006 (71 FR 15040).	10/27/2015	12/11/2015	Incinerator burning.
	Revision to 445B.22096	August 23, 2012 (77 FR 50936).	10/27/2015	12/11/2015	Control measures constituting BART; limitations on emissions.
	Revision to 445B.22097	October 21, 2014 (79 FR 62851).	10/27/2015	12/11/2015	Standards of quality for ambient air

2. What is the purpose of the submitted rule revisions

The regulations were proposed ''to further align [Nevada's regulations] with the national ambient air quality standards (NAAQS) currently in effect,'' and include ''new definitions for $PM_{2.5}$ emissions and PM_{10} emissions to clarify that direct gaseous emissions from a source that condense to form particulate matter . . . are included in those terms, as required by federal regulation.'' [14]

The new regulations support or address infrastructure SIP requirements for the 2012 $PM_{2.5}$ NAAQS by strengthening the control of $PM_{2.5}$ emissions. Rules in the Nevada Administrative Code (NAC) 445B.1349 and 445.1355 would, for the first time, define $PM_{2.5}$ emissions and PM_{10} emissions to include vapor emissions that can condense to form PM_{10}.[15] The EPA clarified that condensable $PM_{2.5}$ must be covered in PSD and nonattainment new source review permitting in a memorandum dated April 14, 2014.[16] The EPA's 2013 Infrastructure SIP Guidance explained that the EPA will evaluate structural elements of a state's PSD program, which includes provisions to regulate all NSR pollutants, including condensable PM and its precursor emissions.[17] The revisions to NAC 445B.2203, NAC 445B.2207 and NAC 445B.22096 change language related to PM_{10} emissions to be consistent with NAC 445B.1355, which strengthens the controls for specific sources by controlling condensable PM_{10} emissions. The change to NAC 445B.22097 would lower the State's annual average standard for $PM_{2.5}$ to 12.0 $\mu g/m^3$, consistent with the 2012 $PM_{2.5}$ NAAQS. It would also remove the State annual average standard for PM_{10}, which the EPA revoked in a final rule published on October 17, 2006 (71 FR 61144) but leaves the State 24-hour PM_{10} NAAQS in place, consistent with the EPA's 24-hour PM_{10} NAAQS.

C. Commitment Letters

In addition to the submittals identified in Table 1, NDEP and Washoe County submitted letters committing to develop, adopt, and submit rules meeting the public notice requirements of CAA section 127, which are cross-referenced in CAA section 110(a)(2)(J), within one year of our final action conditionally approving both agencies for the requirement.[18] CAA section 127 requires that each state's EPA-approved SIP contain measures to notify the public of instances where any NAAQS is exceeded, advise the public of health hazards related to any exceedance, and provide information on ways to prevent such standards from being exceeded in the future. While NDEP and Washoe County provide notifications to the public in the event of a NAAQS exceedance, neither agency's EPA-approved SIP contains measures requiring such notifications. CAA section 110(k)(4) authorizes the EPA to conditionally approve a plan revision based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval.

IV. The EPA's Evaluation and Proposed Action

A. Proposed Approvals and Partial Approvals

1. Infrastructure SIP

We have evaluated Nevada's Infrastructure SIP Submittal and the existing provisions of the Nevada SIP for compliance with the infrastructure SIP requirements (or ''elements'') of CAA section 110(a)(2) and applicable regulations in 40 CFR part 51 (''Requirements for Preparation, Adoption, and Submittal of State Implementation Plans''). The Technical Support Document (TSD), which is available in the docket to this proposed rulemaking, includes our evaluation of all of the elements and rationale for our proposed action, as well as our evaluation of various statutory and regulatory provisions. For some requirements, we refer to prior actions and TSDs for Nevada Infrastructure SIPs, which are also included in the docket for this rulemaking.

Based on the analysis in this proposed rulemaking and discussed in detail in our TSD, we propose to approve Nevada's Infrastructure SIP with respect to the following Clean Air Act requirements:[19]

[14] Department of Conservation and Natural Resources, which includes the Nevada Division of Environmental Protection, State Environmental Commission, Notice of Regulatory Hearing Adoption of Regulations and Other Matters Before the State Environmental Commission Public Notice, SEC Public Hearing October 14, 2015.

[15] This rulemaking does not alter the definition of PM_{10} at NAC 445B.135, adopted into the SIP in a final rule on March 26, 2006 (FR 71 FR 15040).

[16] Memorandum from Stephen D. Page, Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors, Regions 1–10, dated April 8, 2014, regarding: Interim Guidance on the Treatment of Condensable Particulate Matter Test Results in the Permitting Programs.

[17] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013, pp. 25–29.

[18] Letter from Greg Lovato, Administrator Nevada Division of Environmental Protection, to Martha Guzman, Regional Administrator, U.S. EPA Region IX, Re: Request for Conditional Approval of Nevada's Infrastructure State Implementation Plan for the 2012 $PM_{2.5}$ and 2015 Ozone National Ambient Air Quality Standards, dated September 9, 2022 and Letter from Greg Lovato, Administrator Nevada Division of Environmental Protection to Martha Guzman, Regional Admin, Re: Nevada's Infrastructure State Implementation Plan for the 2012 $PM_{2.5}$ National Ambient Air Quality Standard dated September 9, 2022 that enclosed the letter from Francisco Vega, Director, Air Quality Management Division, Washoe County Health Division to Greg Lovato, Administrator, Nevada Division of Environmental Protection and Martha Guzman, EPA, Re: Request for Conditional Approval of Nevada's Infrastructure State Implementation Plan for the 2012 $PM_{2.5}$ and 2015 Ozone National Ambient Air Quality Standards, dated September 2, 2022.

[19] All approvals are full approvals for NDEP, Clark County, and Washoe County except where noted otherwise.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C)(in part): Program for enforcement of control measures (full approval), and regulation of new stationary sources (approval for Clark County only) and minor sources (full approval).
- 110(a)(2)(D)(in part): Interstate Pollution Transport.
  - 110(a)(2)(D)(i)(I)—significant contribution to a nonattainment area (prong 1).
  - 110(a)(2)(D)(i)((I)—interference with a maintenance area (prong 2).
  - 110(a)(2)(D)(i)(II) (in part)—interference with PSD (prong 3) (approval for Clark County only) and visibility transport (prong 4) (deferred).
  - 110(a)(2)(D)(ii) (in part)—interstate pollution abatement (approval for Clark County only) and international air pollution.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency episodes.
- 110(a)(2)(H): SIP revisions.
- 110(a)(2)(J) (in part): Consultation with government officials, public notification (conditional approval for NDEP and Washoe County, approval for Clark County), and PSD and visibility protection (approval for Clark County only).
- 110(a)(2)(K): Air quality modeling and submission of modeling data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

2. Proposed Approval of State Provisions Into the Nevada SIP

As part of our proposed approval of Nevada's infrastructure SIP submittal, we are also proposing to approve several State regulations into the Nevada SIP. Specifically, we propose to approve into the SIP six provisions from the Nevada Administrative Code. Two new provisions, NAC 445B.1349 and NAC 445B.1355, define ''$PM_{2.5}$ emissions'' and ''PM_{10} emissions'' to include vapors that can condense to form $PM_{2.5}$ and PM_{10}. Three provisions are revisions to NAC 445B.2203, NAC 445B.2207, and NAC 445B.22096 and replace the term ''emissions of PM_{10}'' with ''PM_{10} emissions,'' Finally, NAC 445B.22097 revises the State annual $PM_{2.5}$ emissions standard from 15.0 μg/m³ to 12.0 μg/m³ to be consistent with the 2012 $PM_{2.5}$ NAAQS.

The current revision to NAC 445B.22096 aligns a reference to PM_{10} emissions with the new definition for PM_{10} emissions in NAC 445B.1355, which strengthens the SIP by regulating condensable PM_{10} emissions. However, the EPA had previously disapproved a portion of NAC 445B.22096 in 2012 addressing the NO_X averaging time and control type for units 1, 2, and 3 and the NO_X emission limit for unit 3 at the Reid Gardner Generating Station (RGGS).[20] In addition to disapproving a portion of NAC 445B.22096 in 2012, the EPA promulgated a Federal Implementation Plan (FIP) to replace the disapproved portions of the rule.[21] Since that time, RGGS has closed and the EPA has rescinded its FIP.[22] Because of the facility's closure and decommission, the provisions covering emissions from RGGS are no longer applicable. Therefore, although the current revision to NAC 445B.22096 includes provisions for RGGS that the EPA previously disapproved, because RGGS has now closed, approving this rule into the SIP does not change the status of RGGS and otherwise strengthens the SIP by regulating condensable PM_{10} emissions.

As a general matter, rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). We have evaluated the NDEP's new and revised rules for compliance with CAA requirements for SIPs, set forth in CAA section 110(a)(2), and for compliance with CAA requirements for SIP revisions in CAA sections 110(l) and 193. In general, the rules either strengthen the SIP or clarify certain terms in the SIP, as discussed in section III.B.2. of this proposed rulemaking and in our TSD. Based upon our analysis, we propose to find the NDEP rules meet the requirements of CAA sections 110(a)(2), 110(l), and 193. Therefore, the EPA is proposing to approve the submitted new and revised rules into the Nevada SIP.

B. Exemptions; Conditional Approvals

1. Exemptions

For emergency episode planning, the priority thresholds for classification of Air Quality Control Regions (AQCR) of a state are listed in 40 CFR 51.150. AQCRs classified Priority I, IA, or II are required to have SIP-approved emergency episode contingency plans, while those classified Priority III are not required to have plans.[23] Classification of Nevada's AQCRs is located at 40 CFR 52.1471. However, there are currently no priority classifications for $PM_{2.5}$. As explained in our TSD, we have instead relied upon 2009 guidance for the 2006 p.m.$_{2.5}$ NAAQS, which includes recommendations for evaluating emergency episode requirements under the CAA.[24] Under the 2009 guidance, any AQCR with 24-hour $PM_{2.5}$ ambient air concentrations above 140.4 μg/m³ must have a SIP-approved emergency episode contingency plan under 110(a)(2)(G). The only AQCR in Nevada with ambient air concentrations above this level is the Northwest Nevada Intrastate AQCR, which had a maximum $PM_{2.5}$ 24-hour concentration of 241.6 μg/m³ in 2021.[25] Washoe County and several counties within the jurisdiction of NDEP that are part of the Northwest Nevada Intrastate AQCR are therefore required to have SIP-approved contingency plans. While the NDEP and Washoe County have SIP-approved emergency episode contingency plans, only the Washoe County plan addresses $PM_{2.5}$, whereas the NDEP plan does not. However, under 40 CFR 51.152(d)(1), the EPA may exempt from the emergency episode contingency plan requirements any AQCR that is in attainment for the relevant NAAQS. Because the Northwest Nevada Intrastate AQCR is in attainment for the 2012 $PM_{2.5}$ NAAQS,[26] we are proposing to exempt the Northwest Nevada Intrastate AQCR from the contingency plan requirements of CAA section 110(a)(2)(G).

2. Conditional Approvals

CAA section 110(k)(4) authorizes the EPA to conditionally approve a plan revision based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval. In letters dated September 2, 2022 and September 9, 2022, the NDEP and Washoe County committed to adopt and submit specific enforceable measures to address the identified

[20] 77 FR 50936 (August 23, 2012).

[21] Id.

[22] The recission of the Nevada Regional Haze FIP was finalized in a rule published on October 26, 2018 (83 FR 54053).

[23] 40 CFR 51.151 and 51.152.

[24] Memorandum from: William T. Harnett, Policy Division Director, EPA, to: Regional Air Division Directors, Regions I–X, Subject: Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), dated September 25, 2009.

[25] The monitoring data are available in the docket for this proposal.

[26] 80 FR 2206 (January 15, 2015).

deficiencies under CAA section 110(a)(2)(J) discussed in Sections III.C. and IV.A. of this proposed rulemaking and in our TSD.[27] Accordingly, pursuant to section 110(k)(4) of the Act, the EPA is proposing a conditional approval of the portions of the NDEP and Washoe County Infrastructure SIP Submittals addressing the public notification requirements of CAA section 110(a)(2)(J) for the 2012 $PM_{2.5}$ NAAQS.

If the NDEP and Washoe County meet their commitments to submit the required revisions within 12 months of the EPA's final action on this SIP submittal, and the EPA approves the submission, then the deficiencies listed above will be cured. However, if the NDEP or Washoe County fails to submit these revisions within the required timeframe, the conditional approvals shall become disapprovals.

C. Proposed Partial Disapprovals

The EPA proposes to disapprove Nevada's Infrastructure SIP Submittals with respect to the following infrastructure SIP requirements:

- 110(a)(2)(C) (in part): Regulation of new and modified stationary sources (disapproval for the NDEP and Washoe County).
- 110(a)(2)(D)(i)(II) (in part): interference with PSD (prong 3) (disapproval for the NDEP and Washoe County).
- 110(a)(2)(D)(ii) (in part): interstate pollution abatement (disapproval for the NDEP and Washoe County).
- 110(a)(2)(J) (in part): PSD (disapproval for the NDEP and Washoe County).

As explained more fully in our TSD, we are proposing to disapprove the NDEP and Washoe County portions of Nevada's Infrastructure Submittals with respect to the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J). The Nevada SIP does not fully satisfy the statutory and regulatory requirements for PSD permit programs under part C, title I of the Act, because the NDEP and Washoe County do not currently have SIP-approved PSD programs. Although the NDEP and Washoe County portions of the SIP remain deficient with respect to PSD requirements, there would be no consequences of this proposed disapproval, as both agencies implement the Federal PSD program at 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with the EPA.[28]

D. Deferred Action

On August 12, 2022, NDEP withdrew its submittal of the Prong 4 element in the 2015 Nevada Infrastructure SIP Submittal and submitted a revised Prong 4 element with the State's Regional Haze Plan for the 2nd Planning Period.[29] The EPA intends to act on the revised Prong 4 element when we act on Nevada's Regional Haze Plan for the 2nd Planning Period.

E. Request for Public Comments

The EPA is soliciting public comments on this proposed rulemaking. We will accept comments from the public for the next 30 days. We will consider any comments received before taking final action.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the NDEP rules listed in Table 2 and discussed in section III.B.2. of this preamble. The EPA has made, and will continue to make, these documents generally available electronically in the docket for this rulemaking at *https://www.regulations.gov.*

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 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); and
- 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 Clean Air Act.

The State did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

In addition, the SIP is not approved 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 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

Approval and promulgation of implementation plans, Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Particulate

[27] Clark County has satisfied this requirement through Air Quality Regulation 4.5, approved into the SIP in a rule published on April 21, 2022 (87 FR 23765).

[28] See 40 CFR 52.1485. The EPA fully delegated the implementation of the Federal PSD programs to NDEP on October 19, 2004 (''Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 9 to the Nevada Division of Environmental Protection''), as updated on September 15, 2011 and November 7, 2012, and to Washoe County on March 13, 2008 (''Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 9 to the Washoe County District Health Department'').

[29] See letter dated August 12, 2022, from Greg Lovato, Administrator, Nevada Department of Environmental Protection, to Martha Guzman, Regional Administrator, EPA Region 9, re: The Nevada State Implementation Plan for the Regional Haze Rule for the Second Planning Period; Withdrawal and Replacement of Elements of the 2012 $PM_{2.5}$ NAAQS and 2015 Ozone NAAQS Infrastructure SIPs.

matter, $PM_{2.5}$, PM_{10}, Reporting and recordkeeping requirements.

Dated: October 15, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–22864 Filed 10–19–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2022–0745; FRL–10211–01–R9]

Determination of Attainment by the Attainment Date, Clean Data Determination, and Proposed Approval of Base Year Emissions Inventory for the Imperial County, California Nonattainment Area for the 2012 Annual Fine Particulate Matter NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Imperial County, California fine particulate matter ($PM_{2.5}$) nonattainment area (''Imperial $PM_{2.5}$ nonattainment area'') attained the 2012 annual $PM_{2.5}$ national ambient air quality standard (NAAQS or ''standard'') by its December 31, 2021 ''Moderate'' area attainment date. This proposed determination is based upon ambient air quality monitoring data from 2019 through 2021. We are also proposing to make a clean data determination (CDD) based on our determination that preliminary air quality monitoring data from 2022 indicate the Imperial $PM_{2.5}$ nonattainment area continues to attain the 2012 annual $PM_{2.5}$ NAAQS. If we finalize this CDD, certain Clean Air Act (CAA) requirements that apply to the Imperial County Air Pollution Control District (ICAPCD or ''District'') will be suspended for so long as the area continues to meet the 2012 annual $PM_{2.5}$ NAAQS. The area will remain designated as nonattainment for the 2012 annual $PM_{2.5}$ NAAQS. The EPA is also proposing to approve a revision to California's state implementation plan (SIP) consisting of the 2012 emissions inventory for the Imperial $PM_{2.5}$ nonattainment area, submitted by the California Air Resources Board (CARB or ''State'') on July 18, 2018.

DATES: Comments must be received on or before November 21, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0745 at *https://www.regulations.gov.* For comments submitted at *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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; telephone number: (415) 972–3964; email address: *vagenas.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to the EPA.

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I. Background for the EPA's Proposed Action

A. The 2012 Annual $PM_{2.5}$ National Ambient Air Quality Standard

Under section 109 of the CAA, the EPA has established NAAQS for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. The EPA sets the NAAQS for criteria pollutants at levels required to protect public health and welfare after considering substantial evidence from numerous health studies demonstrating that serious adverse health effects are associated with exposures to these criteria pollutants.[1]

Particulate matter includes particles with diameters that are generally 2.5 microns or smaller ($PM_{2.5}$) and particles with diameters that are generally 10 microns or smaller (PM_{10}). $PM_{2.5}$ can be emitted directly into the atmosphere as a solid or liquid particle (''primary $PM_{2.5}$'' or ''direct $PM_{2.5}$'') or can be formed in the atmosphere (''secondary $PM_{2.5}$'') as a result of various chemical reactions among precursor pollutants such as nitrogen oxides (NO_X), sulfur dioxide (SO_2), volatile organic compounds (VOC), and ammonia (NH_3).[2]

Epidemiological studies have shown statistically significant correlations between elevated $PM_{2.5}$ levels and detrimental effects to human health and the environment. The health effects associated with $PM_{2.5}$ exposure include changes in lung function resulting in the development of respiratory symptoms, aggravation of existing respiratory conditions, cardiovascular disease (as indicated by increased hospital admissions, emergency room visits,

[1] For a given air pollutant, ''primary'' national ambient air quality standards are those determined by the EPA as requisite to protect the public health. ''Secondary'' standards are those determined by the EPA as requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. CAA section 109(b).

[2] EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

absences from school or work, and restricted activity days), and premature mortality. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.[3] Elevated $PM_{2.5}$ levels also has adverse secondary effects such as visibility impairment and damage to vegetation and ecosystems.

The EPA first established annual and 24-hour NAAQS for $PM_{2.5}$ on July 18, 1997.[4] The annual primary and secondary standards were set to 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. Then, on January 15, 2013, in order to provide increased protection of public health, the EPA promulgated a more stringent annual $PM_{2.5}$ NAAQS, revising the primary standard to 12.0 $\mu g/m^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, while retaining the secondary standard at 15.0 $\mu g/m^3$.[5]

B. Clean Air Act Requirements for $PM_{2.5}$ Nonattainment Areas

The CAA requires states to develop a SIP that provides generally for the attainment, maintenance, and enforcement of the NAAQS. In addition, the CAA requires states to make a specific type of SIP submittal, a nonattainment plan submittal, that imposes additional controls for purposes of attaining the $PM_{2.5}$ NAAQS, to achieve reductions of $PM_{2.5}$ and $PM_{2.5}$ precursor emissions.

The general CAA part D nonattainment area planning requirements are found in subpart 1 and the nonattainment area planning requirements specific to particulate matter are found in subpart 4. The subpart 1 statutory requirements for attainment plans include the following: the section 172(c)(1) requirements for reasonably available control measures (RACM)/reasonably available control technology (RACT) and attainment demonstrations; the section 172(c)(2) requirement to demonstrate reasonable further progress (RFP); the section 172(c)(3) requirement for emissions inventories; the section 172(c)(5) requirements for a nonattainment new source review (NNSR) permitting program; and the section 172(c)(9) requirement for contingency measures.

The more specific subpart 4 statutory requirements for Moderate $PM_{2.5}$ nonattainment areas include the following: the section 189(a)(1)(A) NNSR permit program requirements; the section 189(a)(1)(B) requirements for attainment demonstrations; the section 189(a)(1)(C) requirements for RACM; the section 189(c) requirements for RFP and quantitative milestones; and the section 189(e) requirement for controls on sources of PM_{10} precursors.

Under subpart 4, states with Moderate $PM_{2.5}$ nonattainment areas must provide for attainment in the area as expeditiously as practicable but no later than the end of the sixth calendar year after designation. For the 2012 $PM_{2.5}$ annual NAAQS, this date is December 31, 2021. In addition, under subpart 4, direct $PM_{2.5}$ and all precursors to the formation of $PM_{2.5}$ are subject to control unless the EPA approves a demonstration from the state establishing that a given precursor does not contribute significantly to $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS in the area.[6]

To implement the $PM_{2.5}$ NAAQS, the EPA has also promulgated the ''Fine Particle Matter National Ambient Air Quality Standard: State Implementation Plan Requirements; Final Rule'' (''$PM_{2.5}$ Implementation Rule'').[7] The $PM_{2.5}$ Implementation Rule provides additional regulatory requirements and guidance applicable to attainment plan submittals for the $PM_{2.5}$ NAAQS, including the 2012 annual $PM_{2.5}$ NAAQS at issue in this action.

C. Imperial $PM_{2.5}$ Nonattainment Area Designation and State Implementation Plan Requirements

Following promulgation of a new or revised NAAQS, the EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS.[8] Those regions found not to be attaining the NAAQS are also given a classification that describes the degree of nonattainment. Under subpart 4 of part D of title I of the CAA, the EPA designates areas found to be violating the $PM_{2.5}$ NAAQS, and areas that contribute to such violations, as nonattainment and classifies them initially as Moderate nonattainment areas.

On January 15, 2015, the EPA published initial air quality designations for the 2012 annual $PM_{2.5}$ NAAQS for most areas in the United States, effective April 15, 2015. The EPA designated a portion of Imperial County as a nonattainment area for the 2012 annual $PM_{2.5}$ standard and classified it as a ''Moderate'' area, based on ambient monitoring data that showed the area was above 12.0 $\mu g/m^3$ for the 2011–2013 monitoring period.[9]

As a consequence of the Moderate nonattainment designation and classification, CAA sections 172(c) and 189(a), (c) and (e) required the state of California to submit an attainment plan for the Imperial $PM_{2.5}$ nonattainment area within 18 months of the effective date of designation (that is, by October 15, 2016), demonstrating attainment of the NAAQS as expeditiously as practical but no later than the end of the sixth calendar year following the designation, or December 31, 2021, which is the latest permissible attainment date under CAA section 188(c)(2).

Under state law, the local air district with primary responsibility for developing a plan to attain the 2012 annual $PM_{2.5}$ NAAQS in this area is the ICAPCD. Also under state law, authority for regulating sources under state jurisdiction in the Imperial $PM_{2.5}$ nonattainment area is split between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources.

Effective May 7, 2018, the EPA issued a finding that California had failed to submit a timely revision to its SIP as required to satisfy certain requirements under the CAA for implementation for the 2012 annual $PM_{2.5}$ NAAQS for the Imperial $PM_{2.5}$ nonattainment area.[10] For mandatory SIP requirements under part D, title I of the CAA, such as those for $PM_{2.5}$ nonattainment areas, the EPA's finding that a state has failed to make the required complete SIP submission establishes specific consequences. These consequences include the imposition of mandatory sanctions for the affected area if the state has not submitted a complete SIP within 18 months of the finding of failure to submit, in this case by October 6, 2019.[11] Additionally, such a finding triggers an obligation under CAA section 110(c) for the EPA to promulgate a federal implementation plan (FIP) for

[3] Id.

[4] 62 FR 38652. In October 2006, the EPA lowered the 24-hour NAAQS for $PM_{2.5}$ from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$. 71 FR 61144 (October 17, 2006).

[5] 78 FR 3086 and 40 CFR 50.18. Unless otherwise noted, all references to the $PM_{2.5}$ NAAQS in this document are to the 2012 annual NAAQS of 12.0 $\mu g/m^3$, codified at 40 CFR 50.18.

[6] 40 CFR 51.1006 and 51.1009.

[7] 81 FR 58010 (August 24, 2016).

[8] The EPA designated a portion of Imperial County as nonattainment for the 2006 24-hour standard effective December 13, 2009, and subsequently determined that the area had attained the standard. 74 FR 58688 (November 13, 2009) and 82 FR 13392 (March 13, 2017).

[9] For the 2011–2013 period relevant to the designation, the annual $PM_{2.5}$ design value for the Imperial $PM_{2.5}$ nonattainment area was 14.3 $\mu g/m^3$ based on monitored readings at the Calexico-Ethel (''Calexico'') monitor. 80 FR 2206.

[10] 83 FR 14759 (April 6, 2018).

[11] CAA section 179.

the area no later than two years from the effective date of the finding if the state has not submitted and the EPA has not approved the required SIP submittal.

The District worked cooperatively with CARB in preparing the ''Imperial County 2018 Annual Particulate Matter Less than 2.5 Microns in Diameter State Implementation Plan.'' (Imperial $PM_{2.5}$ Plan, or ''Plan''), which was adopted by the District on April 24, 2018. CARB submitted the Imperial $PM_{2.5}$ Plan as a revision to the California SIP on July 18, 2018. On October 29, 2018, CARB submitted Imperial County rules related to the contingency measure element of the attainment plan.[12] On March 19, 2019, we determined that together these submittals addressed our finding of failure to submit and corrected the deficiency that formed the basis for that finding.[13] As a result, the offset and highway sanctions clocks triggered by the finding of failure to submit were permanently stopped, but the EPA's obligation to issue a FIP remained in place.

D. Requirement for Determination of Attainment of the 2012 Annual $PM_{2.5}$ National Ambient Air Quality Standard

Section 179(c) of the CAA requires that within six months following the applicable attainment date, the EPA shall determine whether a nonattainment area attained the standard based on the area's design value[14] as of that date, *i.e.,* as of December 31, 2021.[15] In this instance, this determination, also referred to as a determination of attainment by the attainment date or a DAAD, is based on certified data for the period of 2019—2021. Section 179(c)(2) of the CAA requires the EPA to publish the determination in the **Federal Register** no later than 6 months after the attainment date, that is, in the case of the Imperial $PM_{2.5}$ nonattainment area, by June 30, 2022. If the EPA determines that a Moderate area failed to attain, CAA section 188(b)(2) requires the area to be reclassified by operation of law as a Serious nonattainment area.

E. The EPA's Clean Data Policy

While the EPA may determine that an area's air quality data indicate that an area met the $PM_{2.5}$ NAAQS as of the attainment date, this does not eliminate the state's responsibility under the Act to adopt and implement an approvable attainment plan unless the area also has been granted a CDD.[16] Under the EPA's longstanding Clean Data Policy, which was reaffirmed in the $PM_{2.5}$ Implementation Rule at 40 CFR 51.1015, when an area has attained the relevant $PM_{2.5}$ standard(s), the EPA may issue a CDD (also sometimes referred to as a determination of attainment for the purposes of the Clean Data Policy or regulations) after notice and comment rulemaking determining that a specific area is attaining the relevant standard(s). A CDD is not linked to any particular attainment deadline and is not necessarily equivalent to a determination that an area has attained the standard by its applicable attainment deadline.

The effect of a CDD is to suspend the requirement for the area to submit an attainment demonstration, RACM, an RFP plan, contingency measures, and any other planning requirements related to attainment for as long as the area continues to attain the standard.[17] With respect to the attainment demonstration requirements of section 172(c) and section 189(a)(1)(B) of the CAA, the EPA finds that if an area already has air quality monitoring data demonstrating attainment of the standard, there is no need for an area to make a further submittal containing additional measures to achieve attainment, nor is there a need for the area to perform future modeling to show how the area will achieve attainment. Similarly, both CAA sections 172(c)(1) and 189(a)1)(C) require provisions to assure that RACM that are necessary to help an area achieve attainment are implemented. Thus, where an area is already attaining the standard, no additional RACM are required. Additionally, the EPA interprets the CAA as not requiring the submittal of RFP and associated quantitative milestones for areas that are already attaining the NAAQS. For areas that are attaining the NAAQS, showing that the state will make RFP towards attainment has no meaning. Similar reasoning applies to other SIP submittal requirements that are linked with attainment demonstration and RFP requirements. The EPA interprets the obligation to submit contingency measures as suspended when the area has attained the standard because those contingency measures are directed at ensuring RFP and attainment by the applicable date. A CDD does not suspend the requirements for an emissions inventory or for new source review.[18]

II. Proposed Determination of Attainment and Associated Rationale

A. Applicable Statutory and Regulatory Provisions

Sections 179(c)(1) and 188(b)(2) of the CAA require the EPA to determine whether a $PM_{2.5}$ nonattainment area attained by the applicable attainment date, based on the area's air quality ''as of the attainment date.'' Generally, this determination of whether an area's air quality meets the $PM_{2.5}$ standards is based upon the most recent three years of complete, certified data gathered at eligible monitoring sites in accordance with 40 CFR part 58.[19] The requirements of 40 CFR part 58 include quality assurance procedures for monitor operation and data handling, siting parameters for instruments or instrument probes, and minimum ambient air quality monitoring network requirements. State, local, or tribal agencies that operate air monitoring sites in accordance with 40 CFR part 58 must enter the ambient air quality data and associated quality assurance data from these sites into the EPA's Air Quality System (AQS) database.[20] These monitoring agencies certify annually that these data are accurate to the best of their knowledge, taking into consideration the quality assurance findings.[21] Accordingly, the EPA relies primarily on AQS data when determining the attainment status of an area.

The 2012 primary annual $PM_{2.5}$ standard is met when the three year

[12] The EPA approved these rules in a separate action. 84 FR 45418 (August 29, 2019).

[13] Letter dated March 19, 2019, from Elizabeth Adams, Air Division Director, EPA, Region IX, to Richard Corey, Executive Officer, CARB.

[14] A design value is the 3-year average NAAQS metric that is compared to the NAAQS level to determine when a monitoring site meets or does not meet the NAAQS. The specific methodologies for calculating whether the annual $PM_{2.5}$ NAAQS is met at each eligible monitoring site in an area is found in 40 CFR part 50, Appendix N, Section 4.1.

[15] A determination that an area has attained by the applicable attainment date does not constitute a redesignation to attainment.

[16] 81 FR 58010, 58069.

[17] In the context of CDDs, the EPA distinguishes between attainment planning requirements of the CAA, which relate to the attainment demonstration for an area and related control measures designed to bring an area into attainment for the given NAAQS as expeditiously as practicable, and other types of requirements, such as permitting requirements under the nonattainment new source review program, emissions inventory requirement, and specific control requirements independent of those strictly needed to ensure timely attainment of the given NAAQS.

[18] On August 26, 2019, the EPA approved Imperial County APCD's amended Rule 207, ''New and Modified Stationary Source Review'' as meeting applicable CAA requirements for New Source review, thereby satisfying the requirement for new source review. 84 FR 44545. This action includes our proposed approval of the base year emissions inventory included in the attainment plan for the Imperial County nonattainment area submitted on July 18, 2018. See Section IV of this document.

[19] 40 CFR part 50, Appendix N, section 3.0.

[20] 40 CFR 58.16. AQS is the EPA's national repository of ambient air quality data.

[21] 40 CFR 58.15(a).

average of the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50 appendix N, is less than or equal to 12.0 μg/m^3 at each eligible monitoring site (based on the rounding convention in 40 CFR part 50, Appendix N).[22] For the annual $PM_{2.5}$ standard, eligible monitoring sites are those monitoring stations that meet the criteria specified in 40 CFR 58.11 and 58.30, and thus are approved for comparison to the annual $PM_{2.5}$ NAAQS.[23] Three years of valid annual means are required to produce a valid annual $PM_{2.5}$ NAAQS design value.[24] Data completeness requirements for a given year are met when at least 75 percent of the scheduled sampling days for each quarter have valid data.[25] We note that monitors with incomplete data in one or more quarters may still produce valid design values if the conditions for applying the EPA's data substitution test are met.[26] In determining whether data are suitable for regulatory determinations, the EPA uses a ''weight of evidence'' approach, considering the requirements of 40 CFR part 58, Appendix A ''in combination with other data quality information, reports, and similar documentation that demonstrate overall compliance with Part 58.'' [27]

B. Monitoring Network Review, Quality Assurance, and Data Completeness

The State and the District are the governmental agencies with the authority and responsibility under state law for collecting ambient air quality data within the Imperial $PM_{2.5}$ nonattainment area. During the 2019–2021 period, CARB and the ICAPCD operated three $PM_{2.5}$ state and local air monitoring stations (SLAMS) within the Imperial $PM_{2.5}$ nonattainment area; all three sites are located in the southern portion of Imperial County. The Calexico-Ethel monitoring site (AQS ID: 06–025–0005) is operated by CARB and is located approximately 0.7 miles north of the United States-Mexico border. The Calexico-Ethel monitoring site measured the highest 2021 design value [28] within the Imperial $PM_{2.5}$ nonattainment area; it is therefore considered the ''design value site'' for the area. The ICAPCD operates two additional SLAMS: the Brawley monitoring site (AQS ID: 06–025–0007), located in the City of Brawley, 9 miles north of the border, and the El Centro monitoring site (AQS ID: 06–025–1003), located in the City of El Centro, 22 miles north of the border. CARB, as the primary quality assurance organization for the Imperial $PM_{2.5}$ nonattainment area, submits annual monitoring network plans to the EPA documenting the status of CARB's air monitoring network, as required under 40 CFR 58.10.[29] The EPA reviews these annual network plans for compliance with specific requirements in 40 CFR 58. With respect to $PM_{2.5}$, we have found that the annual network plans submitted by CARB meet these requirements under 40 CFR part 58, including minimum monitoring requirements.[30]

In accordance with 40 CFR 58.15, CARB certifies annually that the previous year's ambient concentration and quality assurance data are completely submitted to AQS and that the ambient concentration data are accurate, taking into consideration the quality assurance findings.[31] Along with the certification letters, CARB submits a summary of the precision and accuracy data for all ambient air quality data.[32]

The design value report also includes a validity indicator (''Valid Ind.'') that reflects whether the design value is valid (*i.e.,* calculated using data that meet the applicable completeness criteria). For the purposes of this proposal, we reviewed the data for the 2019—2021 period for completeness and determined that the $PM_{2.5}$ data collected by CARB and the ICAPCD met the 75 percent completeness criterion for all 12 quarters at the Imperial County monitoring sites except for the $PM_{2.5}$ data collected at the Brawley monitoring site.[33] The Brawley monitor recorded less than 75 percent data capture during the 2nd quarter of 2021 (37 percent) due to monitor replacement. Because the data substitution test under 40 CFR part 50, Appendix N, section 4.1(c)(ii) requires each quarter to have data completeness of at least 50 percent, the Brawley 2021 data do not qualify for the data substitution test. The Brawley site has not historically been the 2012 annual $PM_{2.5}$ design value site for the area. We assessed the long-term trends at the Brawley monitoring site and determined that the site has historically had design values below the annual $PM_{2.5}$ NAAQS. During the 2012 to 2021 period, the Brawley monitoring site consistently had lower design values for the 2012 annual $PM_{2.5}$ NAAQS than the Calexico-Ethel monitoring site in Imperial County.[34] Furthermore, the District exceeds the $PM_{2.5}$ minimum monitoring requirements in the El Centro Metropolitan Statistical Area (MSA). Thus, based on the historical design value concentrations at the Brawley monitoring site relative to the 2012 annual $PM_{2.5}$ NAAQS, we find that the incomplete data at the Brawley monitoring site should not preclude the EPA from determining the Imperial $PM_{2.5}$ nonattainment area has attained the 2012 annual $PM_{2.5}$ NAAQS.

Finally, the EPA conducts regular technical systems audits (TSAs) where we review and inspect state and local ambient air monitoring programs to assess compliance with applicable regulations concerning the collection, analysis, validation, and reporting of ambient air quality data. For the purposes of this proposal, we reviewed the findings from the EPA's most recent TSA of CARB's ambient air monitoring program.[35] The results of the TSA do not preclude the EPA from determining that the Imperial $PM_{2.5}$ nonattainment area has attained the 2012 annual $PM_{2.5}$ NAAQS.

In summary, based on the relevant monitoring network plans, certifications, quality assurance data, and 2018 TSA, we propose to find that the $PM_{2.5}$ data collected at the Imperial County monitoring sites are suitable for determining whether the Imperial $PM_{2.5}$ nonattainment area attained the 2012 annual $PM_{2.5}$ NAAQS by the applicable attainment date.

C. The EPA's Evaluation of Attainment

Table 1 provides the $PM_{2.5}$ design values at each of the three monitoring sites with the Imperial $PM_{2.5}$ nonattainment area, expressed as a single design value representing the average of the annual mean values from the 2019–2021 period; the annual mean

[22] 40 CFR 50.18(b); 40 CFR part 50, Appendix N, section 4.1(a)

[23] 40 CFR part 50, Appendix N section 1.0(c)

[24] 40 CFR part 50, Appendix N, Section 4.1(b).

[25] Id.

[26] 40 CFR part 50 Appendix N, section 4.1(b) and (c).

[27] 40 CFR part 58, Appendix A, section 1.2.3.

[28] According to 40 CFR part 50, Appendix N—*Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$,* design values are ''the metrics (*i.e.,* statistics) that are compared to the NAAQS levels to determine compliance, calculated as shown in section 4 of this appendix. . .''

[29] We have included copies of CARB's annual network plans for 2019–2021 in the docket for this rulemaking.

[30] We have included our reviews of CARB's annual network plans and the correspondence transmitting these reviews in the docket for this rulemaking.

[31] We have included CARB's annual data certifications for 2019, 2020, and 2021 in the docket for this rulemaking.

[32] 40 CFR 58.15(c).

[33] AQS Design Value Report (AMP480), dated August 31, 2022 (User ID: STSAI, Report Request ID: 2042550).

[34] Id.

[35] See letter dated February 3, 2020, from Elizabeth J. Adams, Director, Air Division, U.S. EPA Region IX, to Richard Corey, Executive Officer, CARB.

for each individual year is also listed.[36] The $PM_{2.5}$ data show that the design values at the Imperial County monitoring sites were below the 2012 annual $PM_{2.5}$ NAAQS of 12.0 μg/m³. The Brawley monitoring site recorded less than 75 percent data capture during the 2nd quarter of 2021 (37 percent) due to monitor replacement. As discussed in Section II.B above, based on the historical design value concentrations at the Brawley monitoring site relative to the 2012 annual $PM_{2.5}$ NAAQS, we find that the incomplete data at the Brawley monitoring site should not preclude the EPA from determining the Imperial $PM_{2.5}$ nonattainment area has attained the 2012 annual $PM_{2.5}$ NAAQS. Consequently, the EPA proposes to determine based upon three years of complete, quality-assured, and certified data from 2019 through 2021 that the Imperial $PM_{2.5}$ nonattainment area has attained the 2012 annual $PM_{2.5}$ NAAQS by its December 31, 2021 attainment date.

TABLE 1—2019–2021 ANNUAL $PM_{2.5}$ DESIGN VALUES FOR THE IMPERIAL $PM_{2.5}$ NONATTAINMENT AREA

Local site name	Site (AQS ID)	Annual weighted mean (μg/m³)			2019–2021 Annual design values (μg/m³)
		2019	2020	2021	
Calexico-Ethel	06–025–0005	10.7	12.0	10.3	11.0.
El Centro	06–025–1003	7.9	9.8	8.4	8.7.
Brawley	06–025–0007	8.3	9.4	7.8 (Inc)	8.5. (Inv) [a].

[a] Based on the design value calculation methodologies described in 40 CFR part 50, Appendix N, section 4.1(b), the Brawley (AQS ID: 06–025–0007) 2019–2021 design value is considered invalid due to incomplete data in the 2nd quarter of 2021.

Source: EPA, Design Value Report, AMP480, dated August 31, 2022 (User ID: STSAI, Report Request ID: 2042550).

Notes: Inc = Incomplete data. Inv = Invalid design value due to incomplete data.

III. Clean Data Determination

As described in section I.C. of this document, when an area has attained the relevant $PM_{2.5}$ standard(s), the EPA may issue a CDD after notice and comment rulemaking determining that a specific area is attaining the relevant standard.[37] Based on complete, quality-assured, and certified data for 2019–2021, the Imperial $PM_{2.5}$ nonattainment area meets the 2012 annual $PM_{2.5}$ standard.

Preliminary data available in AQS for 2022 (January through June) indicate that the area continues to show concentrations consistent with attainment of the 2012 annual $PM_{2.5}$ standard.[38] Consequently, the EPA is proposing to issue a CDD.

If we finalize this proposed CDD, the requirements for the State to submit an attainment demonstration, provisions demonstrating RACM (including RACT for stationary sources), an RFP plan, quantitative milestones and quantitative milestone reports, and contingency measures for the area will be suspended until such time as: (1) the area is redesignated to attainment, after which such requirements are permanently discharged; or, (2) the EPA determines that the area has re-violated the $PM_{2.5}$ NAAQS, at which time the state shall submit such attainment plan elements for the moderate nonattainment area by a future date to be determined by the EPA and announced through publication in the **Federal Register** at the time the EPA determines the area is violating the $PM_{2.5}$ NAAQS.

A CDD does not suspend the requirements for an emissions inventory or for new source review. This action includes our proposed approval of the 2012 base year emissions inventory included in the attainment plan for the Imperial $PM_{2.5}$ nonattainment area, submitted on July 18, 2018.[39] The EPA fully approved the District's new source review program as meeting CAA requirements on August 26, 2019.[40]

IV. Analysis of 2012 Base Year Emissions Inventory

A. California's SIP Submittal for the 2012 $PM_{2.5}$ Standard for the Imperial $PM_{2.5}$ Nonattainment Area

This rulemaking also addresses the 2012 base year emissions inventory included in the Imperial $PM_{2.5}$ Plan, adopted by the District on April 24, 2018, and submitted to the EPA as a SIP revision on July 18, 2018.[41]

Imperial County encompasses over 4,000 square miles in southeastern California. Its population is estimated to be approximately 180,000 people, and its principal industries are farming and retail trade. It is bordered by Riverside County to the north, Arizona to the east, Mexico to the south, and San Diego County to the west. The Imperial Valley runs north-south through the central part of the County. Most of the County's population and industries exist within this relatively narrow land area, which extends about one-fourth the width of the County. The rest of Imperial County is primarily desert, with little or no human population. The Imperial $PM_{2.5}$ nonattainment area, which encompasses 982.1 square miles, is located within this central portion of the County. It is bordered to the north by the southern end of the Salton Sea and extends south to the Mexico border. The nonattainment area encompasses the three most populous cities in the County (Brawley, El Centro, and Calexico), and includes most of Imperial County's residents. For a precise description of the geographic boundaries of the Imperial $PM_{2.5}$ nonattainment area, see 40 CFR 81.305.

B. Public Notice, Public Hearing, and Completeness Requirements for SIP Submittals

CAA sections 110(a)(1) and (2) and 110(l) require each state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision to the EPA. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided

[36] AQS Design Value Report (AMP480), dated August 31, 2022 (User ID: STSAI, Report Request ID: 2042550).

[37] See 40 CFR 51.1015.

[38] AQS Design Value Report (AMP480), dated September 2, 2022 (User ID: STSAI, Report Request ID: 2043042).

[39] See Section IV of this rulemaking.

[40] 84 FR 44545.

[41] As provided in 40 CFR 51.1015, our clean data determination for the Imperial $PM_{2.5}$ nonattainment area suspends requirements to submit an attainment demonstration, associated RACM, RFP plan, contingency measures, and other SIP revisions related to the attainment of the 2012 annual $PM_{2.5}$ NAAQS, but does not suspend the requirement for a base year emissions inventory. Therefore, in conjunction with our proposed clean data determination for the Imperial $PM_{2.5}$ nonattainment area, we are also proposing to approve the 2012 base year inventory submitted with the Imperial $PM_{2.5}$ Plan.

consistent with the EPA's implementing regulations in 40 CFR 51.102.

Both the District and the State satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of the Imperial $PM_{2.5}$ Plan. The District provided a public comment period and held a public hearing prior to the adoption of the SIP submittal on April 24, 2018. CARB provided the required public notice and opportunity for public comment prior to its May 25, 2018 public hearing and adoption of the SIP submittal.[42] The submittal includes proof of publication of notices for the respective public hearings. We find, therefore, that the Imperial $PM_{2.5}$ Plan meets the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l).

CAA section 110(k)(1)(B) requires the EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section of the CAA also provides that any plan that the EPA has not affirmatively determined to be complete or incomplete will become complete by operation of law six months after the date of submittal. The EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V. On March 19, 2019, the EPA affirmatively found that the July 18, 2018 and October 29, 2019 submittals fulfill our completeness criteria.[43]

C. Requirements for Emissions Inventories

CAA section 172(c)(3) requires that each nonattainment plan SIP submittal include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the nonattainment area. This base year emissions inventory should provide a state's best estimate of actual emissions from all sources of the relevant pollutants in the area, *i.e.,* all emissions that contribute to the formation of a particular NAAQS pollutant. For the $PM_{2.5}$ NAAQS, the base year inventory must include direct $PM_{2.5}$ emissions, separately reported filterable and condensable $PM_{2.5}$ emissions, and emissions of all chemical precursors to the formation of secondary $PM_{2.5}$, *i.e.,* NO_X, SO_2, VOC, and ammonia.[44]

A state's nonattainment plan SIP submittal must include documentation explaining how it calculated the emissions data. In estimating mobile source emissions, a state should use the latest emissions models and planning assumptions available at the time the SIP is developed. At the time the Imperial $PM_{2.5}$ Plan was developed, the latest EPA-approved version of California's mobile source emission factor model for estimating tailpipe, brake and tire wear emissions from on-road mobile sources was EMFAC2014.[45] A state is also required to use the EPA's ''Compilation of Air Pollutant Emission Factors'' (AP–42) road dust method for calculating re-entrained road dust emissions from paved roads.[46] [47]

D. Base Year Emissions Inventory in the Imperial $PM_{2.5}$ Plan

Summaries of the planning emissions inventories for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors (NO_X, SO_X,[48] VOC,[49] and ammonia) and the documentation for the inventories for the Imperial $PM_{2.5}$ nonattainment area are located in Chapter 3 of the Plan. More detailed emissions inventories for the Imperial $PM_{2.5}$ nonattainment area are found in Appendix B of the Plan. A more in-depth discussion of the methodology used by CARB and the District to develop projected inventories for modeling is included in Appendix G to Appendix A of the Imperial $PM_{2.5}$ Plan.

CARB and District staff worked together to develop the emissions inventories for the Imperial $PM_{2.5}$ nonattainment area. The District worked with operators of larger stationary facilities in the nonattainment area to develop the stationary source emissions estimates. CARB staff developed the emissions inventories for both on-road and off-road mobile sources.[50] The responsibility for developing estimates for the areawide sources such as agricultural burning and paved road dust was shared by the District and CARB.

The Imperial $PM_{2.5}$ Plan includes annual average emissions inventories for the 2012 base year. The inventory includes emissions from stationary, areawide, and mobile sources.[51] The District developed base year inventories for larger stationary sources using actual emissions reports prepared by facility operators. CARB and the District estimated emissions for smaller stationary sources by using various methodologies reported as an aggregated total. CARB developed the base year emissions inventory for areawide sources using the most recent models and methodologies.[52] For the mobile source inventory, CARB used EMFAC2014 to estimate on-road motor vehicle emissions.[53] CARB calculated re-entrained paved road dust emissions using a CARB methodology consistent with the EPA's AP–42 road dust methodology, and taking into account reductions from District Rules 803, ''Carry Out and Track Out'' and 805, ''Paved and Unpaved Roads.'' [54]

Table 1 provides a summary of the annual average inventories in tons per day (tpd) of direct $PM_{2.5}$ and $PM_{2.5}$

[42] CARB, ''Notice of Public Meeting to Consider the $PM_{2.5}$ State Implementation Plan for Imperial County,'' April 27, 2018; and CARB Board Resolution 18–18, ''$PM_{2.5}$ State Implementation Plan for Imperial County,'' May 25, 2018.

[43] Letter dated March 19, 2019, from Elizabeth Adams, Air Division Director, EPA, Region IX, to Richard Corey, Executive Officer, CARB.

[44] 40 CFR 51.1008.

[45] 80 FR 77337 (December 14, 2015). EMFAC is short for *EM*ission *FAC*tor. The EPA announced the availability of the EMFAC2014 model for use in state implementation plan development and transportation conformity in California on December 14, 2015. The EPA's approval of the EMFAC2014 emissions model for SIP and conformity purposes was effective on the date of publication of the notice in the **Federal Register**. On August 15, 2019, the EPA approved and announced the availability of EMFAC2017, the latest update to the EMFAC model for use by State and local governments to meet CAA requirements. 84 FR 41717.

[46] The EPA released an update to AP–42 in January 2011 that revised the equation for estimating paved road dust emissions based on an updated data regression that included new emission tests results. 76 FR 6328 (February 4, 2011). CARB used the revised 2011 AP–42 methodology in developing on-road mobile source emissions; see *https://www.arb.ca.gov/ei/areasrc/fullpdf/full7-9_2016.pdf.*

[47] AP–42 is the EPA's Compilation of Air Pollutant Emission Factors. It has been published since 1972 as the primary source of the EPA's emission factor information. It contains emission factors and process information for more than 200 air pollution source categories. A source category is a specific industry sector or group of similar emitting sources. The emission factors have been developed and compiled from source test data, material balance studies, and engineering estimates.

[48] The Imperial $PM_{2.5}$ Plan generally uses ''sulfur oxides'' or ''SO_X'' in reference to SO_2 as a precursor to the formation of $PM_{2.5}$. We use SO_X and SO_2 interchangeably throughout this notice.

[49] The Imperial $PM_{2.5}$ Plan generally uses ''reactive organic gasses'' or ''ROG'' in reference to VOC as a precursor to the formation of $PM_{2.5}$. We use ROG and VOC interchangeably throughout this notice. See *https://www.arb.ca.gov/ei/speciate/voc_rog_dfn_1_09.pdf.*

[50] EPA regulations refer to ''nonroad'' vehicles and engines whereas California Air Resources Board (CARB) regulations refer to ''off-road'' vehicles and engines. These terms refer to the same types of vehicles and engines, and for the purposes of this action, we will be using CARB's chosen term, ''off-road,'' to refer to such vehicles and engines.

[51] Section 3–7 of the Imperial $PM_{2.5}$ Plan describes how county-wide emissions were allocated to the nonattainment area, which encompasses a portion of Imperial County. For example, geographical coordinates of stationary sources were used to determine if a source is located within the nonattainment area. Allocations of emissions from areawide sources were based on spatial surrogates such as paved road miles or human population.

[52] Imperial $PM_{2.5}$ Plan, Chapter 3.

[53] Id. at 3–16.

[54] Id. at 3–10. Additional information regarding this methodology is available at *https://www.arb.ca.gov/ei/areasrc/arbmiscprocunpaverddst.htm.*

precursors for the base year of 2012. For a detailed breakdown of the inventories, see Chapter 3 and Appendix B in the Imperial $PM_{2.5}$ Plan.

TABLE 1—IMPERIAL ANNUAL AVERAGE EMISSIONS INVENTORY FOR DIRECT $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2012 BASE YEAR

[tpd]

Category	Direct $PM_{2.5}$	NO_X	SO_X	VOC	Ammonia
Stationary Sources	0.55	1.54	0.000	0.96	1.19
Areawide Sources	10.58	0.37	0.05	5.14	21.94
On-Road Mobile Sources	0.19	5.31	0.02	1.77	0.11
Off-Road Mobile Sources	0.98	6.98	0.21	4.03	0.00
Totals	12.30	14.19	0.28	11.89	23.24

Source: Imperial $PM_{2.5}$ Plan, Chapter 3, Table 3–8a.

E. The EPA's Evaluation

The inventories in the Imperial $PM_{2.5}$ Plan are based on the most current and accurate information available to the State and District at the time the Plan and its inventories were being developed, including the latest version of California's mobile source emissions model at that time, EMFAC2014. The inventories comprehensively address all source categories in the Imperial $PM_{2.5}$ nonattainment area and were developed consistent with the EPA's inventory guidance. For these reasons, we are proposing to approve the 2012 base year emissions inventory in the Imperial $PM_{2.5}$ Plan as meeting the requirements of CAA section 172(c)(3).

V. Environmental Justice Considerations

Executive Order 12898 (59 FR 7629, February 16, 1994) requires that federal agencies, to the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. Additionally, Executive Order 13985 (86 FR 7009, January 25, 2021) directs federal government agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and Executive Order 14008 (86 FR 7619, February 1, 2021) directs federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.

To identify environmental burdens and susceptible populations in underserved communities in the Imperial $PM_{2.5}$ nonattainment area and to better understand the context of the DAAD, the CDD, and our proposed approval of the emissions inventory on these communities, we conducted a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool (''EJSCREEN'').[55] Our screening-level analysis indicates that communities affected by this action score above the national average for the EJSCREEN ''Demographic Index,'' which is the average of an area's percent minority and percent low income populations, *i.e.,* the two demographic indicators explicitly named in Executive Order 12898.[56] These communities also score above the national average for the ''linguistically isolated population,'' and ''population with less than high school education'' indicators. Although the area is attaining the $PM_{2.5}$ NAAQS, because almost all areas across the U.S. are also attaining the NAAQS (many by a wider margin), communities within the Imperial $PM_{2.5}$ nonattainment area score above the national average for the $PM_{2.5}$ EJ index. These communities also score above the national average for other EJ Index indicators, including the respiratory hazard EJ Index.

As discussed in the EPA's EJ technical guidance, people of color and low-income populations, such as those in Imperial County, often experience greater exposure and disease burdens than the general population, which can increase their susceptibility to adverse health effects from environmental stressors.[57] Underserved communities may have a compromised ability to cope with or recover from such exposures due to a range of physical, chemical, biological, social, and cultural factors.[58]

Notwithstanding the EJ concerns highlighted by the results of the EJSCREEN analysis, because monitoring data indicate the area has attained the annual $PM_{2.5}$ NAAQS, we do not believe this proposed action will have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. This DAAD, when finalized, will fulfill the EPA's statutory obligation under CAA section 179(c)(1) to determine whether the Imperial $PM_{2.5}$ nonattainment area attained the NAAQS by the attainment date. Our final action on the base year emissions inventory will fulfill our statutory obligation to act on SIP submittals under section 110(k)(3).

If we finalize our proposed CDD, requirements related to achieving attainment of the 2012 annual $PM_{2.5}$ NAAQS will be suspended, as set forth in 40 CFR 51.1015. Because the area has attained the standard, such requirements are not necessary for timely attainment of the NAAQS. However, if prior to a potential future redesignation to attainment, we determine the Imperial $PM_{2.5}$ nonattainment area subsequently violates the NAAQS, we will rescind the

[55] EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at *https://www.epa.gov/ejscreen/what-ejscreen*. The EPA used EJSCREEN to obtain environmental and demographic indicators representing the Imperial $PM_{2.5}$ nonattainment area, the City of Calexico, which measures the highest levels of $PM_{2.5}$ in the nonattainment area, and the City of El Centro. These indicators are included in EJSCREEN reports that are available in the rulemaking docket for this action.

[56] EJSCREEN reports environmental indicators (*e.g.,* air toxics cancer risk, Pb paint exposure, and traffic proximity and volume) and demographic indicators (*e.g.,* people of color, low income, and linguistically isolated populations). The score for a particular indicator measures how the community of interest compares with the state, the EPA region, or the national average. For example, if a given location is at the 95th percentile nationwide, this means that only five percent of the US population has a higher value than the average person in the location being analyzed. EJSCREEN also reports EJ indexes, which are combinations of a single environmental indicator with the EJSCREEN Demographic Index. For additional information about environmental and demographic indicators and EJ indexes reported by EJSCREEN, see EPA, ''EJSCREEN Environmental Justice Mapping and Screening Tool—EJSCREEN Technical Documentation,'' section 2 (September 2019).

[57] EPA, ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis,'' section 4 (June 2016).

[58] Id. Section 4.1.

CDD and require the area to submit a SIP that addresses the pertinent requirements.[59]

Notwithstanding the suspension of certain attainment-related requirements, all requirements adopted into the SIP prior to attainment will remain in place.[60] For example, the $PM_{2.5}$ emissions inventory in Imperial County is dominated by dust. Together, unpaved road dust, fugitive windblown dust, and dust from farming operations account for about 76 percent of the 2012 emissions inventory. Dust from mineral processes contributes about 3 percent, construction and demolition activities contribute another 1.44 percent, and dust from paved roads another 1 percent.[61] These sources are controlled by Imperial County's Regulation VIII, which the EPA previously approved as meeting best available control technology measure (BACM) levels of control for PM_{10}.[62] Regulation VIII will remain in place and will continue to control emissions that contribute to ambient $PM_{2.5}$.

The EPA notes that there are other efforts underway to reduce environmental burdens in Imperial County. The Imperial $PM_{2.5}$ nonattainment area borders Mexico, and the United States and Mexico have long recognized the environmental challenges near the border and share the goal of protecting the environment and public health throughout the U.S.-Mexico border region. The two nations have been working together outside the framework of the SIP process to make progress towards those goals.

The U.S.-Mexico Environmental Program (''Border 2025'') is a five-year (2021–2025) binational effort designed ''to protect the environment and public health in the U.S.-Mexico border region, consistent with the principles of sustainable development.'' [63] Border 2025 is the latest of a series of cooperative efforts implemented under the 1983 La Paz Agreement. It builds on previous binational efforts (*i.e.,* the Border 2012 and Border 2020 Environmental Programs), emphasizing regional, bottom-up approaches for decision making, priority setting, and project implementation to address the environmental and public health problems in the border region. As in the previous two border programs, Border 2025 encourages meaningful participation from communities and local stakeholders and establishes guiding principles that will support the mission statement, ensure consistency among all aspects of the Border 2025 Program, and continue successful elements of previous binational environmental programs.

Border 2025 sets out four strategic goals, including the reduction of air pollution and the improvement of water quality, to address environmental and public health challenges in the border region. Within the goals are specific objectives that identify actions that will be taken in support of the program's mission. The goals and objectives were determined binationally between the EPA and the Ministry of Environment and Natural Resources of Mexico (SEMARNAT) to address ongoing environmental challenges and considered input from state and tribal partners. The ''California-Baja California 2021–2023 Border 2025 Action Plan'' lists and describes the projects that are being undertaken to achieve the goals and objectives of Border 2025, along with the target outputs, expected results, and status of each action.[64]

In addition to the ongoing efforts under the Border 2025 agreement, in 2020, the EPA awarded the ICAPCD $3,350,371 to pave 3.5 miles of residential alleyways in the downtown core of the City of Calexico to reduce $PM_{2.5}$ and PM_{10}.[65] The EPA subsequently awarded the ICAPCD an additional $3,485,940 to pave 2.5 miles of residential alleyways in the City of El Centro. The resulting reductions of particulate emissions will relieve some of the cumulative burden on disadvantaged communities in the Imperial $PM_{2.5}$ nonattainment area.

VI. Proposed Action

For the reasons discussed in this document, the EPA is proposing to determine that the Imperial $PM_{2.5}$ nonattainment area attained the 2012 annual $PM_{2.5}$ NAAQS by its December 31, 2021 attainment date. This action, when finalized, will fulfill the EPA's statutory obligation to determine whether the Imperial $PM_{2.5}$ nonattainment area attained the NAAQS by the attainment date.

As provided in 40 CFR 51.1015, we are also proposing a CDD. If the EPA finalizes this proposal, the requirements for this area to submit an attainment demonstration, associated RACM, RFP plan, contingency measures, and any other SIP revisions related to the attainment of the 2012 annual $PM_{2.5}$ NAAQS, will be suspended so long as this area continues to meet the standard. This CDD does not constitute a redesignation to attainment. The Imperial $PM_{2.5}$ nonattainment area will remain designated nonattainment for the 2012 annual $PM_{2.5}$ NAAQS until such time as the EPA determines, pursuant to sections 107 and 175A of the CAA, that the Imperial $PM_{2.5}$ nonattainment area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan showing that the area will continue to meet the standard for 10 years.

We are also proposing to approve the Imperial $PM_{2.5}$ Plan's 2012 base year emissions inventory as meeting the requirements of CAA section 172(c)(3). As authorized in section 110(k)(3) of the Act, the EPA is proposing to approve the submitted base year emissions inventory because we believe it fulfills all relevant requirements.

As described in Section I.B of this document, the EPA's finding of failure to submit triggered an obligation for the EPA to issue a FIP. The District and CARB ultimately fulfilled their obligation to submit a plan, but because the EPA has not issued a final approval of the Imperial $PM_{2.5}$ Plan and because the nonattainment plan requirements continue to apply, our obligation to promulgate a FIP remains in place. If the EPA finalizes this proposed CDD, the District's and State's nonattainment planning obligations, except the requirement for a base year emissions inventory and new source review, will be suspended.[66] If, in addition to making a CDD, we finalize our proposed approval of the base year emissions inventory, the EPA's FIP obligation will be suspended until such time as the CDD is rescinded.[67]

The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this proposal until November 21, 2022 and

[59] See the $PM_{2.5}$ Implementation Rule, 81 FR 58010, 58128.

[60] Id.

[61] Imperial $PM_{2.5}$ Plan, Chapter 3.

[62] 75 FR 39366 (July 8, 2010) and 78 FR 23677 (April 22, 2013).

[63] ''Border 2025: United States—Mexico Environmental Program,'' included in this docket and accessible at *https://www.epa.gov/sites/default/files/2021-05/documents/final_us_mx_border_2025_final_may_6.pdf.*

[64] The ''California-Baja California 2019–2020 Border 2020 Action Plan'' is included in the docket for this action and is accessible online at *https://www.epa.gov/usmexicoborder/region-9-action-plansplanes-de-accion-de-region-9.*

[65] A list of the Targeted Airshed Grants the EPA awarded in fiscal years 2015–2021 is accessible online at *https://www.epa.gov/air-quality-implementation-plans/targeted-airshed-grant-recipients.* These EPA grants support projects to reduce emissions in areas facing the highest levels of ground-level ozone and $PM_{2.5}$.

[66] See Section I.D. of this document.

[67] On August 26, 2019, the EPA approved Imperial County APCD's amended Rule 207, ''New and Modified Stationary Source Review'' as meeting applicable CAA requirements for New Source review. 84 FR 44545.

will consider comments before taking final action.

VII. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This rule does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget. This action proposes to find that the Imperial $PM_{2.5}$ nonattainment area attained the 2012 $PM_{2.5}$ NAAQS by the applicable attainment date, proposes to determine the area has clean data, and proposes to approve the base year emissions inventory. Thus, the proposed action does not establish any new information collection burden that has not already been identified and approved in the EPA's information collection request.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The proposed approval of the emissions inventory, the DAAD, and the CDD for the 2012 $PM_{2.5}$ NAAQS does not in and of itself create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states and tribes, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal Government and the states for the purposes of implementing the NAAQS is established under the CAA.

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

This action does not have tribal implications. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. There are no tribes affected by this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

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

I. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

Executive Order (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA's evaluation of this issue is contained in the section of the preamble titled ''Environmental Justice Considerations.''

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, and Volatile organic compounds.

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

Dated: October 6, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–22191 Filed 10–19–22; 8:45 am]

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Notices

Federal Register
Vol. 87, No. 202
Thursday, October 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 COMMERCE

Bureau of Industry and Security

Aviastar—TU, 5 b. 7 Leningradsky prospekt g. Moskva, 125040, Moscow, Russia; Order Renewing Temporary Denial of Export Privileges

Pursuant to section 766.24 of the Export Administration Regulations, 15 CRR parts 730–774 (2021) (''EAR'' or ''the Regulations''),[1] I hereby grant the request of the Office of Export Enforcement (''OEE'') to renew the temporary denial order (''TDO'') issued in this matter on April 21, 2022. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations.

I. Procedural History

On April 21, 2022, I signed an order denying Aviastar—TU's (''Aviastar'') export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations and was effective upon issuance.[2]

On September 13, 2022, BIS, through OEE, submitted a written request for renewal of the TDO that issued on April 21, 2022. The written request was made more than 20 days before the TDO's scheduled expiration. A copy of the renewal request was sent to Aviastar in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

B. The TDO and BIS's Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation's (''Russia's'') further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (*e.g.,* Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (ECCN) 9A991 (section 746.8(a)(1) of the EAR).[3] BIS will review any export or reexport license applications for such items under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (AVS) (section 740.15 of the EAR).[4] Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO and the evidence developed over the course of this investigation, which indicate a blatant disregard for U.S. export controls, as well as the TDO. Specifically, the initial TDO, issued on April 21, 2022, was based on evidence that Aviastar engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022, from destinations including Hangzhou, China, Shenzhen, China, and Zhengzhou, China, without the required BIS authorization.[5]

[1] On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. app. 2401 *et seq.* (''EAA''), (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (''IEEPA''), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, Section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

[2] The TDO was published in the **Federal Register** on April 26, 2022 (87 FR 24514).

[3] 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (''CCL'') under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

[4] 87 FR 13048 (Mar. 8, 2022).

[5] Publicly available flight tracking information shows that on April 10, 2022, serial number (SN) 27054 flew from Hangzhou, China to Novosibirsk, Russia and that on April 11, 2022 and April 14, 2022, respectively, SN 25696 and SN 25731 flew from Hangzhou, China to Novosibirsk, Russia. In addition, on April 12, 2022, SN 27053 flew from Shenzhen, China to Abakan, Russia.

In its September 13, 2022, request for renewal of the TDO, BIS has submitted evidence that Aviastar continues to operate in violation of the April 21, 2022 TDO and/or the Regulations by operating aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia. Specifically, BIS's evidence and related investigation indicated that Aviastar has continued to operate aircraft subject to the EAR, including, but not limited to, flights into and out of Russia from/to Hangzhou, China and Zhengzhou, China, as well as on domestic flights within Russia potentially in violation of section 736.2(b)(10) of the Regulations.[6] Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft Type	Departure/Arrival Cities	Dates
RA–73355	27054	757–223 (PCF) (B752)	Zhengzhou, CN/Novosibirsk, RU	May 22, 2022.
RA–73355	27054	757–223 (PCF) (B752)	Irkutsk, RU/Moscow, RU	September 25, 2022.
RA–73355	27054	757–223 (PCF) (B752)	Norilsk, RU/Novosibirsk, RU	September 30, 2022.
RA–73355	27054	757–223 (PCF) (B752)	Moscow, RU/Mirny, RU	October 4, 2022.
RA–73351	25696	757–223 (PCF) (B752)	Zhengzhou, CN/Novosibirsk, RU	May 24, 2022.
RA–73351	25696	757–223 (PCF) (B752)	Moscow, RU/Norilsk, RU	September 23, 2022.
RA–73351	25696	757–223 (PCF) (B752)	Moscow, RU/Norilsk, RU	September 27, 2022.
RA–73351	25696	757–223 (PCF) (B752)	Ulan-Ude, RU/Moscow, RU	October 1, 2022.
RA–73352	25731	757–223 (PCF) (B752)	Hangzhou, CN/Novosibirsk, RU	May 25, 2022.
RA–73352	25731	757–223 (PCF) (B752)	Irkutsk, RU/Moscow, RU	September 22, 2022.
RA–73352	25731	757–223 (PCF) (B752)	Moscow, RU/Norilsk, RU	October 1, 2022.
RA–73352	25731	757–223 (PCF) (B752)	Moscow, RU/Norilsk, RU	October 7, 2022.
RA–73354	27053	757–223 (PCF) (B752)	Hangzhou, CN/Novosibirsk, RU	May 25, 2022.
RA–73354	27053	757–223 (PCF) (B752)	Moscow, RU/Norilsk, RU	September 28, 2022.
RA–73354	27053	757–223 (PCF) (B752)	Moscow, RU/Novosibirsk, RU	September 30, 2022.
RA–73354	27053	757–223 (PCF) (B752)	Moscow, RU/Mirny, RU	October 7, 2022.

III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Aviastar has acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Aviastar, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, Aviastar-TU, 5 b. 7 Leningradsky prospekt, g. Moskva, 125040, Moscow, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Aviastar any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Aviastar of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Aviastar acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Aviastar of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from Aviastar in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and

[6] Section 736.2(b)(10) of the EAR provides: General Prohibition Ten—Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur). You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR. (emphasis in original).

authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Aviastar, or service any item, of whatever origin, that is owned, possessed or controlled by Aviastar if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Aviastar by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of sections 766.24(e) of the EAR, Aviastar may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Aviastar as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Aviastar, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2022–22815 Filed 10–19–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC463]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Monday, November 7, 2022, at 10 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/7734602932755043339*.

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Skate Committee will finalize recommendations for 2023 Council management priorities regarding skates. Other business may be discussed, as necessary. Also, a closed session for Committee members only will take place to review Skate Advisory Panel applications for the 2023–2025 and provide recommendations.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 17, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–22808 Filed 10–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC474]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. The EFP would allow commercial fishing vessels to fish outside fishery regulations in support of research conducted by the applicant. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before November 4, 2022.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nmfs.gar.efp@noaa.gov*. Include in the subject line ''MREM 4.5-inch Mesh and Underutilized Species EFP.''

FOR FURTHER INFORMATION CONTACT: Samantha Tolken, Fishery Management Specialist, *Samantha.Tolken@noaa.gov,* 978–675–2176.

SUPPLEMENTARY INFORMATION: The applicant submitted a complete application for an EFP to conduct commercial fishing activities that the regulations would otherwise restrict. This EFP would exempt the

participating vessels from the following Federal regulations:

TABLE 1—REQUESTED EXEMPTIONS

Citation	Regulation	Need for exemption
50 CFR 648.80(a)(3)(i)	Gulf of Maine (GOM) Regulated Mesh Area Minimum Mesh Size and Gear Restrictions.	Conduct exploratory fishing to test the use of 4.5-inch (11.4-cm) square mesh, intended to facilitate the catch of haddock and pollock, 4.5-inch (11.4-cm) diamond mesh to facilitate the catch of redfish and haddock, and 5.5-inch (14-cm) square mesh to facilitate the catch of haddock and pollock.
§ 648.80(a)(4)(i)	Georges Bank (GB) Regulated Mesh Area Minimum Size and Gear Restrictions.	Conduct exploratory fishing to test the use of 4.5-inch (11.4-cm) square mesh, intended to facilitate the catch of haddock and pollock, 4.5-inch (11.4-cm) diamond mesh to facilitate the catch of redfish and haddock, and 5.5-inch (14-cm) square mesh to facilitate the catch of haddock and pollock.
§ 648.85(e)(1)(ii)	Redfish Exemption Program Exemption Area.	Conduct exploratory fishing in the larger, fishing years 2015–2019 Redfish Sector Exemption Area.
§ 648.85(e)(1)(viii)	Redfish Exemption Program Catch Thresholds.	Conduct exploratory fishing to test the use of 4.5-inch (11.4-cm) square mesh, intended to facilitate the catch of haddock and pollock, 4.5-inch (11.4-cm) diamond mesh to facilitate the catch of redfish and haddock, and 5.5-inch (14-cm) square mesh to facilitate the catch of haddock and pollock.

TABLE 2—PROJECT SUMMARY

Project title	Maximized Retention Electronic Monitoring 4.5-inch (11.4-cm) Mesh and Underutilized Species.
Applicant	Commercial Fisherman Michael Walsh and Northeast Sector Service Network, Inc. (NSSN).
Project objectives	Determine the gear configuration and mesh size that most effectively increases catch of underutilized healthy stocks (pollock, haddock, redfish) while minimizing catch of other stocks (white hake, cod, etc.), and evaluate if a second vessel and captain is capable of maintaining a similar catch composition of underutilized species while minimizing catch of other allocated species.
Application date	3/2/2022.
Project period	10/1/2022, or as soon as possible,—4/30/2023.
Project location	GOM and GB.
Number of vessels	2.
Number of trips	Approximately 30.
Trip duration (days)	7–10 total days per trip, with 5–8 fishing days per trip.
Total number of days	Approximately 300.
Gear type(s)	Bottom trawl.
Number of tows or sets	6–9 tows per day; approximately 2,160 total tows.
Duration of tows or sets	2–5 hours per tow; approximately 10,800 total hours.

Project Narrative

The subject application would allow up to two sector vessels participating in the maximized retention electronic monitoring (MREM) program additional exemptions from 50 CFR 648.80(a)(3)(i) and (a)(4)(i), and from § 648.85(e)(1)(i) and (e)(1)(viii), to conduct exploratory fishing using codends with 4.5-inch (11.4-cm) square mesh, intended to facilitate the catch of haddock and pollock, 4.5-inch (11.4-cm) diamond mesh to facilitate the catch of redfish and haddock, and 5.5-inch (14-cm) square mesh to facilitate the catch of haddock and pollock. Additionally, vessels would not be subject to the current universal Redfish Exemption Program Exemption Area at § 648.85(e)(1)(ii) and Redfish Exemption Program Catch Thresholds at § 648.85(e)(1)(viii).

The applicant requested to operate in the larger geographic area where the redfish exemption was permitted in fishing years 2015–2019 to test the feasibility of using alternative codend configurations to facilitate the catch of legal size pollock and haddock during trips targeting Acadian redfish. Unlike trips under the current redfish exemption, which is authorized in a smaller area during fishing year 2022, the intent of this EFP is to conduct exploratory fishing. The participation of a second vessel will evaluate if a different vessel and captain is capable of maintaining a similar catch composition of underutilized species, while minimizing catch of other allocated species. Exploratory fishing that indicates that the use of 4.5-inch (11.4-cm) mesh and larger is biologically sustainable, could inform a future program for a maximized-retention-based sector exemption and could also incentivize greater participation in an MREM program by high-volume vessels.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 17, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–22801 Filed 10–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC466]

Mid-Atlantic Fishery Management Council (MAFMC); Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold three public hearings (one as a webinar) and accept written comments regarding an action intended to revise the species separation requirements in the Atlantic surfclam and ocean quahog fisheries.

DATES: The hearings will be held between November 10, 2022 and November 17, 2022. Written comments must be received by November 23, 2022. See **SUPPLEMENTARY INFORMATION** for details, including the dates and times for all hearings.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for hearing details.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org*.

Written comments may be submitted to:

- Email to: *jcoakley@mafmc.org* (use subject ''SCOQ Species Separation'')
- Via webform at: *https://www.mafmc.org/comments/scoq-species-separation*
- Mail to: Chris Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. Mark the outside of the envelope ''SCOQ Species Separation.''

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Council will hold three public hearings and accept written comments regarding an action intended to modify the current species separation requirements in the Atlantic surfclam and ocean quahog fisheries. Additional details, including the public hearing document can be found at: *https://www.mafmc.org/actions/scoq-species-separation*.

Hearing 1—Philadelphia, Pennsylvania. Thursday, November 10, 2022. 6:30 p.m.–9:30 p.m., Embassy Suites Philadelphia Airport. 9000 Bartram Avenue, Philadelphia, PA 19153, telephone: (215) 365–4500;

Hearing 2—Fall River, Massachusetts. Monday, November 14, 2022. 6:30 p.m.–9:30 p.m., Hampton Inn. 53 Old Bedford Road, Westport, MA 02790, telephone: (508) 675–8500; and

Hearing 3—Webinar: Thursday, November 17, 2022. 6 p.m.–9 p.m. Connection details can be found at the Council's website calendar or *https://www.mafmc.org/actions/scoq-species-separation*.

Written comments are accepted at the hearings or via the submission methods described above, by November 23, 2022.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 17, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–22809 Filed 10–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Reporting Requirements for Commercial Fisheries Authorization Under Section 118 of the Marine Mammal Protection Act

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 19, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Reporting Requirements for Commercial Fisheries Authorization under Section 118 of the Marine Mammal Protection Act.

OMB Control Number: 0648–0292.

Form Number(s): None.

Type of Request: Regular submission (extension of currently approved collection).

Number of Respondents: 200.

Average Hours per Response: 15 minutes.

Total Annual Burden Hours: 50.

Needs and Uses: This request is for an extension of a currently approved information collection and is sponsored by National Marine Fisheries Service Office of Protected Resources.

Reporting injury to and/or mortalities of marine mammals incidental to commercial fishing activities is mandated under section 118 of the Marine Mammal Protection Act. This information is required to determine the impacts of commercial fishing on marine mammal populations. This information is also used to classify commercial fisheries into Categories I, II, or III on the annual Marine Mammal Protection Act List of Fisheries. Participants in the first two categories must be authorized to take marine mammals, while those in Category III are exempt from that requirement. All three categories must report injuries or mortalities to the National Marine Fisheries Service using the OMB approved form.

Minor administrative changes are being made to the form to clarify the instructions for completing the ''Description of the mortality/injury incident'' (DESCRIPTION OF UNKNOWN SPECIES OR CIRCUMSTANCES OF MORTALITY/INJURY INCIDENT field) and the ''Coast Guard document number'' (COAST GUARD DOCUMENT NO. or VESSEL'S STATE REGISTRATION NO field).

Affected Public: Business or other for-profit organizations; Individuals or households; State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

Legal Authority: 16 U.S.C. 1387 Sec. 118.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the

publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0292.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–22728 Filed 10–19–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open in-person/virtual hybrid meeting.

SUMMARY: This notice announces an in-person/virtual hybrid subcommittee meeting of the whole of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, November 15, 2022, 9:00 a.m. to 1:00 p.m.

ADDRESSES: This hybrid meeting will be in-person at the Holiday Inn Richland on the River (address below) and virtually. To receive the virtual access information and call-in number, please contact the Federal Coordinator, Gary Younger, at the telephone number or email listed below by five days prior to the meeting.

The meeting will be held, following COVID–19 precautionary measures, at: Holiday Inn Richland on the River, 802 George Washington Way, Richland, WA 99352.

Attendees should check with the Federal Coordinator (below) for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Gary Younger, Federal Coordinator, U.S. Department of Energy, Hanford Office of Communications, Richland Operations Office, P.O. Box 550, Richland, WA, 99354; Phone: (509) 372–0923; or Email: *gary.younger@rl.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Board Elections
- Discussion of Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gary Younger at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or within five business days after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gary Younger. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available at the following website: *http://www.hanford.gov/page.cfm/hab/FullBoardMeetingInformation.*

Signing Authority

This document of the Department of Energy was signed on October 14, 2022, by Shena Kennerly, Acting Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on October 14, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–22741 Filed 10–19–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, November 14, 2022, 1:00 p.m.–3:45 p.m.

Tuesday, November 15, 2022, 9:00 a.m.–3:30 p.m.

ADDRESSES: Augusta University, Summerville Campus, Student Activity Center Ballroom, 2500 Walton Way, Augusta, GA 30904.

The meeting will also be streamed on YouTube, no registration is necessary; links for the livestream can be found on the following website: *https://cab.srs.gov/srs-cab.html.*

Attendees should check the website listed above for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Amy Boyette, Office of External Affairs, U.S. Department of Energy (DOE), Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–6120; or Email: *amy.boyette@srs.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, November 14, 2022

Chair Update
Agency Updates
Subcommittee Updates
Program Presentation
Public Comments

Tuesday, November 15, 2022

Program Presentations
Public Comments
Board Business, Voting

Public Participation: The meeting is open to the public. It will be held strictly following COVID–19 precautionary measures. To provide a safe meeting environment, seating may be limited; attendees should register for in-person attendance by sending an

email to *srscitizensadvisoryboard@srs.gov* no later than 4:00 p.m. ET on Thursday, November 10, 2022. The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Amy Boyette at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board via email either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should submit their request to *srscitizensadvisoryboard@srs.gov.* Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. Comments will be accepted after the meeting, by no later than 4:00 p.m. ET on Monday, November 21, 2022. Please submit comments to *srscitizensadvisoryboard@srs.gov.* The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make oral public comments will be provided a maximum of five minutes to present their comments. Individuals wishing to submit written public comments should email them as directed above.

Minutes: Minutes will be available by emailing or calling Amy Boyette at the email address or telephone number listed above. Minutes will also be available at the following website: *https://cab.srs.gov/srs-cab.html.*

Signing Authority

This document of the Department of Energy was signed on October 14, 2022, by Shena Kennerly, Acting Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 14, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–22740 Filed 10–19–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6115–016]

Pyrites Hydro, LLC; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 6115–016.

c. *Date filed:* August 31, 2021.

d. *Applicant:* Pyrites Hydro, LLC (Pyrites Hydro).

e. *Name of Project:* Pyrites Hydroelectric Project (Pyrites Project or project).

f. *Location:* The existing project is located on the Grass River near the Town of Canton, St. Lawrence County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kevin M. Webb, Hydro Licensing Manager, Pyrites Hydro, LLC, 670 N Commercial Street, Suite 204, Manchester, NH 03101, (978) 935–6039; email—*kwebb@centralriverspower.com.*

i. *FERC Contact:* Chris Millard at (202) 502–8256; or email at *christopher.millard@ferc.gov.*

j. *Deadline for filing scoping comments:* November 12, 2022.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy via U.S. Postal Service to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Pyrites Hydroelectric Project (P–6115–016).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *The project consists of:* (1) a 170-foot-long and 12-foot-high concrete Ambursen overflow spillway dam with 1.5-foot-high flashboards, a 115-foot-long concrete auxiliary spillway, and a 208-foot-long non-overflow intake dam, which includes a 50-foot-wide intake structure; (2) a 6-foot-diameter, 700-foot-long steel penstock running from the intake structure to an upper powerhouse and a 10-foot-diameter, 2,160-foot-long penstock running from the intake structure to a lower powerhouse; (3) a 21-foot by 31-foot upper powerhouse located 700 feet downstream of the intake structure containing one 1.2-megawatt (MW) turbine/generator unit operating under a rated head of 76 feet and a 50-foot by 53-foot lower powerhouse located 1,200 feet downstream of the upper powerhouse tailrace containing two 3.5–MW turbine/generator units operating under a rated head of 111 feet; (4) a 405-foot-long, 20-foot-wide tailrace; (5) a 50-foot by 97-foot, 115/4.16/2.3-kilovolt (kV) switchyard and substation for use by both powerhouses; (6) a 470-foot-long 2.3-kV transmission line connecting the upper powerhouse to the switchyard; (7) a 1,150-foot-long 4.16-kV transmission line connecting the lower powerhouse to the switchyard; and (8) appurtenant facilities.

The project is operated in a run-of-river mode, whereby outflow from the project approximates inflow. The lower powerhouse is operated in an automatic control mode using water level transducers to maintain normal impoundment elevation at the flashboard crest (*i.e.,* 484.8 feet).[1] The

[1] Elevation data are presented using the National Geodetic Vertical Datum of 1929 (NGVD29).

upper powerhouse is manually operated and serves as a backup to the lower powerhouse when inflows exceed the hydraulic capacity of the lower powerhouse (*i.e.,* 860 cubic feet per second [cfs]).[2] The minimum and maximum hydraulic capacities of the project are 232 cfs and 1,090 cfs, respectively.

A continuous minimum flow of 45 cfs or inflow, whichever is less, is passed into the bypassed reach. The minimum flow comprises 30 cfs at the spillway and 15 cfs of leakage flow from the upper powerhouse. Project operation ceases when inflow falls below the project's minimum hydraulic capacity and all flow is passed via a minimum flow weir [3] and/or over the project spillway. From 2010 to 2020, the project generated an average of 27,865 megawatt-hours annually.

m. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* scoping document) via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document (P–6115). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

n. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process:* Commission staff will prepare either an environmental assessment (EA) or an environmental impact statement (EIS) that describes and evaluates the probable effects, if any, of the licensee's proposed action and alternatives. The EA or EIS will consider environmental impacts and reasonable alternatives to the proposed action. The Commission's scoping process will help determine the required level of analysis and satisfy the National Environmental Policy Act (NEPA) scoping requirements, irrespective of whether the Commission prepares an EA or an EIS. At this time, we do not anticipate holding on-site scoping meetings. Instead, we are soliciting written comments and suggestions on the preliminary list of issues and alternatives to be addressed in the NEPA document, as described in scoping document 1 (SD1), issued October 13, 2022.

Copies of SD1 outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: October 13, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22769 Filed 10–19–22; 8:45 am]

BILLING CODE 6717–01–P

[2] Pyrites Hydro estimates that the upper powerhouse operates about 16% of the time on an annual basis.

[3] The 8-foot-wide by 1.5-foot-deep minimum flow weir is located at the north end of the spillway dam.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2496–286]

Eugene Water & Electric Board; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-capacity Amendment of License.

b. *Project No:* 2496–286.

c. *Date Filed:* October 6, 2022 [1]

d. *Applicant:* Eugene Water & Electric Board (licensee).

e. *Name of Project:* Leaburg-Walterville Hydroelectric Project.

f. *Location:* The project is located on the McKenzie River in Lane County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Frank Lawson, Eugene Water & Electric Board, 4200 Roosevelt Blvd., Eugene, Oregon 97402, (541) 685–7000, *frank.lawson@eweb.org.*

i. *FERC Contact:* Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* November 14, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2496–286. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee proposes to remove from the project boundary two 7.6-mile-long, 69-kilovolt (kV) transmission lines which no longer qualify as primary transmission lines. These lines, referred to as the A–2 and B–2, formerly connected the Leaburg Substation with the Walterville Substation and then to load centers and the interconnected transmission system at the Hayden Bridge Substation. The A–2 and B–2 transmission lines have been taken out of service and the licensee is removing them. The licensee installed a new 11.5-kV generation feed line between the Leaburg power plant and the new Holden Creek Substation in the easternmost 0.43 mile of the right-of-way previously occupied by the two 69-kV transmission lines. The Leaburg plant's power generation is now delivered to the interconnected transmission system at the Holden Creek Substation, which is connected to

[1] The October 6, 2022 filing supersedes a September 1, 2022 filing.

the Bonneville Power Administration. The proposed amendment would reduce the project transmission line right-of-way by 117.08 acres; from 180.86 to 63.78 acres.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. *Location of the Orders Issuing New License:* This order may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: October 13, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22770 Filed 10–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–89–000.

Applicants: Sapphire Sky Wind Energy LLC, WEC Infrastructure LLC.

Description: Sapphire Sky Wind Energy LLC, et al., submits response to September 14, 2022 Deficiency Letter.

Filed Date: 10/14/22.

Accession Number: 20221014–5059.

Comment Date: 5 p.m. ET 11/4/22.

Docket Numbers: EC23–6–000.

Applicants: American Electric Power Service Corporation, Ohio Power Company, Guernsey Power Station LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Guernsey Power Station LLC, et al.

Filed Date: 10/13/22.

Accession Number: 20221013–5255.

Comment Date: 5 p.m. ET 11/3/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–1837–001.

Applicants: Florida Power & Light Company.

Description: Compliance filing: Compliance Filing Regarding Formula Rate Template to be effective 12/31/9998.

Filed Date: 10/14/22.

Accession Number: 20221014–5175.

Comment Date: 5 p.m. ET 11/4/22.

Docket Numbers: ER22–2330–000.

Applicants: Pacific Gas and Electric Company.

Description: Refund Report: CCSF Refund Report for Additional Points Filing (SA 275) to be effective N/A.

Filed Date: 10/14/22.

Accession Number: 20221014–5106.

Comment Date: 5 p.m. ET 11/4/22.

Docket Numbers: ER22–2585–001.

Applicants: Public Service Company of New Mexico.

Description: Tariff Amendment: Response to Deficiency Letter and Request for Shortened Comment Period to be effective 10/1/2022.

Filed Date: 10/14/22.

Accession Number: 20221014–5168.

Comment Date: 5 p.m. ET 10/21/22.

Docket Numbers: ER23–84–001.

Applicants: Citizens Sycamore-Penasquitos Transmission LLC.

Description: Tariff Amendment: Amendment to TRBAA 2022 Filing to be effective 1/1/2023.

Filed Date: 10/14/22.

Accession Number: 20221014–5002.

Comment Date: 5 p.m. ET 11/4/22.

Docket Numbers: ER23–85–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF–FPL—Rate Schedule No. 387—Concurrence—Import Allocation Agmt to be effective 12/11/2022.

Filed Date: 10/13/22.

Accession Number: 20221013–5213.

Comment Date: 5 p.m. ET 11/3/22.

Docket Numbers: ER23–86–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2022–10–14 Cedar Creek II LGIA Amnd 3 to be effective 10/15/2022.

Filed Date: 10/14/22.

Accession Number: 20221014–5054.

Comment Date: 5 p.m. ET 11/4/22.

Docket Numbers: ER23–87–000.

Applicants: American Electric Power Service Corporation, Ohio Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii): AEP submits one Facilities Agreement re: ILDSA, SA No. 1336 to be effective 12/14/2022.

Filed Date: 10/14/22.

Accession Number: 20221014–5063.

Comment Date: 5 p.m. ET 11/4/22.

Docket Numbers: ER23–88–000.

Applicants: Basin Electric Power Cooperative.

Description: Tariff Amendment: Basin Electric Notice of Cancellation of Service Agreements to be effective 11/4/2022.

Filed Date: 10/14/22.

Accession Number: 20221014–5079.

Comment Date: 5 p.m. ET 11/4/22.

Docket Numbers: ER23–89–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 2648, Queue No. V3–044 to be effective 12/15/2022.
Filed Date: 10/14/22.
Accession Number: 20221014–5081.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–90–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 5371, Non-Queue No. NQ147–1 to be effective 1/12/2022.
Filed Date: 10/14/22.
Accession Number: 20221014–5089.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–91–000.
Applicants: Georgia Power Company.
Description: Initial rate filing: SR Toombs Affected System Construction Agreement Filing to be effective 9/15/2022.
Filed Date: 10/14/22.
Accession Number: 20221014–5093.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–92–000.
Applicants: Consumers Energy Company.
Description: Tariff Amendment: Cancellation of Wholesale Distribution Service Agreements to be effective 12/31/9998.
Filed Date: 10/14/22.
Accession Number: 20221014–5098.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–93–000.
Applicants: Consumers Energy Company.
Description: § 205(d) Rate Filing: Wholesale Distribution Tariff and WDS Service Agreements to be effective 12/1/2022.
Filed Date: 10/14/22.
Accession Number: 20221014–5099.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–94–000.
Applicants: ISO New England Inc.
Description: § 205(d) Rate Filing: ISO–NE Capital Budget & Revised Tariff Sheets for Recovery of 2023 Admin. Costs to be effective 1/1/2023.
Filed Date: 10/14/22.
Accession Number: 20221014–5122.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–95–000.
Applicants: 83WI 8me, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 10/15/2022.
Filed Date: 10/14/22.
Accession Number: 20221014–5123.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–96–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Service Agreement No. 29 with Lambie Energy Center, LLC of Pacific Gas and Electric Company.
Filed Date: 10/14/22.
Accession Number: 20221014–5127.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–97–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Service Agreement No. 30 with Goose Haven Energy Center, LLC of Pacific Gas and Electric Company.
Filed Date: 10/14/22.
Accession Number: 20221014–5128.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–98–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Service Agreement No. 31 with Creed Energy Center, LLC of Pacific Gas and Electric Company.
Filed Date: 10/14/22.
Accession Number: 20221014–5138.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–99–000.
Applicants: Avista Corporation.
Description: Notice of Termination of Interconnection Agreement of Avista Corporation et al.
Filed Date: 10/14/22.
Accession Number: 20221014–5142.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–100–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): ISO–NE; Filing for Recovery of Costs for the 2023 Operation of NESCOE to be effective 1/1/2023.
Filed Date: 10/14/22.
Accession Number: 20221014–5145.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–101–000.
Applicants: North East Offshore, LLC.
Description: Baseline eTariff Filing: North East Offshore, LLC Baseline Filing to be effective 12/14/2022.
Filed Date: 10/14/22.
Accession Number: 20221014–5158.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–102–000.
Applicants: Revolution Wind, LLC.
Description: Baseline eTariff Filing: Revolution Wind, LLC Baseline Filing to be effective 12/14/2022.
Filed Date: 10/14/22.
Accession Number: 20221014–5159.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–103–000.
Applicants: South Fork Wind, LLC.
Description: Baseline eTariff Filing: South Fork Wind, LLC Baseline Filing to be effective 12/14/2022.
Filed Date: 10/14/22.
Accession Number: 20221014–5162.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–104–000.
Applicants: Sunrise Wind LLC.
Description: Baseline eTariff Filing: Sunrise Wind LLC Baseline Filing to be effective 12/14/2022.
Filed Date: 10/14/22.
Accession Number: 20221014–5164.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–105–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: PG&E UOG Amendments for Steelhead and Quail (SA 416 and SA 496) to be effective 12/14/2022.
Filed Date: 10/14/22.
Accession Number: 20221014–5171.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–106–000.
Applicants: Duke Energy Florida, LLC.
Description: Tariff Amendment: DEF–TECO Cancellation of RS No. 268. Concurrence to be effective 12/14/2022.
Filed Date: 10/14/22.
Accession Number: 20221014–5172.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–107–000.
Applicants: Union Electric Company.
Description: § 205(d) Rate Filing: Rate Schedule 22 to be effective 1/1/2023.
Filed Date: 10/14/22.
Accession Number: 20221014–5186.
Comment Date: 5 p.m. ET 11/4/22.
Docket Numbers: ER23–108–000.
Applicants: MD Solar 2, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 10/17/2022.
Filed Date: 10/14/22.
Accession Number: 20221014–5194.
Comment Date: 5 p.m. ET 11/4/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 14, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22777 Filed 10–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–71–000]

Buena Vista Energy Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Buena Vista Energy Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 3, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 14, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22775 Filed 10–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2333–094]

Rumford Falls Hydro, LLC; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2333–094.

c. *Date Filed:* September 29, 2022.

d. *Applicant:* Rumford Falls Hydro LLC.

e. *Name of Project:* Rumford Falls Hydroelectric Project.

f. *Location:* On the Androscoggin River in the Town of Rumford, Oxford County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Luke Anderson, Rumford Falls Hydro LLC, Brookfield Renewable, 150 Main St., Lewiston, Maine, 04240, (207) 755–5613, *luke.anderson@brookfieldrenewable.com.*

i. *FERC Contact:* Ryan Hansen at (202) 502–8074 or email at *ryan.hansen@ferc.gov.*

j. The application is not ready for environmental analysis at this time.

k. *Project Description:* The project consists of two developments: the Upper Station and Lower Station. The Upper Station Development consists of the following existing facilities: (1) a concrete gravity dam with a 464-foot-long, 37-foot-high ogee type spillway section with 32-inch-high, pin-supported wooden flashboards; (2) a reservoir with a storage capacity of 2,900 acre-feet and a surface area of approximately 419 acres at a maximum headwater elevation of 601.24 feet; (3) a 2,300-foot-long, 150-foot-wide forebay; (4) a gatehouse containing two headgates for each of the four penstocks for a total of eight headgates with trashracks; (5) four 110-foot-long underground steel-plate penstocks, three of which are 12 feet in diameter, and one of which is 13 feet in diameter; (6) a masonry powerhouse integral with the dam that is composed of two adjoing stations(a) a 30-foot-wide, 110-foot-long, 92-foot-high Old Station, containing one horizontal generating unit with a capacity of 4,300 kilowatts (kW), and (b) a 60-foot-wide, 140-foot-long, 76-foot-high New Station containing three vertical generating units, two with a capacity of 8,100 kW each, and one with a capacity of 8,800 kW; (7) four 11.5-kilovolt (kV) overhead transmission lines, two of which are de-energized, and the other two are: a 4,500-foot-long line 2 and a 4,200-foot-long line 3; and (8) appurtenant facilities.

The Lower Station Development consists of the following existing facilities: (1) a rock-filled, wooden cribbed and concrete-capped Middle Dam, with a 328.6-foot-long, 20-foot-high gravity spillway section with a crest elevation of 502.74 feet with 16-inch-high, pin-supported, wooden flashboards; (2) a reservoir with storage capacity of 141 acre-feet and a surface area of 21 acres at a normal maximum headwater elevation of 502.7 feet; (3) a 120-foot-long concrete headgate structure located adjacent to the dam with ten steel headgates and a waste weir section perpendicular to the headgate structure with a crest elevation of 502.6 feet and 10-inch-high flashboards regulating flow to the Middle Canal; (4) a 2,400-foot-long Middle Canal with a width ranging from 75 to 175 feet and a depth from 8 to 11 feet; (5) a gatehouse containing two headgates, trashracks, and other appurtenant equipment regulating flow from the canal into two penstocks; (6) two 815-foot-long, 12-foot-diameter, steel-plate penstocks conveying flow from the gatehouse to two surge tanks; (7) two 36-foot-diameter, 50.5-foot-high cylindrical surge tanks; (8) two 77-foot-

long, 12-foot-diameter steel penstocks conveying flow from the surge tanks to the powerhouse; (9) a masonry powerhouse containing two identical vertical units, each with a 7,600-kW capacity; (10) two 600-foot-long, 11.5-kV parallel generator leads; and (11) appurtenant facilities.

Rumford Falls Hydro LLC operates the project in a run-of-river mode and does not propose any changes to project facilities or operation. The project would continue to generate an estimated average of 270,800 megawatt-hours annually.

l. *Location of the Application:* In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* license application) via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–2333). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary)	October 2022.
Issue Additional Information Request (if necessary)	November 2022.
Notice of Acceptance/Notice of Ready for Environmental Analysis	March 2023.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	May 2023.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: October 13, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22771 Filed 10–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–138–000]

Northern Natural Gas Company; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Northern Lights 2023 Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft Environmental Impact Statement (EIS) for the Northern Lights 2023 Expansion Project (Project), proposed by Northern Natural Gas Company (Northern) in the above-referenced docket. Northern requests a Certificate of Public Convenience and Necessity and authorization to abandon, construct, operate, and maintain certain natural gas transmission pipeline facilities in Freeborn, Washington, Scott, Sherburne, and Stearns Counties, Minnesota and Monroe County, Wisconsin. The Project purpose is to provide incremental winter firm service of 44,222 dekatherms per day (Dth/d) to Northern's residential, commercial, and industrial customer market and 6,667 Dth/d of additional firm service that will allow a shipper enhanced reliability and flexibility in natural gas transportation capacity for electric generation.

The draft EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would result in some adverse environmental impacts; however, with the exception of potential impacts on climate change, we conclude that impacts would be reduced to less than significant levels. Regarding climate change impacts, the EIS is not characterizing the Project's greenhouse gas (GHG) emissions as significant or not significant because the Commission is conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going forward.[1]

Special construction methods in proximity to residences are shown on Northern's Site-Specific Residential Construction Plans (see appendix N of the draft EIS), which we have reviewed and found acceptable; however, we encourage affected landowners to review these site-specific drawings and provide comments, as warranted. The draft EIS addresses the potential environmental effects of the construction, abandonment, and operation of the following Project facilities:

- Ventura North E-line Extension (Ventura Extension)—2.8 miles of 36-inch-diameter pipeline extension of the Ventura North E-Line in Freeborn County, Minnesota;
- Elk River 3rd Branch Line Loop [2] (Elk River Loop)—1.1 miles of 30-inch-diameter pipeline loop in Washington County, Minnesota;
- Willmar D Branch Line Extension (Willmar Extension)—1.1 miles of 24-inch-diameter pipeline extension in Scott County, Minnesota;
- Princeton Tie-Over Loop Extension (Princeton Extension)—2.5 miles of 8-inch-diameter pipeline loop extension in Sherburne County, Minnesota;
- Paynesville 2nd Branch Line Loop (Paynesville Loop)—2.0 miles of 4-inch-diameter pipeline loop in Stearns County, Minnesota; and
- Tomah Branch Line Loop Extension (Tomah Extension)—0.3 mile of 8-inch-diameter pipeline extension in Monroe County, Wisconsin.
- The aboveground facilities proposed for this Project would include one new pig [3] launcher, four new valve settings, replacement of valves and piping inside four facilities, and installation of two rupture-mitigation valves (RMV), associated piping, and buildings.
- Abandonment and removal of two valve settings and associated piping.

[1] *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews,* 178 FERC ¶ 61,108 (2022); 178 FERC ¶ 61,197 (2022).

[2] A loop is a segment of pipeline parallel to a mainline that connects to it at both ends and allows more gas to flow through that segment.

[3] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

The Commission mailed a copy of the *Notice of Availability* of the draft EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The draft EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP22–138). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The draft EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the draft EIS may do so. Your comments should focus on draft EIS's disclosure and discussion of potential environmental effects, measures to avoid or lessen environmental impacts, and the completeness of the submitted alternatives, information and analyses. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on December 5, 2022.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–138–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: October 14, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22776 Filed 10–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7186–054]

Missisquoi, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 7186–054.

c. *Date Filed:* September 30, 2022.

d. *Applicant:* Missisquoi, LLC.

e. *Name of Project:* Sheldon Springs Hydroelectric Project.

f. *Location:* On the Missisquoi River in Franklin County, Vermont. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kevin Webb, Licensing Manager, Missisquoi, LLC, 670 N Commercial St., Suite 204, Manchester, NH 03101; Phone at (978) 935–6039, or email at *kwebb@centralriverspower.com.*

i. *FERC Contact:* John Baummer at (202) 502–6837, or *john.baummer@ferc.gov.*

j. *Cooperating Agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: November 29, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. All filings must clearly identify the project name and docket number on the first page: Sheldon Springs Hydroelectric Project (P–7186–054).

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The existing Sheldon Springs Hydroelectric Project consists of: (1) a 283-foot-long, 35.5-foot-high concrete overflow Ambursen-type buttress dam that includes a 262-foot-long spillway with 2-foot-high wooden flashboards and a 16-foot-long, 8-foot-high hydraulically operated flap gate; (2) an impoundment with a surface area of approximately 175 acres; (3) the Main Powerhouse containing two identical vertical Kaplan turbine-generator units with a total capacity of 20,500 kilowatts (kW); (4) the South Mill Powerhouse that includes a 1,000-kW Francis-type turbine-generator unit; (5) the Grinder Room Powerhouse that includes two Francis-type turbine-generator units with a total capacity of 3,300 kW; (6) a 165-kW Kaplan turbine-generator unit located in one of the dam's Ambursen bays; (7) two transmission lines; and (8) appurtenant facilities. The project creates an approximately 4,700-foot-long bypassed reach of the Missisquoi River.

Missisquoi, LLC voluntarily operates the project in a run-of-river mode such that outflow from the project approximates inflow. The minimum and maximum hydraulic capacities of the powerhouses are 70 and 3,342 cubic feet per second (cfs), respectively. The average annual generation of the project was approximately 69,277 megawatt-hours from 2010 to 2020.

For the purpose of protecting aquatic resources, Article 35 of the current license requires Missisquoi, LLC to release: (1) a minimum flow of 70 cfs or inflow, whichever is less, to the bypassed reach; (2) a minimum flow of 270 cfs or inflow, whichever is less, as measured immediately below the tailrace of the South Mill Powerhouse; and (3) a minimum flow of 285 cfs or inflow, whichever is less, as measured immediately below the tailrace of the Main Powerhouse.

The applicant proposes to: (1) operate the project in a run-of-river mode; (2) release a 70-cfs minimum bypassed reach flow or inflow, whichever is less; (3) release a 285-cfs minimum flow downstream of the South Mill Powerhouse or inflow, whichever is less; (4) implement an impoundment refill procedure, in the event of a drawdown of the impoundment, whereby 90 percent of inflow is passed downstream and 10 percent of inflow is used to refill the impoundment; (5) release approximately 13 cfs over the flashboard crest from 7:00 a.m. to 8:00 p.m. from May 1 to October 31; (6) develop an operation compliance monitoring plan; (7) install a 400-foot-long path from the canoe portage takeout to a public road; (8) install a two-car parking area for canoe portage; (9) improve the existing whitewater boating access points; and (10) implement erosion control measures to protect cultural resources.

o. In addition to publishing the full text of this notice in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* license application) via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19) issued on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural Schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter and Request Additional Information: November 2022

Issue Scoping Document 1 for comments: February 2023

Request Additional Information (if necessary): March 2023

Issue Acceptance Letter: March 2023

Issue Scoping Document 2 (if necessary): April 2023

Issue Notice of Ready for Environmental Analysis: April 2023

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: October 14, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22774 Filed 10–19–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–507–000]

Transcontinental Gas Pipe Line Company, LLC; Sea Robin Pipeline Company, LLC; Florida Gas Transmission Company, LLC; Notice of Request for Extension of Time

Take notice that on October 11, 2022, Transcontinental Gas Pipe Line Company, LLC (Transco), 2800 Post Oak Boulevard, Houston, Texas 77056, requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until December 31, 2023, in order to complete abandonment activities as authorized in Transco's VR22 to Shore Abandonment Project (Project) in the March 18, 2021 Order Granting Abandonment [1] (March

[1] *Transcontinental Gas Pipe Line Company, LLC,* 174 FERC ¶ 62,169 (2021).

18 Order). The March 18 Order, Ordering Paragraph (C) required Transco [2] to complete abandonment of the facilities within one year of the order date. On December 22, 2021, Transco requested an extension of time until December 31, 2022, to complete abandonment of Project facilities, that we granted on March 15, 2022.

Transco now requests an extension of time until December 31, 2023, to complete abandonment of the Project facilities. Transco states that it has completed the majority of abandonment activities but will be unable to complete the removal of approximately 14,240 feet of 24-inch-diameter pipe located in state waters. Transco avers that the contractor it selected was originally scheduled to begin removal of the pipe in state waters in July of 2022, however, delays in the remaining abandonment activities pushed the state water removals outside of their anticipated timeframe. The barges required for the removal are now unavailable through the end of November 2022. Transco asserts that seasonal weather conditions and water levels prohibit safe removal of the state water pipeline beginning December 2022. Transco states that the most favorable weather window of offshore construction activities is generally May through September of each year. Accordingly, Transco requests an extension until December 31, 2023, which it asserts will allow flexibility in scheduling around weather events that may delay abandonment activities.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Transco's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).[3]

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[4] the Commission will aim to issue an order acting on the request within 45 days.[5] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[6] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[7] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[8] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov*. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on October 28, 2022.

Dated: October 13, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22772 Filed 10–19–22; 8:45 am]

BILLING CODE 6717–01–P

[2] Transco is the operator of the pipeline facilities proposed to be abandoned.

[3] Only motions to intervene from entities that were party to the underlying proceeding will be accepted. *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 39 (2020).

[4] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[5] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[6] *Id.* at P 40.

[7] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[8] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2014–0313; FRL–10128–01–ORD]

Availability of the Draft IRIS Toxicological Review of Hexavalent Chromium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 60-day public comment period associated with release of the draft Integrated Risk Information System (IRIS) Toxicological Review of Hexavalent Chromium. The draft document was prepared by the Center for Public Health and Environmental Assessment (CPHEA) within EPA's Office of Research and Development (ORD).

EPA is releasing this draft IRIS assessment for public comment in advance of a Science Advisory Board (SAB) led peer review. SAB will convene a public meeting to discuss the draft report with the public during Step 4 of the IRIS Process. The external peer reviewers will consider public comments submitted to the EPA docket in response to this notice and any others provided at the public meeting when reviewing this document. EPA will consider all comments submitted to the docket when revising the document post-peer review. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent, and should not be construed to represent Agency policy or views.

DATES: The 60-day public comment period begins October 20, 2022 and ends December 19, 2022. Comments must be received on or before December 19, 2022.

ADDRESSES: The IRIS Toxicological Review of Hexavalent Chromium will be available via the internet on the *IRIS* website at *https://www.epa.gov/iris/iris-recent-additions* and in the public docket at *http://www.regulations.gov,*

Docket ID No. EPA–HQ–ORD–2014–0313.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov*.

For technical information on the IRIS Toxicological Review of Hexavalent Chromium contact Dr. Andrew Kraft, CPHEA; telephone: 202–564–0286; or email: *kraft.andrew@epa.gov*. The IRIS Program will provide updates through the IRIS website (*https://www.epa.gov/iris*) and via EPA's IRIS listserv. To register for the IRIS listserv, visit the IRIS website (*https://www.epa.gov/iris*) or visit *https://www.epa.gov/iris/forms/staying-connected-integrated-risk-information-system#connect*.

For information about the peer review, please visit the EPA SAB website: *https://sab.epa.gov/ords/sab/f?p=114:1:::::*.

SUPPLEMENTARY INFORMATION: I. How to Submit Technical Comments to the Docket at *https://www.regulations.gov*. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2014–0313 for the Hexavalent Chromium IRIS Assessment, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov*.
- *Fax:* 202–566–9744. Due to COVID–19, there may be a delay in processing comments submitted by fax.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752. Due to COVID–19, there may be a delay in processing comments submitted by mail.

For information on visiting the EPA Docket Center Public Reading Room, visit *https://www.epa.gov/dockets*. Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room may be closed to the public with limited exceptions. The telephone number for the Public Reading Room is 202–566–1744. The public can submit comments via *www.regulations.gov* or email.

Instructions: Direct your comments to docket number EPA–HQ–ORD–2014–0313 for IRIS Toxicological Review of Hexavalent Chromium. Please ensure that your comments are submitted within the specified comment period. It is EPA's policy to include all comments it receives in the public docket within the specified comment period without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*.

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Wayne Cascio,

Director, Center for Public Health & Environmental Assessment.

[FR Doc. 2022–22725 Filed 10–19–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Systemic Resolution Advisory Committee; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Systemic Resolution Advisory Committee. The Advisory Committee will provide advice and recommendations on a broad range of policy issues regarding the resolution of systemically important financial companies. The meeting is open to the public. The public's means to observe this meeting of the FDIC System Resolution Advisory Committee will be both in-person and via a Webcast live on the internet. In addition, the meeting will be recorded and subsequently made available on-demand approximately two weeks after the event. To view the live event, visit *http://fdic.windrosemedia.com.*

DATES: Wednesday, November 9, 2022, from 9:00 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Ms. Debra A. Decker, Committee Management Officer of the FDIC, at (202) 898–8748.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of a range of issues and developments related to the resolution of systemically important financial companies. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Observers requiring such assistance should email *DisabilityProgram@fdic.gov* at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting.

This meeting of the FDIC Systemic Resolution Advisory Committee will be Webcast live via the internet *http://fdic.windrosemedia.com.* For optimal viewing, a high-speed internet connection is recommended. Further, a video of the meeting will be available on-demand approximately two weeks after the event. To view the recording, visit *http://fdic.windrosemedia.com/index.php?category=Systemic+Resolution+Advisory+Committee.* If you require a reasonable accommodation to participate, please send an email to *DisabilityProgram@fdic.gov* or call (703) 562–2096 to make necessary arrangements.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 17, 2022.

James Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–22789 Filed 10–19–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Training Evaluation

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: 60-Day notice and request for comments.

SUMMARY: FMCS requests evaluations from clients to create tailored training as well as post-training evaluations to continue to provide world-class training to all sectors.

DATES: Comments must be submitted on or before December 19, 2022.

ADDRESSES: You may submit comments, identified by Training Evaluation, through one of the following methods:

- *Email: register@fmcs.gov;*
- *Mail:* Office of the General Counsel, One Independence Square, 250 E St. SW, Washington, DC 20427. Please note that at this time, mail is sometimes delayed. Therefore, we encourage emailed comments.

FOR FURTHER INFORMATION CONTACT: Krystil Smith, *ksmith@fmcs.gov,* 202–606–5137.

SUPPLEMENTARY INFORMATION: Copies of the agency questions are available here.

I. Information Collection Request

Agency: Federal Mediation and Conciliation Service.

Form Number: Not yet assigned.

Type of Request: New Collection.

Affected Entities: Federal government, households and individuals, private sector (private sector, not-for-profit institutions), state and local governments.

Frequency: All affected entities are requested to complete the information collection on occasion. The information collection takes approximately 2 minutes to complete.

Abstract: FMCS provides training services to minimize workplace conflict. To continue to provide the best training, FMCS needs to solicit feedback on its training services.

Burden: We expect to solicit 1,500 information collections annually, with an estimated 2 minutes for completion. We expect a response rate of 35%. The respondent is asked to respond on occasion (before or after the training). Therefore, the estimated burden is 1,050 minutes.

II. Request for Comments

FMCS solicits comments to:

i. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

ii. Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

iii. Enhance the quality, utility, and clarity of the information to be collected.

iv. Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

III. The Official Record

The official records are both electronic and paper records.

List of Subjects

Labor-Management Relations.

Dated: October 14, 2022.

Alisa Zimmerman,

Acting General Counsel.

[FR Doc. 2022–22729 Filed 10–19–22; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Federal Mediation and Conciliation Service Internal Reorganization

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: Notice of FMCS reorganization.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is issuing this notice to inform the public that FMCS has performed a reorganization to optimize client services, internal communications, and agency resources.

DATES: This change to FMCS's organization is effective September 25, 2022.

FOR FURTHER INFORMATION CONTACT: Greg Goldstein, 202–606–8111, *ggoldstein@fmcs.gov.*

SUPPLEMENTARY INFORMATION: FMCS's reorganization, pursuant to the authority vested in the Director under 29 U.S.C. 172, included consolidating two regions consisting of eight district offices to six general regions as well as departmental realignments at the Agency's headquarters to improve the efficacy of the Agency's work. FMCS is working expeditiously to update affected sections of the Code of Federal Regulations that reflect the Agency's outdated organizational structure.

Dated: October 14, 2022.

Alisa Zimmerman,

Acting General Counsel.

[FR Doc. 2022–22727 Filed 10–19–22; 8:45 am]

BILLING CODE 6732–01–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 November 4, 2022.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice

President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Dallas Polen, III, Overland Park, Kansas; and Benjamin Polen, as trustee of the following trusts: the Emmalie Gessner Cowherd Revocable Living Trust Dated 06–29–00, the Clifton R. Cowherd Testamentary Trust; and the Carroll County Trust Company Employees Profit Sharing Plan and Trust, all of Carrollton, Missouri;* to become members of the Polen/Cowherd Family Group, a group acting in concert to retain voting shares of Carroll County Bancshares, Inc. and thereby indirectly retain voting shares of Carroll County Trust Company of Carrollton, Missouri, both of Carrollton, Missouri.

2. *The Jan Elaine Townsend 2022 Trust, The Hilary Irene Townsend 2022 Trust, The Lara Townsend Gradt 2022 Trust, and the Jennifer Townsend Earls 2022 Trust, Barbara Newman Townsend, as the sole trustee, all of Grove, Oklahoma;* and that each of the four trusts to join the Townsend Family Group, a group acting in concert to acquire voting shares of Townsend Holding Company, and thereby indirectly acquiring voting shares of the Bank of Grand Lake, both of Grove, Oklahoma.

B. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291: Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *The Debra L. Rasmussen Irrevocable Trust and the Dane L. Rasmussen Survivor's Trust, Dane L. Rasmussen, as trustee of both trusts, all of Baldwin, Wisconsin;* as members of the Rasmussen Family Shareholder Group, a group acting in concert, to retain voting shares of Baldwin Bancshares, Inc., and thereby indirectly retain voting shares of The First Bank of Baldwin, both of Baldwin, Wisconsin.

2. *The Frank L. Farrar Dynasty Trust II, the Frank L. Farrar and Patricia J. Farrar 2022 Irrevocable Trust, Robert Farrar, individually and as trustee of both trusts, all of Britton, South Dakota; Anne M. Farrar, St. Paul, Minnesota; Samuel Farrar Orfield; Minneapolis, Minnesota;* to acquire voting shares of Beresford Bancorporation, Inc., Britton, South Dakota, and thereby indirectly acquire First Savings Bank, Beresford, South Dakota, as part of a group acting in concert that includes Jeanne Farrar Orfield, Minneapolis, Minnesota; Sally A. Farrar, Arkansaw, Wisconsin; Mary S. Farrar Turner, Pierre, South Dakota; Arthur Turner, Lauderdale, Minnesota; Frank Turner, Hettinger, North Dakota; and Reid Turner, Iowa City, Iowa.

3. *The Frank L. Farrar Dynasty Trust II, the Frank L. Farrar and Patricia J. Farrar 2022 Irrevocable Trust, and Robert Farrar, individually and as trustee of both trusts, all of Britton, South Dakota;* to acquire voting shares of Fulda Bancorporation, Inc., Britton, South Dakota, and thereby indirectly acquire First National Bank, Oldham, South Dakota.

4. *The Frank L. Farrar Dynasty Trust II, the Frank L. Farrar and Patricia J. Farrar 2022 Irrevocable Trust, Robert Farrar, individually and as trustee of both trusts, all of Britton, South Dakota; Anne M. Farrar, St. Paul, Minnesota; Samuel Farrar Orfield; Minneapolis, Minnesota;* to acquire voting shares of Capitol Bancorporation, Inc., Britton, South Dakota, and thereby indirectly acquire First National Bank, Ft. Pierre, South Dakota, as part of a group acting in concert that includes Jeanne Farrar Orfield, Minneapolis, Minnesota; Sally A. Farrar, Arkansaw, Wisconsin; Mary S. Farrar Turner, Pierre, South Dakota; Arthur Turner, Lauderdale, Minnesota; Frank Turner, Hettinger, North Dakota; and Reid Turner, Iowa City, Iowa.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–22807 Filed 10–19–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Savings and Loan Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and of the Board's Regulation LL (12 CFR 238.31) to acquire shares of a savings and loan holding company. The factors that are considered in acting on the notices 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 November 4, 2022.

A. Federal Reserve Bank of San Francisco (Joseph Cuenco, Assistant Vice President, Formations & Transactions) 101 Market Street, San Francisco, California 94105–1579:

1. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard*; to acquire additional voting shares of Hawaiian Electric Industries, Inc., and thereby indirectly acquire additional voting shares of American Savings Bank, F.S.B., both of Honolulu, Hawaii.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–22803 Filed 10–19–22; 8:45 am]

BILLING CODE 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 November 21, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Craft Bancshares, Inc., Atlanta, Georgia;* to become a bank holding company by acquiring Craft Bank, Atlanta, Georgia.

B. 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. *Bradford Bancorp, Inc., Greenville, Illinois:* to merge with Community Bancshares, Inc., and thereby indirectly acquire Community Trust Bank, both of Irvington, Illinois.

C. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Capra Financial Inc., Montezuma, Iowa*; to become a bank holding company by acquiring Peoples Savings Bank, Montezuma, Iowa.

D. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Victory Financial Corporation, Lubbock, Texas*; to become a bank holding company by acquiring The Security State Bank, Winters, Texas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–22804 Filed 10–19–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) re-approve the proposed information collection project ''*Online Submission Form for Supplemental Evidence and Data for Systematic Reviews for the Evidence-based Practice Center Program.*''

This proposed information collection was previously published in the **Federal Register** on July 19, 2022 and allowed 60 days for public comment. AHRQ did not receive substantive comments during public review period. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by November 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''Online Submission Form for Supplemental Evidence and Data for Systematic Reviews for the Evidence-Based Practice Center Program.''

This is an ongoing activity of AHRQ's Evidence-based Practice Center (EPC) Program.

AHRQ's EPC Program develops evidence reports and technology assessments on topics relevant to clinical and other health care organization and delivery issues—specifically those that are common, expensive, and/or significant for the Medicare and Medicaid populations. For example, recent reviews have focused on clinical conditions, such as ''Radiation Therapy for Brain Metastases''; health delivery topics, such as ''Transitions of Care From Pediatric to Adult Services for Children With Special Healthcare Needs''; and specific technologies, such as ''Telehealth for Women's Preventive Services.'' These evidence reports include systematic reviews, technical briefs, and rapid reviews; and provide an essential foundation from which to understand what we know from existing research and what critical research gaps remain. These reports, reviews, and technology assessments are based on rigorous, comprehensive syntheses and analyses of the scientific literature on topics. EPC reports and assessments emphasize explicit and detailed documentation of methods, rationale, and assumptions. EPC reports are conducted in accordance with an established policy on financial and nonfinancial interests. These scientific syntheses may include meta-analyses and cost analyses.

The EPC Program supports AHRQ's mission by synthesizing and disseminating the available research as a ''science partner'' with private and public organizations in their efforts to improve the quality, effectiveness, and appropriateness of health care. The EPC Program is a trusted source of rigorous, comprehensive, and unbiased evidence reviews for stakeholders. The resulting evidence reports and technology assessments are used by Federal and State agencies, private-sector professional societies, health delivery systems, providers, payers, and others committed to evidence-based health care. These end-users may use EPC Program evidence reports to inform policy decisions, clinical practice guidelines, and other healthcare decisions.

This research has the following goals:

- Use research methods to gather knowledge on the effectiveness and harms of certain treatments and healthcare delivery processes and models for medical conditions, both published and unpublished, to evaluate the quality of research studies and the evidence from these studies.
- Promote the use of evidence in healthcare decision making to improve healthcare and health.
- Identify research gaps to inform future research investments.

This study is being conducted by AHRQ pursuant to its statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following data collection will be implemented:

- Online Submission Form. This information is collected for the purposes of providing supplemental evidence and data for systematic reviews (SEADS). The online submission form (OSF) collects data from respondents on their

name, organization name, description of the submission, medical condition, intervention, and email address. For the purposes of meta-analyses, trial summary data from missing and unidentified studies are sought. For the purposes of constructing evidence tables and quality ratings (*e.g.,* on public reporting of cost measures or health information exchange), data can vary (*e.g.,* URLs, study designs, and consumer-mediated exchange forms). Information on both completed and ongoing studies is requested. Submitters may alternatively email their submission to the AHRQ EPC mailbox at *epc@ahrq.hhs.gov.*

The EPC Program currently uses a broad-based announcement via email listserv and a **Federal Register** notice, as needed, to publicize the opportunity to submit scientific information about each topic. AHRQ plans to conduct one SEADS collection per topic. Up to twenty-four topics per year with SEADS portals are anticipated; over the past 5 years the number of SEADS portals has ranged from 11–20, with an average range of 0–5 potential respondents per topic. The EPC Program does not anticipate more than 40 topics per year with SEADS portals.

Estimated Annual Respondent Burden

Exhibit 1 presents estimates of the reporting burden hours for the data collection efforts. Time estimates are based on pilot testing of materials and what can reasonably be requested of respondents. The number of respondents listed in ''Number of respondents'' of Exhibit 1 reflects a projected upper range response rate per SEADS portal multiplied by the anticipated upper limit of number of SEADS portals per year, based on historical information over the past 3 years.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours per SEADS
Online Submission Form (OSF)	200	1	15/60	50
Total	200	1	15/60	50

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
OSF	200	50	[a] $57.62	$2,881
Total	200	50	57.62	2.881

* Occupational Employment Statistics, May 2021 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_nat.htm#b29-0000.*

[a] Based on the mean wages for *Public Relations and Fundraising Managers, 11–2030,* the occupational group most likely tasked with completing the OSF.

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 13, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–22735 Filed 10–19–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Tribal Maternal, Infant, and Early Childhood Home Visiting Program Form 2: Grantee Performance Measures (OMB #0970–0500)

AGENCY: Office of Early Childhood Development; Administration for Children and Families; Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the ACF-Tribal Maternal, Infant, and Early Childhood Home Visiting (Tribal MIECHV) Program Form 2: Grantee Performance Measures (Office of Management and Budget (OMB) #0970–0500; Expiration date Feb 28, 2023). There are no changes requested to the form.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the

search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The MIECHV Program authorizes the Secretary of HHS (in section 511(h)(2)(A)) to award grants to Indian tribes (or a consortium of Indian tribes), tribal organizations, or urban Indian organizations to conduct an early childhood home visiting program. The legislation set aside 3 percent of the total MIECHV program appropriation for grants to tribal entities. Tribal MIECHV grants, to the greatest extent practicable, are to be consistent with the requirements of the MIECHV grants to states and jurisdictions and include conducting a needs assessment and establishing quantifiable, measurable benchmarks.

The ACF, Office of Ealy Childhood Development (ECD), in collaboration with the Health Resources and Services Administration (HRSA), Maternal and Child Health Bureau (MCHB), awards grants for the Tribal MIECHV Program. The Tribal MIECHV grant awards support 5-year cooperative agreements to conduct community needs assessments; plan for and implement high-quality, culturally relevant, evidence-based home visiting programs in at-risk tribal communities; collect and report on performance measures; and participate in research and evaluation activities to build the knowledge base on home visiting among Native populations.

Specifically, the MIECHV legislation requires that State and Tribal MIECHV grantees collect performance data to measure improvements for eligible families in six specified areas (referred to as ''benchmark areas'') that encompass the major goals of the program. These include:

1. Improved maternal and newborn health;

2. Prevention of child injuries, child abuse, neglect, or maltreatment, and reduction in emergency department visits;

3. Improvement in school readiness and achievement;

4. Reduction in crime or domestic violence;

5. Improvement in family economic self-sufficiency; and

6. Improvement in the coordination and referrals for other community resources and supports.

Tribal MIECHV grantees are required to propose a plan for meeting the benchmark requirements specified in the legislation and must report on improvement in constructs under each benchmark area. Tribal Home Visiting (HV) Form 2 will provide a template for Tribal MIECHV grantees to report data on their progress in improving performance under the six benchmark areas, as stipulated in the legislation.

ACF will continue to use Tribal HV Form 2 to:

- Track and improve the quality of benchmark measures data submitted by the Tribal grantees;
- Improve program monitoring and oversight;
- Improve rigorous data analyses that help to assess the effectiveness of the programs and enable ACF to better monitor projects; and
- Ensure adequate and timely reporting of program data to relevant federal agencies and stakeholders including Congress and members of the public.

Respondents: Tribal MIECHV Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Tribal MIECHV Form 2	23	1	500	11,500

Estimated Total Annual Burden Hours: 11,500.

Authority: Public Law 115–123, section 511(h)(2)(A) of Title V of the Social Security Act.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–22755 Filed 10–19–22; 8:45 am]

BILLING CODE 4184–77–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Case Studies of Child Care and Development Fund Lead Agencies' Consumer Education Strategies (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS) is proposing to collect qualitative data to examine innovative and promising consumer education strategies that Child Care and Development Fund (CCDF) Lead Agencies are using to help families search for and select child care and early education (CCEE). This information collection aims to present an internally valid description of the experiences of up to six, purposively selected case study sites, not to promote statistical generalization to different sites or service populations.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act (PRA) of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Consumer Education and Parental Choice in Early Care and Education project is proposing to conduct qualitative case studies to examine consumer education strategies in up to six sites. Sites will be selected based on a scan of innovative or promising strategies being used to help parents looking for and selecting CCEE.

In each site, we will conduct interviews with CCDF administrators and agency staff, consumer education services staff, and other key informants to collect information on select consumer education strategies and implementation successes and challenges. We will conduct focus

groups with parents of young children to gather information about their experiences looking for CCEE. The study will collect information about (a) the selected consumer education strategies; (b) implementation successes and challenges; and (c) parents' experiences looking for CCEE, including the resources they used and their awareness of and perspectives on state/local consumer education resources.

Respondents: State, Territory, and Tribal CCDF program administrators and agency staff, consumer education services staff, key informants who interact with parents and provide a state/local perspective, and parents/guardians of children under age 6.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total/annual burden (in hours)
Interview Guide for State, Tribal, and Territory CCDF Administrators	12	1	1	12
Interview Guide for Consumer Education Services Staff	30	1	1	30
Key Informant Interview Guide	18	1	.75	14
Parent Focus Group Facilitator's Guide	120	1	1.5	180
Focus Group Brief Questionnaire	120	1	.1	12

Estimated Total Annual Burden Hours: 248.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Child Care and Development Block Grant (CCDBG) Act of 1990, as amended (42 U.S.C. 9857 *et seq.*)

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–22759 Filed 10–19–22; 8:45 am]

BILLING CODE 4184–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Domestic Victims of Human Trafficking Program Data (OMB #0970–0542)

AGENCY: Office on Trafficking in Persons, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office on Trafficking in Persons (OTIP), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting renewal with revisions of an approved information collection: Domestic Victims of Human Trafficking (DVHT) Program Data (OMB #0970–0542; expiration date 3/31/2023).

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Trafficking Victims Protection Act of 2000 (TVPA), as amended, authorizes the HHS Secretary to expand benefits and services to victims of severe forms of trafficking in persons in the United States, without regard to their immigration status. The TVPA also authorizes HHS to establish and strengthen programs to assist United States citizens and lawful permanent residents who have experienced sex trafficking or severe forms of trafficking in persons (22 U.S.C. 7105(f)(1)). Acting under a delegation of authority from the Secretary of HHS, ACF awards cooperative agreements to organizations to establish a program to assist United States citizens and lawful permanent residents who have experienced human trafficking, the DVHT Program. The DVHT Program is inclusive of two distinct programs: the Domestic Victims of Human Trafficking Services and Outreach Program (DVHT–SO), and the Demonstration Grants to Strengthen the Response to Victims of Human Trafficking in Native Communities Program (VHT–NC). Through the DVHT Program, grant recipients provide comprehensive case management to domestic survivors of human trafficking in traditional case management and Native community settings.

OTIP proposes to continue to collect information to measure grant project performance, provide technical assistance to grant recipients, assess program outcomes, inform program evaluation, respond to congressional inquiries and mandated reports, and inform policy and program development that is responsive to the needs of victims.

The information collection captures information on participant demographics (*e.g.,* age, gender identity, race/ethnicity), type of trafficking experienced (sex, labor, or both), types of services and benefits provided, along with aggregate information on outreach activities conducted, subrecipients enrolled, and the types of trainings provided to relevant audiences. Minor updates have been made to performance indicators under this collection in

consultation with existing grant recipients and stakeholders, to reduce respondent burden and strengthen privacy and confidentiality. Specifically, to reduce burden and strengthen client privacy and confidentiality, the following DVHT client-level indicators have been removed: Type of Intake, Date of Birth, Services Requested at Intake, Benefits Requested at Intake, Trafficker Relationship to Victim, and Employment Status at Case Closure. To reduce respondent burden, additional outreach and subrecipient indicators have also been removed: Screening Tool Used During Outreach, Goal of Subrecipient Partnership, Type of Subrecipient Partnership; Services Provided by Subrecipient (In-House) and Services Provided by Subrecipient (by Referral) have been collapsed into one category: Services Provided By Subrecipient. A currently approved form under this collection, the DVHT Spending Form, was renamed to Categories of Assistance and categories of assistance on the Spending Form have been simplified to reduce reporting burden. This form was inadvertently not included on the **Federal Register** Notice inviting initial comments on this collection (87 FR 45107) but has been included for comment here and is included in the request to OMB.

Respondents: DVHT Program Grant Recipients and Clients of those programs, specifically DVHT–SO and VHT–NC funding recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Client Characteristics and Program Entry	1,700	1	0.75	1,275	425
Client Case Closure	1,700	1	0.167	283.9	94.6
Barriers to Service Delivery and Monitoring	35	4	0.167	23.4	7.8
Client Service Use and Delivery	1,700	1	0.25	425	141.7
Victim Outreach	35	4	0.3	42	14
Training	35	4	0.5	70	23.3
Subrecipient Enrollment	35	3	0.167	17.5	5.8
Categories of Assistance	35	1	.75	26.25	8.75

Estimated Total Annual Burden Hours: 720.95.

Authority: 22 U.S.C. 7105.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–22757 Filed 10–19–22; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0655]

Animal Generic Drug User Fee Act; Public Meeting; Request for Comments; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is extending the comment period for the notice announcing a public meeting and requesting comments that appeared in the **Federal Register** of September 30, 2022. In that notice, FDA announced a public meeting to discuss the proposed recommendations for the reauthorization of the Animal Generic Drug User Fee Act (AGDUFA IV) for fiscal years 2024 through 2028 and that the comment period would be open until November 9, 2022. FDA is taking this action due to a delay in the posting of the AGDUFA IV Performance Goals and Procedures Letter. This extension will provide the public 30 days to comment as required.

DATES: FDA is extending the comment period announced in the notice of public meeting and request for comments published September 30, 2022 (87 FR 59441). Either electronic or written comments on the notice must be submitted by November 14, 2022, to ensure that the Agency considers your comments regarding this public meeting and request for comments.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 14, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–

2011–N–0655 for ''Animal Generic Drug User Fee Act.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT: Lisa Kable, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–6888, *Lisa.Kable@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 30, 2022, FDA published a notice announcing a public meeting and requesting comments on the proposed recommendations for the reauthorization of the AGDUFA IV for fiscal years 2024 through 2028.

Interested persons were originally given until November 9, 2022, to comment on the public meeting and request for comments. Due to a delay in the posting of the AGDUFA IV Performance Goals and Procedures Letter to our website at *https://www.fda.gov/industry/animal-generic-drug-user-fee-act-agdufa/agdufa-meetings,* we are extending the comment period until November 14, 2022, to allow for a 30-day comment period.

Dated: October 14, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22744 Filed 10–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0401]

Donor Eligibility for Animal Cells, Tissues, and Cell- and Tissue-Based Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry #254 entitled ''Donor Eligibility for Animal Cells, Tissues, and Cell- and Tissue-Based Products.'' FDA's Center for Veterinary Medicine is issuing this guidance for sponsors, firms, individuals, and establishments that participate in the manufacture of, or perform any aspect of, the donor eligibility determination for animal cells, tissues, and cell- and tissue-based products (ACTPs). ACTPs that are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or ACTPs intended to affect the structure or function of the animal generally meet the definition of a new animal drug under the Federal Food, Drug, and Cosmetic Act. Donor eligibility is a critical component of current good manufacturing practice (CGMP) when manufacturing ACTPs. A donor should be considered eligible to donate ACTPs only if screening of the donor shows that the donor is free from risk factors for, and clinical evidence of, infection with relevant disease agents and diseases, and the donor (and product/source material) test results for relevant disease agents are negative or nonreactive.

DATES: The announcement of the guidance is published in the **Federal Register** on October 20, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0401 for ''Donor Eligibility for Animal Cells, Tissues, and Cell- and Tissue-Based Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff

between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Lynne Boxer, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0611, *Lynne.Boxer@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 23, 2021 (86 FR 52912), FDA published the notice of availability for a draft guidance entitled ''Donor Eligibility for Animal Cells, Tissues, and Cell- and Tissue-Based Products'' giving interested persons until November 22, 2021, to comment on the draft guidance. FDA received two submissions that contained multiple comments on the draft guidance and those comments were considered as the guidance was finalized. Editorial changes were made to improve clarity, for example, by making clear that the final guidance is intended to apply to allogeneic and xenogeneic ACTPs, as opposed to autologous ACTPs, and by providing additional, suggested donor screening and testing information that should be considered when determining an ACTP donor's eligibility. The guidance announced in this notice finalizes the draft guidance dated September 2021.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Donor Eligibility for Animal Cells, Tissues, and Cell- and Tissue-Based Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 514 been approved under OMB control number 0910–0032.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov*.

Dated: October 14, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22817 Filed 10–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0399]

Current Good Manufacturing Practice for Animal Cells, Tissues, and Cell- and Tissue-Based Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for industry #253 entitled ''Current Good Manufacturing Practice for Animal Cells, Tissues, and Cell- and Tissue-Based Products.'' FDA's Center for Veterinary Medicine (CVM) is issuing this guidance to provide establishments that manufacture animal cells, tissues, and cell- and tissue-based products (ACTPs) with recommendations for meeting requirements for current good manufacturing practice (CGMP). All new animal drugs, including ACTPs, are required to be manufactured in accordance with CGMP to ensure that such drugs meet the requirements of the Federal Food, Drug, and Cosmetic Act (FD&C Act) as to safety, and have the identity, strength, quality, and purity characteristics, which they purport to or are represented to possess. This guidance also provides FDA's recommendations for those aspects of manufacturing specific to ACTPs in accordance with existing CGMP regulations, as applicable, and with the FD&C Act. In this guidance, we specifically address the methods, facilities, and controls used for manufacturing ACTPs.

DATES: The announcement of the guidance is published in the **Federal Register** on October 20, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0399 for ''Current Good Manufacturing Practice for Animal Cells, Tissues, and Cell- and Tissue-Based Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Lynne Boxer, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0611, *Lynne.Boxer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 23, 2021 (86 FR 52911), FDA published the notice of availability for a draft guidance entitled ''Good Manufacturing Practices for Animal Cells, Tissues, and Cell- and Tissue-Based Products'' giving interested persons until November 22, 2021, to comment on the draft guidance. FDA received two submissions that contained multiple comments on the draft guidance and those comments were considered as the guidance was finalized. Editorial changes were made to improve clarity, for example, by making clear that the final guidance is intended to apply to xenogeneic, allogeneic, and autologous ACTPs and that under certain circumstances, we may not expect an individual veterinarian or veterinary practice engaged solely in recovering cells or tissues for further ACTP processing by third parties to register with FDA. Other editorial changes clarify definitions of terms used in the final guidance, such as the definition of the term ''establishment.'' The guidance announced in this notice finalizes the draft guidance dated September 2021.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Current Good Manufacturing Practice for Animal Cells, Tissues, and Cell- and Tissue-Based Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: October 14, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22816 Filed 10–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2013–N–0375, FDA–2013–N–1147, FDA–2010–N–0083, FDA–2013–N–0115, FDA–2013–N–1588, and FDA–2016–N–1593]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Agreement for Shipments of Devices for Sterilization	0910–0131	9/30/2025
Environmental Impact Considerations	0910–0322	9/30/2025
Substances Prohibited from Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed	0910–0339	9/30/2025
Manufactured Food Regulatory Program Standards	0910–0601	9/30/2025
Tobacco Products, Exemptions From Substantial Equivalence Requirements	0910–0684	9/30/2025
Medical Device Accessories	0910–0823	9/30/2025

Dated: October 14, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22762 Filed 10–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2455]

Advancing Real-World Evidence Program

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

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the Advancing Real-World Evidence (RWE) Program to fulfill FDA's commitment under the seventh iteration of the Prescription Drug User Fee Amendments (PDUFA VII), incorporated as part of the FDA User Fee Reauthorization Act of 2022.

DATES: The Advancing RWE Program will proceed from the date of this notice through September 30, 2027. Sponsors may submit meeting requests for the program through March 31, 2027.

ADDRESSES: For additional information about the Program, please refer to FDA's web page at *https://www.fda.gov/drugs/development-resources/advancing-real-world-evidence-program.*

FOR FURTHER INFORMATION CONTACT: Nahleen Lopez, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6360, Silver Spring, MD 20993–0002, 240–402–2659, *Nahleen.Lopez@fda.hhs.gov,* with the subject line ''Advancing RWE Program''; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911, *Stephen.Ripley@fda.hhs.gov,* with the subject line ''Advancing RWE Program.''

SUPPLEMENTARY INFORMATION:

I. Background

In connection with the seventh iteration of the Prescription Drug User Fee Amendments (PDUFA VII), incorporated as part of the FDA User Fee Reauthorization Act of 2022, FDA committed to establishing the ''Advancing Real-World Evidence (RWE) Program,'' which seeks to identify approaches for generating RWE that meet regulatory requirements in support of labeling for effectiveness (*e.g.,* new indications, populations, dosing information) or for meeting post-approval study requirements. FDA is establishing and publicly communicating the Advancing RWE Program to satisfy this commitment. The Advancing RWE Program provides sponsors who are selected into the Program the opportunity to meet with Agency staff—before protocol development or study initiation—to discuss the use of RWE in medical product development. The Advancing RWE Program is an optional pathway for sponsors submitting RWE proposals; established procedures to engage with the Agency will continue to be available.

Meetings under the Advancing RWE Program will be conducted by FDA's Center for Drug Evaluation and Research (CDER) or Center for Biologics Evaluation and Research (CBER) during fiscal years 2023 to 2027. Oncology applications will include participation from the Oncology Center of Excellence. FDA will grant up to four meetings between CDER or CBER and a sponsor selected into the Advancing RWE Program to discuss approaches for generating RWE that can meet regulatory requirements. To promote awareness of characteristics of RWE that can support regulatory decisions, study designs discussed through the program may be presented by FDA in a public forum (*e.g.,* in a guidance or public workshop).

The Advancing RWE Program website includes current program eligibility criteria; format, content, and instructions for submission of initial and followup meeting requests; and information regarding a required disclosure agreement. The Program's website address is *https://www.fda.gov/drugs/development-resources/*

advancing-real-world-evidence-program.

II. Paperwork Reduction Act of 1995

This notice refers to collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information resulting from formal meetings between sponsors or applicants and FDA have been approved under OMB control number 0910–001. The collections of information in 21 CFR part 312 (investigational new drug applications) have been approved under OMB control number 0910–0014.

Dated: October 17, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22795 Filed 10–19–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1400]

Complex Innovative Design Paired Meeting Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The seventh iteration of the Prescription Drug User Amendments (PDUFA VII), included as part of the FDA User Fee Reauthorization Act of 2022, highlights the goal of facilitating and advancing the use of complex adaptive, Bayesian, and other novel clinical trial designs. The Food and Drug Administration (FDA or Agency) is announcing the continuation of the paired meeting program established under the sixth iteration of PDUFA that affords sponsors, who are selected, the opportunity to meet with Agency staff to discuss the use of complex innovative trial design (CID) approaches in medical product development. Meetings under the program will be conducted by FDA's Center for Drug Evaluation and Research (CDER) or Center for Biologics Evaluation and Research (CBER) during fiscal years 2023 to 2027. For each sponsor whose meeting request is granted, two meetings will be held between the sponsor and CDER or CBER that will provide an opportunity for medical product developers to discuss their CID proposals. To promote innovation in this area, trial designs developed through the paired meeting program may be presented by FDA (*e.g.,* in a guidance or public workshop) as case studies, including trial designs for drugs that have not yet been approved by FDA.

DATES: The CID Paired Meeting Program will proceed from October 1, 2022, through September 30, 2027. Sponsors may submit meeting requests for the program through June 30, 2027. Either electronic or written comments about this meeting program must be submitted by November 3, 2022.

ADDRESSES: You may submit comments about the CID paired meetings program as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 3, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–1400 for ''Complex Innovative Design Paired Meeting Program.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT:

CDER: Scott Goldie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New

Hampshire Ave., Bldg. 21, Rm. 3557, Silver Spring, MD 20993–0002, 301–796–2055, *Scott.Goldie@fda.hhs.gov,* with the subject line ''CID Paired Meeting Program for CDER.''

CBER: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In connection with the seventh iteration of PDUFA, FDA committed to continue the paired meeting program established under PDUFA VI for highly innovative trial designs, with a particular focus on trial designs for which simulations are necessary to evaluate the trial operating characteristics. The Agency also committed to issue a **Federal Register** notice announcing the continuation of the paired meeting program, outlining program eligibility, and describing the proposal submission, selection process, and example topics that will advance the use of complex innovative designs and inform the development of a guidance document (see PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2023 Through 2027, section I.L.4.b, *https://www.fda.gov/media/151712/download*).

FDA is announcing the continuation of the paired meeting program to satisfy the above-mentioned commitments. The goals of the early meeting discussions granted under this program are to provide advice on how a proposed CID approach can be used in a specific drug development program and to promote innovation by allowing FDA to publicly present the trial designs considered through the program, including trial designs for drugs that have not yet been approved by FDA. FDA has committed to accepting up to eight proposals each fiscal year.

Meeting requests may be submitted on a rolling basis; however, only those received by the quarterly closing date, which will be the last day of each quarter of the fiscal year (*i.e.,* December 31, March 31, June 30, September 30), will be considered for selection in the following quarter. Within 45 days after the quarterly closing date, FDA will review the submissions, select meeting requests to proceed to disclosure discussions, and notify sponsors of their status. When disclosure discussions are complete, FDA will grant the paired meetings request.

The Meeting Request Granted letter will include the date for an initial meeting. The follow-up meeting will occur approximately 90 days after receiving the follow-up meeting package. Being granted a meeting as part of the paired meeting program does not mean that the proposed CID is appropriate for regulatory decision making. Likewise, being denied a meeting as part of the paired meeting program does not mean that the proposed CID is unacceptable for regulatory decision making. Sponsors who do not participate in the paired meeting program may seek Agency interaction on their clinical development plan through traditional channels (*e.g.,* Type C meeting requests, Critical Path Innovation Meetings).

The listed eligibility factors and procedures outlined in this notice reflect the current thinking at the time of publication. Processes may be revised and will be communicated on the following web page: *https://www.fda.gov/drugs/development-resources/complex-innovative-trial-design-meeting-program.*

II. Eligibility and Selection for Participation in the CID Paired Meeting Program

To be eligible for the CID Paired Meeting Program:

- The sponsor must have a pre-investigational new drug (IND) application or IND number for the medical product(s) included in the CID meeting request with the intent of implementing the CID proposed in the meeting request.
- The trial is not a first in human study, and there is sufficient clinical information available to inform the proposed CID.
- The sponsor and FDA are able to reach agreement on the trial design information to be publicly disclosed.

Example CIDs include, but are not limited to:

- Trials with adaptations to multiple design features such as treatment arm selection or patient allocation.
- Formal incorporation of prior information such as placebo augmentation using an external control or other data sources, or other approaches to leverage information internal or external to the trial.
- Use of posterior probability or decision-theoretic approaches to determine trial success criteria.
- Trials with novel application of complex design features for a given indication (even when those design features have been used in other indications), such as use of an active-controlled, non-inferiority design in a setting where placebo-controlled designs have typically been used and where there is a novel or complex approach for determining the non-inferiority margin.
- Master protocols.
- Sequential multiple assignment randomized trial designs.

The Agency currently plans to accept requests based on the following:

- Innovative features of the trial design, particularly if the innovation may provide advantages over alternative approaches.
- Therapeutic need (*i.e.,* therapies being developed for use in disease areas where there are no or limited treatment options).
- Priority will be given to trial designs for which analytically derived properties (*e.g.,* Type I error) may not be feasible and simulations are necessary to determine operating characteristics.
- Priority will also be given to proposed CIDs intended to provide substantial evidence of effectiveness to support regulatory approval of the medical product.

III. Procedures and Submission Information

A. General Information

The CID Paired Meeting Program will be jointly administered by the following Centers:

- *CDER:* CDER's Office of Biostatistics, in the Office of Translational Sciences, which is the point of contact for CID Paired Meeting Program communications for CDER products.
- *CBER:* CBER's Division of Biostatistics, in the Office of Biostatistics and Pharmacovigilance, which is the point of contact for CID Paired Meeting Program communications for CBER products.

B. How To Submit a Meeting Request and Meeting Package

Meeting requests should be submitted electronically to the relevant application (*i.e.,* Pre-IND, IND) with ''CID Program Meeting Request for CDER'' (CDER applications) or ''CID Program Meeting Request for CBER'' (CBER applications) in the subject line. Information about providing regulatory submissions in electronic format is available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/providing-regulatory-submissions-electronic-format-certain-human-pharmaceutical-product-applications.*

C. Content and Format of the Meeting Request

Include the following information in the meeting request (25 pages or less):

1. Product Name.
2. Application Number.

3. Proposed indication(s) or context of product development.
4. A background section that provides a brief history of the development program and the status of product development.
5. Trial objectives.
6. Brief rationale for the choice of the proposed CID.
7. Description of study design, including study schema with treatment arms, randomization strategy, and endpoints.
8. Key features of the statistical analysis plan including, but not limited to, the analyses, model, analysis population, approach to handle missing data, and decision criteria. These should include aspects of the design that may be modified and the corresponding rules for decisions, if adaptive.
9. Simulation plan, including the set of parameter configurations that will be used for the scenarios to be simulated and preliminary evaluation and discussion of design operating characteristics. Preliminary simulation results of the operating characteristics (*e.g.,* Type I error, power, etc.) should include several hypothetical plausible scenarios.
10. Elements of the study design that the sponsor considers non-disclosable, along with a rationale for exclusion.
11. A list of issues for discussion with the Agency about the specific proposed CID approach for the applicable drug development program.

D. Content and Format of the Meeting Information Package

Sponsors whose meeting requests are granted as part of the program should submit a meeting information package electronically with ''CID Paired Meeting Program Package for CDER'' (CDER applications) or ''CID Paired Meeting Program Package for CBER'' (CBER applications) in the subject line.

The initial meeting package should include the following information:
1. Product name.
2. Application number.
3. Proposed agenda, including estimated time needed for discussion of each agenda item.
4. List of questions for discussion along with a brief summary of each question that explains the need or context for the question.
5. Detailed description of the statistical methodology including, but not limited to, the analyses, model, analysis population, approach to handle missing data, and decision criteria.
6. Detailed simulation report that includes the following:
a. Example trials in which a small number of hypothetical trials are described with different conclusions.
b. Description of the set of parameter configurations used for the simulation scenarios, including a justification of the adequacy of the choices.
c. Simulation results, including operating characteristics such as Type I error probability, power, expected sample size/duration, and estimation properties under various scenarios.
d. Simulation code that is readable, adequately commented on, and includes the random seeds. The code should preferably be written in widely used programming languages such as R or SAS to facilitate the simulation review.
e. Overall conclusions, including a brief summary of the simulated operating characteristics based on the design features and analyses and a discussion of the utility of the CID given the simulation results.

The followup meeting package should include the following information:
1. Product name.
2. Application number.
3. Updated background section that includes a brief history of the development program and the status of product development and clinical data to date, if applicable.
4. Proposed agenda, including estimated times needed for discussion of each agenda item.
5. List of questions for discussion along with a brief summary of each question that explains the need or context for the question.
6. Updated programs/shells for simulations, if applicable.
7. Summary of new information that is available to support discussions.

E. Meeting Summary

A meeting summary will be sent to the sponsor within 60 days of each meeting.

F. Disclosure

To promote innovation in this area, trial designs developed through the paired meeting program may be presented by FDA (*e.g.,* in a guidance, at public workshops and conferences, or on FDA's website) as case studies, including while the drug studied in the trial has not yet been approved by FDA. Accordingly, before FDA grants the initial meeting under the program, FDA and the sponsor must agree on the information that FDA may include in these public case studies. The specific information to be disclosed will depend on the content of each CID proposal, but FDA intends to focus on information that is beneficial to advancing the use of CIDs, and those elements relevant to understanding of the CID and its potential use in a clinical trial intended to support regulatory approval. Generally, the Agency does not anticipate that the case studies will need to include information such as molecular structure, the sponsor's name, product name, subject-level data, recruitment strategies, or a complete description of study eligibility criteria. FDA does anticipate that the following information will generally be disclosed to facilitate discussion of the proposed CID:
1. Rationale for the selected design.
2. Study design characteristics:
a. Randomization.
b. Blinding.
c. Study schema.
d. Study endpoints.
e. Target population.
f. Sample size determination, including assumptions.
g. Choice of controls (external/historical, concurrent).
h. Estimand(s) of interest.
i. Adaptive elements, including aspects of the design that can be modified.
3. Analysis plan:
a. Model(s), including underlying assumptions and any prior distributions.
b. Null and alternative hypotheses.
c. Statistical test(s).
d. Approaches to handle missing data and multiplicity.
e. Decision criteria throughout the trial, including rules for adaptive decisions.
4. Simulations:
a. Objectives and assumptions.
b. Scenarios, including parameter configurations and the rationale for parameter values considered, and hypothetical examples of trials for a given simulation scenario.
c. Simulation results, including operating characteristics such as Type I error probability, power, expected sample size/duration, and estimation properties.
5. Data access plan components and any other approaches to minimize impacts on trial integrity imposed by the innovative design.
6. Any modifications or amendments to any of the above that occur during interactions about the proposed CID between Submitter and FDA.

It is important that sponsors wishing to participate in the program identify aspects of the design and analysis that they consider non-disclosable and provide a rationale for withholding the information. Participation in the program, including any agreement on information disclosure, will be voluntary and at the discretion of the sponsor. Sponsors that do not wish to make such disclosures may seek regulatory input through other existing channels.

IV. Paperwork Reduction Act of 1995

This notice refers to collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collection of information resulting from formal meetings between sponsors or applicants and FDA has been approved under OMB control number 0910–0429. The collection of information in 21 CFR part 312 (investigational new drug applications) has been approved under OMB control number 0910–0014.

Dated: October 17, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22794 Filed 10–19–22; 8:45 am]

BILLING CODE 4164–01–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: Center for Scientific Review Special Emphasis Panel; Small Business: Biological Chemistry, Biophysics, and Assay Development.

Date: November 15–16, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bethesdan Hotel Tapestry Collection by Hilton (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John Harold Laity, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8254, *laityjh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: Topics in Social Connectedness.

Date: November 15, 2022.

Time: 11:00 a.m. to 8:00 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: Courtney M. Pollack, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–3671, *courtney.pollack@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–19–367: Maximizing Investigators' Research Award (R35—Clinical Trial Optional).

Date: November 16–17, 2022.

Time: 9:00 a.m. to 7:00 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: James J. Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnostics and Treatments (CDT).

Date: November 17–18, 2022.

Time: 9:00 a.m. to 6:00 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: Victor A. Panchenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 802B2, Bethesda, MD 20892, (301) 867–5309, *victor.panchenko@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Medical Imaging.

Date: November 17–18, 2022.

Time: 9:00 a.m. to 8:00 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: Krystyna H. Szymczyk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–4198, *szymczykk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Drug Development and Therapeutics (CDDT).

Date: November 17–18, 2022.

Time: 9:00 a.m. to 7:00 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: Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular and Surgical Devices.

Date: November 17–18, 2022.

Time: 9:00 a.m. to 8:00 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: Willard Wilson, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–867–5309, *willard.wilson@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomaterials, Delivery, and Nanotechnology.

Date: November 17–18, 2022.

Time: 9:00 a.m. to 8:00 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: David R. Filpula, Ph.D., BS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery for Aging, Neuropsychiatric and Neurologic Disorders.

Date: November 17–18, 2022.

Time: 9:00 a.m. to 7:00 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: Kathryn Partlow, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1016D, Bethesda, MD 20892, (301) 594–2138, *partlowkc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Immunology and Infectious Diseases B.

Date: November 17–18, 2022.

Time: 9:00 a.m. to 6:00 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: Uma Basavanna, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–1398, *uma.basavanna@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Instrumentation, Environmental, and Occupational Safety.

Date: November 17–18, 2022.

Time: 9:30 a.m. to 8:00 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: Joonil Seog, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–9791, *joonil.seog@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Gastroenterology.

Date: November 17, 2022.

Time: 9:30 a.m. to 6:00 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: Frederique Yiannikouris, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–3313, *frederique.yiannikouris@nih.gov.*

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; HIV Coinfections and HIV Associated Cancers Study Section.

Date: November 17, 2022.

Time: 9:30 a.m. to 8:00 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: Joshua David Powell, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–5370, *josh.powell@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Tobacco Regulatory Science B.

Date: November 17, 2022.

Time: 9:30 a.m. to 8:00 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: Izabella Zandberg, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–0359, *izabella.zandberg@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS): Collaborative Research Centers (CRCs) and Data Management and Coordinating Center (DMCC).

Date: November 17–18, 2022.

Time: 10:00 a.m. to 12:00 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: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, (301) 435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics on Innate and Adaptive Immunology.

Date: November 17, 2022.

Time: 10:00 a.m. to 8:00 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: Velasco Cimica, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–1760, *velasco.cimica@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Macromolecular Biophysics and Biological Chemistry.

Date: November 17, 2022.

Time: 10:00 a.m. to 6:00 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: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–20–153: Science Education Partnership Award (SEPA) (R25).

Date: November 17–18, 2022.

Time: 11:00 a.m. to 8:00 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: Thomas Y. Cho, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5144, MSC 7840, Bethesda, MD 20892, (301) 402–4179, *thomas.cho@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: October 17, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–22763 Filed 10–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; P01 Review.

Date: November 4, 2022, and November 11, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Li Jia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Room 3208D, Rockville, MD 20852, 301–451–2854, *li.jia@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: October 17, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–22764 Filed 10–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Literature Selection Technical Review Committee, October 27–28, 2022, 9:30 a.m. to 5:00 p.m., which was published in the **Federal Register** on July 1, 2022, 87 FR 126, Page 39538.

This meeting will be amended to change the meeting time from 9:30 a.m.–5:00 p.m. to 10:00 a.m.–4:00 p.m. on both days. An open session is added from 10:00–11:20 a.m. on October 28, 2022.

The open session of the meeting will be virtual. Any interested person may file written comments with the

committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Dianne Babski, Associate Director, Division of Library Operations, National Library of Medicine at *babskid@mail.nih.gov.* The open session will be videocast and can be accessed from the NIH Videocasting website at *https://videocast.nih.gov.*

Dated: October 17, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–22765 Filed 10–19–22; 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; Digestive Diseases and Nutrition C Study Section DDK–C NIDDK Digestive Diseases and Nutrition Career Development Study Section.

Date: October 26–28, 2022.

Time: 5:00 p.m. to 5:00 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., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Peter J. Kozel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7009, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4721, *kozelp@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

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: October 17, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–22768 Filed 10–19–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2022–0012]

Incident Communications Activity Report (ICAR)

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; new collection (request for a new OMB Control Number, 1670–NEW.

SUMMARY: DHS CISA Emergency Communications Division (ECD) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until December 19, 2022.

ADDRESSES: You may submit comments, identified by docket number CISA–2022–0012, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Mail:* CISA strongly prefers comments to be submitted electronically. Written comments and questions about this Information Collection Request should be forwarded to CISA/ECD, ATTN Mark Carmel: CISA—Mailstop 0612, Cybersecurity and Infrastructure Security Agency, 4200 Wilson Blvd., Arlington, VA 20598–0612.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and a corresponding docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include confidential comments, such as sensitive personal information or proprietary information. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Wes Rogers at 202–897–8132 or at *wes.rogers@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Cybersecurity and Infrastructure Security Agency (CISA) Emergency Communications Division (ECD) is mandated by The Cybersecurity and Infrastructure Security Act of 2018, 6 U.S.C. 652(f) under sections (9) carry out emergency communications responsibilities, in accordance with subchapter XIII; (10) carry out cybersecurity, infrastructure security, and emergency communications stakeholder outreach and engagement and coordinate that outreach and engagement with critical infrastructure Sector Risk Management Agencies, as appropriate; and (11) provide education, training, and capacity development to Federal and non-Federal entities to enhance the security and resiliency of domestic and global cybersecurity and infrastructure security.

This information collection is requested to be completed by ECD stakeholders—including state and local emergency communications professionals—through The Incident Communications Activity Report (ICAR) form. The ICAR was developed with the intention of capturing and documenting the emergency communications activity of any organized incident management command and coordination structure established for an incident, planned event, or exercise. As a result, CISA/ECD seeks to execute a standard request from the Paper Reduction Act (PRA) to review, analyze, and revise current Incident Communication Activity.

The Emergency Communications Division (ECD) is a division within the Cybersecurity and Infrastructure Security Agency (CISA) which serves

under the direction of the Department of Homeland Security (DHS). ECD coordinates with National Security and Emergency Preparedness (NS/EP) communications stakeholders to enable use of technical assistance and information sharing to reduce communications system impacts or vulnerabilities. CISA has authority to perform assessments and evaluations for federal and non-federal entities, with consent and upon request. CISA leverages several different authorities, including but not limited to Presidential Policy Directive—21 (PPD–21), the National Infrastructure Protection Plan (NIPP) Voluntary Partnership Framework, and sec. 871 of the Homeland Security Act of 2002. This authority is consistent with the Department's responsibility to ''[c]onduct comprehensive assessments of the vulnerabilities of the Nation's critical infrastructure in coordination with the Sector Rick Management Agencies and in collaboration with SLTT [State, Local, Tribal, and Territorial] entities and critical infrastructure owners and operators.''

The information collected will provide on-the-ground data on emergency communications activity of any organized incident management command and coordination structure established for an incident, planned event, or exercise.

The information captured focuses on a number of key areas: incident complexity, command and coordination systems, and all-hazards information and communications technology positions, resources (*e.g.* voice and data systems, interoperability techniques, and planning references), challenges and general conditions encountered during the incident.

ICAR will be submitted electronically by the emergency responder with overall information and communications technology responsibilities within the identified command and coordination organization, for a reporting period.

This information will inform other jurisdictions on best practices while permitting data-driven decisions on future policy improvements. CISA, in support of the National Counsel of Statewide Interoperability Coordinators (NCSWIC) and the CISA interoperable-communications program known as SAFECOM, will collect data through a two-page report to capture the emergency communications activity of any organized incident management command and coordination structure established for an Incident, Planned Event, or Exercise. CISA's goal is to identify lessons learned to drive strategy and improve existing or offer new technical assistance within the scope of emergency communications activity for Incidents, Planned Events, or Exercises. The ICAR is completed by the person with overall information and communications technology responsibilities with the identified command and coordination organization, for the indicated reporting period. The reporting period is flexible to meet agency or jurisdictional program needs. The report is designed to accommodate a single report for the incident or event duration, or multiple reports for smaller time periods within the same incident or event. State, local, territorial, or tribal communications and public safety technologies communications challenges and best practices will be captured. Public safety communications technologies would include—Cellular, Tactical Information Technology, Emergency Alert Systems, Land Mobile Radio, Satellite, 9–1–1 and emergency communications centers. Collecting and summarizing this data will drive our nationwide response, drive strategy, and goal development—subsequently improving existing and/or offer new Technical Assistance option to stakeholders.

The ICAR is an electronically submitted form to populate the data sets which will be loaded, stored, and analyzed in the Division's data analytics system. Electronic data collection enables an efficient and straightforward submission process to submit, reducing the time and effort for the submitter while also reducing errors.

We will send the ICAR form out using a Microsoft Teams Form link via email. The ICAR form will require a total effort of approximately five minutes for completion. The ICAR form will be completed per incident. The recipients are individuals we deal with on a regular basis and are in constant contact with them. Leveraging the MS Forms and a fillable PDF there will be no printing of forms needed, no preparing and sending emails or memos per incident. Participants will be able to input free form information in addition to a couple drop down type questions which will be asked.

This is a NEW of an information collection.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

Title of Collection: Incident Communications Activity Report (ICAR).

OMB Control Number: 1670–NEW.

Frequency: per incident on a voluntary basis.

Affected Public: State, Local, territorial and Tribal public safety communications personnel.

Number of Annualized Respondents: 450.

Estimated Time per Respondent: 0.083 hours.

Total Annualized Burden Hours: 37.5 hours.

Total Annualized Respondent Opportunity Cost: $2,131.15.

Total Annualized Respondent Out-of-Pocket: $0.

Total Annualized Government Cost: $25,563.

Robert Costello,

Chief Information Officer, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2022–22791 Filed 10–19–22; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–54]

30-Day Notice of Proposed Information Collection: Rent Schedule—Low Income Housing; OMB Control No.: 2502–0012

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested

parties on the proposed collection of information. The purpose of this notice is to allow for additional 30 days of public comment.

DATES: *Comments Due Date:* November 21, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 13, 2022 at 87 FR 21897.

A. Overview of Information Collection

Title of Information Collection: Rent Schedule—Low Rent Housing.

OMB Approval Number: 2502–0012.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: HUD–92458.

Description of the need for the information and proposed use: This information is necessary for HUD to ensure that tenant rents are applied in accordance with HUD administrative procedures.

Respondents: Owners and managers of subsidized low-income housing projects.

Estimated Number of Respondents: 2,446.

Estimated Number of Responses: 2,446.

Frequency of Response: Annually, or on occasion.

Average Hours per Response: 5.33.

Total Estimated Burden: 13,037.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(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.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–22788 Filed 10–19–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7061–N–15]

60-Day Notice of Proposed Information Collection: Public Housing Operating Subsidy—Appeals; OMB No.: 2577–0246

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 19, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

FOR FURTHER INFORMATION CONTACT: Leea Thornton, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202–402–6455. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Thornton.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Operating Subsidy—Appeals.

OMB Approval Number: 2577–0246.

Type of Request: Extension without change of a currently approved collection.

Form Number: N/A.

Description of the Need for the Information and Proposed Use: Under the operating fund rule, PHAs that elect to file an appeal of their subsidy amounts are required to meet the appeal

requirements set forth in subpart G of the rule. There are four grounds of appeal in 24 CFR 990.245 under which PHAs may appeal the amount of their subsidy. They are: a streamlined appeal; an appeal for specific local conditions; an appeal for changing market conditions; and an appeal to substitute actual project cost data. To appeal the amount of subsidy on any one of these permitted bases of appeal, PHAs submit a written appeal request to HUD and appeal must cover an entire portfolio (not single projects). However, HUD has the discretion to accept appeals of less than an entire portfolio for PHAs with greater than 5,000 public housing units. Additional requirements with respect to certain appeals are covered by 24 CFR 990.250.

Respondents (*i.e.,* affected public): State, Local or Tribal Government.

Estimated Number of Respondents: 105.

Estimated Number of Responses: 105.

Frequency of Response: 1.

Average Hours per Response: 20.

Total Estimated Burdens: 2049.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Laura Miller-Pittman,

Chief, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2022–22797 Filed 10–19–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000.L1440000.BJ0000.212.HAG 23–001]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Oregon State Office, Portland, Oregon, 30 calendar days from the date of this publication.

DATES: Protests must be received by the BLM prior to the scheduled date of official filing, November 21, 2022.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Mary Hartel, telephone: (503) 808–6131, email: *mhartel@blm.gov,* Branch of Geographic Sciences, Bureau of Land Management, 1220 SW 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact Ms. Hartel during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon:

WILLAMETTE MERIDIAN, OREGON

T. 34 S., R. 2 E. accepted June 13, 2022
T. 21 S., R. 1 W., accepted September 30, 2022
T. 11 S., R. 43 E., accepted September 30, 2022
T. 21 S., R. 2 W., accepted September 30, 2022
T. 3 S., R. 5 W., accepted September 30, 2022

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the Chief Cadastral Surveyor for Oregon/ Washington, Bureau of Land Management. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A notice of protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Oregon/ Washington during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the Chief Cadastral Surveyor for Oregon/ Washington within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C., chapter 3)

Mary J.M. Hartel,

Chief Cadastral Surveyor of Oregon/ Washington.

[FR Doc. 2022–22733 Filed 10–19–22; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–34120; PPWOBSADC0, PPMVSCS1Y.Y00000]

Notice of Intent To Extend and Continue Concession Contracts and Award Temporary Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The National Park Service gives public notice that, pursuant to the terms of the concession contracts identified in the tables below, as applicable, and in accordance with NPS regulations, it intends to: extend each

concession contract listed in table 1 below until the date shown in the ''Extension Date'' column or until the effective date of a new contract, whichever comes first; continue each concession contract listed in table 2 for a period not to exceed one year beginning on January 1, 2023; award the temporary concession contracts listed in table 3 below.

DATES: The National Park Service intends that the concession contract extensions, continuations, temporary concession contracts will be effective on the dates shown in the tables below, as applicable.

FOR FURTHER INFORMATION CONTACT: Kurt Rausch, Program Chief, Commercial Services Program, National Park Service, 1849 C Street NW, Mail Stop 2410, Washington, DC 20240; Telephone: 202–513–7156.

SUPPLEMENTARY INFORMATION: The concession contracts listed in table 1 below will expire by their terms on or before October 31, 2023. Under 36 CFR 51.23 the National Park Service proposes to extend each contract until the date shown in the ''Extension Expiration Date'' column or until the effective date of a new contract, whichever comes first. The National Park Service has determined that the proposed extensions are necessary to avoid an interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such an interruption. The extension of the existing contracts does not confer or affect any rights with respect to the award of new contracts.

The concession contracts listed in table 2 below have been extended for the maximum time allowable under 36 CFR 51.23. Under the provisions of the existing contracts and pending the issuance of prospectuses and the completion of the public solicitation process to award new concession contracts, the National Park Service intends to continue the existing contracts for a period not to exceed one year beginning on January 1, 2023. Except for their expiration dates, the terms and conditions of the existing contracts will remain unchanged. The continuation of the existing contracts does not confer or affect any rights with respect to the award of new concession contracts.

The National Park Service proposes awarding temporary concession contracts, in accordance with 36 CFR 51.24(a), to provide the visitor services currently provided under the contracts listed in table 3 below. Each temporary contract will have a term not to exceed three years, and each will be awarded to a qualified person. The National Park Service anticipates that the temporary contracts will be effective on the dates shown in the ''Effective Date'' column. This notice is not a request for proposals.

The publication of this notice reflects the intent of the National Park Service but does not bind the National Park Service to extend, continue, or award any of the contracts listed below.

TABLE 1—CONCESSION CONTRACTS EXTENDED UNTIL THE DATE SHOWN OR UNTIL THE EFFECTIVE DATE OF A NEW CONTRACT, WHICHEVER COMES FIRST

Park unit	CONCID	Concessioner	Extension effective date	Extension expiration date
Big South Fork NR&RA	BISO003–13	Bobby Gene and Gretta York	1/16/2023	1/15/2024
Blue Ridge Parkway	BLRI002–13	Cradle of Forestry in America Interpretive Association	5/22/2023	5/21/2024
Blue Ridge Parkway	BLRI008–13	Southern Highland Handicraft Guild, Inc	2/1/2023	1/31/2024
Blue Ridge Parkway	BLRI010–13	Price Lake Boat Rentals, Inc	4/1/2023	3/31/2024
Bryce Canyon NP	BRCA001–13	Bryce Canyon Natural History Association	1/1/2023	12/31/2023
Buffalo NR	BUFF002–13	Lost Valley Canoe and Lodging, Inc	1/1/2023	12/31/2023
Buffalo NR	BUFF004–13	Ozark Bison, LLC	1/1/2023	12/31/2023
Buffalo NR	BUFF005–13	Silver Hill Canoe, Inc	1/1/2023	12/31/2023
Buffalo NR	BUFF009–13	Buffalo Outdoor Center, Inc	1/1/2023	12/31/2023
Buffalo NR	BUFF010–13	Buffalo River Outfitters, Inc	1/1/2023	12/31/2023
Buffalo NR	BUFF011–13	Charles Raulston	1/1/2023	12/31/2023
Buffalo NR	BUFF014–13	Christopher Crockett	1/1/2023	12/31/2023
Buffalo NR	BUFF015–13	Buffalo Camping & Canoeing, Inc	1/1/2023	12/31/2023
Buffalo NR	BUFF016–13	Buffalo River Float Service, LLC	1/1/2023	12/31/2023
Buffalo NR	BUFF018–13	Buffalo River Canoes, Inc	1/1/2023	12/31/2023
Buffalo NR	BUFF019–13	Dirst Canoe Rental	1/1/2023	12/31/2023
Buffalo NR	BUFF022–13	Bill Scruggs, Inc	1/1/2023	12/31/2023
Canyonlands NP	CANY008–13	Canyonlands Natural History Association	1/1/2023	12/31/2023
Colonial NHP	COLO001–13	Yorktown Arts Foundation	6/15/2023	6/14/2024
Crater Lake NP	CRLA003–12	The Shuttle, Inc	5/1/2023	4/30/2024
Denali NP&P	DENA013–20	Denali National Park Wilderness Centers, Ltd	1/1/2023	12/31/2023
Death Valley NP	DEVA002–11	NEG282, LLC	1/13/2023	1/12/2024
Gateway NRA	GATE015–03	ARKLOW–FBF, LLC	4/15/2023	4/14/2024
Glacier Bay NP&P	GLBA008–18	Haines Rafting Company, LLC	1/1/2023	12/31/2024
Glacier Bay NP&P	GLBA011–18	Chilkat Guides, Ltd	1/1/2023	12/31/2024
Glacier Bay NP&P	GLBA012–18	Colorado River and Trail Expeditions, Inc	1/1/2023	12/31/2024
Glacier Bay NP&P	GLBA013–18	Momentum Alaska, Inc	1/1/2023	12/31/2024
Glacier Bay NP&P	GLBA014–18	Mountain Travel	1/1/2023	12/31/2024
Glacier Bay NP&P	GLBA017–18	Wilderness River Outfitters & Trails Expeditions, Inc	1/1/2023	12/31/2024
Glacier Bay NP&P	GLBA038–16	Lindblad Expeditions, Inc	1/1/2023	12/31/2023
Glacier Bay NP&P	GLBA041–16	AM Owner Group, Inc	1/1/2023	12/31/2023
Glacier Bay NP&P	GLBA042–16	InnerSea Discoveries Alaska, Inc	1/1/2023	12/31/2023
Glacier Bay NP&P	GLBA043–16	American Cruise Lines, Inc	1/1/2023	12/31/2023
Glen Canyon NRA	GLCA007–03	Antelope Point Holdings, LLC	1/1/2023	12/31/2023
Grand Canyon NP	GRCA034–12	Bright Angel Bicycles, LLC	3/1/2023	2/28/2024
Grand Teton NP	GRTE005–13	The American Alpine Club	1/1/2023	12/31/2023
Grand Teton NP	GRTE025–13	Powder Hounds, Inc	11/1/2023	10/31/2024
Various Areas	IMFA001–13	Western National Parks Association	1/1/2023	12/31/2023

TABLE 1—CONCESSION CONTRACTS EXTENDED UNTIL THE DATE SHOWN OR UNTIL THE EFFECTIVE DATE OF A NEW CONTRACT, WHICHEVER COMES FIRST—Continued

Park unit	CONCID	Concessioner	Extension effective date	Extension expiration date
Ozark NSR	OZAR011–12	Current River Canoe Rental, LLC	1/1/2023	12/31/2023
Ozark NSR	OZAR016–12	Carr's Grocery and Canoe Rental, LLC	1/1/2023	12/31/2023
Pictured Rocks NL	PIRO001–10	Pictured Rocks Cruises, Inc	1/1/2023	4/30/2023
Point Reyes NS	PORE003–11	American Youth Hostels, Inc	10/17/2023	10/16/2024
Ross Lake NRA	ROLA003–13	WF Goodfellow Adventures, Inc	1/1/2023	12/31/2023
Rocky Mountain NP	ROMO004–13	Silver Peaks Enterprises, Inc	1/1/2023	12/31/2023
Rocky Mountain NP	ROMO009–12	Streamside Properties, LLC	1/1/2023	12/31/2023
Rocky Mountain NP	ROMO011–12	YMCA of the Rockies	1/1/2023	12/31/2023
Rocky Mountain NP	ROMO012–12	Dao House, LLC	1/1/2023	12/31/2023
Rocky Mountain NP	ROMO013–12	Wind River Ministries, Inc	1/1/2023	12/31/2023
Rocky Mountain NP	ROMO016–12	SK Horses, Ltd	1/1/2023	12/31/2023
Rocky Mountain NP	ROMO017–12	Sombrero Ranches, Inc	1/1/2023	12/31/2023
Rocky Mountain NP	ROMO018–12	Winding River Resort, Inc	1/1/2023	12/31/2023
Rocky Mountain NP	ROMO019–12	Cheley Colorado Camps, Inc	1/1/2023	12/31/2023
Rocky Mountain NP	ROMO022–12	Girl Scouts of Colorado	1/1/2023	12/31/2023
Rocky Mountain NP	ROMO028–12	SK Horses, Ltd	1/1/2023	12/31/2023
Rocky Mountain NP	ROMO029–12	SK Horses, Ltd	1/1/2023	12/31/2023
Voyageurs NP	VOYA002–11	Oveson Kab-Con, Inc	1/1/2023	12/31/2023
Wrangell-St. Elias NP&P	WRST018–13	St. Elias Alpine Guides, LLC	1/1/2023	12/31/2024

TABLE 2—CONCESSION CONTRACTS CONTINUED FOR A PERIOD NOT TO EXCEED ONE YEAR BEGINNING ON JANUARY 1, 2023

Park unit	CONCID	Concessioner
Glen Canyon National Recreation Area	GLCA002–88	ARAMARK Sports and Entertainment Services, Inc.
Glen Canyon National Recreation Area	GLCA003–69	ARAMARK Sports and Entertainment Services, Inc.
Lake Mead National Recreation Area	LAKE001–73	LMNRA Guest Services, LLC.
Lake Mead National Recreation Area	LAKE002–82	LMNRA Guest Services, LLC.
Lake Mead National Recreation Area	LAKE005–97	LMNRA Guest Services, LLC.
Lake Mead National Recreation Area	LAKE006–74	Las Vegas Boat Harbor, Inc.
Lake Mead National Recreation Area	LAKE009–88	LMNRA Guest Services, LLC.
Interior Region 1—National Capital Area	NACC003–86	Guest Services, Inc.

TABLE 3—TEMPORARY CONCESSION CONTRACTS

Park unit	CONCID	Services	Effective date
Badlands NP	BADL001–09	Lodging, Campgrounds, Retail, Food and Beverage	11/1/2022
Big Bend NP	BIBE002–21	Lodging, Food and Beverage, Retail, Fuel Stations, Other	7/1/2023
Bryce Canyon NP	BRCA003–10	Lodging, Food and Beverage, Retail, Tours, Other	1/1/2023
Fire Island NS	FIIS003–09	Water Transportation, Retail	11/1/2022
Olympic NP	OLYM003–10	Lodging, Food and Beverage, Retail, Boat Rentals	2/1/2023
Pictured Rocks NL	PIRO001–10	Boat Tours, Food and Beverage	5/1/2023

Justin Unger,

Associate Director, Business Services.

[FR Doc. 2022–22760 Filed 10–19–22; 8:45 am]

BILLING CODE 4312–53–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Semiconductors Devices Having Layered Dummy Fill, Electronic Devices, and Components Thereof, DN 3649;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf Bell Semiconductor, LLC on October 14, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain semiconductor devices having layered dummy fill, electronic devices, and components thereof. The complainant names as respondents: Analog Devices Inc. of Norwood, MA; Bose Corporation of Framingham, MA; Marvell Technology Group, Ltd. of Bermuda; Marvell Semiconductor, Inc. of Santa Clara, CA; Suteng Innovation Technology Co., Ltd. d/b/a RoboSense of China; Kioxia Corporation of Japan; Kioxia America, Inc. of San Jose, CA; MaxLinear, Inc. of Carlsbad, CA; Linskys USA, Inc. of Irvine, CA; MACOM Technology Solutions, Inc. of Lowell, MA; Silicon Laboratories, Inc. of Austin, TX; DENSO Corporation of Japan; Skyworks Solutions, Inc. of Irvine, CA; OmniVision Technologies, Inc. of Santa Clara, CA; and Arlo Technologies, Inc. of Milpitas, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3649'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.)[1] Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 17, 2022.

Jessica Mullan,

Attorney Advisor.

[FR Doc. 2022–22805 Filed 10–19–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–563 and 731–TA–1331–1333 (Review)]

Finished Carbon Steel Flanges From India, Italy, and Spain; 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 duty order on finished carbon steel flanges from India and the antidumping duty orders on finished carbon steel flanges from India, Italy, and Spain would be likely to lead to continuation or

recurrence of material injury within a reasonably foreseeable time.

DATES: August 5, 2022.

FOR FURTHER INFORMATION CONTACT: Caitlyn Hendricks-Costello (202–205–2058), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 5, 2022, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 25662, May 2, 2022) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on October 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 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 determination the Commission should reach in the reviews. Comments are due on or before October 21, 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 these reviews by October 21, 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 §§ 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 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 § 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 14, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–22752 Filed 10–19–22; 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 Weldbend Corporation and Boltex Manufacturing Company Inc., domestic producers, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0011]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Previously Approved Collection: Application To Make and Register a Firearm—ATF Form 1 (5320.1)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) OMB 1140–0011 (Application to Make and Register a Firearm—ATF Form 1 (5320.1) is being revised to include changes due to formatting, additional definitions, updates to the instructions, and additional sub-questions required to comply with the Bipartisan Safer Communities Act. Comments were previously requested by notice published in the **Federal Register** on August 31, 2022. The proposed IC is also being published to obtain comments from the public and affected agencies.

DATES: Comments were previously requested by notice published in the **Federal Register** on August 31, 2022 at 87 FR 53490. Comments are encouraged and will be accepted for an additional 30 days until November 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a Currently Approved Collection.

2. *The Title of the Form/Collection:* Application to Make and Register a Firearm.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 1 (5320.1).

Sponsor Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households, Business or other for-profit, Federal Government, State, Local, or Tribal Government.

Other: Not for-profit and Farms.

Abstract: The Application to Make and Register a Firearm—ATF Form 1 (5320.1) must be completed by any person, other than a qualified manufacturer, who wishes to make and register a National Firearms Act (NFA) firearm. For any person other than a government agency, the making incurs a tax of $200.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 25,716 respondents will respond to this collection once annually, and it will take each respondent approximately 3.99783 hours to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 102,808 hours, which is equal to 25,716 (total respondents) * 1 (# of response per respondent) * 3.99783 hours (239.9 minutes or the time taken to prepare each response).

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, Mail Stop 3E.206, Washington, DC 20530.

Dated: October 14, 2022.

Robert Houser,

Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–22754 Filed 10–19–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0005]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Application and Permit for Importation of Firearms, Ammunition, and Defense Articles—ATF Form 6—Part I (5330.3A)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0005 (Application and Permit for Importation of Firearms, Ammunition, and Defense Articles) is being revised due to minor material changes to the form, such as formatting and an additional sub question.

DATES: Comments are encouraged and will be accepted for 60 days until December 19, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Deanna Fetterolf, Firearms and Explosives Specialist, Firearms Explosives Services Division either by mail at 244 Needy Road, Martinsburg, WV 25405, or by email at *Deanna.Fetterolf@atf.gov,* or by telephone at 304–616–4550.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Evaluate whether and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Application and Permit for Importation of Firearms, Ammunition and Defense Articles.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: Form Number ATF Form 6—Part I (5330.3A)

Sponsor Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Businesses or other for-profit. Other (if applicable): Federal Government, State, Local or Tribal Government, and individuals or households. Abstract: The Application and Permit for Importation of Firearms, Ammunition, and Defense Articles—ATF Form 6—Part I (5330.3A) allows ATF to determine if the article(s) described on the application qualifies for importation and serves as authorization for the importer.

5. *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: An estimated 10,000 respondents will utilize the form, and it will take each respondent approximately 39 minutes to provide their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 6500 hours, which is equal to 10,000 (3 of respondents) * 1 (# of responses per respondents) * .65 (39 minutes).

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, Mail Stop 3E.206, Washington, DC 20530.

Dated: October 14, 2022.

Robert Houser,

Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–22756 Filed 10–19–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0055]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Identification of Explosive Materials

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 1140–0055 (Identification of Explosive Materials) is being revised due to a reduction in the number of respondents, the total responses and public burden hours associated with this IC, since the last renewal in 2019.

DATES: Comments are encouraged and will be accepted for 60 days until December 19, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Crystal Clardy, Explosives Enforcement Specialist, Explosives Industry Programs Branch, either by mail at 3750 Corporal Road Redstone Arsenal-Huntsville, AL 35898, or by email at *eipbinformationcollection@atf.gov,* or by telephone at (605) 290–6760.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Identification of Explosive Materials.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: None. Sponsor Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other (if applicable): None. Abstract: Marking of explosives enables law enforcement entities better trace explosives from the manufacturer through the distribution chain to the end purchaser. This process is used as a tool in criminal enforcement activities.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,066 respondents will respond to this IC approximately 520 times, and it will take each respondent an average 3 seconds twice per day to provide their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 895.3 or 895 hours, which is equal to 2,066 (# of respondents) * 260 (number of workdays) * 0.001666 hours (average time to complete each response).

7. *An Explanation of the Change in Estimates:* The adjustment associated with this collection is a decrease in the number of respondents by 87. Consequently, the total responses and burden hours were reduced by 45,240 and 38 hours respectively, since the last renewal in 2019.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, Mail Stop 3E.206, Washington, DC 20530.

Dated: October 14, 2022.

Robert J. Houser,

Assistant Director, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2022–22753 Filed 10–19–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Gizella Pozsgai,* No. 88–6545 (E.D. Pa.) was lodged with the United States District Court for the Eastern District of Pennsylvania on October 14, 2022.

This proposed Consent Decree concerns a complaint filed by the United States against Defendants Gizella Pozsgai and John Pozsgai (John Pozsgai is now deceased), pursuant to Section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The District Court entered final judgment on January 8, 1990, but certain obligations under the judgment and

subsequent court orders remain outstanding. The proposed Consent Decree resolves these outstanding obligations by requiring non-party Britton Industries, Inc., an owner of an adjacent property that has entered into a purchase agreement for the Pozsgai property, to restore a significant portion of the impacted areas and to protect surrounding woodlands.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Landon Y. Jones, Assistant United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, *pubcomment_eds.enrd@usdoj.gov,* and refer to *United States* v. *Gizella Pozsgai,* No. 88–6545 (E.D. Pa.), DJ No. 90–5–1–1–17910.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Philadelphia, PA 19106. In addition, the proposed Consent Decree may be examined electronically at *https://www.justice.gov/enrd/consent-decrees.*

Cherie Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2022–22743 Filed 10–19–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–12035]

Proposed Exemption for Certain Prohibited Transaction Restrictions Involving JPMorgan Chase Co. (JPMC or the Applicant) Located in New York, New York

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and/or the Internal Revenue Code of 1986 (the Code). If the proposed exemption is granted, certain asset managers with specified relationships to JPMorgan Chase Co. (JPMC) (the JPMC Affiliated qualified professional asset managers (QPAMs) and the JPMC Related QPAMs) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the judgment of conviction against JPMC, as described below.

DATES: If granted, this proposed exemption will be effective for a period of four years beginning on January 10, 2023, and ending on January 9, 2027, if the exemption's conditions and definitions are satisfied.

Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by December 19, 2022.

ADDRESSES: All written comments and requests for a hearing should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12035 via email to *e-OED@dol.gov* or online through *https://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Comments

In light of the current circumstances surrounding the COVID–19 pandemic caused by the novel coronavirus which may result in disruption to the receipt of comments by U.S. Mail or hand delivery/courier, persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

WARNING: All comments received will be included in the public record without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *https://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Proposed Exemption

The Department is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the

procedures set forth in 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011).[1] If the proposed exemption is granted, certain asset managers with specified relationships to JPMC (the JPMC Affiliated QPAMs and the JPMC Related QPAMs) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[2] notwithstanding the judgment of conviction against JPMC (the Conviction) [3] for engaging in a conspiracy to fix the price of, or eliminate competition in, the purchase or sale of the euro/U.S. dollar currency pair exchanged in the Foreign Exchange (FX) Spot Market. This proposed exemption, if granted, will be effective for a period of four years beginning on January 10, 2023, and ending on January 9, 2027, if the exemption's conditions and definitions are satisfied.

This proposed exemption, would provide relief from certain of the restrictions set forth in ERISA sections 406 and 407. It would not, however, provide relief from any other violation of law. Furthermore, the Department cautions that the relief in this proposed exemption would terminate immediately if, among other things, an entity within the JPMC corporate structure is convicted of a crime covered by Section I(g) of PTE 84–14 (other than the Conviction as defined in Section I(a)) during the exemption period (as defined in Section I(c)). Although the JPMC QPAMs could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption.

The terms of this proposed exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost-effective fashion in the event of an additional conviction or a determination by a plan that it is otherwise prudent to terminate its relationship with an entity covered by the exemption.

Summary of Facts and Representations [4]

Background

1. JPMC is a financial holding company and global financial services firm incorporated in Delaware and headquartered in New York, New York. JPMC's principal bank subsidiaries are JPMorgan Chase Bank, N.A. and Chase Bank USA, National Association. Two of JPMC's principal non-bank subsidiaries are its primary broker-dealer subsidiary, J.P. Morgan Securities LLC, and its primary investment management subsidiary, J.P. Morgan Investment Management Inc. (JPMIM). JPMC operates through four major reportable segments or lines of business: Consumer & Community Banking (CCB), Corporate & Investment Bank (CIB), Commercial Banking (CB), and Asset & Wealth Management (AWM).

2. JPMC is the publicly-traded parent company of investment management affiliates that function as QPAMs, through which the CCB, CIB, and AWM segments operate. Since the Department granted PTE 2017–03 (as discussed in more detail below), the following seven JPMC QPAMs have exercised discretionary control over the management and disposition of client assets held by ERISA-covered Plans and IRAs (together, Covered Plans): [5] JPMorgan Chase Bank, N.A., J.P. Morgan Alternative Asset Management, Inc., JPMorgan Asset Management (Asia Pacific) Limited, J.P. Morgan Investment Management Inc., J.P. Morgan Private Investments Inc., J.P. Morgan Securities LLC., and Security Capital Research & Management Incorporated.

The JPMC Affiliated QPAMs provide investment management services to thousands of plans and IRAs. In managing these assets, the JPMC Affiliated QPAMs regularly rely on the QPAM Exemption. In addition to the JPMC Affiliated QPAMs, JPMC currently owns a 5% or greater direct or indirect interest in certain investment managers that are not affiliated with JPMC in the actual control sense (the JPMC Related QPAMs). JPMC does not have the authority to exercise a controlling influence over the JPMC Related QPAMs and is not involved with their clients, strategies, or ERISA assets under management, if any.

ERISA and Code Prohibited Transactions and PTE 84–14

3. The rules set forth in ERISA Section 406 and Code Section 4975(c)(1) proscribe certain ''prohibited transactions'' between plans and certain parties in interest with respect to those plans.[6] ERISA Section 3(14) defines parties in interest with respect to a plan to include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.[7] The prohibited transaction provisions under ERISA Section 406(a) and Code Section 4975(c)(1) prohibit, in relevant part, (1) sales, leases, loans, or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), (2) the use of plan assets by or for the benefit of a party in interest, or (3) a transfer of plan assets to a party in interest.[8]

Under the authority of ERISA Section 408(a) and Code Section 4975(c)(2), the Department has the authority to grant exemptions from such ''prohibited transactions'' in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011) if the Department finds an exemption is: (a) administratively feasible, (b) in the interests of the plan and of its participants and beneficiaries, and (c)

[1] For purposes of this proposed exemption, references to specific provisions of ERISA Title I, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code Section 4975. Further, this proposed exemption, if granted, does not provide relief from the requirements of, or specific sections of, any law not noted above. Accordingly, the Applicant is responsible for ensuring compliance with any other laws applicable to the transactions described herein.

[2] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[3] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

[4] The Summary of Facts and Representations is based on the Applicant's representations provided in its exemption application and does not reflect factual findings or opinions of the Department unless indicated otherwise. The Department notes that availability of this exemption, is subject to the express condition that the material facts and representations contained in application D–12035 are true and complete at all times, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

[5] For purposes of this proposed exemption, the term Covered Plan means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to Code section 4975 (an ''IRA''), in each case, with respect to which a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14.

[6] For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

[7] Under the Code, such parties, or similar parties, are referred to as ''disqualified persons.''

[8] The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA Section 406(b). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

protective of the rights of participants and beneficiaries.

4. PTE 84–14 exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) in which a plan has an interest if the investment manager satisfies the definition of ''qualified professional asset manager'' (QPAM) and satisfies additional conditions of the exemption. PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary manager.[9]

5. Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by the QPAM exemption, for itself and its client plans if that entity, an ''affiliate'' thereof,[10] or any direct or indirect five percent or more owner in the QPAM has been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in section I(g) within the 10 years immediately preceding the transaction. Section I(g) was included in PTE 84–14, in part, based on the Department's expectation that QPAMs and those who may be in a position to influence the QPAM's policies maintain a high standard of integrity.

JPMC Conviction and PTE 84–14 Disqualification

6. On May 20, 2015, the Department of Justice filed a Criminal Information in the U.S. District Court for the District of Connecticut (the District Court) [11] charging JPMC with a one-count violation of the Sherman Antitrust Act.[12] The Information charged that from at least as early as July 2010 until at least January 2013, JPMC, through one of its euro/U.S. dollar (EUR/USD) traders, entered into and engaged in a combination and conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the foreign exchange (FX) spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere (the Criminal Misconduct). The Criminal Misconduct involved near-daily conversations some of which were in code, in an exclusive electronic chat room used by certain EUR/USD traders.

JPMC resolved the charges through a plea agreement presented to the District Court on May 20, 2015 (the Plea Agreement), under which JPMC agreed to enter a plea of guilty to the charge set out in the Information. A judgment of the Conviction was subsequently entered against JPMC on January 10, 2017, and pursuant to the judgment, JPMC was required to pay approximately $550 million in total fines and restitution in connection with the Conviction.

The Prior and Existing Exemptions

7. *PTE 2016–15.* Once the District Court entered the Conviction, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as well as their Covered Plan clients, became ineligible to rely on PTE 84–14, pursuant to section I(g) of the class exemption without receiving an individual prohibited transaction exemption from the Department. The JPMC Affiliated QPAMs submitted an exemption application to the Department on May 20, 2015, and after reviewing the application, the Department granted PTE 2016–15 on January 10, 2017. PTE 2016–15 permitted the JPMC Affiliated QPAMs and the JPMC Related QPAMs to continue to rely upon the relief provided in the QPAM exemption for one-year period from the date of the Conviction.[13]

8. *PTE 2017–03.* Subsequently, on December 29, 2017, the Department granted PTE 2017–03, a second individual exemption that permitted the JPMC Affiliated QPAMs and the JPMC Related QPAMs to continue to rely upon the relief provided by PTE 84–14 for a period of five years beginning on January 10, 2018, and ending on January 9, 2023.[14]

9. PTEs 2016–15 and 2017–03 each contain a set of conditions that are designed to protect those Covered Plans that entrust their assets to a JPMC Affiliated QPAM despite the serious nature of the Criminal Misconduct underlying the Conviction. The Department discusses some of the protective conditions below.[15]

Conditions of PTE 2017–03

10. PTE 2017–03 requires each JPMC Affiliated QPAM to develop, implement, maintain, and follow written policies (the Policies) that are reasonably designed to ensure that, among other things: (a) the asset management decisions of the JPMC Affiliated QPAM are independent of the corporate management and business activities of JPMC; (b) the JPMC Affiliated QPAM fully complies with ERISA's fiduciary duties; (c) any filings or statements made by the JPMC Affiliated QPAM to regulators on behalf of Covered Plans are materially accurate and complete; and (d) the JPMC Affiliated QPAM complies with the terms of PTE 2017–03. Further, any violation of or failure to comply with the Policies must be corrected promptly upon discovery, and any such violation or compliance failure that is not promptly corrected must be reported, in writing to appropriate corporate officers upon the discovery of the failure to promptly correct.

11. PTE 2017–03 requires each JPMC Affiliated QPAM to develop and implement a training program (the Training) that is conducted at least annually by a prudently selected independent professional. The Training must cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions of PTE 2017–03, and the duty to promptly report wrongdoing.

12. PTE 2017–03 further requires each JPMC Affiliated QPAM to be audited biannually (covering the preceding 12-month period) by a prudently selected independent auditor (the Auditor). The Auditor must evaluate the adequacy of each JPMC Affiliated QPAM's implementation of the Policies and Training requirements of PTE 2017–03 and their compliance with them. The Auditor must issue a written report (the Audit Report) to JPMC and each JPMC Affiliated QPAM to which the audit applies that describes the procedures performed during the Audit. In its Audit Report, the Auditor must assess the

[9] See 75 FR 38837, 38839 (July 6, 2010).

[10] Section VI(d) of PTE 84–14 defines the term ''affiliate'' for purposes of Section I(g) as ''(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.''

[11] Case Number 3:15–CR–79–SRU.

[12] 15 U.S.C. 1.

[13] PTE 2016–15, 81 FR 94028 (December 22, 2016). PTE 2016–15 became effective on January 10, 2017 (the date on which the District Court entered the Conviction against JPMC) and expired on January 10, 2018.

[14] PTE 2017–03, 82 FR 61816 (December 29, 2017).

[15] The following paragraphs do not discuss all of the conditions set out in PTE 2017–03. For the complete set of conditions, see PTE 2017–03, 82 FR 61816 (December 29, 2017).

adequacy of each of the JPMC Affiliated QPAM's Policies and Training, their compliance with the Policies and Training, the need, if any, to strengthen the Policies and Training, and any instance(s) of noncompliance.

13. PTE 2017–03 also requires certain JPMC senior personnel to review the Audit Report, make certain certifications, and take corrective actions when necessary. In this regard, a general counsel, or one of the three most senior executive officers of each JPMC Affiliated QPAM to which the Audit Report applies must certify in writing and under penalty of perjury that the officer has reviewed the Audit Report, addressed, corrected, or remedied any inadequacy identified in the Audit Report, and determined that the Policies and Training comply with the requirements of PTE 2017–03 and applicable provisions of ERISA and the Code.

14. PTE 2017–03 requires each JPMC Affiliated QPAM to agree and warrant to its Covered Plan clients that it will: (a) comply with ERISA and the Code; (b) refrain from engaging in prohibited transactions that are not otherwise exempt (and promptly correct any inadvertent prohibited transactions); and (c) comply with the standards of prudence and loyalty set forth in ERISA Section 404. PTE 2017–03 also requires each JPMC Affiliated QPAM to agree and warrant: (a) to indemnify and hold harmless Covered Plans for certain damages; and (b) not to require (or otherwise cause) Covered Plans to waive, limit, or qualify the liability of each JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions. Finally, PTE 2017–03 requires the JPMC Affiliated QPAMs to agree and warrant not to: (a) restrict the ability of Covered Plans to terminate or withdraw from their arrangement with the JPMC Affiliated QPAM, with the exception of reasonable restrictions disclosed in advance, as defined in PTE 2017–03; or (b) impose any fees, penalties, or charges for such termination or withdrawal, with the exception of reasonable fees.

15. PTE 2017–03 contains extensive notice requirements that obligate the JPMC Affiliated QPAMs to provide Covered Plans with a notice of the QPAM's obligations under the exemption, a copy of the notice of the exemption as published in the **Federal Register**, a separate summary describing the facts that led to the Conviction (the Summary), and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14.

16. PTE 2017–03 also requires JPMC to designate a senior compliance officer (the Compliance Officer) to conduct an annual review to determine the adequacy and effectiveness of the implementation of the Policies and Training (the Annual Review). The Compliance Officer must prepare a written report for each Annual Review that, among other things, summarizes their material activities during the preceding year, sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action taken.

Current Exemption Request

17. On October 1, 2021, the Applicant filed an application for exemptive relief that would permit the JPMC Affiliated QPAMs and the JPMC Related QPAMs to continue to rely upon the relief provided under PTE 84–14 for a period of four years from January 10, 2023 (the expiration of PTE 2017–03), through January 9, 2027 (the conclusion of the Section I(g) 10-year ineligibility period triggered by the Conviction). On February 7, 2022, the Applicant supplemented its application with the Second Audit Report. In support of its request, the Applicant states that: each of the JPMC Affiliated QPAMs and the JPMC Related QPAMs have complied with the conditions of PTE 2017–03 and, therefore, should be permitted to continue to rely upon PTE 84–14 through the remainder of the ineligibility period in order to avoid substantial costs and other disruptions that would occur if it no longer could rely on the exemption. The Applicant's representations regarding PTE 2017–03 compliance are addressed immediately below and its representations regarding costs to Covered Plans begins at paragraph 42 under the heading ''Hardship to Plans.''

Compliance With PTE 2017–03

18. *Training.* The Applicant represents that the JPMC Affiliated QPAMs developed and implemented a comprehensive Training program before the July 9, 2018, deadline specified in PTE 2017–03. Through a web-based e-learning training module, the Applicant requires the Training to be completed annually by relevant personnel of each JPMC Affiliated QPAM, including asset/portfolio management, trading, legal, compliance, and internal audit personnel, as required under PTE 2017–03. The Training is designed to track completion by required participants and covers compliance with ERISA and the Code, including applicable ERISA fiduciary duty and prohibited transaction provisions. The Applicant updates the Training annually, as necessary, for clarity, accessibility, and legislative and regulatory changes.

19. *Policies and Procedures.* The Applicant represents that before the effective date of PTE 2016–15, each JPMC Affiliated QPAM developed and instituted a firmwide policy specifically addressing fiduciary responsibilities under ERISA and the Code (the ERISA Policies). The ERISA Policies cover a broad range of topics relevant to the JPMC QPAMs' management of Covered Plan assets, including ERISA's prohibited transaction rules, party in interest transactions, self-dealing and conflicts of interest, employer securities, and employer real property. The ERISA Policies also cover PTE 84–14, PTE 2017–03, the statutory exemption provided under ERISA Section 408(b)(2), recordkeeping and reporting obligations, and the applicability of the ERISA Policies to Covered Plans.

Each section of the ERISA Policies provides background information, identifies responsible parties, and describes objective requirements, internal practices, and reporting obligations. The ERISA Policies address compliance requirements for Covered Plans and assign responsibility for specific activities to relevant JPMC personnel. They further address PTE 2017–03's required content related to manager independence, compliance with ERISA and the Code, communications with regulators, exemption compliance, corrections, and the Training. The ERISA Policies also feature cross-references to related policies, procedures, and compliance manuals, and are supplemented by a library of pre-existing firmwide, line of business-specific, and JPMC QPAM-specific policies and procedures on particular topics.

The ERISA Policies apply to all lines of business that engage in activities involving a JPMC Affiliated QPAM's exercise of investment discretion or provision of investment advice to plans and plan asset investment funds, or indirect service as an adviser or sub-adviser to a pooled investment vehicle deemed to hold the assets of Covered Plans. The Applicant represents that an electronic notice was sent to relevant JPMC Affiliated QPAM personnel regarding the availability of the ERISA Policies and that the ERISA Policies have been easily accessible on JPMC's intranet during the relevant period. The Applicant states that the ERISA Policies are reviewed annually and updated as necessary.

20. *Internal Compliance Processes.* The Applicant represents that the JPMC Affiliated QPAMs conducted a thorough

review of their ERISA policies and procedures and implemented or augmented a variety of testing, monitoring, and reporting capabilities to ensure that they employ and follow robust and comprehensive compliance systems.

21. *The Audits.* PTE 2017–03 requires the JPMC Affiliated QPAMs to submit to an audit conducted annually by a prudently selected independent auditor to evaluate the adequacy of, and each JPMC Affiliated QPAM's compliance with, the Policies and Training requirements of the exemption. The JPMC Affiliated QPAMs have undergone two comprehensive audits performed by Newport Trust Company (Newport). Newport completed its first audit (covering July 10, 2018 through July 9, 2019) on January 9, 2020 (the First Audit). Newport completed its second audit (covering July 10, 2020–July 9, 2021) on January 9, 2022 (the Second Audit). In conducting the audits, Newport states that it thoroughly analyzed the Policies and Training implemented by each JPMC Affiliated QPAM in connection with PTE 2017–03.

Auditor's Findings

22. *The ERISA Policies.* With respect to the ERISA Policies, Newport gathered information from JPMC through six separate data requests, reviewed the JPMC Affiliated QPAMs' obligations under ERISA and applicable Policies and Procedures, held discussions with JPMC personnel regarding existing internal governance structures (and how the Policies were uniquely tailored to accommodate individual JPMC Affiliated QPAMs' investment strategies), and tested the JPMC Affiliated QPAMs' operational compliance with the Policies.

In the First Audit, Newport determined that JPMC's ERISA Policies are ''comprehensive in scope and adequately address all of the content required by PTE 2017–03.'' Based on its review, Newport, ''determined that the JPMC QPAMs developed, implemented and maintained Policies in accordance with the conditions of the Exemption.'' In the Second Audit, Newport concluded that ''[t]he ERISA Policy is comprehensive in scope and adequately addresses all of the content required by the Exemption.'' Newport identified no gaps or areas of insufficient coverage within the ERISA Policy and concluded that the ERISA Policy is clearly written and provides relevant personnel with an appropriate amount of information about each topic.

Newport also reviewed JPMC's firmwide and line of business-specific policies and procedures that supplement the ERISA Policy to better understand how the ERISA Policy fits within JPMC's broader governance structure. Newport concluded that the Policies, comprised of the ERISA Policy and these supplemental policies and procedures, provide JPMC personnel with clear guidance on relevant procedural requirements and extensive documentation related to the management of assets held by Covered Plans.

23. *The Training.* In its assessment of the Training, Newport states that it held discussions with JPMC personnel regarding the qualifications of the Training's developer and implementer, as well as the format, timing, and schedule for the Training. Newport also reviewed the online course material and attendance records. Newport states that the JPMC Affiliated QPAMs developed and implemented a comprehensive Training program before the deadline specified in PTE 2017–03 and rolled out a web-based e-learning training module more than a year before the required deadline of July 9, 2018.

Newport further states that it reviewed the content of the Online Training Module and noted that, in compliance with the requirement specified in the ERISA Policies, the training covered: (a) the Policies; (b) ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions); (c) ethical conduct; (d) the consequences of not complying with the exemption conditions (including any loss of exemptive relief); and (e) prompt reporting of wrongdoing. During the period covered by the Second Audit, Newport states that based upon a comparison of enrollment records against completion records, the Training had a 99.89% attendance rate for the designated individuals.

24. *Compliance with ERISA and the Code.* Newport states that it selected individual prohibited transaction exemptions, principal transactions, proprietary investments, and record retention as focus areas for special scrutiny during the period covered by its audits. Newport notes that it identified the following issues.

25. *Issue: PTE 2003–24 Compliance.* Newport states that, on December 2, 2021, JPMC personnel disclosed to Newport an issue related to compliance with PTE 2003–24.[16] As described by JPMC in a written summary to Newport, during a review of certain bank regulatory reporting requirements relating to affiliated transactions, JPMC's Asset Management Line of Business (AM) identified 19 new issuances,[17] constituting approximately 2% of the 946 total new issuances that JPMC purchased on behalf of managed funds and accounts from July 2020 to June 2021, that were underwritten by an affiliate but not included on the respective 23B bank regulatory reporting.

Newport states that JPMC is remediating this PTE 2003–24 underreporting issue consistent with its correction procedures and past precedent by taking the following steps: (a) completing a review of affiliated transactions; (b) reviewing all issuances purchased by the asset manager on behalf of managed funds and accounts from July 2020 through June 2021 that were underwritten by an affiliate to confirm compliance with reporting requirements; (c) further analyzing exceptions to determine the root cause, identifying and implementing procedural enhancements, and considering any redress as applicable and necessary; and (d) re-issuing relevant PTE 2003–24 quarterly reporting per the asset manager's internal procedures for reporting affiliated transactions with an explanation to the impacted Covered Plans.

Based on its evaluation, Newport determined that AM complied with the ERISA Policies and line of business-specific procedures with respect to PTE 2003–24 for transactions involving Covered Plans during the period covered by the audit. Newport states that it intends to follow up to confirm that the proposed remediation was implemented as planned.

26. *Issue: Fee Offsetting Issues.* Newport states that representatives from JPMC's Private Banking line of business (PB) identified three separate issues related to the offsetting process for Covered Plans invested in proprietary investment products. On July 28, 2020, JPMC notified Newport that PB had identified gaps in the fee offsetting

[16] PTE 2003–24 permits the purchase of securities by an asset management affiliate of the applicant (JPMorgan Chase Bank) on behalf of employee benefit plans, including those investing in a pooled fund, for which the applicant acts as a fiduciary, from any person other than the applicant or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where the affiliated broker-dealer is a manager or member of such syndicate, and/or where an affiliated trustee serves as trustee of a trust that issued the securities (whether or not debt securities) or serves as indenture trustee of securities that are debt securities.

[17] The JPMC asset manager subsequently reviewed its quarterly PTE 2003–24 reporting during the same period and determined that 12 of the 19 new issuances were reported but 7 were not reported.

process during a historical review of the firm's fee offsetting process conducted in late 2019. The review identified two primary gaps: (a) a failure to flag certain proprietary funds as fee offset eligible in the relevant systems and therefore not providing the relevant monthly information regarding fee offsets; and (b) a failure to set up certain accounts for fee offsetting. The review encompassed approximately 100,000 Covered Plans dating back to 2012 and identified 753 accounts that were impacted.

Newport states that, before 2013, account coding errors were more frequent because portfolio managers had to go through a manual process to make sure account coding was set up for fee offsetting. After the implementation of enhancements in 2013, the fee offset coding was automatically applied to accounts identified as Covered Plans. In addition, PB now performs weekly checks to ensure that all new Covered Plans are fee offset eligible. With these enhancements, JPMC determined that no further changes to the fee offsetting process were needed.

Newport states that PB Operations led the remediation process, identified impacted accounts, calculated the amounts owed to each client (the amount of fees that were not offset plus an interest charge for lost earnings calculated using the Department's VFCP Calculator), and notified clients. Newport also notes that PB fully credited all impacted client accounts and prepared an excise tax filing.

27. JPMC identified two other PB issues related to fee offsetting for proprietary investments and communicated those issues to Newport on December 2, 2021. While preparing a response to one of Newport's inquiries regarding the fee offsetting process for Sample Accounts, PB representatives identified an issue with one proprietary exchange traded fund (ETF) held in one of the Sample Accounts that closed in the middle of a month during the period covered under the Second Audit. PB conducted a review of all Covered Plans that had closed mid-month and held ETFs and escalated the issue with legal, compliance, and operations leadership.

Newport states that JPMC detected an error in the process for calculating offset amounts associated with proprietary ETFs held at the time accounts are closed, and that this issue has persisted since July 2018 when proprietary ETFs were first launched for use in managed accounts. Specifically, the Closed Account Report used to determine the credit amount owed to accounts that closed mid-month and that held proprietary funds showed certain issues.

PB conducted an analysis of all Covered Plans managed by PB that closed mid-month between July 2018 and September 2021. PB's analysis found that over 550 accounts were under-credited for an aggregate amount of approximately $4,500 and that over 1,400 accounts were over-credited for an aggregate of approximately $144,000. PB representatives notified Newport that the Closed Account Report has been corrected to ensure accuracy going forward, and that PB is currently calculating the total impact of the fee offset amounts owed (including lost earnings), determining the approach for crediting accounts, developing a plan for communication with clients and advisors for affected accounts, and preparing an excise tax filing. Newport plans to follow up on the anticipated timing of the remediation process and has requested that PB update Newport throughout the remediation process.

28. Another issue was identified on August 9, 2021, when an investor notified the PB fee billing team of a discrepancy in its client's advisory fee calculation. Upon further analysis, the PB team discovered that while the proprietary fund fee offset had been correctly applied when the account was initially billed, the offset was not reapplied following an update to (*i.e.,* recalculation of) the previously calculated fee. The issue arose when a coding change was made following a conversion from an old fee to a new billing program in March 2020. This resulted in offsets no longer being applied when there was a rebilling of an incorrect advisory fee after onboarding.

PB representatives conducted a review of all Covered Plans that had a fee update between September 2018 and July 2021 and calculated a preliminary impact of approximately $2,000 across 80 accounts.[18] PB representatives notified Newport that the fee billing group has corrected the program to ensure that all future fee updates include the required offset. PB is currently calculating the total impact of the offset amounts owed (including lost earnings), determining the approach for crediting accounts, developing a plan for communication with clients and advisors for affected accounts, and preparing an excise tax filing.

Newport states that it plans to follow up on the anticipated timing of the remediation process and has requested that PB update Newport throughout the process. Based on Newport's assessment, PB self-identified several issues related to fee offsetting for proprietary investment products and promptly took steps to remediate those issues in accordance with its correction procedures. Therefore, Newport did not find any instances of noncompliance related to proprietary investment products within PB during the period covered by PTE 2017–03. However, given the multiple issues that have been identified above, Newport recommended that PB perform a comprehensive assessment of its existing fee offsetting processes.

Deferred Prosecution Agreement

29. On September 29, 2020, JPMC, JPMorgan Chase Bank and J.P. Morgan Securities LLC (JPMS) entered into a deferred prosecution agreement with the Department of Justice (the DPA).[19] As required by the conditions of PTE 2017–03, JPMC provided written notification to the Department regarding the DPA on that date. In response to a request for information from Newport, and as set forth in the DPA, JPMC stated that between 2008 and 2016, former employees of JPMC and JPMS who worked on the Precious Metals Desk and U.S. Treasuries Desk within the CIB in the Global Markets division, engaged in trading practices known as ''spoofing'', in which the traders placed orders to buy or sell precious metals or U.S. Treasury futures contracts, or U.S. Treasury notes and bonds in the secondary cash market with the intent to cancel those orders before execution in an effort to manipulate the market in those instruments.

30. The Applicant represents that there is no connection between the lines of business that manage assets through QPAMs in reliance on PTE 84–14 and the conduct cited in the DPA. JPMC, as a firm, conducts discretionary investment management activities through various lines of business that engage in relevant transactions through several JPMC legal entities. JPMorgan Chase Bank, NA is the legal entity that manages cash collateral related to the

[18] With respect to this last issue, the Applicant represents that PB did not choose September 2018 as a beginning date for their search. In March 2020, the functionality that enabled an advisory fee to be recalculated was migrated from one system to another. In connection with this migration, the functionality was not implemented correctly in the new system. Thus, as of March 2020, when an advisory fee was recalculated, the offset was not included in the recalculated fee. Once this system issue was discovered, PB reviewed all accounts that had an advisory fee that was updated/recalculated between March 2020 and July 2021, the period during which the functionality was faulty. The earliest dated invoice that required rebilling through the new system—and thus impacted by the defective system migration and functionality—was from September 2018.

[19] The CFTC and SEC announced separate settlements in connection with related, parallel proceedings on the same date as the DPA.

securities lending sub-line of business. Accordingly, JPMorgan Chase Bank, NA is the QPAM in this instance, and it may rely on PTE 84–14 to manage such cash collateral.

While all JPMC personnel ultimately report to common senior leadership at some level, the Agency Securities Finance business (*i.e.,* the asset management business) is distinct from the Global Markets business (including the business groups that comprise the Precious Metals and U.S. Treasuries Desks), and each such business has separate heads and dedicated compliance and internal staff.[20] The Applicant states that the control functions have dedicated personnel covering Agency Securities Finance, and those individuals do not perform those services for the Global Markets Division, including the Precious Metals and U.S. Treasuries Desks within that division. Ultimately, these control function personnel report up to common senior leadership at some level.

31. The Applicant represents that, to the best of its knowledge, there have been no instances where JPMC QPAMs entered into trades for Covered Plans with the Precious Metals or U.S. Treasuries Desks. Accordingly, the spoofing activity referred to in the DPA should not have directly impacted any such Covered Plans. Further, JPMC states that it is not aware of any impact to Covered Plans from the conduct underlying the DPA. JPMC, however, states that the activities described in the DPA may have had an indirect impact on participants in the markets at issue, regardless of whether such market participants had traded with the Precious Metals and U.S. Treasuries Desks.

32. Newport states that the trading conduct cited in the DPA ceased in 2016, before the Audit periods covered under PTEs 2016–15 and 2017–03. In addition, JPMC confirmed to Newport that, to its knowledge, none of the JPMC Affiliated QPAMs traded directly with the CIB Global Markets Precious Metals or U.S. Treasuries Desks during the period between 2008 and 2016, nor do they today. JPMC states that it has found no evidence of direct impact to Covered Plans managed on a discretionary basis by JPMC QPAMs during the period cited in the DPA. JPMC also stated that Covered Plans were not found to have been affected in connection with precious metals barrier options transactions.

33. Newport requested information regarding the structure and functions of the JPMC compliance and internal audit controls pertaining to the activities described in the DPA to determine whether oversight measures are sufficient to prevent and detect future similar activities. Based on its review, Newport concluded that the trading and market conduct and personnel that are the subject of the DPA did not have any direct bearing on the activities of the JPMC Affiliated QPAMs subject to the Audits and that JPMC took measures designed to enhance oversight and controls, prevent the occurrence of similar future conduct, and detect any issues relating to trading activities cited in the DPA.

Compliance With Other Conditions of PTE 2017–03

34. Newport determined that the JPMC QPAMs did not participate in the Criminal Misconduct that is the subject of the Conviction.[21] Rather, the Criminal Misconduct was the action of one trader working in the FX trading business of JPMorgan Chase Bank who did not work at any time for a fiduciary line of business within JPMC. Newport determined further that there was no indication that the Criminal Misconduct related to any identified transaction involving Covered Plans nor did any JPMC QPAM personnel participate in such activities or receive remuneration in connection with them. Newport further determined that the JPMC QPAMs did not employ or knowingly engage the individual that participated in the Criminal Misconduct.

35. The conditions of PTE 2017–03 require Newport to determine that filings or statements made by the JPMC QPAMs to regulators, including but not limited to the Department, the Treasury, the DOJ, and the PBGC, on behalf of or in relation to Covered Plans, are materially accurate and complete. Based on its review of regulator communications, Newport determined that the JPMC QPAMs followed their ERISA Policies in accordance with the communications requirements of PTE 2017–03.

36. Condition I(d) of PTE 2017–03 provides that JPMC must not use its authority or influence to direct any investment fund subject to ERISA or the Code and managed by a JPMC QPAM with respect to one or more Covered Plans to enter into any transaction with JPMC, or to engage JPMC to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. Newport determined that JPMC has met its obligations in these regards.

37. Based on its review of the client documentation and representations made by JPMC personnel, Newport determined that the JPMC Affiliated QPAMs have complied with the various contractual requirements specified in Section I(j) of PTE 2017–03. Newport also determined that the JPMC Affiliated QPAMs have complied with the communication requirements of Section I(k) of PTE 2017–03.

38. With regard to the Compliance Officer requirements of PTE 2017–03, Newport states that in April 2018, JPMC designated David S. Villwock, JPMC's Head of Firmwide Fiduciary Compliance, to serve as the Compliance Officer for purposes of PTE 2017–03. Newport states that Mr. Villwock has the requisite experience with, and knowledge of, the regulation of financial services and products (including under ERISA and the Code) and has a direct reporting line to JPMC's highest-ranking corporate officer in charge of legal compliance for asset management. Newport concludes that, with the appointment of Mr. Villwock as the Compliance Officer, JPMC complied with the relevant requirements of PTE 2017–03.

39. PTE 2017–03 also requires Newport to assess the adequacy of the Annual Review conducted by the Compliance Officer. Newport states that Mr. Villwock conducted an Annual Review for the most recent twelve-month period that ended on January 9, 2021, which was memorialized in an Annual Report provided to Newport on April 8, 2021. Based on its review, Newport determined that: (a) the Annual Report covers all of the content required under PTE 2017–03; (b) Mr. Villwock provided the required written certifications regarding the Annual Report; and (c) the recipients of the Annual Report included the appropriate corporate officers of JPMC and each JPMC QPAM to which such report

[20] All CIB Compliance function personnel roll up to the CCO for CIB, and all firm-wide Compliance function personnel roll up to the JPMorgan Global Chief Compliance Officer, who reports to the firm's Chief Risk Officer. Similarly, business-aligned Internal Audit function personnel roll up to the Chief Auditor-CIB and ultimately to the General Auditor of JPMC. In addition, some surveillance, monitoring, and testing functions utilize centralized resources and personnel within Compliance, and business-aligned Compliance personnel collaborate with other stakeholders across the firm across many lines of business.

[21] As noted earlier, the Criminal Misconduct is in connection with FX spot market manipulation in violation of the Sherman Antitrust Act, 15 U.S.C. 1, entered in the District Court for the District of Connecticut (the District Court) (case number 3:15–cr–79–SRU).

relates. Further, Newport found that the Annual Report was thorough and effectively leveraged JPMC's existing compliance apparatus.

40. Newport determined that the JPMC Affiliated QPAMs' record retention activities were operationally compliant with Section I(n) of PTE 2017–03 and with JPMC's Record Management Policies.

41. Newport states that it did not find any instance where a client contract specifically contradicted the requirements of Section I(j)(7) of PTE 2017–03. In this regard, Newport notes that JPMC provided a copy of the Supplement to Account Agreement found on JPMC's client portal, which specifically incorporates the contract requirements set out in Section I(j) of PTE 2017–03. Newport states that JPMC representatives confirmed that the JPMC Affiliated QPAMs provided notice to Covered Plan clients informing them that a Supplement to Account Agreement was available through its client portal, prior to July 9, 2018.

Hardship to Covered Plans

42. The Applicant represents that if the Department declines to grant this proposed exemption, there would be adverse consequences for ERISA-covered plans, public plans, and IRAs. In the absence of exemptive relief, the JPMC Affiliated QPAMs may be unable to manage, or manage as efficiently, the strategies for which they have contracted with thousands of Covered Plans. Further, Covered Plans desiring to withdraw from their arrangements could incur significant transaction costs as well as costs associated with finding new managers and reinvesting assets with those new managers. The Applicant states that the transaction costs associated with changing managers are significant, especially in many of the strategies employed by the JPMC Affiliated QPAMs. In this regard, the cost of liquidating assets, identifying and selecting new managers, and reinvesting assets would be borne by the Covered Plans and their participants.

43. The Applicant states that, if the Department denies the exemption request, transactions currently dependent on PTE 84–14 or where PTE 84–14 was the counterparty's expected relief, could be in default and terminated at a significant cost to Covered Plans. According to the Applicant, Covered Plans that decide to retain the JPMC Affiliated QPAMs as their asset manager could be prohibited from engaging in certain potentially beneficial transactions such as hedging transactions using over-the-counter options or derivatives. The Applicant states that counterparties to such transactions are far more comfortable with the QPAM Exemption than any other currently available exemption, and the unavailability of the QPAM Exemption could trigger a default or early termination by a Covered Plan or pooled trust.

44. The Applicant represents that in the event of an exemption denial, certain derivatives transactions and other contractual agreements automatically and immediately could be terminated without notice or action or could become subject to termination upon notice from a counterparty in the event the Applicant no longer qualifies for relief under the QPAM Exemption.

45. The Applicant represents that some of its strategies tend to be less liquid than others and, thus, the transition costs would be significantly higher than, for example, liquidating a large-cap equity portfolio. Real estate is an example of a strategy that could experience significant disruption without the QPAM Exemption. Clients of the JPMC Affiliated QPAMs have over $38.9 billion in ERISA and public plan assets in commingled funds that are invested in real estate strategies, with approximately 224 holdings. Many transactions in these accounts rely on Parts I, II, and III of the QPAM Exemption as a backup to the collective investment fund exemption [22] (which may become unavailable to the extent a related group of plans has a greater than 10% interest in the collective investment fund). The Applicant estimates that there could be a significant loss in value if assets had to be quickly liquidated. In that instance, the QPAM may end up having to sell assets at a discount of more than 10% of their carrying price, which is pegged at FMV. There could also be prepayment penalties on the financing of these assets.

46. The Applicant further asserts that JPMC Affiliated QPAMs rely on the QPAM Exemption when buying and selling fixed income products. Stable value strategies, for example, rely on the QPAM Exemption to enter into wrappers and insurance contracts that permit the assets to be valued at book value. Many counterparties specifically require a representation that the QPAM Exemption applies, and those contracts could be in default if the requested exemption were not granted. Depending on the market value of the assets in these funds at the time of termination, such termination could result in losses to the stable value funds.

47. The Applicant states that as of March 31, 2021, approximately 500 accounts managed through the JPMC Affiliated QPAMs (including commingled funds and separately managed accounts) invest in fixed income products with a total portfolio of approximately $100 billion in market value of ERISA and public plan assets in commingled funds. If the QPAM Exemption were lost, the Applicant estimates that its clients' costs of approximately could incur average weighted liquidation 50–75 basis points of the total market value in fixed income products. While money markets and short and intermediate term bonds could be liquidated for between 5–50 basis points, long duration bonds may be more difficult to liquidate, and liquidation costs may range from 75–100 basis points. Further, the liquidation costs for high-yield and emerging market investments could range from 75–150 basis points.

The Applicant notes that not all JPMC QPAM investment strategies exclusively rely upon the QPAM exemption for prohibited transaction relief. In fact, for equities, foreign exchange, and publicly traded bond strategies, the JPMC Affiliated QPAMs have other exemptions upon which they can rely. In the case of public bonds, the JPMC Affiliated QPAMs can rely upon class exemption 75–1 Part II and the statutory exemption under ERISA Section 408(b)(17).

48. While equity purchases in the market are not necessarily made in reliance on the QPAM Exemption, such strategies often use derivatives, foreign exchange (for non-U.S. strategies), and other products that require the QPAM Exemption. The Applicant manages over $50 billion in ERISA and public plan assets in equity strategies within the Applicant's Asset Management business that could suffer different liquidation costs depending on the strategy. On average, for all equity strategies, the liquidation costs for a 30-day liquidation timeframe might range from 40–80 basis points.

49. Agency securities lending is a business within JPMorgan Chase Bank that makes loans of securities owned by clients, including Covered Plans, secured by cash collateral. JPMorgan Chase Bank acts as investment manager for such cash and invests it in short-term instruments. The cash collateral is maintained in 32 separately managed accounts with total ERISA assets under management of approximately $3.9 billion.[23] JPMorgan Chase Bank may

[22] 56 FR 31966 (July 12, 1991).

[23] As of June 2021.

rely on the QPAM Exemption with respect to the investment of cash collateral for its agency securities lending business. The Applicant believes that many brokers and counterparties with whom JPMorgan Chase Bank deals in regard to cash collateral investments rely on JPMorgan Chase Bank's QPAM status, because of the prevalence of the QPAM Exemption as the industry standard exemption. If the QPAM Exemption were unavailable, such brokers and counterparties could be reluctant to continue doing business with Covered Plans.

50. Many accounts managed by the JPMC Affiliated QPAMs are similarly invested in hedging instruments to deal with the risk of currency exposure for investments in foreign markets. For example, the JPMC Affiliated QPAMs engage in foreign exchange swap transactions and in foreign exchange spot and forward transactions to hedge against fluctuations in foreign exchange rates, for speculative or other alpha-seeking purposes, to settle trades in foreign securities, and for other reasons. The Applicant represents that it would not be in the interests of Covered Plans to be invested in global strategies without being able to hedge currency risk or otherwise engage in foreign exchange transactions. While there may be other exemptions upon which to rely, the market and regular counterparties may choose to rely on the QPAM Exemption and refuse to trade or price the trade accordingly for any greater risk they foresee in the absence of that exemption.

Applicant's Requested Modifications

52. With its exemption request, the Applicant requested that this exemption incorporate certain modifications relative to the conditions of PTE 2017–03. These modification requests and the Department's responses to them are described in further detail below.

53. *Newly Acquired Asset Managers.* The Applicant represents that from time to time, JPMC acquires asset managers that could rely on PTE 84–14. According to the Applicant, it would be nearly impossible for such managers to come into full compliance with PTE 2017–03 or this proposed exemption before any such acquisition closes considering all the conditions regarding notices, training, policies, and compliance regimes. Where the Applicant acquires a new asset manager that already has its own plan clients for which it is using the QPAM Exemption as of the closing date of the transaction, in the absence of relief, that manager needs to comply with the terms of the individual QPAM exemption immediately. Where the new asset manager is not in immediate compliance, Covered Plan clients of the new asset manager with swaps ongoing might have to terminate them immediately, and new transactions could not be consummated, because the new asset manager is not in compliance on day one with all of the conditions of the exemption (*e.g.,* contractual obligations and other investment management agreement amendments; distribution of exemption notice, statement and policy summary; drafting of policies and procedures; training; and feasibility of audit coverage).

The Applicant states that the process of integrating an acquired company can take many months or years. The company being acquired does not in the normal course adopt policies, train on those policies, or interfere with existing client communications or agreements before the acquisitions close, particularly when the acquirer is a large and complex financial institution such as the Applicant. According to the Applicant, it is not free to communicate with a target's clients until after the closing, nor can it communicate with a target's employees, directors, officers, or agents to cause them to draft or adopt policies, procedures, or training. Therefore, the Applicant requests that the conditions of this proposed exemption would not apply until a date that is six months after the closing date for an acquisition.[24]

Department's Response: The Department is unable to make the requested change without detailed information regarding the specific conditions implicated by the requested change, and an explanation regarding why six months is an appropriate extension period.

54. *Training Conducted Electronically.* The Applicant requests confirmation from the Department that the Training may be conducted electronically or via a website. In reliance on a prior clarification from the Department, the JPMC Affiliated QPAMs have been utilizing a web-based training tool that the Auditor has already deemed sufficient to provide JPMC Affiliated QPAM personnel with adequate training in compliance with PTE 2017–03.

Department's Response: The Department confirms the Applicant's request that the Training of JPMC personnel may be conducted either electronically or via a website.

55. *Timing of the Training.* The Applicant requests that the Department change the timing of the Training to once per calendar year ending on December 31 as opposed to once every twelve months ending on July 9, with the last training required during calendar year 2026. The Applicant states that doing so will enable the JPMC Affiliated QPAMs to measure compliance with the training requirement as of year-end (as opposed to July 9). Per this request, relevant personnel would be required to complete a Training under PTE 2017–03 by July 9, 2022, and the next training would be completed under this proposed exemption by December 31, 2023. Future Trainings would be required by December 31, 2024, 2025, and 2026.

Department's Response: The Department declines to make the Applicant's requested change, which would result in approximately 18 months between deadlines for annual Training, without justification that the requested change is equally protective of Covered Plans as the current annual training requirement.

56. *Flexibility to Abbreviate the Training for Returning Learners.* The Applicant requests confirmation that the content of Training need not be the same for new learners as for JPMC Affiliated QPAM personnel who have previously demonstrated proficiency with the subject matter of the Training. The Applicant states that: (a) the Training fully covers the subject matter required under PTE 2017–03 in significant detail and concludes with a knowledge assessment; (b) the Training has been administered for several years now; and (c) tenured employees have demonstrated comprehension of the subject matter by successfully completing the assessment. Accordingly, the Applicant requests confirmation that less detailed training can be used for personnel who have completed the full Training and successfully completed the accompanying assessment in a prior year.

Department's Response: The Department declines to make this requested change because the Applicant has not sufficiently demonstrated that less detailed Training for relevant JPMC personnel would be equally protective of Covered Plans as the training described in this proposed exemption.

57. *Notification Requirements.* If this proposed exemption is granted, the Applicant must provide a Notice to Interested Persons (NTIP) to Covered

[24] The Applicant further states that, the acquired manager would continue to rely on PTE 84–14 during that six-month period, which could be used to provide the necessary notices to the new affiliate's clients, to provide training to the new affiliate's employees, to make sure that systems are in place to implement the ERISA policies, etc.

Plan clients shortly after the proposed exemption is published in the **Federal Register**. The Applicant requests clarification that the NTIP requirement will be deemed met for each Covered Plan client via notice by **Federal Register** publication.

To the extent that the Department is unwilling to grant this request, the Applicant requests clarification that the NTIP requirement will be deemed met for each Covered Plan client by posting the required NTIP materials on the JPMC Affiliated QPAM or JPMC Related QPAM's website where the notice of obligations under PTE 2017–03 (Section I(j)(7)), and notice of the Exemption (Section I(k)), are currently posted provided such website is updated, as necessary, within 15 days of the publication of this exemption in the **Federal Register**.

In addition, with respect to the Notice requirements of this exemption, the Applicant requests clarification that such requirements will be deemed met for each Covered Plan client that received the equivalent notifications pursuant to PTE 2017–03, provided the website currently containing the materials stipulated is updated, as necessary, by May 10, 2023 (four months following the effective date of this exemption, if granted). Accordingly, such clients would not need to be notified again pursuant to this proposed exemption.

Department's Response: The Department declines to make the requested changes. The Applicant has not demonstrated that simply updating a website without sending a corresponding notification of the update to Covered Plans would represent adequate notice. Without a corresponding notice that directs Covered Plans to access the website, certain Covered Plans may never become aware that a new proposed exemption has been published.

58. *New Covered Plan Clients.* The Applicant represents that it is likely that many clients that retain the JPMC Affiliated QPAMs shortly after the effective date of this proposed exemption (January 10, 2023) would enter into investment management or comparable agreements with the JPMC Affiliated QPAMs that continue to include notification language referencing PTE 2017–03 and a link to the required materials thereunder. As the Department did through email clarification when PTE 2017–03 was published, the Applicant requests clarification that it would meet the notification requirements in this exemption for such clients that first become Covered Plan clients on or after January 10, 2023, but before May 10, 2023, to the extent the investment management or comparable agreements with the JPMC Affiliated QPAMs include notification language referencing PTE 2017–03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in this proposed exemption, if granted is updated, as necessary, by May 10, 2023. The Applicant expects that clients that first become Covered Plan clients on or after May 10, 2023, would enter into agreements with the JPMC Affiliated QPAMs that include notification language specifically referencing this exemption including links to the updated website containing the materials stipulated under such conditions.

Department's Response: The Department concurs with the Applicant's request regarding clients that first become Covered Plan clients on or after January 10, 2023, but before May 10, 2023.

59. *Audit and Compliance Officer Annual Review Timing.* The Applicant requests that the Department change the timing of the final two audits to begin on July 1, rather than July 10. The Applicant states that this change would enable the Auditor to request data and other necessary information as of the end of calendar quarters, facilitating the JPMC Affiliated QPAMs' ability to readily gather and deliver such material. The Applicant also requests the beginning of the Compliance Officer's Annual Review period to be delayed nine days, from January 1 to January 10.

Department's Response: The Department concurs with the Applicant's requests regarding the start date of the audit and the start date of the Compliance Officer Annual Review.

60. *Auditor Cooperation.* The Applicant states that continued relief under this exemption should not be conditioned upon the Auditor cooperating with, or disclosing workpapers to, the Department. The Applicant states that neither the JPMC Affiliated QPAMs nor Covered Plans can control the Independent Auditor's actions in this regard.

Department's Response: The Department declines to make this requested revision. JPMC should make every effort to ensure that the Auditor fully cooperates with the Department. The Department, also, is unaware of any instance where an Auditor failed to fully cooperate with the Department in connection with a QPAM Section I(g) audit.

61. *Definition of Covered Plan.* The Applicant requests clarification that a JPMC QPAM may include a disclaimer in a modification of a contract, arrangement, or agreement with a Covered Plan as follows: ''Notwithstanding the above, a JPMC Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where the modification is made in a bilateral document signed by the client, the client's attention is specifically directed toward the disclaimer, and the client is advised in writing that, with respect to any transaction involving the client's assets, the JPMC Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.''

Department's Response: The Department concurs with the Applicant's requested change.

62. Section I(j) requires each JPMC Affiliated QPAM to provide a notice of its obligations under that section to each Covered Plan. The Applicant requests the Department's confirmation that this condition would be met where the JPMC Affiliated QPAM previously agreed to the same obligations required by Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan.

Department's Response: The Department confirms that this condition would be met where the JPMC Affiliated QPAM previously agreed to the same obligations required by Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan.

Additional Changes to the Exemption's Conditions

63. Since granting PTE 2017–03, the Department has clarified and updated certain conditions included in QPAM Section I(g) exemptions to enhance protections for Covered Plans. These updated conditions appear in Sections III(a) and (b) of this proposed exemption.

Proposed Exemption's Protective Conditions

64. In developing administrative exemptions under ERISA Section 408(a), the Department implements its statutory directive to grant only exemptions that are appropriately protective and in the interest of affected plans and IRAs. The Department is proposing this exemption with conditions that would protect Covered Plans (and their participants and beneficiaries) and allow them to continue to utilize the services of the

JPMC Affiliated and Related QPAMs. If this proposed exemption is granted as proposed, it would allow Covered Plans to avoid costs and disruptions to investment strategies that may arise if such Covered Plans are forced, on short notice, to hire a different QPAM or asset manager because the JPMC Affiliated and Related QPAMs no longer are able to rely on the relief provided by PTE 84–14 due to the Conviction.

65. The Department notes that the protective conditions of this proposed exemption are essentially the same as the protective suite of conditions set forth under PTE 2017–03, with certain modifications for consistency with the Department's more recent individual exemptions relating to Section I(g) of PTE 84–14. Given the seriousness of the misconduct described in the DPA discussed above, the Department is adding two new conditions. The first provides that, other than former employees who worked on the Precious Metals Desk and U.S. Treasuries Desk within the CIB in the Global Markets division, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the conduct underlying the DPA. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the DPA.

The second provides that, apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA.

Statutory Findings

66. Based on the conditions included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an exemption under ERISA Section 408(a).

67. *The Proposed Exemption is ''Administratively Feasible.''* The Department has tentatively determined that the proposed exemption is administratively feasible because, among other things, a qualified independent auditor would be required to perform an in-depth audit covering each JPMC Affiliated QPAM's compliance with the terms of the exemption, and a corresponding written audit report would be provided to the Department and made available to the public. The Department notes that the independent audit would incentivize compliance while reducing the immediate need for review and oversight by the Department.

68. *The Proposed Exemption is ''In the Interest of the Covered Plans.''* The Department has tentatively determined that the proposed exemption would be in the interests of the participants and beneficiaries of affected Covered Plans. It is the Department's understanding, based on representations from the Applicant, that if the requested exemption is denied, Covered Plans may be forced to find other managers at a potentially significant cost. According to the Applicant, ineligibility under Section I(g) of PTE 84–14 would deprive the Covered Plans of the investment management services that these plans expected to receive when they appointed these managers. In this regard, an exemption denial could result in the termination of relationships that the fiduciaries of the Covered Plans have determined to be in the best interests of those plans.

69. *The Proposed Exemption Is ''Protective of the Plan.''* The Department has tentatively determined that the proposed exemption is protective of the interests of the participants and beneficiaries of Covered Plans. As described above, the proposed exemption is subject to a suite of conditions that include, but are not limited to: (a) the development and maintenance of the Policies; (b) the continued implementation of the Training; (c) a robust audit conducted by a qualified independent auditor; (d) the provision of certain agreements and warranties on the part of the JPMC Affiliated QPAMs; (e) specific notices and disclosures that inform Covered Plans of the circumstances necessitating the need for exemptive relief and the JPMC Affiliated QPAMs' obligations under this exemption; and (f) the designation of a Compliance Officer who must ensure the JPMC Affiliated QPAMs continue to comply with the Policies and Training requirements of this exemption.

Summary

70. This proposed exemption would provide relief from certain of the restrictions set forth in ERISA Section 406 and Code Section 4975(c)(1). No relief or waiver of a violation of any other law would be provided by this proposed exemption. The relief set forth in this proposed exemption would terminate immediately if, among other things, an entity within the JPMC corporate structure were convicted of any crime covered by Section I(g) of PTE 84–14 (other than the Conviction). While such an entity could request a new individual prohibited transaction exemption in that event, the Department is not obligated to grant such request. Consistent with this proposed exemption, the Department's consideration of additional exemptive relief is subject to the findings required under ERISA Section 408(a) and Code Section 4975(c)(2).

71. When interpreting and implementing this exemption, the Applicant and the JPMC Affiliated QPAMs should resolve any ambiguities in light of the exemption's protective purposes. To the extent additional clarification is necessary, these persons or entities should contact EBSA's Office of Exemption Determinations at 202–693–8540.

72. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an individual exemption under ERISA Section 408(a) and Code Section 4975(c)(2).

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within thirty (30) days of the publication of the notice of proposed four-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner approved by the Department and will contain the documents described therein and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written

comments and/or requests for a hearing must be received by the Department within sixty (60) days of the date of publication of this proposed four-year exemption in the **Federal Register**. All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) and/or Code Section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B); nor does it affect the requirement of Code Section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA Section 408(a) and/or Code Section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption would be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction; and

(4) The proposed exemption would be subject to the express condition that the material facts and representations contained in the application are true and complete at all times, and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

Proposed Exemption

The Department is considering granting a four-year exemption under the authority of ERISA Section 408(a) and Internal Revenue Code (or Code) section 4975(c)(2), and in accordance with the procedures set forth in exemption procedure regulation.[25]

Section I. Definitions

(a) The term ''Conviction'' means the judgment of conviction against JPMC for violation of the Sherman Antitrust Act, 15 U.S.C. 1, entered in the District Court for the District of Connecticut (the District Court) (case number 3:15–cr–79–SRU). For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in case number 3:15–cr–79–SRU (the Plea Agreement).

(b) The term ''Covered Plan'' means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to Code section 4975 (an ''IRA''), in each case, with respect to which a JPMC Affiliated QPAM relies on PTE 84–14, or with respect to which a JPMC Affiliated QPAM (or any JPMC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the JPMC Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Further, a JPMC Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where the modification is made in a bilateral document signed by the client, the client's attention is specifically directed toward the disclaimer, and the client is advised in writing that, with respect to any transaction involving the client's assets, the JPMC Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

(c) The term ''Exemption Period'' means January 10, 2023, through January 9, 2027.

(d) The term ''JPMC'' means JPMorgan Chase and Co.

(e) The term ''JPMC Affiliated QPAM'' means a ''qualified professional asset manager,'' as defined in Section VI(a) of PTE 84–14, that relies on the relief provided by PTE 84–14 or represents to Covered Plans that it qualifies as a QPAM, and with respect to which JPMC is a current or future ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14). The term ''JPMC Affiliated QPAM'' excludes the parent entity, JPMC, the entity implicated in the criminal conduct that is the subject of the Conviction.

(f) The term ''JPMC Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to whom JPMC owns a direct or indirect five percent or more interest but is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

Section II. Covered Transactions

Under this proposed exemption, the JPMC Affiliated QPAMs and the JPMC Related QPAMs, as defined in Sections I(e) and I(f), respectively, would not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption) notwithstanding the Conviction, as defined in Section I(a), during the Exemption Period,[26] provided that the conditions set forth in in Section III below are satisfied.

Section III. Conditions

(a) Other than a single individual who worked for a non-fiduciary business within JPMorgan Chase Bank and who had no responsibility for, nor exercised any authority in connection with, the management of plan assets, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers,

[25] 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

[26] Section I(g) of PTE 84–14 generally provides relief only if ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including violation of the Sherman Antitrust Act, Title 15 United States Code, Section 1.

directors, agents other than JPMC, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the Conviction. For purposes of this proposed exemption, ''participate in'' refers not only to active participation in the criminal conduct of JPMC that is the subject of the Conviction, but also to knowing approval of the criminal conduct or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual's supervisors, and to the Board of Directors;

(b) Apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents other than JPMC, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Conviction;

(c) The JPMC Affiliated QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction.

(d) At all times during the Exemption Period, no JPMC Affiliated QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such JPMC Affiliated QPAM in reliance on PTE 84–14, or with respect to which a JPMC Affiliated QPAM has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM class exemption, to enter into any transaction with JPMC, or to engage JPMC to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a JPMC Affiliated QPAM or a JPMC Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A JPMC Affiliated QPAM or a JPMC Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or Code Section 4975 (an IRA) in a manner that it knew or should have known would: further the criminal conduct that is the subject of the Conviction; or cause the JPMC Affiliated QPAM, the JPMC Related QPAM, or their affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, JPMC will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) and (C), with respect to Covered Plan assets; provided, however, that JPMC will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA Section 3(21)(A)(ii) or Code Section 4975(e)(3)(B);

(h)(1) Each JPMC Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of the JPMC Affiliated QPAM are conducted independently of the corporate management and business activities of JPMC;

(ii) The JPMC Affiliated QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The JPMC Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the JPMC Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete to the best of such QPAM's knowledge at that time;

(v) To the best of the JPMC Affiliated QPAM's knowledge at the time, the JPMC Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The JPMC Affiliated QPAM complies with the terms of this exemption; and

(vii) Any violation of or failure to comply with an item in subparagraphs (ii) through (vi) is corrected as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the general counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A JPMC Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each JPMC Affiliated QPAM must continue to implement a training program (the Training) conducted at least annually for all relevant JPMC Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training required under this exemption may be conducted electronically and must: (i) at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and (ii) be conducted by a professional who has been prudently

selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption;

(i)(1) Each JPMC Affiliated QPAM must submit to an audit conducted every two years by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of and each JPMC Affiliated QPAM's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies. Each audit must cover the preceding consecutive twelve (12) month period. The first audit must cover the period from July 10, 2022, through July 9, 2023, and must be completed by December 31, 2023. The second audit must cover the period from July 1, 2024, through June 30, 2025, and must be completed by December 31, 2025. The third audit must cover the period from July 1, 2026, through January 9, 2027, and must be completed by July 8, 2027;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, each JPMC Affiliated QPAM and, if applicable, JPMC, will grant the auditor unconditional access to its businesses, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access will be provided only to the extent that it is not prevented by state or federal statute, or involves communications subject to attorney client privilege and may be limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each JPMC Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each JPMC Affiliated QPAM's operational compliance with the Policies and Training conditions. In this regard, the auditor must test, for each QPAM, a sample of the QPAM's transactions involving Covered Plans sufficient in size and nature to afford the auditor a reasonable basis to determine the QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period for completing the audit described in Section I(i)(1), the auditor must issue a written report (the Audit Report) to JPMC and the JPMC Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. At its discretion, the auditor may issue a single consolidated Audit Report that covers all the JPMC Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) the adequacy of each JPMC Affiliated QPAM's Policies and Training; each JPMC Affiliated QPAM's compliance with the Policies and Training conditions; the need, if any, to strengthen such Policies and Training; and any instance of the respective JPMC Affiliated QPAM's noncompliance with the written Policies and Training described in Section I(h) above. The JPMC Affiliated QPAM must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective JPMC Affiliated QPAM. Any action taken, or the plan of action to be taken, by the respective JPMC Affiliated QPAM must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective JPMC Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a JPMC Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular JPMC Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor, as required by Section I(i)(3) and (4) above; and

(ii) The adequacy of the most recent Annual Review described in Section I(m);

(6) The auditor must notify the respective JPMC Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the JPMC Affiliated QPAM with respect to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption and that to the best of such officer's knowledge at the time, the JPMC Affiliated QPAM has addressed, corrected or remedied any noncompliance and inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. The certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person referenced in the Statement of Facts that gave rise to the Conviction, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts underlying the Conviction, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct;

(8) The Risk Committee of JPMC's Board of Directors is provided a copy of each Audit Report, and a senior executive officer with a direct reporting line to the highest-ranking legal compliance officer of JPMC must review the Audit Report for each JPMC Affiliated QPAM and certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each JPMC Affiliated QPAM provides its certified Audit Report, by electronic mail to *e-oed@dol.gov.* This delivery must take place no later than

thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each JPMC Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each JPMC Affiliated QPAM and the auditor must submit to *e-OED@dol.gov* any engagement agreement(s) executed pursuant to the engagement of the auditor under this exemption no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request access to all the workpapers created and utilized in the course of the audit, for inspection and review, provided such access and inspection is otherwise permitted by law; and

(12) JPMC must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and JPMC;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a JPMC Affiliated QPAM and a Covered Plan, the JPMC Affiliated QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and comply with the standards of prudence and loyalty set forth in ERISA Section 404 with respect to each such Covered Plan, to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a JPMC Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such JPMC Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14, other than the Conviction. This condition applies only to actual losses caused by the JPMC Affiliated QPAM's violations. Actual losses include losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the JPMC Affiliated QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the JPMC Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by the QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and the restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event the withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the JPMC Affiliated QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of JPMC and its affiliates, or damages arising from acts outside the control of the JPMC Affiliated QPAM; and

(7) Each JPMC Affiliated QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For all other prospective Covered Plans, the JPMC Affiliated QPAM must agree to its obligations under this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–15 or PTE 2017–03 that meets the terms of this condition. This condition will also be met where the JPMC Affiliated QPAM previously agreed to the same obligations required by this Section I(j) in an updated investment management agreement between the JPMC Affiliated QPAM and a Covered Plan. Notwithstanding the above, a JPMC Affiliated QPAM will not violate this condition solely because a Covered Plan refuses to sign an updated investment management agreement;

(k) Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM provides notice of the exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14 to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a JPMC Affiliated QPAM, or the sponsor of an investment fund in any case where a JPMC Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with a JPMC Affiliated QPAM after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the JPMC Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the exemption). Notwithstanding the above, a JPMC Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

For Covered Plan clients that first become clients on or after January 10, 2023, but before May 10, 2023, a JPMC Affiliated QPAM will meet the requirements of this Section (k) to the extent the investment management or comparable agreements with the JPMC Affiliated QPAM includes notification language referencing PTE 2017–03 and a link to the required materials, provided the website containing such materials stipulated under the notification conditions in this proposed exemption, if granted, is updated, as necessary, by May 10, 2023;

(l) The JPMC Affiliated QPAM must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction. If, during the Exemption Period, an entity within the JPMC corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction), relief in this exemption would terminate immediately;

(m)(1) Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (m), each relevant line of business within a JPMC Affiliated QPAM may designate its own Compliance Officer(s). Notwithstanding the above, no person, including any person referenced in the Statement of Facts that gave rise to the Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the Statement of Facts, by any party, may be involved with the designation or responsibilities required by this condition, unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of each twelve-month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management.

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The annual Exemption Review includes a review of the JPMC Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2017–03; any material change in the relevant business activities of the JPMC Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the JPMC Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the prior year; (B) sets forth any instance of noncompliance discovered during the prior year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the prior year and any related correction taken to date have been identified in the Exemption Report; and (D) the JPMC Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of JPMC and each JPMC Affiliated QPAM to which such report relates; the head of compliance and the general counsel (or their functional equivalent) of JPMC and the relevant JPMC Affiliated QPAM; and must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) The annual Exemption Review, including the Compliance Officer's written Report, must be completed within three (3) months following the end of the period to which it relates. The annual Exemption Reviews under this exemption must cover the following periods: January 10, 2023, through December 31, 2023; January 1, 2024, through December 31, 2024; January 1, 2025, through December 31, 2025; and January 1, 2026, through January 9, 2027.

(n) JPMC imposes internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions;

(o) JPMC complies in all material respects with the requirements imposed by a U.S. regulatory authority in connection with the Conviction;

(p) Each JPMC Affiliated QPAM maintains records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which the JPMC Affiliated QPAM relies upon the relief in this exemption;

(q) During the Exemption Period, JPMC must: (1) immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by JPMC or any of its affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Within 60 days after the effective date of this exemption, each JPMC Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the JPMC Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed. If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the

requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(s) A JPMC Affiliated QPAM will not fail to meet the terms of this exemption solely because a different JPMC Affiliated QPAM fails to satisfy a condition for relief described in Sections III(c), (d), (h), (i), (j), (k), (l), (p) or (r); or if the independent auditor described in Section III(i) fails to comply with a provision of the exemption, other than the requirement described in Section III(i)(11), provided that such failure did not result from any actions or inactions of JPMC or its affiliates; and

(t) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

(u) Other than former employees who worked on the Precious Metals Desk and U.S. Treasuries Desk within the CIB in the Global Markets division, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, agents and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, and did not participate in the conduct underlying the September 29, 2020, deferred prosecution agreement entered into between the Department of Justice and JPMC, JPMorgan Chase Bank, and JPMS (the DPA). Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and JPMC Related QPAMs who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the DPA.

(v) Apart from a non-fiduciary line of business within JPMorgan Chase Bank, the JPMC Affiliated QPAMs and the JPMC Related QPAMs (including their officers, directors, and agents, and employees of such JPMC QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA. Further, any other party engaged on behalf of the JPMC Affiliated QPAMs and the JPMC Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the conduct underlying the DPA.

Effective Date: If granted, the exemption will be effective for a period of four years beginning on January 10, 2023, and ending on January 9, 2027.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2022–22861 Filed 10–19–22; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Privacy Act of 1974: Systems of Records

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of a revised system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the National Credit Union Administration (NCUA) gives notice of a proposal to revise an existing Privacy Act system of records. The revised system is the Examination and Supervision System (ESS), NCUA–22. The ESS will continue to be used for NCUA's statutorily mandated examination and supervision activities, including the coordination and conduct of examinations of credit unions, supervisory evaluations and analyses, enforcement actions and Federal court actions. NCUA may coordinate with other financial regulatory agencies on matters related to the safety and soundness of credit unions. This revised system will continue to track and store examination and supervision documents created during the performance of the NCUA's statutory duties including recordings of meetings between NCUA and credit unions.

DATES: Submit comments on or before November 21, 2022. This action will be effective without further notice on November 21, 2022 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments by any of the following methods, but please send comments by one method only:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA website: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Lisa Dolin, Business Innovation Officer, Office of Business Innovation, the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314, or Linda Dent, Senior Agency Official for Privacy, Office of General Counsel, the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION: This notice informs the public of NCUA's proposal to revise an existing system of records. Specifically, the NCUA is proposing to add the recordings of meetings between individuals representing the NCUA and credit unions to the Categories of Records in the System section. This revision is being proposed to reflect current and/or anticipated changes to NCUA's exam procedures. The proposed revision to the system is being established under NCUA's authority in the Federal Credit Union Act, 12 U.S.C. 1751, *et seq.* The information collected in the NCUA–22 system of records continues to be used for NCUA's statutorily mandated examination and supervision activities, including the coordination and conduct of examinations of credit unions, supervisory evaluations and analyses, enforcement actions and Federal court actions.

This notice of revision satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is a significant change to the agency's systems of records. The format of NCUA–22 aligns with the guidance set forth in OMB Circular A–108. NCUA–22 is published in full below. All of the NCUA's SORNs are available at *www.ncua.gov.*

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

SYSTEM NAME AND NUMBER:

Examination and Supervision System (ESS)—NCUA–22

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The system is operated and maintained in part by NCUA staff, and in part by third-party vendors. Please contact the system managers (below) for more information.

SYSTEM MANAGER(S):

Director of the Office of Business Innovation and the Director of the Office of Examination and Insurance, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1751, *et seq.*

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained for the purpose of carrying out the NCUA's statutorily mandated examination and supervision activities, including the coordination and conduct of examinations, supervisory evaluations and analyses, enforcement actions and actions in Federal court. NCUA may coordinate with other financial regulatory agencies on matters related to the safety and soundness of credit unions. The information collected in this system also supports the conduct of investigations or other supervisory or legal actions by the NCUA or other supervisory or law enforcement agencies. This may result in criminal referrals, referrals to Offices of Inspectors General, or the initiation of administrative or Federal court actions. This system continues to track and store examination and supervision documents created during the performance of the NCUA's statutory duties. The information also is used for administrative purposes such as quality control, performance metrics, and improvements to examination and supervision processes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are (1) Current and former directors, officers, employees, and agents of credit unions; (2) Current and former members who are or have been serviced by credit unions; (3) Current and former credit union service organization representatives; (4) Other individuals engaged in business with the NCUA for a specific purpose (such as outside counsel); and (5) NCUA employees and contractors, and (6) State Supervisory Authority staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain (1) Contact information about credit union officials (such as members of the Board of Directors, Audit Committee Chair, Chief Executive Officer, Chief Compliance Officer, Internal Auditor, and Independent Auditor), such as name, address, phone number, and email address; (2) Demographic and financial information about individual credit union members, such as name, address, Social Security number, account information, loan and share information, and publicly available information; (3) Information about NCUA employees assigned to credit union examination and supervision tasks, such as name, work phone number, work email address, and other employment information; (4) User information, such as name, email address, and role about other users of the system (such as contractors, credit union representatives, State Supervisory Authority staff, and Credit Union Service Organization representatives (CUSOs) and; (5) recordings of meetings between individuals representing the NCUA and credit unions.

RECORD SOURCE CATEGORIES:

The information in the system about credit union officials and individual credit union members is generally provided by credit unions and CUSOs. NCUA employees and contractors, and State Supervisory Authorities may add additional information to the system as part of their assigned supervision and examination activities (including analytics/business intelligence activities). Some of the information may be from third parties with relevant information about covered persons or service providers, or existing databases maintained by other Federal and state regulatory associations, law enforcement agencies, and related entities. Whenever practicable, the NCUA collects information about an individual directly from that individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside NCUA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. NCUA's Standard Routine Uses apply to this system of records.

2. To a financial institution affected by enforcement activities or reported criminal activities;

3. To the Internal Revenue Service and appropriate State and local taxing authorities;

4. To another federal or state agency to: (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

5. To a grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court;

6. To a court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding related to the NCUA's mission of providing a safe and sound credit union system.

7. To appropriate agencies, entities, and persons, including but not limited to potential expert witnesses, witnesses, or translators, in the course of supervision or enforcement related investigation;

8. To appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy, or license; and

9. To an entity or person that is the subject of supervision or enforcement activities including examinations, investigations, administrative proceedings, and litigation, and the attorney or non-attorney representative for that entity or person.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records and backups are stored on dedicated secure servers, approved by NCUA's Office of the Chief Information Officer (OCIO), within a FedRAMP-authorized commercial Cloud Service Provider's (CSP) Infrastructure as a Service (IaaS) hosting environment and accessed only by authorized personnel. No paper files are maintained.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records pertaining to individual credit union members are not generally retrieved outside of a scheduled examination or supervision contact.

However, such records can be retrieved by credit union name, charter number, credit union member's name or other record in the system. The system includes advanced search features that function essentially as a full-text search tool.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a NCUA records disposition schedule approved by NARA. Records existing on computer storage media are destroyed according to the applicable NIST-compliant media sanitization policy.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

NCUA has implemented the appropriate administrative, technical, and physical controls in accordance with the Federal Information Security Modernization Act of 2014, Pub.L. 113–283, S. 2521, and NCUA's information security policies to protect the confidentiality, integrity, and availability of the information system and the information contained therein. Access is limited to individuals authorized through NIST-compliant Identity, Credential, and Access Management policies and procedures. The records are maintained behind a layered defensive posture consistent with all applicable federal laws and regulations, including OMB Circular A–130 and NIST Special Publications 800–37 and 800–53.

RECORD ACCESS PROCEDURES:

Individuals wishing access to their records should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.
3. The address to which the record information should be sent.
4. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. Individuals requesting access must also comply with NCUA's Privacy Act regulations regarding verification of identity and access to records (12 CFR 792.55).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment to their records should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.
3. A statement specifying the changes to be made in the records and the justification therefore.
4. The address to which the response should be sent.
5. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

NOTIFICATION PROCEDURES:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Senior Agency Official for Privacy, NCUA, 1775 Duke Street, Alexandria, VA 22314, and provide the following information:

1. Full name.
2. Any available information regarding the type of record involved.
3. The address to which the record information should be sent.
4. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf. Individuals requesting access must also comply with NCUA's Privacy Act regulations regarding verification of identity and access to records (12 CFR 792.55).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Federal criminal law enforcement investigatory reports maintained as part of this system may be the subject of exemptions imposed by the originating agency pursuant to 5 U.S.C. 552a(j)(2).

HISTORY:

84 FR 11331.

[FR Doc. 2022–22802 Filed 10–19–22; 8:45 am]

BILLING CODE 7535–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m., Thursday, October 20, 2022.

PLACE: Via conference call.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Regular Board of Directors meeting.

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive Session

Agenda

I. CALL TO ORDER
II. Sunshine Act Resolution To Proceed Without One Week Public Notice
III. Sunshine Act Approval of Executive (Closed) Session
IV. Executive Session Report From CEO
V. Executive Session: Report From CFO
VI. Executive Session: General Counsel Report
VII. NeighborWorks Compass—Future Planning Discussion
VIII. Recognition of Service for Governor Bowman
IX. Action Item Approval of Minutes
X. Action Item FY2022 HUD Housing Counseling Award
XI. Action Item Revised Whistleblower Policy
XII. Action Item Revised Code of Ethical Conduct
XIII. Discussion Item September 8, 2022 Audit Committee Report
XIV. Discussion Item Report from CIO
XV. Discussion Item FY2023 Corporate Scorecard
XVI. Discussion Item DC/NYC Office Relocation Status Update
XVII. Management Program Background and Updates
XVIII. Adjournment

PORTIONS OPEN TO THE PUBLIC: Everything except the Executive Session.

PORTIONS CLOSED TO THE PUBLIC: Executive Session.

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2022–22898 Filed 10–18–22; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–607; NRC–2022–0114]

Regents of the University of California, University of California-Davis McClellan Nuclear Research Center Training, Research, Isotopes, General Atomics Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering renewal of Operating Facility License No. R–130, held by the Regents of the University of California for the University of California Davis (UCD, the licensee), for the continued operation of the McClellan Nuclear Research Center (MNRC) Training, Research, Isotopes, General Atomics (TRIGA) reactor (the reactor, facility), located in the city of North Highlands, Sacramento County, California. In connection with the renewed license, the licensee also seeks to operate at a maximum licensed power level of 1.0 megawatt-thermal (MWt). The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the proposed action.

DATES: The EA and FONSI referenced in this document are available on October 20, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0114 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0114. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this notice.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Folk, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–6944; email: *Kevin.Folk@nrc.gov;* or Geoffrey Wertz, Office of Nuclear Reactor Regulation, telephone: 301–415–0893; email: *Geoffrey.Wertz@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering renewal of Facility Operating License No. R–130, held by Regents of the University of California, which authorizes operation of the MNRC training and isotopes production TRIGA reactor, located in North Highlands, Sacramento County, California. The renewed license would authorize continued operation of the MNRC training and isotopes production TRIGA reactor for an additional 20 years from the date of issuance of the renewed license. By letter dated July 6, 2020, UCD revised its June 11, 2018, license renewal application and associated environmental report to reflect its decision to reduce the licensed thermal operating power level to a maximum of 1.0 MWt, to eliminate pulsing capability and to exclude irradiation of explosive materials in the reactor tank.

As required by section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Criteria for and identification of licensing and regulatory actions requiring environmental assessments,'' the NRC staff prepared this EA documenting its environmental review. Based on the results of the NRC staff's environmental review as documented in the EA that follows, the NRC has determined not to prepare an environmental impact statement for the proposed renewed license and is issuing a FONSI in accordance with 10 CFR 51.32, ''Finding of no significant impact.''

II. Environmental Assessment

Facility Site and Environs

The UCD MNRC reactor is a natural-convection-cooled TRIGA-type reactor that began operation in January 1990, by the U.S. Air Force at the McClellan Air Force Base. The NRC issued Facility Operating License No. R–130 on August 13, 1998, and transferred the license to the Regents of the University of California by letter dated April 13, 1999. The reactor is housed in the three-story MNRC building within the McClellan Business Park, on land that was part of the former McClellan Air Force Base, and located approximately 8 miles (mi) (13 kilometers (km)) northeast of Sacramento, California. The UCD has operated the MNRC reactor to support educational purposes, research, outreach programs, and the United States' energetic device industry.

The MNRC reactor is housed in a room constructed of reinforced concrete and corrugated steel. The MNRC reactor is positioned in a large, water-filled cylindrical tank, which provides both cooling and shielding. The MNRC reactor is fueled with standard TRIGA reactor fuel elements, which are composed of low-enriched uranium-zirconium-hydride fuel, and clad in stainless steel. Natural circulation of the primary coolant in the reactor tank transfers the heat from the reactor core to the primary cooling system, and through a water-to-water heat exchanger connected to the secondary cooling system. The secondary cooling system rejects the heat to the environment through the facility's mechanical draft cooling tower. Makeup water is supplied by the Sacramento Suburban Water District. The MNRC reactor is equipped with systems to monitor radiation. The ventilation system functions to ensure that there are no uncontrolled or unmonitored gaseous effluent releases to the atmosphere. Radioactive effluents released from the stack are continuously monitored for isotopic analysis and radioactive quantity. The radioactive doses to any member of the public are maintained at levels that are below the limits of 10 CFR part 20, ''Standards for Protection Against Radiation.''

A detailed description of the MNRC reactor and its operations can be found in the revised safety analysis report (SAR), (included in the list of documents associated with the license renewal application and can be found in Section IV ''Availability of Documents'' at the end of this notice).

Description of the Proposed Action

The proposed action would renew Facility Operating License No. R–130 for a period of 20 years from the date of issuance of the renewed license. The proposed action would authorize the MNRC reactor to operate at a nominal steady-state power of 1.0 MWt, without pulsing and square wave operation, and would exclude the irradiation of explosive materials in the reactor tank. The proposed action is in accordance with the licensee's application dated June 11, 2018, as supplemented on July 6, 2020, and September 22, 2021 (the

renewal application). The NRC issued the current operating license, as amended, on August 13, 1998. The current license was set to expire at midnight on August 13, 2018. In accordance with 10 CFR 2.109, ''Effect of timely renewal application,'' the existing license remains in effect until the NRC takes final action on the renewal application.

Need for the Proposed Action

The proposed action is needed to allow the continued operation of the MNRC reactor to provide irradiation services for various researchers at universities worldwide, U.S. national laboratories, and U.S. private industry. Irradiation services include seed mutagenesis studies, geochronology irradiations, and radiation hardness test for electronics. A significant use of the facility is the performance of neutron radiography on energetic devices used for U.S. Department of Defense applications and the space industry. Further, the MNRC reactor provides educational experiences for UCD's students and students at other regional universities. UCD also offers an outreach program at the MNRC to expose high school and middle school students to the nuclear sciences.

Environmental Impacts of the Proposed Action

The environmental impacts of the proposed action are described in this notice. As discussed further, the proposed action will not have a significant environmental impact. The proposed action will not require any physical changes to the facility, and the impacts are similar to those occurring during past operations. Separate from this EA, the NRC staff is performing a safety evaluation report (SER), which will be available with the renewed license, if issued.

Radiological Impacts

Environmental Effects of Reactor Operations

Gaseous radioactive effluents resulting from the routine operation of the MNRC are Ar–41 and N–16. These nuclides are released to the environment from the reactor building from an exhaust stack on the roof that combines the ventilation exhausts from both the reactor building interior and the radiography bays. The MNRC stack discharge length is 60 ft (18.3 m) and has an airflow rate of 5,678 cubic feet (160.8 cubic meters) per minute. Because the half-life of N–16 is approximately 7 seconds, the release from the reactor stack is insignificant because most of the N–16 produced in the reactor coolant would decay before reaching the stack. Ar–41 is by far the most significant radionuclide released as a gaseous effluent during normal reactor operations. The maximum release of Ar–41 would occur from continuous operation at full power. The licensee calculated the Ar–41 concentration to be 4.45×10^{-7} μCi/ml exiting the exhaust stack under full power operations. The annual release of Ar–41 under these conditions would be 35.9 curies per year (Ci/yr). From this information, the licensee calculated the maximum annual dose to a member of the public to be 1.5 millirem (mrem). This meets the 100 mrem per year (mrem/yr) (1 millisieverts per year (mSv/yr) dose equivalent to the maximally exposed individual in 10 CFR 20.1301, ''Dose limits for individual members of the public.'' The licensee's annual reports, as supplemented by UCD's response to the NRC staff's request for additional information, for the 5 years of operation from 2016 through 2020 show that the maximum actual recorded release of Ar–41 was 35.9 Ci in 2020. As reflected in UCD's response, this exposure would result in a conservative estimated annual dose of 1.5 mrem/yr (0.015 mSv/yr) to a member of the public. This dose is well below the 100 mrem/yr (1 mSv/yr) limit specified in 10 CFR 20.1301. Further, this annual radiation dose of 1.5 mrem/year does not exceed the as low as reasonably achievable (ALARA) air emissions dose constraint of 10 mrem (0.1 mSv) specified in 10 CFR 20.1101, ''Radiation protection programs,'' paragraph (d).

Liquid radioactive wastes are produced as a result of normal operation of the MNRC reactor, and typically consist of miscellaneous neutron activation product impurities and fission products in the reactor coolant. Since most of these activation products can be removed from the reactor coolant by the filtration system and the demineralizer resins, these radioactive materials are typically disposed as solid radioactive waste. It is UCD/MNRC policy to minimize the release of radioactive liquid waste and, when possible, liquid radioactive wastes that are generated are normally converted into a solid waste for offsite disposal. Nevertheless, UCD/MNRC may release liquid radioactive effluent to the sanitary sewer in compliance with 10 CFR 20.2003 limits and sanitary sewer acceptance criteria. The MNRC annual reports for the 5 years of operation from 2016 through 2020 show that the MNRC had no liquid radioactive waste releases into the sanitary sewer system.

Low-level solid radioactive waste generated from reactor operations at the MNRC are primarily demineralizer resins, mechanical filters, used encapsulations from experiment irradiations, rags, paper towels, plastic bags, rubber gloves, and other miscellaneous contaminated items. These wastes are packaged in metal drums or boxes within the restricted area and temporarily stored in a weatherproof enclosure at the site boundary until shipment for disposal or transfer to a waste broker. UCD last shipped low-level radioactive waste from the MNRC in 2014. The shipment consisted of one B–25 box containing 98 cubic ft (2.8 cubic m) of contaminated materials with an activity of 54 microcuries. Once transferred, the low-level waste broker ships and disposes of the waste in accordance with all applicable regulations for radioactive materials.

No spent (irradiated) fuel will be permanently stored at MNRC either in the reactor tank or in the fuel pits during the license renewal term. The U.S. Department of Energy provides fuel for use at the MNRC and retains title to the fuel. It is also obligated to take the fuel from the site for final disposition when it can no longer be used in the reactor. UCD does not anticipate any changes in spent fuel handling during the proposed license renewal term.

As described in chapter 11 of the SAR, and verified through NRC staff review of the licensee's annual reports for the 5 years of operation from 2016 through 2020, personnel exposures are well within the limits set by 10 CFR 20.1201, ''Occupational dose limits for adults,'' and are ALARA in accordance with 10 CFR 20.1101(b). The licensee tracks exposures of personnel monitored with dosimeters, and the annual reports for the 5 years of operation from 2016 through 2020 show that the personnel exposures (total effective dose equivalent) were usually less than one percent of the occupational limit of 5,000 mrem (50 mSv) per year. The greatest individual exposure (annual) over the last 5 years was 149 mrem (1.49 mSv) in 2018. No changes in reactor operation that would lead to an increase in occupational dose are expected or proposed as a result of the proposed action.

The radiation monitoring systems associated with reactor operations at the MNRC are provided and maintained as a means of ensuring compliance with radiation limits established under 10 CFR part 20. The MNRC monitoring systems consist of area monitors, continuous air monitors, portable radiation survey instruments, personnel

monitors, and stack gas and particulate monitors, as described in section 11.1.5 of the SAR. The stack particulate and gas monitoring systems measure the beta-gamma activity emitted by radioactive particulates and the activity of gaseous radioactive nuclides, respectively, that are exhausted through the MNRC exhaust stack. Perimeter monitoring at the MNRC consists of dosimeters that detect X-ray and gamma radiation.

The licensee conducts an environmental monitoring program to record and track the radiological impact of the MNRC operation on the surrounding unrestricted area. The environment outside the reactor building is monitored by passive optically stimulated luminescence dosimeters, which are replaced quarterly, and sent to the vendor for exposure analysis. The dosimeters are located at 37 sites within the McClellan Industrial Park and 7 sites outside the industrial park. MNRC Health Physics Branch staff analyze the results to ensure that the reported doses are below 10 CFR part 20 limits, and to monitor for trends that would indicate unusual or elevated exposures. The annual reports for the 5 years of operation from 2016 through 2020 show that the measured doses were below 30 mrem (0.3 mSv) (excluding natural background exposure) and well below the specified limits to the public as required by 10 CFR part 20. Year-to-year trends in exposures are consistent between monitoring locations. Also, no apparent correlation exists between total annual reactor operation and annual exposures measured at the monitoring locations.

The licensee also monitors offsite groundwater. Samples are collected at a public water supply well located approximately 2 mi (3.2 km) west of the MNRC in the city of Sacramento. Water samples are collected by a UCD contractor on a quarterly basis and analyzed for gross alpha, gross beta, and tritium, and also by gamma spectroscopy. Review of the annual reports over the last 5 years of operation (2016 through 2020) shows no discernible effect of MNRC operations on groundwater quality. Tritium results have been below the minimum detectable activity range.

Based on the review of monitoring data for the period 2016 through 2020, the NRC staff concludes that operation of the MNRC does not have any significant radiological impact on the surrounding environment. No changes in reactor operation that would affect off-site radiation levels are expected or proposed as a result of the proposed action. Therefore, the proposed action would not have a significant radiological impact.

Environmental Effects of Accidents

Accident scenarios are discussed in Chapter 13 of the SAR. The accidents analyzed in chapter 13 range from anticipated events to a postulated fission product release with radiological consequences that exceed those of any accident considered to be credible. This limiting accident is referred to as the maximum hypothetical accident (MHA). The licensee considers a cladding rupture of one highly irradiated fuel element with no decay followed by instantaneous release of fission products into the air to be its MHA for the MNRC. This accident would involve the release of halogens and noble gases to the reactor confinement building and into the environment. The licensee uses this scenario to calculate the maximum concentration of fission products that might be present in the reactor room air following the MHA. The licensee calculated doses to facility personnel during a 5 minute evacuation duration, and also calculated the dose to a member of the public outside the facility during the 2 hours it would take the entire plume of released radioactive material to pass. The licensee estimated an occupational dose of 300 mrem (3 mSv), and a dose of less than 1 mrem (0.01 mSv) to the maximally-exposed member of the public.

Separate from this EA, the NRC staff is reviewing UCD's MHA analyses of the potential radiological consequences that may result from the proposed license renewal. The results of the NRC staff's safety review will be documented in a safety evaluation report that will be made publicly available. If the NRC concludes that the radiological consequences of the MHA are within 10 CFR part 20 dose limits, then the MHA and the proposed action would not have a significant impact with respect to the radiological consequences of the MHA.

Conclusion—Radiological Impacts

In the application for license renewal, the licensee has not proposed any physical changes to the reactor facility design, or adverse changes to facility operating conditions, that would significantly affect facility operation; therefore, there would be no changes in the types or quantities of routine effluents that may be released off site. The licensee has systems in place for controlling the release of radiological effluents and implements a radiation protection program to monitor personnel exposures and releases of radioactive effluents. Accordingly, there would be no increase in routine occupational or public radiation exposure as a result of the proposed action. Based on the information previously discussed, the NRC staff finds that the proposed action will not significantly increase the probability and consequences of accidents.

The license renewal would not significantly change reactor operations. As previously discussed, information in the application and data reported to the NRC by the licensee for the last 5 years of reactor operation were evaluated to determine the radiological impact. The NRC staff found that releases of radioactive material and personnel exposures were all well within applicable regulatory limits. Based on this evaluation, the continued operation of the reactor would have no significant radiological impacts.

Non-Radiological Impacts

The proposed action does not involve any change in the operation of the reactor, any change in the emissions, or any change in the heat load dissipated to the environment. No new construction or other land disturbing activities are proposed. The proposed action would not result in any land use changes or increase in noise or air emissions, and would not have a significant impact on air quality, noise, visual resources, ecological resources. The proposed license renewal would have no direct impacts on surface water or groundwater resources because water would continue to be supplied from the Sacramento Suburban Water District's public water supply system and the licensee proposes no increase in water use or effluent discharge. Heat produced by MNRC reactor operations is ultimately released to the environment through the secondary cooling system and the cooling tower. No increased thermal effects on the environment would result from the proposed action.

UCD would continue to use small quantities of commercially available water treatment chemicals in the reactor secondary cooling system and in cooling tower to ensure proper operation of the system. The secondary coolant system is essentially a recirculation loop, so much of the water and the chemical compounds are retained in the system. Some chemical residuals may enter the environment through evaporation in the cooling tower and through an overflow line that is routed to the sanitary sewer in accordance with sewer acceptance criteria. These chemical compounds are approved for use by the U.S. Environmental Protection Agency or other applicable State regulatory agencies and their use does not

represent a significant environmental impact.

Hazardous chemicals may be used in experiments at the MNRC reactor, but no releases of potentially hazardous chemicals to the environment occur during normal facility operation. Therefore, the NRC staff concludes that the proposed action would have no significant non-radiological impacts.

Other Applicable Environmental Laws

In addition to the National Environmental Policy Act, which requires Federal agencies to consider the environmental impacts of proposed actions, the NRC has responsibilities that are derived from other environmental laws, which include the Endangered Species Act, Coastal Zone Management Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, and Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.'' The following presents a brief discussion of impacts associated with resources protected by these laws and related requirements.

Endangered Species Act

The Endangered Species Act (ESA) was enacted to prevent further decline of endangered and threatened species and to restore those species and their critical habitat. Section 7 of the ESA requires Federal agencies to consult with the U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service regarding actions that may affect listed species or designated critical habitats. The NRC staff conducted a search of Federally listed species and critical habitats that have the potential to occur in the vicinity of the MNRC reactor using the FWS's Environmental Conservation Online System Information for Planning and Conservation system. Seven Federally listed species have the potential to occur within the vicinity of the MNRC reactor: giant garter snake (*Thamnophis gigas*), California red-legged frog (*Rana draytonii*), California tiger salamander (*Ambystoma californiense*), delta smelt (*Hypomesus transpacificus*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), vernal pool fairy shrimp (*Branchinecta lynchi*), and vernal pool tadpole shrimp (*Lepidurus packardi*). However, none of these species are likely to occur near the MNRC reactor due to a lack of suitable habitat. The McClellan Business Park, in which the MNRC reactor is situated, has been developed and is in use for research and educational purposes for many decades. Additionally, operation of the MNRC reactor has no direct nexus to the natural environment that could otherwise affect Federally listed species. No critical habitats occur in the area. Accordingly, the NRC staff concludes that the proposed license renewal of the MNRC reactor would have no effect on Federally listed species or critical habitats. Federal agencies are not required to consult with the FWS if they determine that an action will not affect listed species or critical habitats. Thus, the ESA does not require consultation for the proposed MNRC reactor license renewal, and the NRC staff considers its obligations under ESA section 7 to be fulfilled for the proposed action.

Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), in part, encourages States to preserve, protect, develop, and, where possible, restore coastal resources. Individual states are responsible for developing a Federally approved Coastal Management Plan and implementing a coastal management program in accordance with such a plan. Section 307(c)(3)(A) of the CZMA requires that applicants for Federal permits whose proposed activities could reasonably affect coastal zones certify to the licensing agency that the proposed activity would be consistent with the state's coastal management program. Sacramento County is not within California's approved coastal zone. Therefore, a consistency determination is not required for the proposed action.

Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act requires Federal agencies that license water resource development projects to consult with the FWS (or National Marine Fisheries Service, when applicable) and the State wildlife resource agencies regarding the potential impacts of the project on fish and wildlife resources.

The proposed action does not involve any water resource development projects, including any of the modifications relating to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage. Therefore, no coordination with other agencies pursuant to the Fish and Wildlife Coordination Act is required for the proposed action.

National Historic Preservation Act

The National Historic Preservation Act (NHPA) requires Federal agencies to consider the effects of their undertakings on historic properties. As stated in the NHPA, historic properties are any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places.

The nearest National Register of Historic Places listed historic property is the Sacramento Air Depot Historic District located approximately 150 ft (47 m) south-southeast of the MNRC facility. The historic air depot headquarters building and residential area are located approximately 0.5 mi (1 km) east of the MNRC facility. The Sacramento Air Depot Historic District, located on McClellan Air Force Base, consisting of original buildings and structures, was the first of six bases authorized by the Wilcox Act of 1935 and was the only depot located west of the Rocky Mountains. The historic district consists of 43 buildings, 7 structures, and 1 object (McClellan Mall and flagpole). The buildings and structures in the historic district appear almost exactly as they did in photographs taken between 1937 to 1939.

Operation of the MNRC reactor has not likely had any impact on this historic property. A request for a section 106 project review was submitted to the State Historic Preservation Officer (SHPO) regarding this undertaking and determination. By letter dated July 8, 2020, the California SHPO concurred that this action would not affect any historic properties. Based on this information, the proposed license renewal and the continued operation of the MNRC reactor would have no adverse effect on historic properties located near the MNRC reactor.

Executive Order 12898—Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629; February 16, 1994), directs Federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law.

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the relicensing and the continued operation of the reactor. Such effects may include human health, biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing around the reactor, and all are exposed to the

same health and environmental effects generated from activities at the reactor.

Minority Populations in the Vicinity of the MNRC Reactor—According to the U.S. Census Bureau's 2010 Census, approximately 42 percent of the total population (approximately 951,000 individuals) residing within a 10-mi (16-km) radius of the MNRC reactor identified themselves as minorities. The largest minority populations were Hispanic, Latino, or Spanish origin of any race (approximately 194,000 or 20 percent) followed by Asian (approximately 82,000 or 9 percent). According to the 2010 Census, 52 percent of the Sacramento County population identified themselves as minorities, with persons of Hispanic, Latino, or Spanish origin of any race, Asians, and Black or African Americans comprising the largest minority populations (22 percent, 14 percent, and 10 percent, respectively). According to the U.S. Census Bureau's 2019 American Community Survey 1-year Estimates, the minority population of Sacramento County, as a percent of the total population, had increased to about 56 percent.

Low-income Populations in the Vicinity of the MNRC Reactor—According to U.S. Census Bureau's 2015–2019 American Community Survey 5-Year Estimates, approximately 155,000 persons and 27,000 families (approximately 15 and 11 percent, respectively) residing within a 10-mi (16-km) radius of the MNRC reactor were identified as living below the Federal poverty threshold. The 2019 Federal poverty threshold was $26,172 for a family of four. According to the U.S. Census Bureau's 2019 American Community Survey Census 1-Year Estimates, the median household income for the State of California was $80,440 while approximately 8 percent of families and 12 percent of the state population were found to be living below the Federal poverty threshold. Sacramento County had a lower median household income average ($72,017) and a similar percentage of families (8 percent) and a slightly higher percentage of persons (13 percent) living below the poverty level.

Impact Analysis—Potential impacts to minority and low-income populations would mostly consist of radiological effects; however, radiation doses from continued operations associated with the proposed license renewal are expected to continue at current levels and would be below regulatory limits. Based on this information and the analysis of human health and environmental impacts presented in this EA, the proposed license renewal would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the MNRC reactor.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to license renewal, the NRC considered denying the proposed action (*i.e.,* the ''no-action'' alternative). If the NRC denied the request for license renewal, reactor operations would cease and decommissioning would be required sooner than if a renewed license were issued. Therefore, the environmental effects of decommissioning would occur sooner under the no-action alternative than if a renewed license were issued. Decommissioning would be conducted in accordance with an NRC-approved decommissioning plan, which would require a separate environmental review under 10 CFR 51.21. Cessation of reactor operations would reduce or eliminate radioactive effluents. However, as previously discussed in this EA, radioactive effluents from reactor operations constitute a small fraction of the applicable regulatory limits. Therefore, the environmental impacts of license renewal and the denial of the request for license renewal would be similar. In addition, denying the request for license renewal would eliminate the benefits of teaching, research, and services provided by the MNRC reactor.

Alternative Use of Resources

The proposed license renewal does not involve the use of any different resources or significant quantities of resources beyond those associated with current facility operations and previously considered in the issuance of Facility License No. R–130 for the reactor on August 13, 1998.

Agencies and Persons Consulted

In satisfaction of its obligations under the NHPA, the NRC consulted with the California SHPO, as previously described. In addition, on June 1, 2022, the NRC notified the California State official (State Liaison Officer), Mr. David Hochschild, Chair, California Energy Commission, of the proposed action. The NRC received no reply. On June 23, 2022, the NRC notified Mr. Justin Cochran, Senior Nuclear Policy Advisor & Emergency Coordinator, California Energy Commission, and Mr. Gonzalo Perez, Chief, Radiological Health Branch (RHB), California Department of Public Health. By email dated June 24, 2022, Mr. Perez replied on behalf of the RHB and expressed appreciation for the NRC's partnership and transparency. In Mr. Perez's reply, he noted that the RHB acknowledges the radiological aspects of the EA and had reviewed the EA for possible effects on the public and environment, with no additional comments.

III. Finding of No Significant Impact

The NRC is considering renewal of Facility License No. R–130, held by the Regents of the University of California for the UCD, which would authorize the continued operation of the MNRC reactor for an additional 20 years from the date of issuance of the renewed license.

On the basis of the EA included in Section II of this notice and incorporated by reference in this finding, the NRC staff finds that the proposed action will not have a significant impact on the quality of the human environment, and will not significantly affect the environment surrounding the MNRC. This is because the proposed action will result in no significant radiological impacts from continued operations as the types or quantities of effluents that may be released off site would not change. No changes in land use would occur or increases in noise or air emissions. Continued operations under the proposed action would have no significant impacts on air quality, noise, visual resources, surface water or groundwater resources, terrestrial or aquatic resources, or on any other environmental resource conditions. Additionally, the proposed action would have no effect on Federally listed species or designated critical habitats, would not affect historic properties, and would not result in environmental justice impacts. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined that there is no need to prepare an environmental impact statement for the proposed action.

The NRC considered information provided in the licensee's application, as supplemented, and the review of related environmental documents. Section IV in this notice lists the environmental documents related to the proposed action and includes information on the availability of these documents.

IV. Availability of Documents

The documents in the following table are available to interested persons through one or more of the following methods, as indicated.

Document description	ADAMS accession No.
LICENSE RENEWAL APPLICATION	
University of California, Davis—Renewal of Facility Operating License No. R–130, Regents of the University of California, Docket No. 50–607, dated June 11, 2018.	ML18179A501
University of California, Davis. McClellan Nuclear Research Center TRIGA Research Reactor—Environmental Report, dated June 11, 2018.	ML18271A212
University of California, Davis. McClellan Nuclear Research Center. TRIGA Research Reactor—License Renewal Application. Updated Safety Analysis Report. Rev. 6. 04/30/18, dated June 11, 2018.	ML18271A211
University of California, Davis. McClellan Nuclear Research Center—MNRC License (R–130) Renewal Application Package Docket Number 50–607, dated July 6, 2020.	ML20188A368
University of California, Davis. McClellan Nuclear Research Center—Environmental Report, License Renewal Application, dated July 6, 2020.	ML20238B993
University of California, Davis. McClellan Nuclear Research Center—Safety Analysis Report, License Renewal Application, Rev. 6. 06/10/20, dated July 6, 2020.	ML20238B984
University of California, Davis. McClellan Nuclear Research Center—UC Davis MNRC Cover Letter for Response to Request for Supplemental Information, dated September 22, 2021.	ML21265A541
University of California, Davis. McClellan Nuclear Research Center—Reactor Environmental Report, dated September 22, 2021.	ML21265A548
University of California, Davis. McClellan Nuclear Research Center—UC Davis MNRC Response to NRC Staff Request for Additional Information Regarding Licensing Renewal Application Letter Issued February 8, 2022, dated March 30, 2022.	ML22089A158
OTHER REFERENCED DOCUMENTS	
University of California, Davis. McClellan Nuclear Research Center. 2014 Annual Report, dated June 29, 2015.	ML15191A047
University of California, Davis. McClellan Nuclear Research Center. 2016 Annual Report, dated December 31, 2016.	ML17181A173
University of California, Davis. McClellan Nuclear Research Center. 2017 Annual Report, dated December 31, 2017.	ML18178A602
University of California, Davis. McClellan Nuclear Research Center. 2018 Annual Report, dated March 2, 2020.	ML20062C059
University of California, Davis. McClellan Nuclear Research Center. 2019 Annual Report, dated July 6, 2020.	ML20188A338
University of California, Davis. McClellan Nuclear Research Center. 2020 Annual Report, dated June 22, 2021.	ML21175A333 (package)
State of California Department of Parks and Recreation, Office of Historic Preservation—Section 106 consultation for the proposed Renewal of Facility Operating License No. R–130 for the McClellan Nuclear Research Center, dated July 8, 2020.	ML20192A365
UCD License Renewal Application, State of California Draft EA Review Comment email, dated June 30, 2022.	ML22182A389

Dated: October 17, 2022.

For the Nuclear Regulatory Commission.

Joshua M. Borromeo,

Chief, Non-Power Production and Utilization Facility Licensing Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–22766 Filed 10–19–22; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: RI 25–15, Notice of Change in Student's Status, 3206–0042

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on the reinstatement of an expired information collection request (ICR) with change, RI 25–15, Notice of Change in Student's Status.

DATES: Comments are encouraged and will be accepted until November 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *http://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''*Currently under Review—Open for Public Comments*'' or by using the search function or fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0042) was previously published in the **Federal Register** on May 20, 2022, at 87 FR 31006, allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 25–15, Notice of Change in Student's Status, is used to collect sufficient information from adult children of deceased Federal employees or annuitants to assure that the child continues to be eligible for payments from OPM.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Notice of Change in Student's Status.

OMB Number: 3206–0042.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 2,500.

Estimated Time per Respondent: 20 minutes.

Total Burden Hours: 835.

U.S. Office of Personnel Management.

Kellie Cosgrove Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2022–22793 Filed 10–19–22; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2023–12; Order No. 6301]

Market Dominant Product List

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recent Postal Service filing requesting to add USPS Connect Local Mail as a new, permanent product to the Mail Classification Schedule and the request's dismissal.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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III. Ordering Paragraphs

I. Introduction and Overview

On October 11, 2022, the Postal Service filed a request with the Commission pursuant to 39 U.S.C. 3642 and 39 CFR 3045.18 to add USPS Connect Local Mail, currently an experimental product, as a new, permanent product offering under the Mail Classification Schedule (MCS) section 1115 (Market Dominant Products: First-Class Mail: First-Class Mail Flats).[1] The USPS Connect Local Mail market test was initially authorized by the Commission on January 4, 2022.[2] It is currently set to expire on January 8, 2024. Order No. 6080 at 20. USPS Connect Local Mail is a derivative of First-Class Mail that functions as an alternative to long-distance, end-to-end mailing for use by business mailers who wish to send mail locally with regular frequency. Order No. 6080 at 2.

In order for the Commission to convert an experimental product offering into a permanent product offering, the Postal Service must first file a request that complies with, among other rules, 39 U.S.C. 3642, 39 CFR 3040.131, 39 CFR 3040.132, and 39 CFR 3045.18. Because the Request does not contain the information required by these statutes and regulations, the Commission dismisses the Request. This dismissal is without prejudice to allow the Postal Service to refile a compliant request to convert USPS Connect Local Mail into a permanent product offering, should it see fit.

II. Commission Analysis

As the Postal Service correctly identifies, a request to add a non-experimental product to the Market Dominant product list based on an experimental product is governed by 39 U.S.C. 3642 and 39 CFR 3045.18. Request at 1. The regulation sets out numerous requirements, including that the request be filed ''pursuant to 39 U.S.C. 3642 and part 3040, subpart B of this chapter.'' 39 CFR 3045.18(a). Part 3040, subpart B, in turn, contains the requirements that the Postal Service must follow to modify the product lists generally. Among these requirements is the mandate that the Postal Service ''[p]rovide all supporting justification'' upon which it proposes to rely on making the request. 39 CFR 3040.131(e).

The supporting justification is the crux of the request to modify the product list. Section 3040.132 sets out in detail the contents of the supporting justification. See 39 CFR 3040.132.

Such information is not only required by law but necessary in practice. As the Commission has previously explained in the analogous context of changes to the MCS, a full and complete request is important to ensure that the Commission has ''sufficient information to make the necessary determination as to whether a[ ] MCS change is appropriate'' and to avoiding the issuance of large numbers of Chairman's Information Requests during proceedings, which leads ''to the expenditure of additional resources by the Commission, the Postal Service, and other interested persons'' and ''complicate[s] the Commission's review.'' [3] An insufficient initial ''explanation of and justification for proposed classification changes also undermines the Commission's objective that changes [ ] are made in an accurate and transparent manner, such that it is clear to participants in Commission proceedings, users of the mail, and the Commission the precise changes the Postal Service is proposing, the likely effects, and the Postal Service's rationale for proposing such changes.'' [4]

The previous proceedings related to USPS Connect Local Mail provide a good example of the importance of the required information. In approving the market test, the Commission emphasized that safeguards in the market test process—specifically, limited duration and revenue and the reevaluation of the product should the Postal Service wish to extend the test or offer the product permanently—weighed in favor of allowing the market test to proceed. Order No. 6080 at 15. The Commission explained that, going forward:

> [I]f the Postal Service submits a request to convert USPS Connect Local Mail into a non-experimental offering (such as a permanent product, permanent price category, or a negotiated service agreement), the Postal Service must comply with 39 CFR 3045.18 and 39 CFR part 3040, subpart B. *See* 39 CFR 3045.18(a). The Commission expects that such a request would include, among other things, the information and supporting justification that would enable correct categorization of the proposed offering. *See* 39 CFR 3040.131, 3040.132.
>
> Order No. 6080 at 15–16.

However, the Request fails to include the information required by 39 U.S.C. 3642, 39 CFR 3040.131, 39 CFR

[1] United States Postal Service Request to Convert USPS Connect Local Mail to a Permanent Offering, October 11, 2022, at 1–2 (Request).

[2] Docket No. MT2022–1, Order Authorizing Market Test of Experimental Product—USPS Connect Local Mail, January 4, 2022 (Order No. 6080).

[3] Docket No. RM2015–6, notice of proposed rulemaking, Changes and Corrections to the Mail Classification Schedule, November 14, 2014, at 2 (79 FR 69781 (November 24, 2014)) (Order No. 2250).

[4] Docket Nos. CP2022–22 and CP2022–62, Order Granting in Part the United States Postal Service's Motions for Clarification of Order Nos. 6071 and 6195, August 15, 2022, at 9–10 (Order No. 6249).

3040.132, 39 CFR 3045.18, and contemplated by the Commission in Order No. 6080. Among other deficiencies, the Request does not include a supporting justification that provides information sufficient to perform a market power analysis, explain why USPS Connect Local Mail is or is not covered by the postal monopoly, provide a description of the private businesses engaged in the delivery of the product or of the likely impact on small businesses, or give the views of users of the product. *See* 39 CFR 3040.132. In short, the Request fails to ''include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.'' *Id.,* (i).

Further, by rule the Postal Service is required to file its request at least 60 days before it wishes for the Commission to make its determination. *See* 39 CFR 3045.18(d)(2)(ii). This date is predicated on the Postal Service providing complete information to facilitate comment by interested parties and a fulsome review by the Commission itself. In the absence of such information, a complete analysis and decision within 60 days is not possible.[5]

Because the Request does not contain the information required by law and necessary for the Commission to determine the appropriateness of converting USPS Connect Local Mail to a permanent product offering, the Commission shall dismiss the Request without prejudice to the Postal Service to file a compliant request.

III. Ordering Paragraphs

It is ordered:

1. The United States Postal Service Request to Convert USPS Connect Local Mail to a Permanent Offering, filed October 11, 2022, does not meet the statutory and regulatory requirements of a request to convert the experimental product to a permanent product offering.

2. The Commission cannot approve the USPS Connect Local Mail product as a permanent product offering based upon the record before it.

3. The Commission hereby dismisses, without prejudice, the United States Postal Service Request to Convert USPS Connect Local Mail to a Permanent Offering, filed October 11, 2022.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–22890 Filed 10–19–22; 8:45 am]

BILLING CODE 7710–FW–P

[5] It should also be noted that the current market test's expiration date of January 8, 2024, appears to allow the Postal Service the opportunity to both provide services without interruption to customers and time to collect more complete volume, revenue, and cost test data.

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2020–196; MC2023–17 and CP2023–16; MC2023–18 and CP2023–17; MC2023–19 and CP2023–18; MC2023–20 and CP2023–19]

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:* October 24, 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:

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I. Introduction
II. Docketed Proceeding(s)

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).:* CP2020–196; *Filing Title:* Notice of the United States Postal Service of Filing Modification Two to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* October 14, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 24, 2022.

2. *Docket No(s).:* MC2023–17 and CP2023–16; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 8 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 14, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 24, 2022.

3. *Docket No(s).:* MC2023–18 and CP2023–17; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial

[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).

ePacket Contract 12 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 14, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 24, 2022.

4. *Docket No(s).:* MC2023–19 and CP2023–18; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 69 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 14, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 24, 2022.

5. *Docket No(s).:* MC2023–20 and CP2023–19; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 70 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 14, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 24, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–22796 Filed 10–19–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 20, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 13, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 68 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–16, CP2023–15.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22750 Filed 10–19–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 20, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 13, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 67 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–15, CP2023–14.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22749 Filed 10–19–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 20, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 14, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 70 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–20, CP2023–19.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22748 Filed 10–19–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 20, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 12, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 66 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–14, CP2023–13.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22747 Filed 10–19–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 20, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 11, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 65 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–13, CP2023–12.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22746 Filed 10–19–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* October 20, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 14, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 69 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–19, CP2023–18.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22745 Filed 10–19–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96077; File No. SR–CboeBZX–2022–043]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Exchange Rule 14.11(d) To Accommodate Exchange Listing and Trading of Options-Linked Securities

October 14, 2022.

On August 18, 2022, Cboe BZX Exchange, Inc. (''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to FR 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend BZX Rule 14.11(d) to accommodate the listing and trading of Options-Linked Securities. The proposed rule change was published for comment in the **Federal Register** on September 8, 2022.[3] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 23, 2022. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, pursuant to FR 19(b)(2) of the Act,[5] the Commission designates December 7, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBZX–2022–043).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22737 Filed 10–19–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95655 (Sept. 1, 2022), 87 FR 55068.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96081; File No. SR–CBOE–2022–051]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Its Rules Relating to the Processing of Auction Responses

October 14, 2022.

Pursuant to FR 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 October 3, 2022, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its rules relating to the processing of auction responses. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend its rules related to its auction responses.

Background

The Exchange currently offers a variety of auction mechanisms which provide price improvement opportunities for eligible orders. Particularly, the Exchange offers the following auction mechanisms: Complex Order Auction (''COA''),[3] Step Up Mechanism (''SUM''),[4] Automated Improvement Mechanism (''AIM''),[5] Complex AIM (''C–AIM''),[6] Solicitation Auction Mechanism (''SAM''),[7] Complex SAM (''C–SAM''),[8] FLEX Auction Process,[9] FLEX AIM [10] and FLEX SAM.[11] The Exchange notes that eligible orders are electronically exposed for an Exchange-determined period (collectively referred to herein as ''auction response period'') in accordance with the applicable Exchange Rule, during which time Users may submit responses (collectively referred to herein as ''auction responses'' or ''auction response messages'') to an auction message. Trading Permit Holders (''TPHs'') may submit auction responses via logical port connectivity.[12] An auction response may only execute in the applicable auction and is cancelled if it does not execute during an auction. If an auction response is unable to be processed by the System during the auction response period, that auction response is unable to receive any execution opportunity or provide liquidity (and possible price improvement) on the Exchange.

By way of further background, auction response messages historically have waited in the same System queue as all other order and quote message traffic. If an auction response is submitted at a time where there is a deep queue of other message traffic such as mass cancellation messages or other orders and quotes, it is possible that the auction response may not be ''processed'' by the System in sufficient time (*i.e.,* prior to the end of the auction response period).[13] Particularly, the queued auction response may not be able to participate in the applicable auction mechanism because the System had unprocessed (queued) messages at the time of the auction execution despite the fact that the User submitted the auction response prior to the end of the auction response period. Auctioned orders may therefore be missing out on potential price improvement that may have otherwise resulted if queued timely auction response(s) were able to participate in the auction. Indeed, the Exchange notes that its review of auction responses during July 2022 indicated that approximately 55% of auction responses had no opportunity to execute in their respective auctions, notwithstanding being submitted within the auction response period.

The Exchange proposes to adopt new functionality under proposed Rule 5.25(e) which would apply across all of its auction mechanisms to increase the likelihood that timely submitted auction responses may participate in the applicable auction, even during periods of high message traffic. Under the proposed functionality, at the time an auction response period ends, the System will continue to process its inbound queue for any messages that were received before the end of the auction period (including auction messages) for up to an Exchange-determined period of time, not to exceed 100 milliseconds (which the Exchange may determine on a class-by-class basis). That is, any auction responses that were in the queue before the conclusion of the auction (as identified by the Network Interface Card (''NIC'') timestamp on the message) [14] would be processed as long as the Exchange-determined time on a class-by-class basis (not to exceed 100 milliseconds) is not exceeded. Only auction messages received prior to the execution of the applicable auction are eligible to be processed for that auction. The applicable auction will execute once all messages, including auction responses, received before the end time of the auction response period have been processed or the Exchange-determined maximum time limit of up to 100 milliseconds has elapsed, whichever occurs first. This continuation of processing the queue for an additional amount of time for messages that were received before the end of the auction allows for auction responses that would otherwise have been canceled due to the conclusion of the auction response period to still have an opportunity to participate in the auction. This provides such responses with increased opportunities to participate in the auction, even during periods of high message traffic, while still providing a processing cut off time to ensure auction executions aren't unduly delayed.

By way of an example, if an auction with an auction response period set to 100 milliseconds were to start at 9:00:00 a.m., only auction responses that were able to be processed by the System by the conclusion of the auction at 9:00:100 would participate in the auction. Accordingly, if, for example, an auction response that was submitted at 9:00:090 (within the auction time response period), is still in the message queue at 9:00:100, that response under the current System functionality would be canceled and not eligible to participate in the auction. Under the proposal, at 9:00:100, because the System continues to process all messages timestamped before 9:00:100, that same auction response submitted at 9:00:090 would not automatically be canceled but rather included in the auction as long as it was able to be processed within an additional 50 milliseconds, which is the additional processing time set by the Exchange for that class in this example. Once that auction response is up for

[3] *See* Rule 5.33(d).

[4] *See* Rule 5.35.

[5] *See* Rule 5.37.

[6] *See* Rule 5.38.

[7] *See* Rule 5.39.

[8] *See* Rule 5.40.

[9] *See* Rule 5.72(c).

[10] *See* Rule 5.73.

[11] *See* Rule 5.74.

[12] A User connects to the Exchange using a logical port available through an API, such as the industry-standard FIX or BOE protocol. Logical ports represent a technical port established by the Exchange within the Exchange's trading system for the delivery and/or receipt of trading messages, including orders, cancels, and auction responses.

[13] For example, it takes the Exchange's system approximately 10 microseconds to process a single order/quote or auction response message and, on average, approximately 190 microseconds to process a mass cancel message. As such, under the current system, an auction response that is entered after a mass cancel message is more likely to be detrimentally delayed as compared to a mass cancel message that is entered after an auction response (*i.e.,* a 190 microsecond ''wait time'' versus a 10 microsecond ''wait time'').

[14] All incoming messages are ''timestamped'' by the Exchange's System.

processing (because the System processes messages sequentially in time order sequence), the response will be able to participate in the auction so long as it's processed by 9:00:150, notwithstanding such processing would occur after the 100-millisecond auction response period has concluded. Any auction responses for the pending auction that are still pending after the execution of the auction would be canceled.[15] The Exchange notes that using the same example, if an auction response was submitted at 9:00:120, it would not be eligible for processing because the timestamp would identify it as being submitted outside the auction response period which was otherwise set to conclude at 9:00:100.

The Exchange believes the proposed rule change will result in increased execution opportunities for liquidity providers that submit auction responses and enhance the potential for price improvement for orders submitted to each mechanism to the benefit of investors and public interest. Indeed, the Exchange believes the proposed functionality will increase the possibility that timely submitted auction responses are processed by the Exchange and have an opportunity for execution in the applicable auction mechanism, even if there is a deep pending message queue. The Exchange believes the proposed maximum amount of additional time for processing is both an adequate amount of time to provide pending auction responses with such execution opportunity, but also an amount minimal enough that impact to other message traffic, if any, would be de minimis. Indeed, the Exchange anticipates that in the vast majority of cases, the additional time needed after the conclusion of auction response period, if any, to process all pending auction responses will be shorter than the maximum 100 milliseconds. All message traffic (including auction responses) will continue to be processed in time-priority.

The Exchange also believes the proposal will continue to allow the Exchange to set each auction response period to an amount of time that provides TPHs with sufficient time to respond to, compete for, and provide price improvement for orders while continuing to provide auctioned orders with timely executions that may reduce market and execution risk. It also provides timely submitted auction responses with more execution opportunities in the applicable, even during periods of high message traffic, thereby potentially providing customers with additional opportunities for price improvement.

Finally, in light of the proposed change, the Exchange proposes to modify Rule 5.25 to make clear that the Exchange may determine whether or not to establish a Priority Queue for Auction response messages (indeed, the Exchange anticipates implementing the proposed functionality at this time in lieu of a Priority Queue). The Exchange previously adopted Priority Queue functionality under Rule 5.25, which provides that auction response messages may be processed through a Priority Queue, and all remaining messages would be processed through a General Queue. If the Exchange utilizes a Priority Queue, the System would process a certain number of messages, as determined by the Exchange, from each queue on an alternating basis and prioritize processing messages in each respective queue in the order in which the System receives them (*i.e.,* in time priority). The Exchange adopted Rule 5.25 for similar purposes as this proposal, which is to increase the likelihood that submitted auction responses would have the opportunity to participate in auctions notwithstanding any potential deep queue of pending message traffic. The Exchange believes however, that the proposed new functionality is a more streamlined approach and would further increase the likelihood that timely submitted auction responses are able to participate in an applicable auction. Particularly, under the priority queue functionality, auction responses not processed by the conclusion of the auction response period would still be canceled, whereas, under the proposal, timely submitted auction responses would have the opportunity to be processed for up to an additional 100 milliseconds following the conclusion of the auction response period. Should the Exchange determine its necessary to utilize a priority queue for auction responses in the future, it would provide notice to all TPHs pursuant to Rule 1.5.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of FR 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the FR 6(b)(5)[17] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the FR 6(b)(5)[18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes modifying its System to allow it to potentially process more, if not all, timely submitted auction responses may provide further opportunities for auctioned orders to receive price improvement, which removes impediments to a free and open market and ultimately protects and benefits investors. In particular, the proposed rule change will continue to provide investors with timely processing of their options quote and order messages, while providing investors who submit auction eligible orders with additional auction liquidity. Indeed, the proposed rule change may allow more investors additional opportunities to receive price improvement through an auction mechanism. While the Exchange may increase the length of auction response periods to accommodate more auction responses, the Exchange believes the proposed rule change will accommodate more auction responses and allow the Exchange to continue to mitigate the market risk that may accompany a longer auction period for auctioned orders by setting the length of an auction response period to a timeframe that allows an adequate amount of time for TPHs to respond to an auction message and providers orders with fast executions. Additionally, the Exchange believes the proposed functionality may provide liquidity providers that submit auction responses with additional execution opportunities in auctions, which may encourage the submission of more auction responses, which may contribute to a deeper, more liquid auction process that provides investors

[15] If, for example, the System processed all messages received before 9:00:100 by 9:00:110, then the auction would execute at 9:00:110 (*i.e.,* the System does not need to wait until 9:00:150 to execute an auction if all messages submitted prior to the end time of the auction have been processed).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

with additional price improvement opportunities.

The Exchange believes adopting the proposed functionality for auction responses would better provide customers with additional opportunities for price improvements with little to no impact to non-auction response message traffic. Currently, auction responses account for an incredibly small fraction of message traffic submitted to the Exchange. Indeed, based on the Exchange's analysis in July 2022, auction response messages accounted for a mere 0.04% of all message traffic submitted to the Exchange. The Exchange believe the processing of such a small amount of message traffic, even after the conclusion of an auction response period, would therefore have de minimis, if any, impact on the processing of non-auction response messages waiting in the queue. The Exchange also notes that all messages are currently processed one at a time by the System. Therefore, the System still needs to ''process'' all pending auction responses, regardless of whether that processing involves canceling the pending auction response because it wasn't processed in time to participate in the auction or actually processing the response to participate in the auction. Either way, the non-auction response messages will still have to wait for processing of any pending responses ahead of it. Conversely, the current system may cause investors to miss out on opportunities to receive price improvement through the Exchange's auction mechanisms as the System is configured to cancel pending auction responses that ''miss'' the auction execution, even if such responses were timely submitted but not processed due to the System being otherwise occupied processing messages in queue ahead of it. The Exchange therefore believes its proposal will make it more likely that the System processes timely submitted auction responses and includes them in applicable auctions, thus providing them with more opportunities to execute against auctioned orders, even during periods of high message traffic. The Exchange further believes the proposal will continue to allow the Exchange to set an auction response period to an amount of time that provides TPHs with sufficient time to respond to, compete for, and provide price improvement for orders while also continuing to provide auctioned orders with quick executions that may reduce market and execution risk. Accordingly, the Exchange believes the proposal would provide customers with additional opportunities for price improvement and enhance the quality of the auctions, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general protecting investors and the public interest.

The Exchange also believes the proposed rule change is not designed to permit unfair discrimination between market participants as all market participants are allowed to submit auction responses. Additionally, the Exchange believes it's reasonable to adopt the proposed functionality for auction responses as compared to other messages because auction responses are submitted only for the purpose of executing (and possibly providing price improvement) in auctions with short durations, whereas other messages are generally submitted to rest in or execute against the book (and generally not used to submit liquidity into auctions). As discussed above, the Exchange also believes the benefits that result from the adoption of the proposed functionality for auction responses would outweigh any potential negative impact to other message traffic, including customer orders, which have an incredibly low chance of being affected by the proposed change as discussed above and which continue to receive priority allocation in any event.

The Exchange lastly believes clarifying in Rule 5.25 that the Exchange may utilize priority queue functionality for auction responses provides further transparency in the rules. The Exchange believes the proposed functionality is currently a better alternative to provide timely submitted auction responses with opportunities to participate in an applicable auction as compared to the priority queue functionality. Particularly, under the priority queue functionality, the System may still be unable to process all submitted auction responses, since the System will not include any auction responses that are still in queue at the conclusion of the auction response period in the auction, even if they were submitted in a timely manner. Under the proposed functionality, as discussed, the System identifies and looks to process all auction responses timely submitted and will process such messages even after the conclusion of the auction response period, up to 100 milliseconds, thereby providing a better chance that more auction responses are in fact able to participate in the auction. As noted above, should the Exchange determine its necessary or appropriate to utilize a priority queue for auction responses in the future, it would provide notice to all TPHs pursuant to Rule 1.5.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule change would apply equally to all TPHs that submit auction responses. As noted above, all market participants are able to submit auction responses. Additionally, the Exchange believes the adoption of the proposed functionality for auction responses would have little to no impact on non-auction response message traffic. As discussed, auction response messages account for an incredibly small fraction of message traffic submitted to the Exchange. The Exchange therefore believes the processing of such a small amount of message traffic by using the functionality would have a de minimis, if any, impact on the processing of non-auction response messages. Moreover, the Exchange believes it's reasonable to adopt the proposed functionality for auction responses as compared to other messages because auction responses are submitted only for the purpose of executing (and possibly providing price improvement) in auctions with short durations, whereas other messages are generally submitted to rest in or execute against the book (and generally not used to submit liquidity into auctions). Lastly, the Exchange does not believe the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed change affects how the System processes auction responses that may only participate in auctions that occur on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period

to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–051 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–CBOE–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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–051, and should be submitted on or before November 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22738 Filed 10–19–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96082; File No. SR–NYSEAMER–2022–49]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE American Options Fee Schedule

October 14, 2022.

Pursuant to FR 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 13, 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 modify the NYSE American Options Fee Schedule (''Fee Schedule'') regarding credits for Floor Broker Qualified Contingent Cross (''QCC'') transactions. The Exchange proposes to implement the fee change effective October 13, 2022.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing to amend the Fee Schedule to modify the credits available to Floor Brokers for QCC transactions.[5] The Exchange proposes to implement the rule change on October 13, 2022.

Currently, Floor Brokers earn a credit for executed QCC orders of ($0.08) per contract for the first 300,000 contracts or ($0.11) per contract in excess of 300,000.[6] The Exchange currently limits the maximum Floor Broker credit to $525,000 per month per Floor Broker firm.[7] QCC executions in which a Customer or Professional Customer, or both, is on both sides of the QCC trade are not eligible for the Floor Broker credit, and the Floor Broker credit is paid only on volume within the applicable tier and is not retroactive to the first contract traded.[8]

The Exchange now proposes to increase the number of contracts per month a Floor Broker must execute to earn the higher of the two QCC credits available to Floor Brokers, as well as the amounts of both of the credits available to Floor Brokers for executed QCC orders. Specifically, the Exchange proposes that Floor Brokers may earn a credit of ($0.11) per contract for the first 500,000 contracts and a credit of ($0.14) per contract on all contracts above 500,000 in a month.

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on October 3, 2022 (SR–NYSEAmer–2022–47) and withdrew such filing on October 13, 2022.

[5] A QCC is defined as an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-options contracts, that is identified as being part of a qualified contingent trade (as that term is defined in Commentary .01 to Rule 900.3NY), coupled with a contra side order or orders totaling an equal number of contracts. *See* Rule 900.3NY(y).

[6] *See* Fee Schedule, FR I.F., QCC Fees and Credits, *available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.*

[7] *See id.,* FR 1.F. Footnote 1.

[8] *See id.*

Although the Exchange cannot predict with certainty whether the proposed change would encourage Floor Brokers to increase their QCC volume, the Exchange believes that the proposed change, although it increases the required number of contracts to qualify for the greater of the two available Floor Broker QCC credits, would continue to incent additional QCC executions by Floor Brokers by increasing the amounts of the credits available on all such orders, and all Floor Brokers are eligible to qualify for the proposed credits.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with FR 6(b) of the Act,[9] in general, and furthers the objectives of FRs 6(b)(4) and (5) of the Act,[10] 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 Rule Change Is Reasonable

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.'' [11]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[12] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in August 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[13]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

To respond to this competitive marketplace, the Exchange has established incentives to assist Floor Brokers in attracting more business to the Exchange—including credits on QCC transactions—as such participants serve an important function in facilitating the execution of orders on the Exchange, thereby promoting price discovery on the public markets.

The Exchange believes that the proposed modification of the credits offered to Floor Brokers on QCC transactions is reasonable because it is designed to continue to incent Floor Brokers to increase the number of QCC transactions sent to the Exchange. To the extent that the proposed change attracts more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume by Floor Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery, to the extent the proposed change encourages Floor Brokers to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants. In addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as Floor Brokers may direct their order flow to any of the 16 options exchanges, including those offering rebates on QCC orders.[14] Thus, Floor Brokers have a choice of where they direct their order flow, including their QCC transactions. The proposed rule change is designed to continue to incent Floor Brokers to direct liquidity (and, in particular, QCC orders) to the Exchange; to the extent Floor Brokers are incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange, and Floor Brokers can attempt to trade QCC orders to earn the increased credits or not. In addition, the proposed credits are available to all Floor Brokers equally. The Exchange also believes that the proposed credits are an equitable allocation of fees and credits because they would encourage and support Floor Brokers' role in facilitating the execution of orders on the Exchange, and to the extent the proposed credits continue to incent Floor Brokers to direct increased liquidity to the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution.

Moreover, the proposed credits are designed to continue to incent Floor Brokers to encourage OTP Holders to

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[12] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[13] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options was 7.56% for the month of August 2021 and 7.57% for the month of August 2022.

[14] *See, e.g.,* Nasdaq PHLX, Options 7, FR 4, QCC Rebate Schedule (offering rebates on QCC transactions of ($0.09) per contract on up to 999,999 contracts in a month and ($0.17) per contract on 1,000,000 contracts or more in a month); *see also* EDGX Options Exchange Fee Schedule, QCC Initiator/Solicitation Rebate Tiers (applying ($0.14) per contract rebate up to 999,999 contracts for QCC transactions when only one side of the transaction is a non-customer); BOX Options Fee Schedule at FR IV.D.1. (QCC Rebate) (providing for ($0.14) per contract rebate up to 1,499,999 contracts for QCC transactions when only one side of the QCC transaction is a broker-dealer or market maker); Nasdaq ISE, Options 7, FR 6.B. (QCC Rebate) (offering rebates on QCC transactions of ($0.14) per contract when only one side of the QCC transaction is a non-customer).

aggregate their executions—including QCC transactions—at the Exchange as a primary execution venue. To the extent that the proposed change achieves its purpose in attracting more Floor Broker volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to modify the credits offered to Floor Brokers on QCC orders because the proposed credits would be available to all similarly-situated Floor Brokers on an equal and non-discriminatory basis. The proposed credits are also not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders on the Exchange, which the Exchange wishes to encourage and support to promote price improvement opportunities for all market participants.

The proposal is based on the amount and type of business transacted on the Exchange, and Floor Brokers are not obligated to execute QCC orders. Rather, the proposal is designed to encourage Floor Brokers to utilize the Exchange as a primary trading venue for all transactions (if they have not done so previously) and increase QCC volume sent to the Exchange. To the extent that the proposed change attracts more QCC orders to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

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.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with FR 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. 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.'' [15]

Intramarket Competition. The proposed increased credits are designed to attract additional order flow to the Exchange (particularly in Floor Brokers' QCC transactions), which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased QCC transactions could increase opportunities for execution of other trading interest. The proposed credits would be available to all similarly-situated Floor Brokers that execute QCC trades, and to the extent that there is an additional competitive burden on non-Floor Brokers, the Exchange believes that any such burden would be appropriate because Floor Brokers serve an important function in facilitating the execution of orders and price discovery for all market participants.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[16] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in August 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[17]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent Floor Brokers to direct trading interest (particularly QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Floor Brokers are incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

The Exchange further believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer rebates on QCC transactions,[18] by encouraging additional orders (and, in particular, QCC orders) to be sent to the Exchange for execution.

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 FR 19(b)(3)(A) [19] of the Act and subparagraph (f)(2) of Rule 19b–4 [20] thereunder, because it

[15] *See* Reg NMS Adopting Release, *supra* note 11, at 37499.

[16] *See* note 12, *supra.*

[17] *See* note 13, *supra.*

[18] *See* note 14, *supra.*

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(2).

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 FR 19(b)(2)(B) [21] 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–NYSEAMER–2022–49 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–2022–49. 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–NYSEAMER–2022–49, and should be submitted on or before November 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22734 Filed 10–19–22; 8:45 am]

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[21] 15 U.S.C. 78s(b)(2)(B).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96086; File No. SR–NYSEARCA–2022–68]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amend the NYSE Arca Equities Fees and Charges

October 14, 2022.

Pursuant to FR 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''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 NYSE Arca Equities Fees and Charges (''Fee Schedule'') by introducing a minimum credit under Adding Tiers for Adding in Tape A, Tape B and Tape C securities. The Exchange also proposes to amend the equity and options volume requirement under the Cross Asset Tier. The Exchange proposes to implement the fee changes effective October 3, 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.

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 the Fee Schedule by introducing a minimum credit under Adding Tiers for Adding in Tape A, Tape B and Tape C securities. The Exchange also proposes to amend the equity and options volume requirement under the Cross Asset Tier. The Exchange proposes to implement the fee changes effective October 3, 2022.

Background

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.'' [3]

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 Commission has recognized that ''such competition can lead to the fragmentation of order flow in that

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

stock.'' [4] Indeed, equity trading is currently dispersed across 16 exchanges,[5] numerous alternative trading systems,[6] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 17% market share.[7] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 10% market share of executed volume of equities trading.[8]

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. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. With respect to non-marketable order flow that would provide liquidity on an Exchange against which market makers can quote, ETP Holders 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.

Proposed Rule Change

Adding Tiers

Currently, under the Adding Tiers table in FR VI. Tier Rates—Round Lots and Odd Lots (Per Share Price $1.00 or Above), the Exchange provides multiple tiers and associated credits for Adding liquidity on the Exchange. Specifically, under Tier 1, if an ETP Holder has Adding ADV that is equal to at least 0.70% of CADV, or has Adding ADV of 84 million shares then that ETP Holder could qualify for a credit of $0.0031 per share for Adding in Tape A securities, $0.0023 per share for Adding in Tape B securities and $0.0032 per share for Adding in Tape C securities.

Under Tier 2, if an ETP Holder has Adding ADV that is equal to at least 0.50% of CADV then that ETP Holder could qualify for a credit of $0.0030 per share for Adding in Tape A securities, $0.0023 per share for Adding in Tape B securities and $0.0031 per share for Adding in Tape C securities.

Under Tier 3, if an ETP Holder has Adding ADV that is equal to at least 0.30% of CADV, or has Adding ADV that is equal to at least 0.25% of CADV plus Removing ADV that is equal to at least 0.40% of Tape B CADV and at least 0.25% of Customer and Professional Customer Electronic Posting Volume of TCADV on NYSE Arca Options by OTP Holder or OTP Firm affiliated with the ETP Holder then that ETP Holder could qualify for a credit of $0.0029 per share for Adding in Tape A securities, $0.0022 per share for Adding in Tape B securities and $0.0029 per share for Adding in Tape C securities.

Finally, under Tier 4, if an ETP Holder has Adding ADV that is equal to at least 0.20% of CADV then that ETP Holder could qualify for a credit of $0.0025 per share for Adding in Tape A securities, $0.0022 per share for Adding in Tape B securities and $0.0025 per share for Adding in Tape C securities.[9]

Additionally, ETP Holders that currently qualify for Tier 1, Tier 2, Tier 3 and Tier 4 are subject to the following fees: $0.0030 per share for Routing, $0.0029 per share for Removing in Tape B securities, and $0.0010 per share for Closing Orders.[10]

The Exchange proposes that ETP Holders that qualify for Tier 1, Tier 2, Tier 3 and Tier 4 and also have combined Adding and Removing that is equal to 1.0% of CADV would receive a minimum credit of $0.0030 per share for Adding in Tape A, Tape B and Tape C securities. The Exchange proposes to reflect the proposed minimum credit by adopting footnote * to the heading titled Tier under the Adding Tiers table.

The Exchange believes that the proposed new minimum credit will incentivize ETP Holders to route their liquidity-providing order flow to the Exchange in order to qualify for the proposed credit, which would be higher than the credits currently available under current Tier 3 and current Tier 4. The proposed credit is also higher than the credit currently provided for Adding in Tape B securities under each of the current tiers. The Exchange believes that by correlating the amount of the fee to the level of orders sent by an ETP Holder that add liquidity, the Exchange's fee structure would incentivize ETP Holders to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Based on the profile of liquidity-adding firms generally, the Exchange believes that a number of ETP Holders could qualify for the proposed new credit if they choose to direct additional order flow to the Exchange. However, without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in ETP Holders directing more of their orders to the Exchange in order to qualify for the proposed new credit.

Cross Asset Tier

The Exchange proposes to amend the volume requirement applicable to ETP Holders to qualify for the credits payable under the Cross-Asset Tier. The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to both streamline the Fee Schedule by reducing the number of requirements and provide ETP Holders an opportunity to receive credits by trading equities and options on the Exchange.

The Exchange currently offers tiered pricing that provides ETP Holders opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for ETP Holders to strive for higher tier levels, which provides increasingly higher discounts for satisfying more stringent criteria. More specifically, the Exchange currently has multiple levels of credits designed to incentivize ETP Holders to achieve certain levels of participation on both

[4] *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).

[5] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[6] *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.*

[7] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[8] *See id.*

[9] ETP Holders that qualify for Tier 4 and have Adding ADV that is equal to 0.05% of CADV above May 2019 receive an incremental credit of $0.0002 per share for Tape A and Tape C Adding. *See* Fee Schedule. This incremental credit is currently denoted on the Fee Schedule under footnote * and is appended to the credits applicable under Tier 4. Footnote * currently appears under Closing Orders. With this proposed rule change, the Exchange proposes to rename the footnote as ** and relocate it from its current location so it appears under Tier 4.

[10] *See* Fee Schedule.

the Exchange's equities and options platform.

Specifically, FR VI. Tier Rates-Round Lots and Odd Lots (Per Share Price $1.00 or Above), provides a base Cross-Asset Tier credit of $0.0030 per share for Adding in Tape A, Tape B and Tape C securities if an ETP Holder has Adding ADV that is equal to at least 0.30% of CADV and has Customer and Professional Customer Electronic Posting Volume by an OTP Holder or OTP Firm affiliated with the ETP Holder that is equal to at least 0.80% of TCADV in all options classes and equal to at least 0.20% of TCADV in Non-Penny options classes.

With this proposed rule change, the Exchange proposes to eliminate the Non-Penny Issues requirement of 0.20% of TCADV. As proposed, to qualify for the base Cross-Asset Tier credit of $0.0030 per share in Tape A, Tape B and Tape C securities, an ETP Holder will be required to meet the current equity volume requirement, *i.e.,* 0.30% Adding ADV of CADV and the current options requirement, *i.e.,* 0.80% of TCADV in all options classes.[11]

Under the Cross-Asset Tier, ETP Holders are also currently eligible to receive an additional credit of $0.0004 per share in Tape C securities if the ETP Holder has Adding ADV that is equal to at least 0.30% of CADV and Adding ADV in Tape C Securities that is equal to at least 0.35% of Tape C CADV, combined with Customer and Professional Customer Electronic Posting Volume by an OTP Holder or OTP Firm affiliated with the ETP Holder that is equal to at least 0.80% of TCADV in all options classes and equal to at least 0.20% of TCADV in Non-Penny Issues. The Exchange proposes to amend the current Tape C equity volume requirement and eliminate the Non-Penny Issues requirement of 0.20% of TCADV to qualify for the additional credit. As proposed, to qualify for the current additional credit of $0.0004 per share in Tape C securities, an ETP Holder will be required to meet an equity volume requirement that is equal to at least 0.50% Adding ADV of CADV and the current options requirement that is equal to at least 0.80% of TCADV in all options classes.

Under the Cross-Asset Tier, ETP Holders are also currently eligible to receive an additional credit of $0.0002 per share in Tape A and Tape B securities if the ETP Holder has Adding ADV that is equal to at least 0.65% of CADV, combined with Customer and Professional Customer Electronic Posting Volume by an OTP Holder or OTP Firm affiliated with the ETP Holder that is equal to at least 0.80% of TCADV in all options classes and equal to at least 0.20% of TCADV in Non-Penny Issues. The Exchange proposes to eliminate the Non-Penny Issues requirement of 0.20% of TCADV to qualify for the additional credit. As proposed, to qualify for the current additional credit of $0.0002 per share in Tape A and Tape B securities, an ETP Holder will be required to meet the current equity volume requirement that is equal to at least 0.65% of Adding ADV of CADV and the current options requirement that is equal to at least 0.80% of TCADV in all options classes.

Finally, under the Cross-Asset Tier, ETP Holders are also currently eligible to receive an additional credit of $0.0001 per share in Tape A, Tape B and Tape C securities if the ETP Holder has Adding ADV that is equal to at least 0.30% of CADV and has Adding and Removing ADV of CADV that is equal to at least 0.40% above the ETP Holder's Q1 2020 Adding and Removing ADV of CADV, combined with Customer and Professional Customer Electronic Posting Volume by an OTP Holder or OTP Firm affiliated with the ETP Holder that is equal to at least 0.80% of TCADV in all options classes and equal to at least 0.20% of TCADV in Non-Penny Issues. The Exchange proposes to amend the current equity volume requirement and eliminate the Non-Penny Issues requirement of 0.20% of TCADV to qualify for the additional credit. As proposed, to qualify for the current additional credit of $0.0001 per share in Tape A, Tape B and Tape C securities, an ETP Holder will be required to meet an equity volume requirement that is equal to at least 0.75% Adding ADV of CADV and the current options requirement that is equal to at least 0.80% of TCADV in all options classes.

The purpose of the proposed rule change is to encourage greater participation by ETP Holders on the Exchange's equities and options platforms. The Exchange believes the current requirements, some of which require ETP Holders to trade specific Tapes, increase adding and removing above a specific baseline and in both Penny and Non-Penny options classes, may have resulted in ETP Holders not aiming to achieve the pricing levels. The Exchange believes modifying and streamlining the requirements of the existing tiers should incentivize ETP Holders to direct more of their trading activity to the Exchange and thus qualify for the credits payable under the Cross-Asset Tier. As described above, ETP Holders with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that the proposed amendment to the volume requirement could lead to more ETP Holders choosing to route their liquidity-providing equites and options orders to the Exchange rather than to a competing exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with FR 6(b) of the Act,[12] in general, and furthers the objectives of FRs 6(b)(4) and (5) of the Act,[13] 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 Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and 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.'' [14]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders that provide liquidity on an Exchange, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

[11] To streamline the Fee Schedule, the Exchange proposes a non-substantive change to add the words ''Adding ADV of CADV'' to the heading titled ''Equity Volume'' under Minimum Requirement and delete the words ''Adding of CADV'' from the text of the various tiers.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange.

Adding Tiers

The Exchange believes that the proposed new minimum credit is reasonable because it is designed to encourage increased trading activity on the Exchange. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold as it offers liquidity providers an opportunity to receive an enhanced rebate. Further, the proposed new minimum credit is reasonable as it would provide ETP Holders an opportunity to qualify for an enhanced rebate, which in some cases is significantly higher than what the Exchange currently provides, by meeting a higher volume threshold than that required under the current pricing tiers. The Exchange believes that the proposal represents a reasonable effort to promote price improvement and enhanced order execution opportunities for ETP Holders. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution opportunities. The Exchange believes the proposed new minimum credit is a reasonable means to encourage ETP Holders to increase their liquidity providing orders in Tape A, Tape B and Tape C securities.

As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides liquidity on an exchange. More specifically, the Exchange notes that greater add volume order flow may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes would incentivize liquidity providers to submit additional liquidity and enhance execution opportunities.

Cross-Asset Tier

The Exchange believes that the proposed modification and streamlining of the volume requirements to qualify for the Cross-Asset Tier is reasonable because it is designed to encourage greater participation by ETP Holders on the Exchange's equities and options platforms and promote additional liquidity in equity and options securities traded on those platforms. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold to qualify for the Cross-Asset Tier credits. The Exchange believes it is reasonable to modify the volume requirement as it would simplify and streamline the pricing tier and make it easier for ETP Holders to qualify for the pricing tier.

Further, the proposed change is reasonable as it would allow ETP Holders additional opportunities to qualify for the credit payable under the various tiers. The Exchange believes it is reasonable to modify two of the existing tiers to a straight volume requirement, without significantly modifying the volume requirement to qualify for those tiers. The Exchange believes replacing the 'step-up' to a 'straight' tier in one existing tier and eliminating the Tape C volume requirement in another existing tier with a higher equity volume requirement for both of those two tiers is reasonable because ETP Holders would no longer be required to trade a minimum amount in Tape C securities or 'step-up' above a baseline period. The Exchange believes the revised criteria would allow ETP Holders that may have been unable to meet the existing requirement to reach the proposed volume requirement more easily.

The Exchange believes that the proposal represents a reasonable effort to provide enhanced order execution opportunities for ETP Holders. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution opportunities. The Exchange notes that market participants are free to shift their order flow to competing venues if they believe other markets offer more favorable fees and credits.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[15] including the Exchange,[16] and are reasonable, equitable and non-discriminatory because they are open to all ETP Holders on an equal basis and provide additional credits that are reasonably related to the value to an exchange's market quality and associated higher levels of market activity.

The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of equities and options orders transacted on the Exchange by ETP Holders which would benefit all market participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

The Proposed Fee Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees and credits among its market participants.

Adding Tiers

The Exchange believes the proposed rule change to introduce a new minimum credit for ETP Holders equitably allocates its fees among its market participants. The Exchange believes the proposed new minimum credit is equitable because it is open to all similarly situated ETP Holders on an equal basis and provides a per share credit that is reasonably related to the value of an exchange's market quality associated with higher volumes. The Exchange believes it is equitable to require ETP Holders to meet the applicable volume thresholds to qualify for the proposed new minimum credit, which, as noted above, is, in some cases, significantly higher than what the Exchange currently provides under the current pricing tiers. The Exchange believes the proposed change would continue to encourage ETP Holders to both submit additional liquidity to the Exchange and execute orders on the Exchange, thereby contributing to robust levels of liquidity, to the benefit of all market participants.

The proposed change is designed as an incentive to any and all liquidity providers interested in meeting the criteria to submit order flow to the Exchange and each will receive the associated rebate if the criteria is met. The Exchange believes that the proposed new minimum credit could encourage the submission and removal of additional liquidity from the Exchange, thus enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that would be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed rule change would also improve market

[15] *See e.g.,* Cboe BZX U.S. Equities Exchange (''BZX'') Fee Schedule, Footnote 1, Add Volume Tiers which provide enhanced rebates between $0.0025 and $0.0033 per share for displayed orders where BZX members meet certain volume thresholds.

[16] *See e.g.,* Fee Schedule, Step Up Tier 1, Step Up Tier 2 and Step Up Tier 3, which provide enhanced rebates between $0.0028 and $0.0033 per share in Tape A Securities, between $0.0022 and $0.0034 per share in Tape B Securities, and between $0.0028 and $0.0033 per share in Tape C Securities for orders that provide displayed liquidity where ETP Holders meet certain volume thresholds.

quality for all market participants seeking to remove liquidity on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality. The Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders would be eligible for the proposed new minimum credit if they meet the proposed volume threshold.

Cross-Asset Tier

The Exchange believes that the proposed rule change to modify the volume requirement to qualify for the credits payable under the Cross-Asset Tier equitably allocates fees and credits among its market participants because it is reasonably related to the value of the Exchange's market quality associated with higher volume. The Exchange believes that pricing is just one of the factors that ETP Holders consider when determining where to direct their order flow. Among other things, factors such as execution quality, fill rates, and volatility, are important and deterministic to ETP Holders in deciding where to send their order flow.

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. ETP Holders that currently qualify for credits associated with the Cross-Asset Tier will continue to receive credits when they provide liquidity to the Exchange. The Exchange believes that recalibrating the volume requirement to qualify for the existing and established credits for providing liquidity will continue to attract order flow and liquidity to the Exchange for the benefit of investors generally. As to those market participants that do not presently qualify for the credits associated with the Cross-Asset Tier, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory.

Adding Tiers

The Exchange believes that the proposed rule change to introduce the new minimum credit is not unfairly discriminatory. The Exchange believes that the proposal does not permit unfair discrimination because the proposed new credit would be applied to all similarly situated ETP Holders and all ETP Holders would be subject to the same requirement to qualify for the proposed new credit. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees and credits under the proposal. The Exchange further believes that the proposed fee change would not permit unfair discrimination among ETP Holders because the general and tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and the Exchange believes there are a number of ETP Holders who could qualify for proposed new minimum credit if they chose to direct more of their order flow to the Exchange.

Cross-Asset Tier

The Exchange believes that the proposed rule change to modify the requirement to qualify for the credits payable under the Cross-Asset Tier is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders and all ETP Holders would be similarly subject to the proposed volume requirement to qualify for the credits payable under the Cross-Asset Tier. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed changes would not permit unfair discrimination among ETP Holders because the general and tiered rates are available equally to all ETP Holders.

As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and the Exchange believes the proposed modification of the requirement to qualify for the credits payable under the Cross-Asset Tier will incentivize ETP Holders to direct more of their order flow to the Exchange. Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. 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 FR 6(b)(8) of the Act,[17] 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 Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. 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.'' [18]

Intramarket Competition. The Exchange believes the proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors. The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed adoption of a minimum credit and amending volume criteria of established tiers, *i.e.,* the Cross-Asset Tier, would incentivize market participants to direct liquidity adding order flow to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

[17] 15 U.S.C. 78f(b)(8).

[18] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

Additionally, the proposed changes would apply equally to all similarly situated ETP Holders equally in that they would all be eligible for the credits available under the Adding Tiers and the Cross-Asset Tier and each such ETP Holder has a reasonable opportunity to meet each tier's criteria.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) is currently less than 10%. 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 changes could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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 FR 19(b)(3)(A) [19] of the Act and subparagraph (f)(2) of Rule 19b–4 [20] 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 FR 19(b)(2)(B) [21] 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–NYSEARCA–2022–68 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–NYSEARCA–2022–68. 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 offices 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–NYSEARCA–2022–68, and should be submitted on or before November 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22731 Filed 10–19–22; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(2).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96084; File No. SR–NYSE–2022–46]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

October 14, 2022.

Pursuant to FR 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 30, 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 it Price List to increase the cap for the maximum average number of shares per day for the billing month in calculating the average monthly consolidated average daily volume (''CADV'') for purposes of Step Up Adding Tier 3. The Exchange proposes to implement the fee changes effective October 3, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend it Price List to increase the cap for the maximum average number of shares per day for the billing month in calculating the average monthly CADV for purposes of Step Up Adding Tier 3.

The proposed change would bring the current CADV cap in line with the tier's June 2020 baseline month CADV, which is above 13.0 billion shares. Increasing the CADV cap in line with higher volume for the baseline month CADV would continue to provide a degree of certainty to member organizations adding liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective October 3, 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. 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]

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 Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [5] Indeed, cash equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of cash 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. 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.

The proposed adjustment of the cap to 13.0 billion shares would bring the current CADV cap in line with the tier's June 2020 baseline month CADV, which is above 13.0 billion shares.[10] Increasing the CADV cap in line with higher volume for the baseline month CADV would continue to provide a degree of certainty to member organizations adding liquidity to the Exchange.

Proposed Rule Change

Under the current Step Up Adding Tier 3, the Exchange provides an incremental $0.0006 credit in Tapes A, B and C securities for all orders from a qualifying member organization market participant identifier (''MPID'') or mnemonic that sets the NBBO [11] or a new BBO [12] if the MPID or mnemonic:

- has adding ADV in Tapes A, B and C Securities as a percentage of Tapes A, B and C CADV,[13] excluding any liquidity added by a DMM, that is at least 50% more than the MPID's or mnemonic's Adding ADV in Tapes A, B and C securities in June 2020 as a percentage of Tapes A, B and C CADV, and
- is affiliated with a Supplemental Liquidity Provider (''SLP'') that has an Adding ADV in Tape A securities at least 0.10% of NYSE CADV, and
- has Adding ADV in Tape A securities as a percentage of NYSE CADV, excluding any liquidity added by a DMM, that is at least 0.20%.

The credit is in addition to the MPID's or mnemonic's current credit for adding liquidity and also does not count toward the combined limit on SLP credits of $0.0032 per share provided for in the Incremental Credit per Share for affiliated SLPs whereby SLPs can qualify for incremental credits of $0.0001, $0.0002 or $0.0003.

For purposes of calculating Tapes A, B and C CADV for Step Up Adding Tier 3, the Exchange established a monthly maximum average cap of 11.5 billion shares per day for Tapes A, B and C CADV in the billing month for MPIDs or mnemonics of qualifying member organizations that are SLPs.[14] The Exchange proposes to increase this cap to 13.0 billion shares.

For example, assume in the billing month that a member organization that is an SLP has an average daily adding volume of 11.5 million shares. Further assume that Tapes A, B and C CADV was 14.0 billion shares during that month. To calculate the adding ADV as a percent of Tapes A, B and C CADV, the Exchange would use the CADV cap of 13.0 billion shares, yielding an adding percent of Tapes A, B and C CADV of 0.088% rather than 0.10% if the Exchange had used 11.5 billion shares.

The Exchange does not propose to change the requirements to qualify for

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *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).

[6] *See* Cboe U.S Equities Market Volume Summary, available at *https://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] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share.*

[11] *See* Rule 1.1(q) (defining ''NBBO'' to mean the national best bid or offer).

[12] *See* Rule 1.1(c) (defining ''BBO'' to mean the best bid or offer on the Exchange).

[13] The terms ''ADV'' and ''CADV'' are defined in footnote * of the Price List.

[14] Similarly, for purposes of calculating NYSE CADV as currently used in Step Up Adding Tier 3, the Exchange also has a monthly maximum average cap of 5.5 billion shares per day for NYSE CADV in the billing month for MPIDs or mnemonics of qualifying member organizations that are SLPs.

or the credits associated with Step Up Adding Tier 3 or the associated credits.

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 FR 6(b) of the Act,[15] in general, and furthers the objectives of FRs 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, is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. As also noted above, Step Up Adding Tier 3's June 2020 baseline month CADV is above 13.0 billion shares. In view of these facts, and the current competitive landscape where market participants can and do move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes, the Exchange believes that the proposed rule change is reasonable. Specifically, the Exchange believes that capping the monthly Tape A, B and C CADV at a maximum of 13.0 billion shares for Step Up Adding Tier 3 for MPIDs or mnemonics of qualifying member organizations that are SLPs is reasonable the proposed change would bring the cap into line with the baseline month CADV. Without the proposed cap on CADV, higher market volumes reflected in the increased baseline month CADV would make it significantly harder for member organizations that are SLPs, whose adding volume is limited to proprietary adding liquidity, to meet the adding requirements for the tier. The Exchanges notes that the other CADV share volumes cap levels, which are not being changed, are the same levels as the current CADV caps for SLP tiers in the fee schedule.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace. The Exchange believes that the proposed 13.0 billion cap for calculating CADV for Step Up Adding Tier 3 credits in a month where Tape A, B and C CADV is equal to or greater than 13.0 billion share constitutes an equitable allocation of fees because the proposed change would apply to all similarly situated member organizations that are SLPs, all of whom 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 Proposed Fee Change 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 proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. The proposed cap for calculating monthly combined CADV for Step Up Adding Tier 3 credits for adding liquidity to the Exchange also does not permit unfair discrimination because the proposed changes would apply to all similarly situated member organizations that are SLPs, who would all benefit from use of the lower volume threshold to calculate the relevant adding tier CADV across tapes on an equal basis.

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 FR 6(b)(8) of the Act,[17] 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 Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. 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.'' [18]

Intramarket Competition. The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The current credits would 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 proposed 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 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.

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.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4) and (5).

[17] 15 U.S.C. 78f(b)(8).

[18] Regulation NMS, 70 FR at 37498–99.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to FR 19(b)(3)(A) [19] of the Act and subparagraph (f)(2) of Rule 19b–4 [20] 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 FR 19(b)(2)(B) [21] 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–2022–46 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–2022–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–46 and should be submitted on or before November 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Deputy Secretary.

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[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(2).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96088; File No. SR–NSCC–2022–009]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt Intraday Volatility Charge and Eliminate Intraday Backtesting Charge

October 14, 2022.

I. Introduction

On July 7, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2022–009 (the ''Proposed Rule Change'') pursuant to FR 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on July 20, 2022,[3] and the Commission has received comments regarding the changes proposed in the Proposed Rule Change.[4]

On September 1, 2022, pursuant to FR 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] This order institutes proceedings, pursuant to FR 19(b)(2)(B) of the Act,[7] to determine whether to approve or disapprove the Proposed Rule Change.

II. Summary of the Proposed Rule Change

A key tool that NSCC uses to manage its respective credit exposures to its members is the daily collection of margin from each member, which is referred to as each member's Required Fund Deposit.[8] The aggregated amount of all members' margin constitutes the Clearing Fund, which NSCC would access should a member default and the defaulted member's own margin be insufficient to satisfy losses to NSCC caused by the liquidation of that member's portfolio.

A. Intraday Volatility Charge

The volatility component of each member's Required Fund Deposit is designed to measure market price volatility of the start of day portfolio and is calculated for members' Net Unsettled Positions. The volatility component is designed to capture the market price risk [9] associated with each member's portfolio at a 99th percentile level of confidence. NSCC has two methodologies for calculating the volatility component—a ''VaR Charge'' and a haircut-based calculation. The VaR Charge applies to the majority of Net Unsettled Positions and is calculated as the greater of (1) the larger of two separate calculations that utilize a parametric Value at Risk (''VaR'') model, (2) a gap risk measure calculation based on the concentration threshold of the largest non-index

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 95286 (July 14, 2022), 87 FR 43355 (July 20, 2022) (File No. SR–NSCC–2022–009) (''Notice'').

[4] Comments are available at *https://www.sec.gov/comments/sr-nscc-2022-009/srnscc2022009.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 95650 (Sept. 1, 2022), 87 FR 55054 (Sept. 8, 2022) (SR–NSCC–2022–009).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The description of the Proposed Rule Change is based on the statements prepared by NSCC in the Notice. *See* Notice, *supra* note 3. Capitalized terms used herein and not otherwise defined herein are defined in the Rules, *available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[9] Market price risk refers to the risk that volatility in the market causes the price of a security to change between the execution of a trade and settlement of that trade. This risk is also referred to herein as market risk and volatility risk.

position in a portfolio, and (3) a portfolio margin floor calculation based on the market values of the long and short positions in the portfolio.[10] The VaR Charge usually comprises the largest portion of a Member's Required Fund Deposit.

In the Proposed Rule Change, NSCC is proposing to implement an intraday volatility charge, which it may collect on an intraday basis, to better address the volatility risks presented by Members' adjusted intraday Net Unsettled Positions between start of day collections of Required Fund Deposits. More specifically, NSCC is proposing to utilize its existing intraday monitoring to determine when the difference between a Member's (1) start of day volatility charge, collected on that Business Day as part of the Member's start of day Required Fund Deposit based on that Member's prior end-of-day Net Unsettled Positions, and (2) a calculation of the volatility charge based on that Member's adjusted intraday Net Unsettled Positions as of a point intraday between the collection of the start of day Required Fund Deposit and end of day settlement, exceeds 100 percent and the amount that would be collected as an intraday volatility charge, calculated as described below, would be greater than $250,000. The amount of the intraday volatility charge would be reduced by the amount collected from that Member at the start of that Business Day as the volatility portion of the Margin Requirement Differential charge, as discussed in more detail in the Notice.

NSCC is also proposing that it would not collect an intraday volatility charge when the quantitative thresholds are met, if (a) trades submitted later in the day would offset trades submitted earlier in the day, such that the quantitative thresholds would not have been met if such activity had been submitted earlier in the day, or (b) the threshold was met due to the submission of an erroneous trade that can be corrected. NSCC would continue to monitor intraday volatility in 15-minute increments throughout the day, and the calculation of the intraday volatility charge would be done at those intervals. While collections may occur multiple times throughout the day, intraday volatility charges are more likely to be collected later in the day, after additional, and potentially offsetting, activity has been submitted.

The proposed methodology would allow NSCC to measure the change in the volatility charge to determine if such change presents NSCC with exposures that are not adequately addressed by the start of day volatility charge on deposit in the Clearing Fund. By collecting an amount that is measured as the difference between the two volatility charge calculations, NSCC would be able to supplement the volatility charge already on deposit in its Clearing Fund with an amount that measures the change in volatility that has occurred since the Required Fund Deposit was collected at the start of the day.

B. Intraday Backtesting Charge

The Backtesting Charge is an additional component of a member's Required Fund Deposit that NSCC may assess at either the start of the day as the Regular Backtesting Charge, or on an intraday basis as the Intraday Backtesting Charge. More specifically, NSCC may assess a Backtesting Charge against any member that has a 12-month trailing backtesting coverage below the 99 percent backtesting coverage target. When calculating a member's backtesting coverage, NSCC excludes amounts already collected as a Backtesting Charge in calculating any applicable Backtesting Charge.[11]

If assessed, a member's Backtesting Charge is generally equal to the member's third largest deficiency, when calculating the Regular Backtesting Charge, and fifth largest deficiency, when calculating the Intraday Backtesting Charge, that occurred during the previous 12 months. NSCC may adjust the Backtesting Charge if it determines that circumstances particular to a member's settlement activity and/or market price volatility warrant a different approach to determining or applying such charge in a manner consistent with achieving NSCC's backtesting coverage target.

In the Proposed Rule Change, NSCC is proposing to eliminate the Intraday Backtesting Charge for several reasons, as set forth in more detail in the Notice. First, in connection with recent regulatory feedback, NSCC has determined that the current methodology for calculating the Intraday Backtesting Charge makes an unreasonable assumption that NSCC would cease to act for a member that has paid all of its intraday margin requirements. As a result, this calculation methodology may underestimate a member's backtesting losses and undercount potential backtesting deficiencies. Second, NSCC believes it will continue to be able to adequately address both its intraday market risk exposures and its backtesting coverage metrics if it eliminates the Intraday Backtesting Charge. Additionally, NSCC would maintain the Regular Backtesting Charge, which is collected at the start of the day, to support its backtesting coverage. Studies reviewing the impact of removing the Intraday Backtesting Charge on NSCC's backtesting coverage metrics indicate that this proposal would not have a significant impact on NSCC's ability to maintain its backtesting coverage target.

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to FR 19(b)(2)(B) of the Act[12] to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, providing the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to FR 19(b)(2)(B) of the Act,[13] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with FR 17A of the Act,[14] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Act,[15] which requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to protect investors and the public interest; and
- Rule 17Ad–22(e)(4)(i) of the Act,[16] which requires that a covered clearing agency establish, implement, maintain,

[10] Procedure XV, FRs I(A)(1)(a)(i) and (2)(a)(i) of the Rules, *supra* note 8.

[11] Procedure XV, FRs I(B)(3) of the Rules, *supra* note 8.

[12] 15 U.S.C. 78s(b)(2)(B).

[13] *Id.*

[14] 15 U.S.C. 78q–1.

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(4)(i).

and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.

• Rule 17Ad–22(e)(6)(i) of the Act,[17] which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.

• Rule 17Ad–22(e)(23)(ii) of the Act [18] which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with FR 17A(b)(3)(F) of the Act,[19] and Rules 17Ad–22(e)(4)(i), (e)(6)(i) and (e)(23)(ii) of the Act,[20] or any other provision of the Act, or the rules and regulations thereunder.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by November 10, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 25, 2022.

The Commission asks that commenters address the sufficiency of NSCC's statements in support of the Proposed Rule Change, which are set forth in the Notice,[21] in addition to any other comments they may wish to submit about the Proposed Rule Change.

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2022–005 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2022–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2022–009 and should be submitted on or before November 10, 2022. Rebuttal comments should be submitted by November 25, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Deputy Secretary.

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[17] 17 CFR 240.17Ad–22(e)(6)(i).

[18] 17 CFR 240.17Ad–22(e)(23)(ii).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i) and (e)(23)(ii).

[21] *See* Notice, *supra* note 3.

[22] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96085; File No. SR–NYSEARCA–2022–71

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

October 14, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 13, 2022, NYSE Arca, Inc. (''NYSE Arca'' 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 modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding credits for Floor Broker Qualified Contingent Cross (''QCC'') transactions. The Exchange proposes to implement the fee change effective October 13, 2022.[4] 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on October 3, 2022 (SR–NYSEArca–2022–67) and withdrew such filing on October 13, 2022.

on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify the credits offered to Floor Brokers for QCC transactions.[5] The Exchange proposes to implement the rule change on October 13, 2022.

Currently, Floor Brokers earn a credit for executed QCC orders of ($0.22) per contract for *Non-Customer* vs. *Non-Customer QCC* transactions or ($0.11) per contract for Customer vs. Non-Customer QCC transactions.[6] QCC executions in which a Customer is on both sides of the QCC trade are not be eligible for a Floor Broker credit, and the maximum Floor Broker credit is $375,000 per month per Floor Broker firm.[7]

The Exchange now proposes to offer an additional ($0.04) per contract credit on all Customer vs. Non-Customer QCC transactions to Floor Brokers that execute at least 500,000 contracts of credit-eligible volume in QCC orders in a month.[8]

Although the Exchange cannot predict with certainty whether the proposed change would encourage Floor Brokers to increase their QCC volume, the proposed change is intended to continue to incent additional QCC executions by Floor Brokers by increasing the amount of the credit available on Customer vs. Non-Customer QCC transactions, and all Floor Brokers are eligible to qualify for the proposed credit.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[10] 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 Rule Change Is Reasonable

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.'' [11]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[12] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in August 2022, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[13]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

To respond to this competitive marketplace, the Exchange has established incentives to assist Floor Brokers in attracting more business to the Exchange—including credits on QCC transactions—as such participants serve an important function in facilitating the execution of orders on the Exchange, thereby promoting price discovery on the public markets.

The Exchange believes that the proposed additional credit offered to Floor Brokers on Customer vs. Non-Customer QCC transactions is reasonable because it is designed to continue to incent Floor Brokers to increase the number of QCC transactions sent to the Exchange. The Exchange also believes that it is reasonable to offer the increased credit on Customer vs. Non-Customer QCC transactions only, as Floor Brokers' Non-Customer vs. Non-Customer QCC transactions are already eligible for a higher credit. To the extent that the proposed change attracts more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume by Floor Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery, to the extent the proposed change encourages Floor Brokers to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants. In addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as Floor Brokers may direct their order flow to any of the 16 options exchanges, including those offering rebates on QCC

[5] A QCC Order is defined as an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade coupled with a contra-side order or orders totaling an equal number of contracts. *See* Rule 6.62P–O(g)(1)(A).

[6] *See* Fee Schedule, Qualified Contingent Cross (''QCC'') Transaction Fees and Credits, *available at: https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[7] *See id.* at Endnote 13.

[8] *See* proposed Fee Schedule at Endnote 13.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[12] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[13] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.*, the Exchange's market share in equity-based options decreased from 12.32% for the month of August 2021 to 11.36% for the month of August 2022.

orders.[14] Thus, Floor Brokers have a choice of where they direct their order flow, including their QCC transactions. The proposed rule change is designed to continue to incent Floor Brokers to direct liquidity (and, in particular, QCC orders) to the Exchange; to the extent Floor Brokers are incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

The Exchange cannot predict with certainty whether the proposed change would encourage Floor Brokers to increase their QCC order flow to the Exchange, but believes that the proposed increased credit would continue to incent Floor Brokers to do so.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange, and Floor Brokers can attempt to trade QCC orders to earn the increased credit or not. In addition, the proposed credit is available to all Floor Brokers equally. The Exchange further believes that the proposed credit, which would apply to Floor Brokers' Customer vs. Non-Customer QCC transactions, is an equitable allocation of credits in light of the greater credit already available for Non-Customer vs. Non-Customer QCC transactions. The Exchange also believes that the proposed credit is an equitable allocation of fees and credits because it would encourage and support Floor Brokers' role in facilitating the execution of orders on the Exchange, and to the extent the proposed credit continues to incent Floor Brokers to direct increased liquidity to the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution.

Moreover, the proposed credit is designed to incent Floor Brokers to encourage OTP Holders to aggregate their executions—including QCC transactions—at the Exchange as a primary execution venue. To the extent that the proposed change achieves its purpose in attracting more Floor Broker volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed change is not unfairly discriminatory because the proposed additional credit on Customer vs. Non-Customer QCC orders would be available to all similarly-situated Floor Brokers on an equal and non-discriminatory basis. The proposed credit is also not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders on the Exchange (including via open outcry), which the Exchange wishes to encourage and support to promote price improvement opportunities for all market participants.

The proposal is based on the amount and type of business transacted on the Exchange, and Floor Brokers are not obligated to execute QCC orders. Rather, the proposal is designed to encourage Floor Brokers to utilize the Exchange as a primary trading venue for all transactions (if they have not done so previously) and increase QCC volume sent to the Exchange. To the extent that the proposed change attracts more QCC orders to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

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.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. 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.'' [15]

Intramarket Competition. The proposed additional credit is designed to attract additional order flow to the Exchange (particularly in Floor Brokers' QCC transactions), which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased QCC transactions could increase opportunities for execution of other trading interest. The proposed credit would be available to all similarly-situated Floor Brokers that execute QCC trades, and to the extent that there is an additional competitive burden on non-Floor Brokers, the Exchange believes that any such burden would be appropriate because Floor Brokers serve an important function in facilitating the execution of orders and price discovery for all market participants.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share

[14] *See, e.g.,* EDGX Options Exchange Fee Schedule, QCC Initiator/Solicitation Rebate Tiers (applying ($0.14) per contract rebate up to 999,999 contracts for QCC transactions when only one side of the transaction is a non-customer); BOX Options Fee Schedule at Section IV.D.1. (QCC Rebate) (providing for ($0.14) per contract rebate up to 1,499,999 contracts for QCC transactions when only one side of the QCC transaction is a broker-dealer or market maker); Nasdaq ISE, Options 7, Section 6.B. (QCC Rebate) (offering rebates on QCC transactions of ($0.14) per contract when only one side of the QCC transaction is a non-customer).

[15] *See* Reg NMS Adopting Release, *supra* note 11, at 37499.

of executed volume of multiply-listed equity and ETF options trades.[16] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in August 2022, the Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.[17]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent Floor Brokers to direct trading interest (particularly QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Floor Brokers are incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment. The Exchange further believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer rebates on QCC transactions, by encouraging additional orders (and, in particular, QCC orders) to be sent to the Exchange for execution.[18]

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.

[16] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[17] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options increased decreased from 12.32% for the month of August 2021 to 11.36% for the month of August 2022.

[18] *See* note 14, *supra.*

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) [19] of the Act and subparagraph (f)(2) of Rule 19b–4 [20] 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) [21] 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–NYSEARCA–2022–71 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–NYSEARCA–2022–71. 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–NYSEARCA–2022–71, and should be submitted on or before November 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22736 Filed 10–19–22; 8:45 am]

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[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(2).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0285]

Tecum Capital Partners III, L.P.; Conflicts of Interest Exemption

Notice is hereby given that Tecum Capital Partners III, L.P., 8000 Brooktree Rd., Ste 310, Wexford, PA 15090, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small business concern, has sought an exemption under Section 312 of the Act and 13 CFR 107.730, Financings which Constitute Conflicts of Interest. Tecum Capital Partners III, L.P. is seeking a written exemption from the Small Business Administration (SBA) for a proposed financing to Primetac Corporation, 223-Gates Road, 3rd Floor, Little Ferry, NJ 07643.

The financing is brought within the purview of 13 CFR 107.730(a) because Primetac Corporation is an Associate of Tecum Capital Partners III, L.P. because Associate Tecum Capital Partners II, L.P. owns a greater than ten percent interest in Primetac Corporation, therefore this transaction is considered *Financing which constitute conflicts of*

interest requiring SBA's prior written exemption.

Notice is hereby given that any interested person may submit written comments on this transaction within fifteen days of the date of this publication to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Bailey G. DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2022–22792 Filed 10–19–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–1356]

Recommended Gulfstream GV-Series Standardized Curricula for Operators Delivered by Training Centers

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

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of the Aviation Rulemaking Advisory Committee's (ARAC) recommended Gulfstream GV-series aircraft standardized curricula for certain air carriers and operators. The FAA invites public comment on the recommended curricula.

DATES: The FAA must receive comments on these documents by November 9, 2022.

ADDRESSES: You may send comments identified by docket number FAA–2022–1356 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *https://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joshua Tarkington, Flight Standards, Air Transportation Division, Training and Simulation Group (AFS–280), *Joshua.Tarkington@faa.gov,* (860) 708–3839. Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION: The Standardized Curriculum concept is a voluntary approach to training for title 14 Code of Federal Regulations (14 CFR) part 135 training when provided by part 142 training centers. It provides an efficient means for approving training curricula offered by part 142 training centers while increasing the consistency of training, testing, and checking delivered to part 135 operators with an emphasis on standardization. The Standardized Curriculum concept supports the overarching goals to enhance training and checking and promote safer operational practices and is consistent with applicable regulations. Additional information about standardized curricula is available in Advisory Circular (AC) 142–1, *Standardized Curricula Delivered by Part 142 Training Centers.*

Discussion

The FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) in March 2020 with providing advice and recommendations on the most effective ways to achieve standardization (where appropriate) and significant administrative efficiency in check pilot qualification, flight instructor qualification, and part 135 air carrier training curricula delivered by part 142 training centers, known as the Standardized Curriculum concept. Under ARAC, the Standardized Curriculum concept was tasked to the Training Standardization Working Group (TSWG). TSWG membership includes representatives from training centers, aircraft manufacturers, operators, and aviation industry organizations. The TSWG was tasked to develop and recommend part 135 standardized curricula for each aircraft or series of aircraft, which includes the maneuvers, procedures, and functions to be performed during training and checking.

The TSWG developed a GV-series standardized curricula, which includes recommended GV maneuvers, procedures, and functions to meet the regulatory requirements in part 135. The TSWG submitted the recommended curricula to the ARAC for consideration. The ARAC subsequently approved the curricula and submitted it to FAA for review.

Comments Invited

The FAA invites public comments on the TSWG proposed ''Standardized Curricula Part 135 Delivered by Part 142 Training Centers, Gulfstream GV-Series.'' This document can be found at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/20220912%20ARAC%20Recommendation%20Report%20-%20TSWG%20GV%20-%20vSent.pdf* and supporting documentation can be found at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/TSWGGVSupportingDocumentation.pdf.*

The FAA will consider the public comments submitted during this comment period in finalizing the curricula.

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

David Boulter,

Acting Associate Administrator, Aviation Safety.

[FR Doc. 2022–22583 Filed 10–18–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0154]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Commercial Motor Vehicle Marking Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. This ICR will enable FMCSA to document the burden associated with the marking regulations, ''Marking of Self-Propelled CMVs and Intermodal Equipment.'' These regulations require marking of vehicles and intermodal equipment by motor carriers, freight forwarders, and intermodal equipment providers (IEPs) engaging in interstate transportation and motor carriers that transport hazardous materials (HM) in intrastate transportation.

DATES: Comments on this notice must be received on or before November 21, 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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Stacy Ropp, Compliance Division, DOT, FMCSA, West Building, 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 609–661–2062; *Stacy.Ropp@dot.gov*.

SUPPLEMENTARY INFORMATION:

Title: Commercial Motor Vehicle Marking Requirements.

OMB Control Number: 2126–0054.

Type of Request: Renewal of a currently approved ICR.

Respondents: Freight-carrying commercial motor carriers, passenger-carrying commercial motor carriers, and intermodal equipment providers.

Estimated Number of Respondents: 895,485 total respondents (861,643 freight-carrying motor carriers; 17,167 intrastate hazardous materials transporting motor carriers; 15,114 passenger-carrying motor carriers; and 1,561 IEPs).

Estimated Time per Response: 26 minutes [12 minutes to affix USDOT Number + 14 minutes for affixing a carrier's name].

Expiration Date: October 31, 2022.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 7,196,938 total hours (4,907,276 hours spent by freight-carrying motor carriers; 239,666 hours spent by intrastate hazardous materials transporting motor carriers; 47,645 hours spent by passenger-carrying motor carriers; and 2,002,351 hours spent by IEPs). All of these entities spent these hours marking their commercial motor vehicles (CMVs) with a USDOT number and motor carrier information.

Background:

The Secretary of Transportation (Secretary) is authorized to require marking of vehicles and intermodal equipment by motor carriers, freight forwarders and IEPs engaging in interstate transportation based on the authority of 49 U.S.C. 31133(a)(8) and 31133(a)(10). The Secretary has delegated authority pertaining to the marking of CMVs pursuant to FMCSA at 49 CFR 1.87(f). The Agency's regulation governing the marking of CMVs is codified at 49 CFR 390.21.

Vehicle marking requirements are intended to ensure that FMCSA, the National Transportation Safety Board, and State safety officials are able to identify motor carriers and correctly assign responsibility for regulatory violations during inspections, investigations, compliance reviews, and crash studies. These marking requirements will also provide the public with beneficial information that could assist in identifying carriers for the purposes of commerce, complaints or emergency notification. The marking requirements apply to motor carriers, freight forwarders, and IEPs engaging in interstate transportation and motor carriers that transport HM in intrastate transportation. The Agency does not require a specific method of marking as long as the marking complies with FMCSA's regulations. The increase of 6,023,243 estimated annual burden hours (7,196,938 proposed estimated annual burden hours − 1,173,695 approved estimated annual burden hours) is due to adjustments in respondent and response estimates and updated information regarding industry population for all four carrier/entity types.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2022–22784 Filed 10–19–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund; CDFI Target Market Assessment Methodologies

ACTION: Notice and Request for Comment.

SUMMARY: The Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury, requests comments from the public regarding the pre-approved Target Market assessment methodologies that entities applying for Certification as a Community Development Financial Institution (CDFI) may use to assess whether the recipients of an entity's Financial Products or Financial Services are members of a pre-approved Target Market. Capitalized terms found in this notice are defined in the regulations that govern the CDFI Program.

DATES: Written comments must be received on or before December 19, 2022 to be assured of consideration.

ADDRESSES: You may submit comments via the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions on the website for submitting comments. In general, all comments will be available for inspection at *www.regulations.gov*. Comments, including attachments and other supporting materials, are part of the public record. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Michelle Dickens, Program Manager, Office of Certification Policy and Evaluation, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220 or by phone at (202) 653–0300. Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at *http://www.cdfifund.gov*.

SUPPLEMENTARY INFORMATION: To be a Certified CDFI, an entity must demonstrate that it serves at least one eligible Target Market (either an Investment Area or a Targeted Population). In addition, it must direct at least 60% of both the number and dollar volume of arm's-length, on-

balance sheet Financial Products to one or more eligible Target Market components. Under the current policies and CDFI Certification Application, Applicants must describe and seek approval for each assessment methodology they have used and intend to use to confirm financing activity to their identified Target Market(s). Only those Target Market assessment methodologies that have been approved by the CDFI Fund may be used when compiling Target Market data.

In an effort to increase transparency and reduce burden through a revised CDFI Certification Application, *https://www.cdfifund.gov/sites/cdfi/files/2022-10/CDFI_Certification_Application_Preview_Final_10322.pdf,* the CDFI Fund intends to publish a list of pre-approved Target Market assessment methodologies that Applicants and Certified CDFIs may use and rely upon to demonstrate that they are serving their identified Target Market(s). Through the revised application and Annual Certification and Data Collection Report (ACR), Applicants and Certified CDFIs will select from a drop-down menu the options in the methodology list that they used for each of their Target Market components (*i.e.,* Investment Area (IA), Low Income Targeted Population (LITP), or Other Targeted Population (OTP).

The proposed list of pre-approved Target Market assessment methodologies, which may be found on the CDFI Fund website (*www.cdfifund.gov*), reflects the primary assessment methods that have been approved by the CDFI Fund and are most commonly used by a majority of currently Certified CDFIs, but may not be a comprehensive list of all the assessment methodologies previously approved by the CDFI Fund. Because the CDFI Fund, to this point, has not specifically tracked approved Target Market assessment methodologies (and in part as a result of documentation system changes), the CDFI Fund may previously have considered and even approved a Target Market assessment method unique to a specific Applicant or Certified CDFI that does not appear on the proposed list.

Applicants that use one of the pre-approved options will no longer be required to describe the assessment process used to confirm financing activity to their Target Market(s) as part of the Certification Application or a Target Market modification. If an Applicant or Certified CDFI seeks to use an alternative or modified Target Market assessment method, it will be permitted to submit a service request through AMIS for consideration of that process to the CDFI Fund. If new assessment methodologies are approved, the CDFI Fund intends to update the list of pre-approved methodologies as appropriate, so that any newly approved methodologies may be available to other Applicants and Certified CDFIs as well.

Approved CDFI Fund Target Market assessment methodologies must be used exactly as approved unless and until modification of the method is authorized by the CDFI Fund. To use an alternative or modified Target Market assessment method when compiling Target Market data for the CDFI Certification Application, the new method must be approved by the CDFI Fund prior to submission of the application. Failure to use an approved assessment methodology (or maintain required documentation, as noted in the list) may result in the termination of a Certified CDFI's certification.

Through this Request for Comment (RFC), the CDFI Fund seeks feedback from the public on the proposed list of pre-approved Target Market assessment methodologies. The CDFI Fund also seeks any additional information beyond the questions below that members of the public believe would assist in establishing policies and procedures related to the Target Market assessment methodology. The CDFI Fund intends to consider the feedback received through this RFC prior to establishing a final list of pre-approved Target Market assessment methodologies.

I. Pre-Approved Target Market Assessment Methodologies

a. Do each of the listed Target Market assessment methodologies, if used, provide sufficient confidence as to the level at which an Applicant or Certified CDFI is serving an Investment Area, LITP, or OTP? If no, please identify the methodology, the reason it may inaccurately capture the level of service to an Applicant's or CDFI's Target Market, and how the methodology could be strengthened.

b. Are there assessment methodologies the CDFI Fund previously allowed but that do not appear in the proposed list of pre-approved Target Market assessment methodologies? If yes, please describe any such methodology and indicate the date on which the methodology was approved by the CDFI Fund.

c. Are there additional assessment methodologies the CDFI Fund should consider that it may not have previously approved, but that would serve to provide sufficient confidence as to the level at which an Applicant or Certified CDFI is serving a Target Market? If yes, please provide the following information for each proposed methodology:

- The applicable Target Market type (IA/LITP/OTP)
- Data Collected (*e.g.* data fields, time period, reporting level)
- Model/Method design (*e.g.* mathematical equations, relationship between data fields, etc.)
- Documents reviewed (*e.g.* contracts, agreements, white paper, etc.)
- The step by step process used to collect the data and review any documents or run the model and process its results
- If proposing a programmatic proxy, the step by step process used to compare programmatic data to CDFI Fund definitions (*e.g.* income sources, income thresholds, etc.)
- Any record keeping process
- The process for updating any methodology dependent on underlying data changes.

d. What standards should the CDFI Fund use in its decision making to approve or disapprove a proposed assessment methodology?

e. The CDFI Fund also will continue to allow, in the absence of documentation of an individual's actual income, an organization's use of assessment methodologies that treat a Financial Product recipient's participation in an income-based program as a proxy to determine that individual's status as a member of a Low-Income Targeted Population. For a program to be an eligible proxy, the income limits of the program must align with the CDFI Fund's definition of Low-Income.

In addition, the use of any programmatic proxy as an assessment methodology that is not previously pre-approved by the CDFI Fund must be submitted to and approved by the CDFI Fund prior to submission of an application for CDFI Certification.

Because the CDFI Fund has not historically tracked all approved programmatic proxy assessment methodologies, the CDFI Fund requests organizations that currently use, or seek to use, a programmatic proxy not listed among the proposed assessment methodologies, submit as part of this Request for Comment information on the programmatic proxy. Doing so will enable the CDFI Fund to make a determination on the eligibility of that programmatic proxy prior to the finalization of the pre-approved methodologies. In addition to the information requested above, please also provide the step by step process the organization used to compare programmatic data to CDFI Fund

definitions (*e.g.* income sources, income thresholds, etc.).

f. The CDFI Fund also is considering whether to include as a pre-approved assessment methodology the use of a geography-based proxy to identify members of a Low-Income Targeted Population in the absence of documentation of an individual's actual income. One such approach would be to identify eligible areas based on the share of households in the area that earn less than 80 percent of the Area Median Income (AMI), such that for a Financial Product or Financial Service delivered to a resident of the area there would be a reasonably high likelihood that the resident would be determined to be low-income.

For example, setting a 70 percent threshold for Low-Income households in a census tract block group (as determined by Low to Moderate Income Population by Block Group *https://hudgis-hud.opendata.arcgis.com/datasets/HUD::low-to-moderate-income-population-by-block-group/about* data from the Department of Housing and Urban Development) as the proxy would capture approximately 34 million of the 134 million Low-Income persons residing in the United States. In addition, approximately 8 million higher-income individuals also live in such block groups and effectively would be treated as Low-Income by such a proxy. There is, however, a significant overlap of block groups with high levels of Low-Income households and block groups located within an Investment Area (where an investment delivered to a higher-income resident is already an eligible Target Market Financial Product). Approximately 32 million Low-Income individuals captured by a 70-percent threshold proxy are also located within an Investment Area, along with 7.5 million higher-income individuals. By contrast, approximately 1.6 million Low-Income individuals captured by such a proxy as well as 478 thousand higher-income individuals are located outside of an Investment Area.

Setting a lower threshold for the proxy would capture a higher share of the nation's Low-Income population, but similarly would effectively treat as members of an LITP a larger number of individuals who would not otherwise be considered Low-Income. Setting a higher threshold, on the other hand, would increase the likelihood that a resident of the geographic proxy is actually Low-Income, but would further limit the utility of the proxy by capturing an even smaller share of the total U.S. Low-Income population.

Based on a 70 percent threshold, a list of all qualifying block groups can be found on the CDFI Fund website, here *https://www.cdfifund.gov/programs-training/certification/cdfi/certification-pra.* Note that the income status of these block groups is based on data from the 2011–2015 American Community Survey (ACS). If the CDFI Fund determines that residence in an eligible geography is an acceptable proxy for assessing an individual's Low-Income status, the data upon which the CDFI Fund will rely for this purpose will be updated periodically based upon the most recent data available from the U.S. Department of Housing and Urban Development.

i. Should the CDFI Fund establish a geographic proxy for Low-Income status as an approved Target Market assessment methodology, such that a Financial Product or Financial Service delivered to a resident of a qualifying block group would be deemed delivered to an LITP, even if the proxy might overestimate the share of LITP borrowers served by an Applicant or Certified CDFI?

ii. Alternatively, should the CDFI Fund accept the use of such a proxy only when other methodologies are unavailable (*e.g.,* documentation of actual income or borrower participation in another program with income-based eligibility restrictions)?

iii. If the share of Low-Income households in a census tract block group is an acceptable proxy for LITP status, is 70 percent an appropriate qualifying threshold to maintain the integrity of the CDFI Certification? If no, what is an appropriate threshold?

iv. Are there guardrails the CDFI Fund could place on such a proxy to limit opportunities for abuse of the proxy, *e.g.,* an entity that chooses to use the proxy because it will allow it to represent more activity as directed to an LITP than would otherwise qualify? If yes, describe those guardrails? If the CDFI Fund allows the use of a geographic LITP proxy, should it also require users of the proxy to obtain an attestation from a Financial Product or Financial Services recipient that their income is below 80 percent of the area median family income?

g. Should a Financial Product delivered to a business, not owned by a member of a Targeted Population or located in an Investment Area, that is providing jobs, products, or services to a Targeted Population or Investment Area, be deemed delivered to a Target Market? If yes, are there assessment methodologies for end users, other than those already included in the list that the CDFI Fund should consider? What are those assessment methodologies? Should approval of any such methodology associated with jobs to a Targeted Population or located in an Investment Area be dependent on standards for a livable wage or other quality job metrics?

h. Current standards for identifying members of a Native American and Native Alaskan OTP include an assessment that an individual has ''maintained Tribal affiliation or community attachment.'' The CDFI Fund's proposed assessment methodologies state that a financing entity may assess a recipient's Tribal affiliation or community attachment via the collection of a government-issued or tribal government-issued photo identification. Are there other methods the CDFI Fund should deem entities can use to assess such status, and in particular an individual's ''community attachment'' to a Native population? What are those methods and describe them?

II. General Target Market Verification Questions for Public Comment

a. Is there additional information that the CDFI Fund should consider related to Target Market assessment methodologies? If so, please describe.

Authority: 12 U.S.C. 4701 et seq.; 12 CFR 1805; Public Law 116–260.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2022–22767 Filed 10–19–22; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is updating the identifying information on its Specially Designated Nationals and Blocked Persons List (SDN List) for one entity whose property and interests in property subject to U.S. jurisdiction are blocked pursuant to Executive Order 13224.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855;

or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On October 17, 2022, OFAC published the following revised information for the entry on the SDN List for the following entity, whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

Entity

1. GRUPO AROSFRAN EMPREENDIMENTOS E PARTICIPACOES SARL (a.k.a. AROSFRAN; a.k.a. GRUPO AROSFRAM; a.k.a. GRUPO AROSFRAN), 1st Floor, Avenida Comandante Valodia, No. 65, Luanda, Angola; Rua Clube Maritimo Africano, No 22 r/c, Luanda, Angola; Rua Comandante de Volodia, No 67, Premiero Andar, Luanda, Angola; Avenida Comandante de Valodia, No. 0.67, 1 Andar, Luanda, Angola; Rua General Rocadas 5, Luanda, Angola; website *www.grupoarosfran.net* [SDGT].

Dated: October 17, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–22811 Filed 10–19–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for effective date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On October 17, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. BADAAS, Mohamed Ali (a.k.a. BA DAS, Muhammad Ali; a.k.a. BADAS, Mohamed Ali), 'Azzan, Shabwah Governorate, Yemen; DOB 1965; POB al-Juwayl Mayfah, Shabwah Governorate, Yemen; nationality Yemen; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: AL–SHABAAB).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL–SHABAAB, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. MATAAN, Ahmed Hasan Ali Sulaiman (a.k.a. SULAIMAN, Ahmad Matan Hassan Ali; a.k.a. ''MATAAN, Ahmad''; a.k.a. ''MATAAN, Ahmed''), Al Mahrah, Yemen; DOB 1966; POB Qandala, Somalia; nationality Yemen; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: AL–SHABAAB).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL–SHABAAB, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. SALAD, Mohamed Hussein, Al Mukalla, Yemen; DOB Jan 1965; POB Bargal, Puntland, Somalia; nationality Somalia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: AL–SHABAAB).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL–SHABAAB, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. ADALE, Khalif (a.k.a. ABDALE, Qaaliif; a.k.a. CADALE, Qaliif; a.k.a. CADE, Qaliif; a.k.a. KHALIF, Adale; a.k.a. WARSAME, Khalif Mohamed), Qunyo Barrow, Middle Juba, Somalia; Buulo Fulaay, Somalia; DOB 01 Jan 1964; alt. DOB 01 Jan 1968; POB Somalia; nationality Djibouti; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 11120061B (Djibouti) (individual) [SDGT] (Linked To: AL–SHABAAB).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL–SHABAAB, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. AFGOOYE, Hassan (a.k.a. AFGOYE, Hassan), Qunyo Barrow, Middle Juba, Somalia; Jilib, Somalia; DOB 01 Jan 1966; nationality Somalia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: AL–SHABAAB).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL–SHABAAB, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. GAGAALE, Abdikarim Hussein (a.k.a. ''AL–ANSARI, Isse''; a.k.a. ''ISSE, Abdikarin''), Qunyo Barrow, Middle Juba, Somalia; DOB 1984; alt. DOB 1985; alt. DOB 1986; nationality Somalia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: AL–SHABAAB).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL–SHABAAB, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. JEERI, Abdullahi (a.k.a. JERI, Abdullahi), Qunyo Barrow, Middle Juba, Somalia; Ceel Buur, Galguduud, Somalia; DOB 1976; nationality Somalia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: AL–SHABAAB).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided

financial, material, or technological support for, or goods or services to or in support of, AL–SHABAAB, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. NUREY, Abdirahman (a.k.a. NOOR, Abdirahman; a.k.a. NUREY, Abdelrahman; a.k.a. NUURE, Abdirahman; a.k.a. NUURI, Abdirahman; a.k.a. RAAGE, Abdirahman Nuure), Baraawe, Lower Shabelle, Somalia; DOB 1968; nationality Somalia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: AL–SHABAAB).

Designated pursuant to section 1(a)(iii)(C) E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL–SHABAAB, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

9. SAMAD, Abdi (a.k.a. ''GALJE'EL, Abdisamad''; a.k.a. ''HAWIYE, Abdisamad''), Kurtunwaarey, Lower Shabelle, Somalia; DOB 1988; nationality Somalia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: AL–SHABAAB).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL–SHABAAB, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Dated: October 17, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–22812 Filed 10–19–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Request for Information—State Small Business Credit Initiative (SSBCI) Technical Assistance Funds

AGENCY: Departmental Offices, Treasury.

ACTION: Request for information; extension of comment period.

SUMMARY: On September 20, 2022, Treasury published a request for information (RFI) that invited the public to comment on how Treasury can use its authorities under the State Small Business Credit Initiative (SSBCI) to fund technical assistance (TA) to qualifying businesses applying to SSBCI credit and investment programs and other jurisdiction and Federal programs that support small businesses. The purpose of this notice is to extend the comment period and provide more time for interested parties to provide comments.

DATES: The comment period for the notice published September 20, 2022, at 87 FR 57558, is extended. Responses must be received by November 3, 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 (202) 622–2059 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: 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,[1] including up to $500 million for TA to qualifying businesses. As further detailed in the SSBCI statute (12 U.S.C. 5708(e)), Treasury may generally deploy the $500 million for TA in three ways: (1) by providing funds to eligible jurisdictions to carry out qualifying TA plans, (2) by transferring amounts to the Minority Business Development Agency (MBDA) so that the MBDA may use such amounts in a matter it determines appropriate to provide TA to qualifying businesses, or (3) by contracting with legal, accounting, and financial advisory firms to provide TA to qualifying 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.[2]

On September 20, 2022, Treasury published an RFI in the **Federal Register** (87 FR 57558) to request public comment on how Treasury might allocate additional TA funding to jurisdictions or contract with TA providers. The RFI requested that respondents address certain Key Questions and provided that comments must be received by October 20, 2022 to be assured of consideration. This notice announces the extension of the comment period in order to give additional time for interested parties to provide comments. Responses must be received by November 3, 2022 to be assured of consideration.

Jeffrey Stout,

Director, SSBCI.

[FR Doc. 2022–22786 Filed 10–19–22; 8:45 am]

BILLING CODE 4810–AK–P

[1] 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.*

[2] *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.*

UNITED STATES INSTITUTE OF PEACE

Notice Regarding Board of Directors Meetings

AGENCY: United States Institute of Peace (USIP) and Endowment of the United States Institute of Peace.

ACTION: Announcement of meeting; notification of change.

SUMMARY: USIP announces the next meeting of the Board of Directors. USIP also announces a change in the method of public notification regarding future meetings of the Board of Directors. Announcements of future meetings of the Board of Directors will no longer be published in the **Federal Register**. Instead, USIP will post notice of meetings of the Board of Directors on the USIP website.

DATES: Friday, October 21, 2022 (9 a.m.–12:30 p.m.). The next meeting of the Board of Directors will be held January 27, 2023. The change regarding the method by which USIP provides reasonable public notice of future meetings of the Board of Directors is effective immediately.

ADDRESSES: Virtual Board Meeting Information: Join by video: *https://usip-org.zoomgov.com/j/16147 96205?pwd=STRzOG9JK3M3MTFkQn RMUUhlV3RFZz09;* Meeting ID: 161 479 6205; Passcode: 986942.

FOR FURTHER INFORMATION CONTACT: Megan O'Hare, 202–429–4144, *mohare@usip.org.*

SUPPLEMENTARY INFORMATION: Open Session—Portions may be closed pursuant to subsection (c) of section 552b of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525 (USIP Act).

The USIP Act at subsection 1706(h)(3) (22 U.S.C. 4605(h)(3)) states that all meetings of the Board of Directors shall be open to public observation. Subsection 1706(h)(3) states that notice in the **Federal Register** shall be deemed to be reasonable public notice, but neither the USIP Act nor any other provision of law precludes USIP from adopting another method of public notice. Accordingly, USIP has the discretion to alter the method by which USIP provides reasonable public notice. In light of the cost of publishing notices in the **Federal Register** and widespread access to the internet, USIP will provide notice of all future meetings of the Board of Directors on USIP's website.

(Authority: 22 U.S.C. 4605(h)(3))

Dated: October 14, 2022.

Rebecca Fernandes,

Director of Accounting.

[FR Doc. 2022–22751 Filed 10–19–22; 8:45 am]

BILLING CODE 2810–03–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0876]

Agency Information Collection Activity: Clearance for A–11 Section 280 Improving Customer Experience Information Collection

AGENCY: Veterans Experience Office, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 19, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0876'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0876'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VEO invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VEO's functions, including whether the information will have practical utility; (2) the accuracy of VEO's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: OMB Circular A–11 (2018), section 280.

Title: Clearance for A–11 Section 280 Improving Customer Experience Information Collection.

OMB Control Number: 2900–0876.

Type of Review: New collection.

Abstract: Whether seeking a loan, Social Security benefits, veterans benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. Veterans Experience Office will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. Veterans Experience Office will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. Veterans Experience Office may also utilize observational techniques to collect this information.

Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

Affected Public: Individuals.

Estimated Annual Burden: 2,504,975.

Estimated Average Burden per Respondent: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 2 minutes or up to 2 hours to participate in an interview.

Estimated Average Cost per Respondent: 0.

Frequency of Response: Varied, dependent upon the data collection method used.

Estimated Number of Respondents: 5,000,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–22790 Filed 10–19–22; 8:45 am]

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Part II

Department of Energy

10 CFR Parts 429 and 431
Energy Conservation Program: Test Procedure for VRF Multi-Split Systems; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2021–BT–TP–0019]

RIN 1904–AE43

Energy Conservation Program: Test Procedure for VRF Multi-Split Systems

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule amends the test procedure for variable refrigerant flow (''VRF'') multi-split air conditioners and heat pumps (''VRF multi-split systems'') to incorporate by reference the latest version of the applicable industry test standard. This final rule also adopts the integrated energy efficiency ratio metric in its test procedures for VRF multi-split systems. Additionally, this final rule adopts provisions in the updated industry test procedure relevant to certification and enforcement, including a controls verification procedure.

DATES: The effective date of this rule is November 21, 2022. The final rule changes will be mandatory for VRF multi-split systems equipment testing October 16, 2023. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register on November 21, 2022. The incorporation by reference of certain other publications listed in this rule was approved by the Director of the Federal Register as of July 30, 2015, and July 16, 2012.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting webinar attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE–2021–BT–TP–0019.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standards as follows:

AHRI Standard 1230 (I–P), ''2021 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment;'' copyright 2021 (''AHRI 1230–2021'')—into parts 429 and 431.

ANSI/AHRI 1230–2010, 2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment,'' approved August 2, 2010 and updated by addendum 1 in March 2011 (''ANSI/AHRI 1230–2010'')—into part 431.

Copies of AHRI 1230–2021 and ANSI/AHRI 1230–2010 can be obtained from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524–8800, or online at: *www.ahrinet.org/search-standards.aspx.*

ANSIASHRAE Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE approved June 24, 2009, (''ANSI/ASHRAE 37–2009'')—into part 431.

ASHRAE Errata Sheet for ANSI/ASHRAE Standard 37–2009—Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment, ASHRAE approved March 27, 2019, (''ASHRAE Errata Sheet for ANSI/ASHRAE Standard 37–2009'').

Copies of ANSI/ASHRAE Standard 37–2009 and ASHRAE Errata Sheet for ANSI/ASHRAE Standard 37–2009 are available from ASHRAE, 180 Technology Parkway NW, Peachtree Corners, GA 30092, (404)–636–8400, or online at *www.ashrae.org/.*

See section IV.N of this document for a further discussion of these standards.

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I. Authority and Background

Commercial package air conditioning and heating equipment is included in the list of ''covered equipment'' for which the U.S. Department of Energy (''DOE'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(B)–(D)) Commercial package air conditioning and heating equipment includes variable refrigerant flow multi-split air conditioners and heat pumps (''VRF multi-split systems''). DOE's energy conservation standards and test procedure for VRF multi-split systems are currently prescribed at 10 CFR 431.97 and 10 CFR 431.96, respectively. The following sections discuss DOE's authority to establish test procedures for VRF multi-split systems and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C [2] of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes small, large, and very large commercial package air conditioning and heating equipment, which includes VRF multi-split systems, the subject of this document. (42 U.S.C. 6311(1)(B)–(D))

The energy conservation program under EPCA consists essentially of four parts: (1) testing; (2) labeling; (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

With respect to VRF multi-split systems, EPCA requires that the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE''), as referenced in ASHRAE/IES Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE Standard 90.1''). (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure unless DOE determines, by a rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, and estimated operating costs of that equipment during a representative average use cycle. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including VRF multi-split systems, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

In addition, if the Secretary determines that a test procedure amendment is warranted, DOE must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and comments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish in the **Federal Register** its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

DOE is publishing this final rule amending the test procedure for VRF multi-split systems in satisfaction of its statutory obligations under EPCA.

B. Background

DOE's existing test procedure for VRF multi-split systems appears at 10 CFR 431.96, ''Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.'' The Federal test procedure for VRF multi-split systems was last amended in a final rule for standards and test procedures for certain commercial heating, air conditioning, and water heating equipment published in the **Federal Register** on May 16, 2012 (''May 2012 Final Rule''). 77 FR 28928. With regard to VRF multi-split systems, the May 2012 Final Rule adopted the test procedure ANSI/AHRI 1230–2010, ''*2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment,*'' approved August 2, 2010 and updated by Addendum 1 in March 2011 (''ANSI/AHRI 1230–2010''). 77 FR 28928, 28945–28946 (May 16, 2012); *see* 10 CFR 431.96, Table 1. Specifically, the DOE test procedure for VRF multi-split systems was modified to reference ANSI/AHRI 1230–2010 with Addendum 1 but omitting sections 5.1.2 and 6.6. 77 FR 28928, 28990–28991 (May 16, 2012). The May 2012 Final Rule also adopted additional requirements, listed in 10 CFR 431.96(c) through (f), for measuring the energy efficiency ratio (''EER'') and coefficient of performance (''COP'') for air-cooled VRF multi-split systems with a cooling

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated as Part A–1.

capacity between 65,000 Btu/h and 760,000 Btu/h and water-source VRF multi-split systems with a cooling capacity less than 760,000 Btu/h. *Id.* These additional requirements specify provisions for equipment set-up and provide for limited involvement of manufacturer representatives during testing. 77 FR 28928, 28991 (May 16, 2012).

In 2016,[3] ASHRAE Standard 90.1 was updated, but the 2016 update did not make changes to the test procedure references in ASHRAE Standard 90.1–2013 for VRF multi-split systems. On July 25, 2017, DOE published in the **Federal Register** a request for information (''RFI'') (''July 2017 ASHRAE TP RFI'') to collect information and data to consider amendments to DOE's test procedures for commercial package air conditioning and heating equipment with the test procedure updates included in ASHRAE Standard 90.1–2016. 82 FR 34427. As part of the July 2017 ASHRAE TP RFI, DOE requested comment on the VRF multi-split systems test procedure, under the 7-year-lookback review requirement. 82 FR 34427, 34429 (July 25, 2017). DOE identified several issues that might have warranted modifications to the applicable VRF multi-split systems test procedure, in particular concerning incorporation by reference of the most recent version of the relevant industry standard(s); efficiency metrics and calculations; and clarification of test methods. 82 FR 34427, 34427 (July 25, 2017).

In September 2017, AHRI published an update to ANSI/AHRI 1230–2010, *i.e.,* ANSI/AHRI 1230–2014 with Addendum 1 (although published in 2017, the update uses a 2014 designation).

On April 11, 2018, DOE published in the **Federal Register** a notice of its intent to establish a negotiated rulemaking working group (''Working Group'') under the Appliance Standards and Rulemaking Federal Advisory Committee (''ASRAC''), in accordance with the Federal Advisory Committee Act[4] and the Negotiated Rulemaking Act,[5] to negotiate the proposed test procedure and amended energy conservation standards for VRF multi-split systems. 83 FR 15514. The purpose of the Working Group was to discuss and, if possible, reach consensus on a proposed rule regarding the test procedure and energy conservation standards for VRF multi-split systems, as authorized by EPCA. *Id.* at 83 FR 15514.

The Working Group comprised 21 voting members including manufacturers, energy efficiency advocates, utilities, and trade organizations.[6] On October 1, 2019, the Working Group reached consensus on a term sheet (''VRF TP Term Sheet''; Docket No. EERE–2018–BT–STD–0003–0044) that includes the following recommendations, which highlight the most substantial changes:

(1) VRF multi-split systems should be rated with the Integrated Energy Efficiency Ratio (''IEER'') metric to allow consumers to make consistent comparisons with rooftop air conditioner ratings.

(2) The amended test procedure should not be required until the compliance date of amended energy conservation standards.

(3) The Federal test procedure for VRF multi-split systems should be consistent with the September 20, 2019 draft version of AHRI 1230, with additional amendments to be implemented after the conclusion of ASRAC negotiations. (*Id.* at pp. 1–3)

On May 18, 2021, AHRI published an updated industry test standard for VRF multi-split systems AHRI Standard 1230 (I–P), ''*2021 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment*'' (''AHRI 1230–2021''). AHRI 1230–2021 references ANSI/ASHRAE Standard 37–2009, ''*Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment*'' (''ANSI/ASHRAE 37–2009''), as corrected by the Errata Sheet issued March 27, 2019, for additional test set-up and methodology specifications.

These changes, along with comments received in response to the July 2017 ASHRAE TP RFI, were addressed in a test procedure NOPR for VRF multi-split systems published in the **Federal Register** on December 10, 2021 (''December 2021 VRF TP NOPR''). 86 FR 70644. In that NOPR, DOE proposed to incorporate by reference AHRI 1230–2021 and ANSI/ASHRAE 37–2009, as corrected by the Errata Sheet issued March 27, 2019) and establish provisions for determining IEER for VRF multi-split systems. *Id.* DOE also proposed to update its certification, compliance, and enforcement (''CCE'') provisions for VRF multi-split systems to provide information that is necessary for testing VRF multi-split systems consistent with the updated industry test procedure AHRI 1230–2021. DOE held a public meeting related to this NOPR on January 20, 2022 (hereafter, the ''NOPR public meeting'').

DOE received comments in response to the December 2021 VRF TP NOPR from the interested parties listed in Table I.1.

TABLE I–1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE DECEMBER 2021 VRF TP NOPR

Commenter(s)	Reference in this final rule	Docket entry No.	Commenter type
Air-Conditioning, Heating, & Refrigeration Institute	AHRI	12	Trade Association.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, and Natural Resources Defense Council.	Joint Advocates	9	Efficiency Advocacy Organization.
California Energy Commission	CEC	10	State Official/Agency.
California Investor-Owned Utilities	CA IOUs	11	Utilities.
Carrier Global Corporation	Carrier	7	Manufacturer.
Daikin North America LLC	Daikin	13	Manufacturer.
Lennox International	Lennox	8	Manufacturer.
Northwest Energy Efficiency Analysis	NEEA	14	Efficiency Advocacy Organization.
New York State Energy Research and Development Authority	NYSERDA	6	State Official/Agency.

[3] No publication date is printed on ASHRAE Standard 90.1–2016, but ASHRAE issued a press release on October 26, 2016, which is available at *www.ashrae.org/news/2016/ashrae-ies-publish-2016-energy-efficiency-standard* (Last accessed April 30, 2021).

[4] 5 U.S.C. App. 2, Public Law 92–463.

[5] 5 U.S.C. 561–570, Public Law 104–320.

[6] A complete list of the ASRAC VRF Working Group members is available at: *www.energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee#Variable%20Refrigerant%20Flow%20Multi-Split%20Air%20Conditioners%20and%20Heat%20Pumps%20Working%20Group.*

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[7] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the NOPR public meeting, DOE cites the written comments throughout this final rule. DOE did not identify any oral comments provided during the webinar that are not substantively addressed by written comments.

On March 1, 2022, DOE published in the **Federal Register** an energy conservation standards NOPR (''March 2022 VRF ECS NOPR'') that proposed amended energy conservation standards for VRF multi-split systems that rely on the new IEER cooling metric and are equivalent to the levels specified in ASHRAE Standard 90.1–2019. 87 FR 11335.

[7] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for VRF multi-split systems. (Docket No. EERE–2021–BT–TP–0019, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

II. Synopsis of the Final Rule

In this final rule, DOE is amending 10 CFR 431.96, ''Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps,'' to revise the relevant references to the most recent version of the industry test procedure as follows: (1) incorporating by reference AHRI 1230–2021 and ANSI/ASHRAE 37–2009, as corrected by the Errata Sheet issued March 27, 2019; and (2) establishing provisions for determining IEER for VRF multi-split systems. DOE is also adding new appendices D and D1 to subpart F of part 431, both titled ''Uniform test method for measuring the energy consumption of variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 Btu/h),'' (''appendix D'' and ''appendix D1,'' respectively). The current DOE test procedure for VRF multi-split systems is relocated from 10 CFR 431.96 to 10 CFR part 431, subpart F, appendix D without change, and the new test procedure adopting AHRI 1230–2021 is established in appendix D1 for determining IEER. Compliance with appendix D1 is not required until such time as compliance is required with amended energy conservation standards for VRF multi-split systems that rely on IEER, should DOE adopt such standards.

In this final rule, DOE is also updating its certification, compliance, and enforcement (''CCE'') provisions for VRF multi-split systems, to require reporting of information that is necessary for testing VRF multi-split systems consistent with the updated industry test procedure AHRI 1230–2021. Most significantly, these changes include the incorporation of the controls verification procedure (''CVP'') from AHRI 1230–2021 into DOE's product-specific enforcement provisions at 10 CFR 429.134, as well as accompanying certification requirements at 10 CFR 429.43. Additionally, DOE is specifying tested combinations to align with AHRI 1230–2021, clarifying the role of manufacturer involvement during testing, and specifying how to determine represented values for systems using different indoor unit combinations DOE is not reducing the enforcement testing sample size from four units to two units, as was proposed in the December 2021 VRF TP NOPR. Figure 1 presents a process diagram for DOE's certification, compliance, and enforcement regulations for VRF multi-split systems, as described in this final rule.

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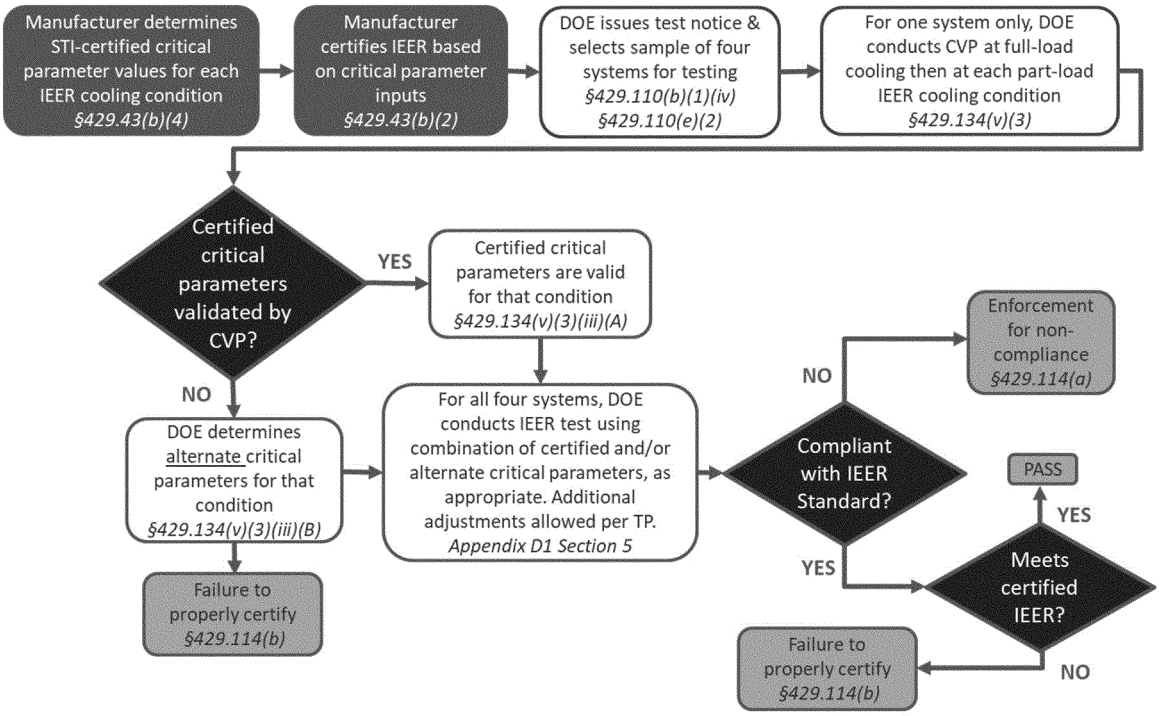

Figure II-1: CCE Process Diagram for VRF Multi-split Systems

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The adopted amendments are summarized in Table II.1 and are compared to the test procedure provisions in place prior to these latest amendments, as well as the reason for each adopted change.

TABLE II–1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

DOE test procedure prior to amendment	Amended test procedure	Attribution
Incorporates by reference ANSI/AHRI 1230–2010.	Incorporates by reference in a new Appendix D1 AHRI 1230–2021 and ANSI/ASHRAE 37–2009 as corrected by the Errata Sheet issued March 27, 2019.	Updates to the applicable industry test procedures.
Includes provisions for determining EER.	Includes provisions for determining both EER and IEER	Updates to the applicable industry test procedures.
Does not include VRF-specific provisions for determination of represented values in 10 CFR 429.43.	Includes provisions in 10 CFR 429.43 specific to VRF multi-split systems to determine represented values for models with specific components, and determine represented values for different indoor unit combinations.	Establish VRF-specific provisions for determination of represented values.
Includes certification requirements in 10 CFR 429.43 consistent with testing to EER per ANSI/AHRI 1230–2010.	Adopts reporting requirements consistent with new test requirements of AHRI 1230–2021, including tested combination, certified critical parameter values, and instructions for conducting the controls verification procedure (“CVP”).	Establish reporting requirements consistent with updated industry test method.
Does not include VRF-specific enforcement provisions in 10 CFR 429.134.	Adopts product-specific enforcement provisions for VRF multi-split systems including: verification of cooling capacity, testing of systems with specific components, break-in period, manufacturer involvement in assessment or enforcement testing, provisions for when DOE would conduct a CVP, and how CVP results would affect critical parameters used in IEER enforcement testing by DOE.	Establish provisions for DOE testing of VRF multi-split systems.
Does not provide VRF-specific instruction for validating alternative methods for determining energy efficiency and energy use (“AEDM”) at 10 CFR 429.70.	Specifies VRF-specific AEDM validation criteria that are dependent on indoor unit combinations offered by the manufacturer.	Establish AEDM instructions specific to VRF multi-split systems.

DOE has determined that the amendments described in section III of this document regarding the establishment of appendix D do not alter the measured efficiency of VRF multi-split systems or require retesting solely as a result of DOE's adoption of the amendments to the test procedure. DOE has determined that the amendments regarding the test procedure in appendix D1 do alter the measured efficiency and are consistent with the updated industry test procedure AHRI 1230–2021. Further, use of the updated industry test procedure provisions and amended representation requirements in 10 CFR 429.43 and 10 CFR 429.70 would not be required until the compliance date of any amended standards based on IEER. Additionally, DOE has determined that the finalized amendments will not increase the cost of testing relative to the updated industry test procedure. The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Discussion of DOE's actions are addressed in detail in section III of this document.

III. Discussion

A. Scope of Applicability

This rulemaking applies to variable refrigerant flow multi-split air conditioners and heat pumps. DOE defines variable refrigerant flow multi-split air conditioners and heat pumps as units of commercial package air conditioning and heating equipment that are configured as a split system air conditioner or heat pump incorporating a single refrigerant circuit, with one or more outdoor units, at least one variable-speed compressor or an alternate compressor combination for varying the capacity of the system by three or more steps, and multiple indoor fan coil units, each of which is individually metered and individually controlled by an integral control device and common communications network and which can operate independently in response to multiple indoor thermostats. 10 CFR 431.92. Variable refrigerant flow implies three or more steps of capacity control on common, inter-connecting piping. *Id.* VRF multi-split heat pumps use reverse cycle refrigeration as its primary heating source and may include second supplemental heating by means of electrical resistance, steam, hot water, or gas. *Id.*

DOE is not amending the scope of the Federal test procedure for VRF multi-split systems. DOE's current test procedure regulations for commercial air conditioners and heat pumps at 10 CFR 431.96 include test procedures that apply to air-cooled VRF multi-split air conditioners, air-cooled VRF multi-split heat pumps, and water-source VRF multi-split heat pumps,[8] all with cooling capacity less than 760,000 Btu/h. Table 1 of 10 CFR 431.96. Single-phase, air-cooled VRF multi-split air conditioners and heat pumps with cooling capacity less than 65,000 Btu/h are subject to DOE's consumer product regulations for central air conditioners, and test procedures for these products are specified in appendices M and M1 to subpart B of part 430. Test procedures for three-phase, air-cooled VRF multi-split systems with cooling capacity less than 65,000 Btu/h are not addressed in this final rule and are instead addressed in a separate test procedure rulemaking for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h (*see* Docket No. EERE–2017–BT–TP–0031).

B. Organization of the VRF Multi-Split System Test Procedure

In the December 2021 VRF TP NOPR, DOE proposed to relocate and centralize the current test procedure for VRF multi-split systems to a new appendix D to subpart F of part 431, such that appendix D would not amend the current test procedure. 86 FR 70644, 70649 (Dec. 10, 2021). The proposed appendix D would also centralize the additional test provisions currently applicable under 10 CFR 431.96 (*i.e.,* optional break-in period for tests conducted using ANSI/AHRI 1230–2010 (10 CFR 431.96(c)); refrigerant line length corrections for tests conducted using ANSI/AHRI 1230–2010 (10 CFR 431.96(d); additional provisions for equipment set-up (10 CFR 431.96(e); and manufacturer involvement in assessment or enforcement testing for variable refrigerant flow systems (10 CFR 431.96(f))). As proposed, VRF multi-split systems would be required to be tested according to appendix D until such time as compliance is required with an amended energy conservation standard that relies on the IEER metric, should DOE adopt such a standard. *Id.*

Similarly, DOE proposed to amend the test procedure for VRF multi-split systems by adopting AHRI 1230–2021 in a new appendix D1 to subpart F of part 431. DOE proposed to adopt the updated version of AHRI 1230, including the IEER metric. *Id.* As proposed, VRF multi-split systems would not be required to be tested according to the test procedure in proposed appendix D1 until such time as compliance is required with an amended energy conservation standard that relies on the IEER metric, should DOE adopt such a standard. *Id.*

DOE did not receive any comments in response to the proposed organization of the test procedure. Accordingly, for the reasons discussed in the December 2021 VRF TP NOPR and as discussed in the preceding paragraphs, DOE is finalizing the proposed organization of the test procedure by establishing appendices D and D1 for testing VRF multi-split systems.

C. Industry Standards

1. Updates to AHRI 1230

As discussed in section I.B of this document, the VRF TP Term Sheet recommended that DOE adopt the 2019 draft version of AHRI 1230 with several changes, including:

- Adding a hierarchy of instructions for how to set up the unit under test, and a clarification that ''as-shipped'' settings should be used as a last resort when instructions are not provided in the supplemental testing instructions (''STI'') and/or the manufacturer's installation instructions (''MII'').
- Providing equations and example calculations of adjustments to measured results for steady-state tests if sensible heat ratio (''SHR'')[9] limits are not met at the 100-percent full-load and/or 75-percent part-load cooling test points.
- Amending the definition of the draft CVP to include a definition of time periods for determining critical parameter validation and allowable critical parameter tolerances using manufacturer-provided data. (Docket No. EERE–2018–BT–STD–0003–0044 at p. 2)

After the VRF ASRAC Working Group meetings in 2019, DOE provided technical support in an AHRI 1230 Technical Committee to address the three outstanding items identified in the VRF TP Term Sheet. For the last item—determining critical parameter tolerances—DOE compiled anonymized, aggregated test data to share with the committee. In a presentation to the AHRI 1230 Technical Committee on September 10, 2020, DOE shared data

[8] The EPCA definition for ''commercial package air conditioning and heating equipment'' specifically excludes ground water source equipment. (42 U.S.C. 6311(8)(A)).

[9] Cooling load is composed of both sensible and latent portions. The sensible load is the energy required to reduce the temperature of the incoming air, without any phase change. The latent load is the energy required to change the moisture in the air from water vapor into a liquid phase as it condenses on the cooling coil. Sensible heat ratio is a ratio of the sensible cooling capacity to the total cooling capacity at a given test condition.

on the variability of critical parameter results as measured during different CVP runs, as well as data on how the measured IEER changed in response to changes in critical parameters. (EERE–2018–BT–STD–0003–0063) DOE presented options that could be considered to express the maximum allowable variation in critical parameters as a ''budget.'' The AHRI 1230 Technical Committee incorporated a budget of 70 points (a measure of critical parameter variation) in the draft AHRI 1230, which is outlined in section III.E.1 of this document.

Following the completion of the AHRI 1230 Technical Committee meetings, in May 2021, AHRI published AHRI 1230–2021, which incorporated the changes consistent with those recommended in the VRF TP Term Sheet. The following list includes substantive changes in AHRI 1230–2021 as compared to ANSI/AHRI 1230–2010, the version currently used for certification:

- Air-cooled VRF multi-split systems with cooling capacity less than 65,000 Btu/h were removed from the scope of the industry test standard. These systems are addressed by AHRI 210/240–2023, ''Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment.''
- Maximum SHR limits of 0.82 and 0.85 were added for full-load and 75-percent part-load conditions, respectively.
- A CVP was added that verifies that the values certified in the STI for setting critical parameters during steady-state testing are within the range of critical parameters that would be used by the system's native controls at the same conditions. A 70-point budget was also added as the criteria for critical parameter validation during the CVP.
- A hierarchy was added indicating which sources of manufacturer's instructions to use during testing in the case of conflicting information among different sources.
- Provisions were updated for refrigerant piping length requirements and for the correction factors applied in the case of excess refrigerant piping length used during testing.
- For water-source equipment, the maximum water flow rate was reduced and part-load entering water temperatures were modified.
- New provisions were added to specify test methods and conditions for cases in which condenser head pressure controls result in unstable operation in part-load cooling tests.
- The provisions for tested combinations, which specify the indoor unit combination to be used for testing, were updated to replace ''highest sales volume'' requirements with a specific hierarchy based on ''indoor unit model family'' (*e.g.,* wall-mounted, compact 4-way ceiling cassette, mid-static ducted).
- A maximum airflow rate of 55 standard cubic feet per minute (''scfm'') per 1,000 Btu/h was added for non-ducted indoor units, and the maximum airflow rate was increased for ducted indoor units from 37.5 scfm per 1,000 Btu/h to 42 scfm per 1,000 Btu/h.
- Test tolerances for indoor air entering wet-bulb temperatures were increased. Specifically, the indoor wet-bulb temperature operating tolerance was increased from 1 °F to 1.8 °F. The indoor wet-bulb temperature condition tolerance was also increased from 0.30 °F to 0.36 °F. Additionally, the operating tolerance for external static pressure (''ESP'') for ducted units was changed from 0.05 in H_2O to 10 percent of the ESP reading.
- Appendix D to ANSI/AHRI 1230–2010 with Addendum 1, ''Test Requirements,'' was amended in ANSI/AHRI 1230–2021 and redesignated as Appendix E, ''ANSI/ASHRAE Standard 37–2009 Clarifications/Exceptions.'' This appendix provides additional instruction and exceptions to the use of ANSI/ASHRAE 37–2009.
- Informative appendices were added that show example calculations for IEER and the CVP ''budget'' method, which calculates the variation between measured critical parameter values and STI-reported critical parameter values.

As part of the December 2021 VRF TP NOPR, DOE evaluated the extent to which a test procedure based on AHRI 1230–2021 would meet the EPCA requirements to produce test results that reflect the energy efficiency, energy use, and estimated operating costs of that equipment during a representative average use cycle, and for such test procedure to not be unduly burdensome to conduct. DOE tentatively concluded that the changes in AHRI 1230–2021 better reflect the field performance of VRF multi-split systems and provide additional clarification for testing provisions. 86 FR 70644, 70650, 70669 (Dec. 10, 2021). DOE also tentatively determined that a test procedure based on AHRI 1230–2021 would not be unduly burdensome to conduct. 86 FR 70644, 70669 (Dec. 10, 2021).

Therefore, DOE proposed to adopt the updated version of AHRI 1230, including the IEER metric, and to incorporate by reference AHRI 1230–2021 in a new appendix D1 to subpart F of part 431. 86 FR 70644, 70650 (Dec. 10, 2021). DOE proposed to reference the following sections from AHRI 1230–2021: Section 3 (except 3.11),[10] Section 5 (except 5.1.2), Section 6 (except 6.3.3 and 6.5), Section 11, Section 12, and Appendix E. 86 FR 70644, 70650–70651 (Dec. 10, 2021). The remaining sections were excluded as either: (1) informative appendices not needed in the DOE test procedure; (2) procedures specific to the AHRI verification program that are not warranted for a DOE test procedure, or (3) sections for which DOE proposed modifications. *Id.*

In the December 2021 VRF TP NOPR, DOE included discussion on several test method topics about which DOE requested comment in the July 2017 ASHRAE TP RFI and received stakeholder comments in response to that RFI. These topics included setting indoor airflow and external static pressure, condenser head pressure controls, indoor unit operation during part-load tests, oil recovery mode during transient testing, secondary methods for capacity measurement, and heat recovery. All of these test method topics were addressed in AHRI 1230–2021, and DOE did not propose any deviations from AHRI 1230–2021 on any of the topics. 86 FR 70644, 70653–70656 (Dec. 10, 2021). DOE did not receive any comments regarding these test method topics in response to the December 2021 VRF TP NOPR, but as discussed, the Department did receive comments generally supportive of DOE's proposal to adopt AHRI 1230–2021. Along these lines, Carrier, Lennox, the CA IOUs, AHRI, Daikin, and NEEA all commented that they support DOE's proposal to adopt AHRI 1230–2021. (Carrier, No. 7 at p. 1; Lennox, No. 8 at pp. 1–2; CA IOUs, No. 11 at p. 3; AHRI, No. 12 at p. 2; Daikin, No. 13 at p. 2; NEEA, No. 14 at p. 2) NEEA further commented that AHRI 1230–2021 adds clarifying provisions that will reduce variability in results. (NEEA, No. 14 at p. 2)

For the reasons discussed in the December 2021 VRF TP NOPR and consistent with the comments received in support of DOE adopting AHRI 1230–2021, DOE concludes that as compared to previous versions of AHRI 1230 (including ANSI/AHRI 1230–2010 which is referenced in the current Federal test procedure), AHRI 1230–2021 generally provides results that are more representative of an average use cycle for VRF multi-split systems, provides additional clarification for

[10] The CA IOUs stated that in proposed updates to 10 CFR 431.97, subpart F, appendix D1, DOE states that critical parameter(s) are defined in section 3.10 of AHRI 1230–2021, but the correct reference should be to section 3.11 of that industry standard. (CA IOUs, No. 11 at p. 4) DOE acknowledges this typographical error and has corrected the section references in this final rule.

testing provisions, and is not unduly burdensome to conduct. In particular, DOE finds that AHRI 1230–2021 includes several test procedure amendments that better reflect typical operation and performance of VRF indoor units, including the addition of SHR limits, further specification of indoor airflow, and changes to indoor unit tested combinations. DOE also finds that the addition of the CVP in AHRI 1230–2021 (which DOE is adopting in enforcement provisions) will improve representativeness by more closely tying controls behavior during testing to controls behavior that would be expected to occur in a field installation under native controls. Therefore, in this final rule DOE is incorporating by reference AHRI 1230–2021 and adopting specific sections for testing VRF multi-split systems as proposed. Sections of AHRI 1230–2021 for which DOE is adopting modifications are discussed in following sections of this final rule.

2. ASHRAE 37

ANSI/ASHRAE Standard 37, which provides a method of test for many categories of air conditioning and heating equipment, is referenced for testing VRF multi-split systems by ANSI/AHRI 1230–2010, ANSI/AHRI 1230–2014 with Addendum 1, and AHRI 1230–2021. ANSI/ASHRAE 37–2005 is referenced in ANSI/AHRI 1230–2010, which is the currently referenced industry test standard in the DOE test procedure for VRF multi-split systems.[11] ANSI/ASHRAE 37–2009 is referenced in ANSI/AHRI 1230–2014 with Addendum 1 and AHRI 1230–2021. To reflect the use of ANSI/ASHRAE 37–2009 in conducting testing according to AHRI 1230–2021, DOE proposed in the December 2021 VRF TP NOPR to incorporate by reference ANSI/ASHRAE 37–2009 (except for sections 1, 2, and 4) including the errata sheet issued March 27, 2019 (which corrected the total heating capacity equations for the outdoor liquid coil method in section 7.6.5.1 of that test standard) [12] in the proposed appendix D1 for the VRF multi-split systems test procedure. 86 FR 70644, 70651 (Dec. 10, 2021). DOE did not receive any comments in response to its proposal to reference ASHRAE 37–2009 in the test method for VRF multi-split systems. Accordingly, DOE concludes that ASHRAE 37–2009 is an integral component of testing VRF multi-split systems (per the 2014 and 2021 versions of AHRI 1230) and that it ensures representativeness and repeatability of the test procedure by specifying instrumentation requirements, test set-up provisions, calculation methods, and test tolerances. Therefore, DOE incorporates by reference ANSI/ASHRAE 37–2009 (as corrected by the most recent errata sheet issued March 27, 2019) and adopts the relevant sections for testing VRF multi-split systems, as proposed.

D. Metrics

1. IEER

In the December 2021 VRF TP NOPR, DOE provided considerable background on the IEER metric, and the Department proposed to adopt the IEER metric and the relevant provisions in AHRI 1230–2021 to determine IEER for VRF multi-split systems. DOE currently prescribes energy conservation standards for air-cooled VRF multi-split systems with cooling capacity greater than or equal to 65,000 Btu/h and water-source VRF multi-split heat pumps in terms of the EER metric for cooling-mode operation and in terms of the COP metric for heating-mode operation. EER and COP capture the system performance at single, full-load operating points in cooling and heating mode, respectively (*i.e.,* single outdoor air temperatures for air-cooled systems and single entering water temperatures for water-source systems). Neither metric provides a seasonal or load-weighted measure of energy efficiency. 86 FR 70644, 70651 (Dec. 10, 2021).

In contrast, the IEER metric factors in the efficiency of operating at full-load conditions as well as part-load conditions of 75-percent, 50-percent, and 25-percent of full-load capacity. In general, the IEER metric provides a more representative measure of field performance by weighting the full-load and part-load efficiencies by the average amount of time equipment spends operating at each load. *Id.*

IEER was first specified in a 2008 supplement to ASHRAE Standard 90.1–2007 for commercial air-cooled, water-cooled, and evaporatively-cooled air conditioning and heat pump equipment. ASHRAE Standard 90.1–2010 included minimum efficiency levels in terms of both EER and IEER for air-cooled VRF multi-split systems. ASHRAE Standard 90.1–2016 added IEER levels for water-source VRF multi-split heat pump systems, including systems with cooling capacity less than 65,000 Btu/h, in addition to the specified EER levels. On January 15, 2016, DOE published a direct final rule in the **Federal Register** for energy conservation standards for air-cooled commercial unitary air conditioners (air-cooled CUACs, or ACUACs), which amended the energy conservation standards for ACUACs and changed the cooling efficiency metric from EER to IEER, with compliance required starting January 1, 2018. 81 FR 2420.

The proposal to adopt the IEER metric and relevant provisions of AHRI 1230–2021 in the test procedure for VRF multi-split systems aligned with the VRF TP Term Sheet upon which the ASRAC Working Group agreed. 86 FR 70644, 70652 (Dec. 10, 2021). DOE also proposed to amend the definition for IEER at 10 CFR 431.92 to distinguish between the test procedures for ACUACs and VRF multi-split systems. *Id.*

Lennox, the CA IOUs, AHRI, Daikin, and NEEA commented that they support DOE's proposal to adopt the IEER metric for VRF multi-split systems. (Lennox, No. 8 at pp. 1–2; CA IOUs, No. 11 at p. 3; AHRI, No. 12 at p. 2; Daikin, No. 13 at p. 2; NEEA, No. 14 at p. 2) Lennox and NEEA stated that IEER improves the representativeness of the tested value for VRF multi-split systems. (Lennox, No. 8 at p. 2; NEEA, No. 14 at p. 2) The CA IOUs and NEEA commented that IEER informs consumers of the part-load performance benefits of variable speed equipment. (CA IOUs, No. 11 at p. 3; NEEA, No. 14 at p. 2) AHRI, Daikin, and Lennox supported DOE's proposed revision to the definition of IEER to differentiate between the test procedures for ACUAC and VRF multi-split systems. (AHRI, No. 12 at p. 2; Daikin, No. 13 at p. 2; Lennox, No. 8 at p. 2)

NEEA commented that DOE should investigate the differences between AHRI 1230–2021 and ANSI/AHRI 1230–2010, because manufacturers currently certify IEER measured per 1230–2010 for the AHRI certification program. The commenter stated that testing according to the new version of AHRI 1230 could result in different IEER values, which could cause market confusion, so NEEA suggested that DOE consider changing the name of the metric measured per AHRI 1230–2021 to ''IEER2.'' (NEEA, No. 14 at p. 2)

Regarding NEEA's comment, the changes in AHRI 1230–2021 as compared to ANSI/AHRI 1230–2010 better reflect typical operation and performance of VRF multi-split systems (see section III.C.1 of this document for further discussion). In particular, DOE

[11] In the December 2021 VRF TP NOPR, DOE incorrectly stated that ANSI/AHRI 1230–2010 references ANSI/ASHRAE 37–2009. 86 FR 70644, 70651 (Dec. 10, 2021).

[12] The errata sheet, which was updated on March 27, 2019, is available at: *www.ashrae.org/file%20library/technical%20resources/standards%20and%20guidelines/standards%20errata/standards/37-2009errata-3-27-2019-.pdf* (Last accessed Sept. 7, 2022).

finds that AHRI 1230–2021 includes several test procedure amendments that better reflect typical operation and performance of VRF indoor units, including the addition of SHR limits, further specification of indoor airflow, and changes to indoor unit tested combinations. DOE also finds that the addition of the CVP in AHRI 1230–2021 (which DOE is adopting in enforcement provisions) will improve representativeness by more closely tying controls behavior during testing to native controls behavior that would be expected to occur in a field installation. DOE also notes that the VRF TP Term Sheet included as Recommendation #1 that VRF multi-split systems should be rated with the IEER metric. (Docket No. EERE–2018–BT–STD–0003–0044) This recommendation was unanimously agreed upon by all Working Group members, as it allowed for comparisons to CUAC ratings, which also use the IEER efficiency metric. Further, DOE does not require certification of IEER as measured per ANSI/AHRI 1230–2010 nor does it include IEER in its current test procedure for VRF multi-split systems. Therefore, DOE concludes that there is not a need to deviate from the metric name ''IEER'' specified in AHRI 1230–2021 and that doing so might spawn unnecessary confusion by suggesting that there is some significant difference as to how that term is used in the context of the amended Federal test procedure as compared to AHRI 1230–2021. Consequently, DOE is adopting the IEER metric measured per AHRI 1230–2021 in the Federal test procedure for VRF multi-split systems, as proposed. Further, DOE is adopting the proposed revisions to the definition for IEER at 10 CFR 431.92 to distinguish between the test procedures for ACUACs and VRF multi-split systems.

2. Test Conditions Used for Efficiency Metrics

AHRI 1230–2021 includes a number of test conditions used to determine rated performance of VRF multi-split systems in both cooling mode and heating mode. Standard rating tests in cooling mode include the full-load cooling and three part-load cooling tests used to determine IEER. Standard rating tests in heating mode differ depending on whether the VRF multi-split heat pump is water-source or air-source. For water-source systems, there is only one heating mode standard rating test. For air-source systems, there are two heating mode standard rating tests (one at 47 °F outdoor temperature and another at 17 °F outdoor temperature).

In the December 2021 VRF TP NOPR, DOE proposed to specify in the test procedure for VRF multi-split systems which test conditions would be required for compliance with standards, were DOE to amend the energy conservation standards based on AHRI 1230–2021, and to specify additional test conditions that would be included in the DOE test procedure for making optional representations of efficiency. 86 FR 70644, 70652–70653 (Dec. 10, 2021). Specifically, for air-cooled VRF multi-split systems, DOE proposed to specify in section 3.1 of the proposed appendix D1 that the cooling test conditions used for compliance would be the ''Standard Rating Conditions, Cooling'' and ''Standard Rating Part-Load Conditions (IEER)'' conditions specified in Table 8 [13] of AHRI 1230–2021. DOE also proposed to specify in section 4.1 of the proposed appendix D1 that the heating test condition used for compliance would be the ''Standard Rating Conditions, High Temperature Steady-State Test for Heating'' conditions (47 °F) specified in Table 8 of AHRI 1230–2021. DOE also proposed to specify in section 4.1.1 of the proposed appendix D1 that representations of COP would be optional for the ''Low Temperature Steady-state Test for Heating'' conditions (17 °F), also specified in Table 8 of AHRI 1230–2021. For water-source VRF multi-split heat pumps, DOE proposed to specify in section 3.2 of the proposed appendix D1 that the test conditions used for compliance would be the standard rating test conditions for ''Water Loop Heat Pumps'' and proposed in section 4.2.1 of proposed appendix D1 that representations of EER and COP at the standard rating conditions for ''Ground-loop Heat Pumps'' would be optional. *Id.*

In response to DOE's proposed rating conditions, NYSERDA encouraged DOE to work with industry stakeholders to improve the representativeness of heating-mode performance ratings by: (1) adding rating points at colder ambient temperatures and (2) encouraging DOE to shift from regulating based on a single test point to an integrated heating metric. NYSERDA asserted that the VRF heating performance rating (COP at 47 °F) does not provide customers with sufficient information to determine equipment performance at temperatures experienced by New Yorkers during much of the winter season. Specifically, the commenter advocated that a rating condition at colder temperatures such as 5 °F or 0 °F is needed to provide colder climates with the data necessary to determine which VRF equipment is most appropriate. NYSERDA also encouraged DOE to change the test condition used for determining heating capacity from 47 °F to 17 °F (or lower). Regarding an integrated heating metric, NYSERDA commented that although integrated ratings are not reflective of any specific building type or climate zone, they provide a relative ranking of products, thereby allowing consumers to understand which models are likely to perform better than others across a range of ambient temperatures and load levels on the equipment. NYSERDA commented that an integrated heating metric for VRFs would be more representative than COP at 47 °F. (NYSERDA, No. 6 at p. 2) Furthermore, NYSERDA requested that if its comments could not be addressed in the current rulemaking, then it asked DOE to consider its comments for the next update of VRF test procedures. (NYSERDA, No. 6 at p. 3) No other comments were received as to the proposed test conditions for VRF multi-split systems.

In response, DOE notes that for VRF multi-split systems, the generally accepted industry test procedure is AHRI 1230–2021, which for air-source heat pumps only includes provisions to determine the COP rating at a high temperature point of 47 °F and at a low temperature point of 17 °F (outdoor air dry-bulb temperatures). Neither AHRI 1230–2021 nor previous versions of AHRI 1230 include the provisions needed to determine heating performance at other outdoor temperatures or specify an integrated metric for heating.

Regarding the addition of heating conditions at temperatures colder than 17 °F or adoption of an integrated heating metric (which as described by NYSERDA, would involve adding part-load heating tests), at this time, DOE lacks sufficient evidence to adopt tests for VRF multi-split systems at conditions other than those specified in the updated industry consensus test procedure, AHRI 1230–2021. Further, DOE does not have data as to representative test conditions, load levels, and weighting factors to be included in an integrated heating metric for VRF multi-split systems.

Regarding the suggestion that rated heating capacity be based on performance at 17 °F instead of 47 °F,

[13] AHRI commented in response to the December 2021 NOPR that DOE incorrectly identified the relevant table numbers of AHRI 1230–2021. They clarified that Table 8 of AHRI 1230–2021 outlines ''standard rating conditions'' for air-source VRF multi-split systems, while Tables 9 and 10 provide these conditions for water-source VRF multi-split systems for cooling mode and heating mode, respectively. (AHRI, No. 12 at p. 10) DOE has corrected these references in this final rule.

NYSERDA did not provide evidence that heating capacity measured at 17 °F would be more representative for VRF multi-split systems for the nation as a whole. Further, all other commercial heat pump equipment categories regulated by DOE also have the rated heating capacity measured at 47 °F, thus allowing comparison at the same condition across equipment categories. Additionally, the AHRI *Directory of Certified Product Performance* [14] includes heating capacity measured at both 47 °F and 17 °F; therefore, to the extent stakeholders are interested in heating capacity of VRF multi-split systems at 17 °F, they can obtain such information from the data made publicly available in the AHRI Directory for systems included in AHRI's certification program.

DOE notes that NYSERDA acknowledged that the Department is finalizing its test procedure rulemaking for VRF multi-split systems and that the commenter's suggestions may not be able to be incorporated in this rulemaking. Absent data supporting the representativeness of alternate test conditions and an alternate metric, as well as a lack of information as to which test conditions would be included in a representative integrated heating metric, DOE is not considering test conditions or metrics for VRF multi-split systems other than those proposed in the December 2021 VRF TP NOPR. Therefore, DOE is not adopting a lower-temperature heating test or an integrated heating metric for VRF multi-split systems, as recommended by NYSERDA. For the reasons discussed in the December 2021 VRF TP NOPR and in the preceding paragraphs, DOE is finalizing its proposals from the December 2021 VRF TP NOPR regarding test conditions for VRF multi-split systems.

E. Controls Verification Procedure

Section 5.1.2.1 of AHRI 1230–2021 specifies that during steady-state performance rating tests for cooling and heating efficiency, VRF multi-split systems must operate under commands from system controls except for certain components, referred to as ''critical parameters,'' which are allowed to be set by a manufacturer's representative. These critical parameters are (1) compressor speed(s), (2) outdoor fan speed(s), and (3) outdoor variable valve positions. Settings for critical parameters are allowed to be manually controlled using a manufacturer control tool, as opposed to all other components which must operate per commands from the system controls. The measured performance of VRF multi-split systems depends, in part, on the operating positions of each of these critical parameters. Accordingly, Section 5.1.2 of AHRI 1230–2021 states that operational settings for each of the critical parameters must be specified in the STI, and that each of the critical parameters must be allowed to be manually adjusted (to match the STI-certified values) during testing.

AHRI 1230–2021 also includes a normative Appendix C that specifies a CVP. The purpose of the CVP is to validate that the observed positions of critical parameters during the CVP are within tolerance of the STI-certified critical parameter values that are set by the manufacturer in steady-state IEER cooling tests (see section III.E.4 of this final rule for discussion of CVP results). This ensures that the measured results of the IEER test procedure are based on critical parameter settings that are representative of critical parameter behavior that would be experienced in the field. The December 2021 VRF TP NOPR includes additional information about the CVP. *See* 86 FR 70644, 70658–70663 (Dec. 10, 2021).

1. Background

DOE's current test procedure for VRF multi-split systems includes allowances in 10 CFR 431.96(f) for limited manufacturer involvement in assessment or enforcement testing. A manufacturer's representative may adjust components such as the compressor speed, fan speeds, and valve positions for the purposes of achieving steady-state conditions during testing. 10 CFR 431.96(f). This adjustment process is provided for VRF multi-split systems because of the complexity of VRF multi-split systems and the variety of settings needed to perform a test. 77 FR 28928, 28946 (May 16, 2012). DOE's current certification requirements for VRF multi-split systems, found at 10 CFR 429.43(b)(4), specify that the STI must include compressor frequency setpoints and required dip switch/control settings for step or variable components. However, DOE's current regulations do not require these settings to match system behavior when the VRF multi-split system is operating under its own controls. Further, there are no constraints regarding the allowable range of adjustments that a manufacturer's representative may make to reach steady-state operation.

In October 2018, during the negotiation meetings of the Working Group, the CA IOUs raised concern (supported by field and laboratory test data) as to the representativeness of the ANSI/AHRI 1230–2010 method, particularly with respect to control inputs used at part-load test conditions. (Docket Nos. EERE–2018–BT–STD–0003–0011 and EERE–2018–BT–STD–0003–0013) Ultimately, the VRF TP Term Sheet from the Working Group recommended that DOE adopt an updated draft of AHRI 1230 that included a controls verification procedure as an appendix. (Docket No. EERE–2018–BT–STD–0003–0044 at pp. 1–2)

Appendix C of AHRI 1230–2021 establishes a CVP.[15] The CVP verifies whether critical parameter settings certified in the STI, implemented by the manufacturer's representative during full-load and part-load steady-state cooling tests for IEER, are within the range of settings that would be used by the system during operation in the field—the system's native controls. The behavior of each critical parameter is monitored and recorded throughout the duration of a CVP. In contrast to steady-state tests in which test conditions are held constant, the CVP is a dynamic cooling test method in which certain test conditions are intentionally varied throughout the test. Specifically, the indoor room dry-bulb temperature is steadily decreased during the CVP using the room conditioning apparatus, in order to determine how the VRF multi-split system under test responds to approaching and achieving its setpoint. Outdoor room test conditions are held constant during the CVP. The CVP may be conducted at any of the four IEER outdoor air or entering water temperature conditions. At the start of the CVP, the indoor room test chamber temperature is controlled to a manufacturer-specified value that must be between 82 °F and 86 °F, and the VRF indoor units are set to control to a constant indoor temperature, 80 °F, except as explained by Section 5.1.5 of AHRI 1230–2021. Section 5.1.5 provides instructions for adjusting the VRF indoor unit setpoints (deviating from 80 °F) to account for setpoint bias and setpoint offset.[16] VRF indoor units

[14] The AHRI directory for VRF multi-split systems is available at: *www.ahridirectory.org/NewSearch?programId=72&searchTypeId=3* (Last accessed July 8, 2022).

[15] The concept for the CVP originated from a minimum compressor speed verification procedure provided in Japanese standard JIS B 8616:2006, *Package Air Conditioners,* which is included as an informative reference in appendix B of AHRI 1230–2021, but not directly referenced within AHRI 1230–2021. Available at *www.jsajis.org/index.php?main_page=product_info&cPath=2&products_id=13290.*

[16] AHRI 1230–2021 provides the following definitions for these terms in sections 3.29 and 3.30, respectively:

Continued

typically use the calculated temperature difference between the setpoint and the measured indoor air temperature as a control parameter for determining when to shut down and become thermally inactive.

As discussed, the timing of the first indoor unit becoming thermally inactive dictates the allowable time period for determining whether certified critical parameter values have been validated, so it is crucial to account for setpoint bias and offset to ensure repeatable test results. After setting initial indoor air temperature, including any adjustments to control for setpoint bias and offset, the CVP proceeds by incrementally decreasing the indoor room test chamber temperature while the VRF multi-split system setpoint is held constant. As the indoor room temperature approaches and eventually passes below the VRF multi-split system setpoint, the VRF multi-split system controls should begin to register that the cooling demand has been satisfied, and the system will begin to ''unload,'' meaning reduce capacity.[17] VRF multi-split systems typically unload by modulating component settings, including critical parameters, from the values used when providing full-load cooling capacity.

During this unloading period and up until the time that the first indoor unit becomes thermally inactive, critical parameters are compared against the critical parameter values that are certified in the STI. Once the first indoor unit becomes thermally inactive, the indoor room dry-bulb temperature continues decreasing until the indoor room reaches 77 °F. Section C6 of AHRI 1230–2021 includes equations for determining ''RSS Points Total'' [18]—an aggregated and normalized measure of deviation of all critical parameters from their certified values—and also includes criteria for determining whether or not the CVP has validated the certified critical parameter settings. The verification criteria specified in Section C6 of AHRI 1230–2021 for critical parameters measured during the CVP constitute a ''budget method'' that applies a limit to the calculated RSS Points Total across all three critical parameters instead of applying individual tolerances to each individual critical parameter.[19] This method allows manufacturers flexibility in critical parameter control strategies while still constraining the overall variation in VRF multi-split system performance. The budget method can be applied the same way regardless of the number of critical parameters that a manufacturer certifies to their STI. For any critical parameter whose value is not certified in the STI, (*i.e.,* not designated as being controlled during the IEER cooling tests), the deviation in that parameter will be calculated as zero for the duration of the CVP. Section C6.1.2 of AHRI 1230–2021 specifies that the certified critical parameters are valid if at least one measurement period of at least three minutes and a minimum of five sample readings exists where the average RSS Points Total is less than or equal to 70 points. Section C6.1.3 specifies the converse, *i.e.,* if no such measurement period satisfying those critical parameters exists within the CVP, then certified critical parameter values are deemed invalid. As discussed and for the reasons explained in the following sections, DOE is generally adopting the CVP provisions as proposed in the December 2021 VRF TP NOPR.

2. When the CVP Is Conducted

In the December 2021 VRF TP NOPR, DOE proposed to adopt the CVP that is specified in appendix C of AHRI 1230–2021 in the product-specific enforcement provisions for VRF multi-split systems at 10 CFR 429.134(s). 86 FR 70644, 70661 (Dec. 10, 2021). Additionally, DOE proposed to specify at 10 CFR 429.134(s)(3) that DOE would conduct a CVP at each of the four IEER cooling test conditions in the December 2021 VRF TP NOPR. *Id.* DOE also proposed to specify that the CVP would be performed first at the full-load cooling condition to determine maximum critical parameter values, before conducting the CVP at part-load cooling conditions because the maximum critical parameter values are used for calculating normalized deviation for CVPs at part-load conditions. *Id.*

The CA IOUs, Daikin, and AHRI commented that they support DOE's proposal to incorporate the CVP into its product-specific enforcement provisions. (CA IOUs, No. 11 at p. 2; Daikin, No. 13 at p. 4; AHRI, No. 12 at p. 5) The CA IOUs stated that this proposal captured the intent of the VRF TP Term Sheet and that this proposal will capture the benefits of the CVP while limiting test burden primarily to the systems included in enforcement testing. (CA IOUs, No. 11 at p. 2)

NEEA commented that the CVP is an essential process to verify that the system can perform according to its rating. NEEA recommended that the CVP should be required as a part of the test procedure, not only included in enforcement provisions. The commenter stated that, without performing a CVP as part of the test procedure, the manufacturer may not be aware that its equipment is underperforming until DOE selects it for enforcement testing. (NEEA, No. 14 at pp. 2–3)

Joint Advocates and the CA IOUs commented that they support DOE's proposal to conduct a CVP at each of the four load points. The CA IOUs stated that the CVP is important at part-load conditions, where deviation in the VRF system performance is expected to be largest. (CA IOUs, No. 11 at p. 2; Joint Advocates, No. 9 at p. 2) AHRI and Daikin pointed out that DOE's proposal to conduct a CVP at each load point would be more than what is required for AHRI's certification program. (AHRI, No. 12 at p. 10; Daikin, No. 13 at p. 7) Daikin further commented that, due to the relative newness of the CVP, manufacturers would likely perform the same CVP tests that DOE would perform as part of enforcement testing, thereby increasing test burden. (Daikin, No. 13 at p. 7) AHRI further commented that other than conducting the CVP at all load points, the burdens of the NOPR proposals are similar to current industry practice as indicated by AHRI 1230–2021. (AHRI, No. 12 at p. 10)

With regards to NEEA's comment, DOE did consider the potential burden and benefits of including the CVP as part of the Federal test procedure, and this evaluation revealed the following. To start, DOE notes that the CVP is not required for rating models as part of the industry consensus test procedure (AHRI 1230–2021). Per the certification requirements adopted in this final rule (see section III.G.2.b of this document), manufacturers will be required to report

Setpoint Bias—The difference between 80 °F and the nominal thermostat setpoint required for the thermostat to control for 80 °F sensed temperature at the sensed location.

Setpoint Offset—The difference between the temperature indicated by a thermostat's temperature sensor and the actual temperature at the sensor's location.

[17] Figure C.1 in AHRI 1230–2021 displays an example schematic of the indoor dry-bulb temperature in °F, compressor speed in Hz, and the number of thermally active indoor units over the duration of a CVP test.

[18] In response to the December 2021 NOPR, the CA IOUs commented that there were certain incorrect section references in the December 2021 NOPR. They stated that proposed changes to 10 CFR 429.134(s)(3)(ii)(B) state that the RSS points total is defined in Section 3.26 of AHRI 1230–2021, while the definition is actually in section 3.27. (CA IOUs, No. 11 at p. 4). DOE has corrected the section references in this final rule.

[19] In addition to recommending inclusion of a CVP as an appendix to the draft AHRI 1230, the VRF TP Term Sheet also recommended that DOE determine appropriate values for critical parameter tolerances using manufacturer-provided data. DOE subsequently conducted testing and sensitivity analysis of several VRF multi-split systems. The results were used to develop the ''budget method'' for CVP critical parameter verification specified in Section C6 of AHRI 1230–2021.

the critical parameter settings at each of the IEER test conditions as part of their STI. Consequently, DOE expects that manufacturers likely will develop these certified values first through investigative testing of some basic models and then later, as knowledge of VRF control systems improves, through simulations. However, DOE expects that manufacturers may determine that they do not need to conduct the CVP on every basic model in order to understand the behavior of the system controls to develop certified critical parameters. For instance, a manufacturer may conduct a CVP on one or two models within a model line and find that the resulting information provides an adequate basis to develop certified critical parameters for other models in the model line (*e.g.,* similar models of differing capacities). Further, manufacturers likely will have some understanding of the dynamic system controls behavior of their models without conducting the CVP. Requiring conducting the CVP for rating every basic model would not provide manufacturers this discretion, and it could result in unnecessary and costly testing.

Requiring the CVP to be conducted for every basic model would require manufacturers to physically test every basic model of VRF multi-split systems. Per current regulations at 10 CFR 429.43 and 10 CFR 429.70, manufacturers are allowed to rate VRF multi-split systems using AEDMs and are not required to test every basic model. Therefore, requiring the CVP to be conducted for every basic model would substantially increase the number of basic models required to be physically tested. Further, as described in the December 2021 VRF TP NOPR, DOE estimated that the CVP would add approximately eight hours of test time at each of the four IEER load conditions during enforcement testing. 86 FR 70644, 70669 (Dec. 10, 2021). If the CVP were required to be used at each IEER test condition, each basic model would potentially require over 30 hours of testing time for the CVP, beyond the testing time required to measure IEER.

Because manufacturers likely will conduct CVP testing and simulation on a number of their VRF models in order to determine representative certified settings for critical parameters in the STI for all basic models, DOE finds that NEEA's suggestion to include the CVP as part of the test procedure for VRF multi-split systems would not substantially change the critical parameter settings manufacturers would certify, and, thus, would not provide a significant increase in representativeness of the test procedure. Further, NEEA's suggestion would impose significantly more burden on manufacturers than the approach proposed in the December 2021 VRF TP NOPR, because it would require physical testing and conducting the CVP for every basic model, rather than allowing manufacturers to decide the appropriate balance of CVP testing and test burden to develop certified critical parameter settings. Contrary to what NEEA suggests, DOE also finds it unlikely that manufacturers would not take appropriate steps to assess their equipment's performance under the CVP, particularly given the potential business disruptions likely to result were underperformance to be encountered for the first time in the context of DOE enforcement testing. Given that not requiring the CVP for testing is consistent with the VRF TP Term Sheet and the most recent industry consensus test procedure, DOE does not have sufficient evidence to conclude that requiring the CVP for testing would improve the representativeness of the test procedure without being unduly burdensome. Therefore, DOE is adopting the CVP as product-specific enforcement provisions for VRF multi-split systems in 10 CFR 429.134(s) as proposed.

With regard to conducting the CVP at all four IEER load points, DOE found through its investigative testing that there is substantial variability in VRF system behavior observed at different IEER load points, and that the system controls behavior at one IEER point does not necessarily predict behavior at a different load point. Therefore, DOE concludes that separately validating critical parameter behavior at each IEER condition is needed as part of DOE enforcement testing in order to sufficiently ensure representative system controls behavior. In consideration of these factors and comments received, in this final rule, DOE is adopting its proposals at 10 CFR 429.134(v)(3) regarding performing a CVP at full-load cooling conditions first, then at each of the part-load cooling conditions.

Adoption of the CVP in enforcement provisions will not require manufacturers to conduct the CVP on every basic model. As previously discussed, manufacturers likely will choose not to conduct the CVP for every basic model of VRF multi-split systems, as they may find that simulations, similarity between basic models (particularly between models within a model line), and their understanding of the behavior of their system controls provide sufficient basis to develop certified critical parameter settings for some of their model offerings. To the extent that manufacturers conduct CVP testing on their models in order to sufficiently understand systems behavior, DOE acknowledges that its adoption of CVP testing at all four IEER load points for enforcement testing (rather than just at one IEER load point) may result in manufacturers conducting the CVP at more IEER load conditions than they otherwise would have. DOE acknowledges that in certain scenarios, running three more CVPs could take up to 24 hours. However, by performing the CVP at the same time as IEER testing, there would be no additional test burden associated with unit set-up/commissioning. Additionally, a CVP could be completed immediately following a steady-state test run at the corresponding IEER load point, in which case there would be no need to change the test chamber temperatures prior to conducting the CVP. Therefore, DOE concludes that for the basic models for which manufacturers choose to conduct the CVP, conducting the CVP at all four IEER load points would not be unduly burdensome and would increase the representativeness of the test procedure. As discussed, DOE has concluded that conducting the CVP at all four IEER load points is needed to ensure representative system behavior. Therefore, DOE is adopting its proposals at 10 CFR 429.134(v)(3) that as part of assessment or enforcement testing, DOE will perform a CVP at full-load cooling conditions first, then at each of the part-load cooling conditions.

In the December 2021 VRF TP NOPR, DOE also proposed to specify that the CVP would be performed on a single system of the two-system sample during enforcement testing. 86 FR 70644, 70661–70662 (Dec. 10, 2021).

AHRI, Lennox, the CA IOUs, and Daikin commented that performing a CVP on a single system is adequate, provided that the testing laboratory ensures the set-up is correct and that a manufacturer representative is involved. (AHRI, No. 12 at p. 5; Lennox, No. 8 at p. 3; CA IOUs, No. 11 at p. 2; Daikin, No. 13 at p. 4)

For the reasons discussed in the December 2021 VRF TP NOPR and in the preceding paragraphs, DOE adopts its proposal to perform the CVP on a single system during assessment or enforcement testing. DOE is clarifying in this final rule that a CVP would be performed on a single system, regardless of the sample size used for enforcement (see section III.G.7 of this document for further discussion of the enforcement sampling plan). DOE's use of the CVP during assessment and enforcement

testing is illustrated in Figure 1 in section II of this final rule.

3. Critical Parameter Definition

In the December 2021 VRF TP NOPR, DOE proposed not to reference the definition of ''critical parameters'' in Section 3.11 [20] of AHRI 1230–2021 in order to be more explicit that the term ''critical parameters'' refers only to those parameters specified by Section 5.1.2.1 of AHRI 1230–2021. DOE proposed to define critical parameters in section 3 of appendix D1 as specifically referring to the following settings of modulating components of VRF multi-split air conditioners and heat pumps: compressor speed(s), outdoor fan speed(s) and outdoor variable valve position(s). 86 FR 70644, 70659 (Dec. 10, 2021). DOE tentatively concluded that the proposed change to the definition is editorial in nature and would not change or conflict with any testing provisions in AHRI 1230–2021. *Id.* at 86 FR 70659–70660.

AHRI and Daikin commented that the original definition for critical parameters as written in AHRI 1230–2021 should be used in the DOE test procedure. (AHRI, No. 12 at p. 3; Daikin, No. 13 at p. 2) AHRI stated that Section 5.1.2.1 of AHRI 1230–2021 specifies what the critical parameters are for a given system and stated their preference that this be enumerated in the test requirements rather than the definition so as to align with AHRI 1230–2021. (AHRI, No. 12 at p. 3) Daikin argued that the proposed revision to the definition does not add more specificity to which components can be adjusted. (Daikin, No. 13 at p. 2) The CA IOUs commented that they support DOE's proposed definition for ''critical parameters'' and limiting the term to the parameters specified in section 5.1.2.1 of AHRI 1230–2021, and they agreed with DOE that the proposal would not conflict with any testing provisions in AHRI 1230–2021. (CA IOUs, No. 11 at p. 4) Lennox commented that they support DOE's proposal to clarify that critical parameters are limited to compressor speeds, outdoor fan speeds, and outdoor variable valve positions, stating that the proposed definition would provide clarity and consistency when conducting a CVP. (Lennox, No. 8 at p. 3)

[20] The CA IOUs stated that in proposed updates to 10 CFR 431.97, subpart F, appendix D1, DOE states that critical parameter(s) are defined in section 3.10 of AHRI 1230–2021, but the correct reference should be to section 3.11 of that industry standard. (CA IOUs, No. 11 at p. 4) DOE acknowledges this typographical error and has corrected the section references in this final rule.

While section 5.1.2.1 of AHRI 1230–2021 clearly enumerates the three types of components that can be specified for testing and verified by conducting a CVP, the definition of ''critical parameter'' in AHRI 1230–2021 is rather vague, open-ended, and susceptible to a reading that would permit inclusion of components that cannot be overridden during testing (*i.e.,* components other than compressor speed(s), outdoor fan speed(s) and outdoor variable valve position(s)). DOE concludes that specifying the relevant components in the definition will add clarity to the test procedure without conflicting with existing provisions or adding duplicative language into the test procedure. Therefore, for the reasons discussed in the December 2021 VRF TP NOPR and in this paragraph, DOE is adopting its proposed definition for critical parameters that specifically refers to the relevant components: compressor speed(s), outdoor fan speed(s) and outdoor variable valve position(s).

4. Validation of Certified Critical Parameters

As previously discussed, Sections C6.1.2 and C6.1.3 of AHRI 1230–2021 specify validation criteria for the CVP using a budget method that limits the calculated RSS Points Total across all three critical parameters. In the December 2021 VRF TP NOPR, the Department discussed this matter in some detail, and DOE tentatively determined that the language in Sections C6.1.2 and C6.1.3 of AHRI 1230–2021 could be construed and applied in multiple manners, and that this could lead to differing test burdens. 86 FR 70644, 70660 (Dec. 10, 2021). The phrase ''a measurement period of at least three minutes and a minimum of five sample readings'' could be misunderstood to indicate a measurement period with no upper limit, potentially encompassing the entire duration of the CVP. This reading could be misunderstood to require iterative calculations of time periods of varying lengths when validating critical parameters during the CVP (*e.g.,* all three-minute periods, and all four-minute periods, and all five-minute periods). Taken to an extreme, this would result in thousands of calculations. Further, the language ''where the average RSS Points Total is less than or equal to 70 points'' does not indicate the specific procedure for determining the average value of RSS Points Total—*i.e.,* whether ''average'' refers to the average value within the measurement period or the cumulative average value of RSS points at the time of measurement. *Id.*

Accordingly, DOE proposed to clarify these provisions by providing additional instructions for validating critical parameters in 10 CFR 429.134(s)(3)(ii). *Id.* Specifically, DOE proposed to specify that the duration of the time period used for validating critical parameters must be whichever of the following is longer: three minutes or the time period needed to obtain five sample readings while meeting the minimum data collection interval requirements of Table C2 of AHRI 1230–2021. *Id.* DOE also proposed to specify that if at least one measurement period (with the aforementioned duration) exists before the first indoor unit goes thermally inactive that has an average RSS Points Total less than or equal to 70 points, then the certified critical parameter values are validated. *Id.*

a. Validation Time Period

Regarding DOE's proposal to clarify the language about the length of time used for the critical parameter validation period, AHRI commented that DOE should not specify a duration for the measurement period used for validating critical parameters. AHRI argued that it is not necessary to change existing language, as increasing testing duration will not improve the ability of the equipment to conform to testing conditions. (AHRI, No. 12 at pp. 3–4) Daikin commented that while they agree with DOE's interpretation that technically a maximum validation time period is not specified in AHRI 1230–2021, a longer test run would result in a higher RSS point total. Daikin stated that this is detrimental to determining whether the critical parameters are valid and asserted that a manufacturer would likely test using the shortest time period permitted by AHRI 1230–2021 (3 to 4 minutes). (Daikin, No. 13 at p. 3) Despite both AHRI and Daikin indicating that a maximum limit for critical parameter validation is not necessary, they acknowledged that there may be merit in adding a maximum time period and suggested changing this period to twice that proposed (*i.e.,* 8 minutes). Daikin and AHRI provided three reasons to justify their proposals: (1) there may be difficulty achieving all three critical parameter values at the same time; (2) if any one critical parameter achieves its target setpoint before the other critical parameters, the system is penalized for going beyond the target setpoint; and (3) the newness of the CVP results in greater uncertainty. (AHRI, No. 12 at pp. 3–4; Daikin, No. 13 at p. 3)

In response, DOE understands Daikin's comment to reflect a misunderstanding of the calculation of the RSS points total, by suggesting the potential for accumulating more points as more time passes. As specified in Section C6.1.1 of AHRI 1230–2021, RSS points total is calculated at each data collection interval during the R2 period [21] as an instantaneous measurement, and, therefore, it does not accumulate over time. AHRI's comments seemingly contradict each other, as it in one place calls for an 8-minute maximum period while at another place it states that a maximum period would have no effect. With respect to AHRI and Daikin's claims about the timing with which critical parameters achieve their target operating states, DOE is aware of the possibility that system controls may achieve desired setpoints for one critical parameter at a different time during the CVP than other critical parameters. However, the purpose of the CVP is to validate that the measured results of the IEER test procedure are based on critical parameter settings that are representative of critical parameter behavior that would be experienced in the field. Because the measured performance of VRF multi-split systems is dependent on the *simultaneous* interaction of each of the critical parameters, critical parameter variation must be evaluated based on the simultaneous positions of each parameter, not based on the behavior for each parameter at different periods of the CVP. Therefore, DOE concludes that for representative IEER test results, the critical parameter settings used in IEER testing should be representative of a combination of setpoints that would be used simultaneously in real-word applications. If the desired critical parameter setpoints are achieved in the CVP at times far enough apart that the RSS Points Total limit is not met within the maximum length of validation period, then the certified critical parameter settings should be invalidated (*i.e.,* not used for steady-state IEER testing). Daikin and AHRI also did not provide any evidence to support their suggestion for increasing the duration of the validation period beyond the duration in DOE's proposed clarification of Sections C6.1.2 and C6.1.3 of AHRI 1230–2021. Because, as discussed in section III.C.1 of this document, the Working Group unanimously recommended that DOE adopt a test procedure referencing AHRI 1230–2021, DOE understands AHRI 1230–2021 to represent the industry consensus opinion. By extension, DOE understands the critical parameter validation time period between 3–4 minutes specified in AHRI 1230–2021 to reflect consensus on an appropriate validation time interval that provides for sufficient data collection and representative results.

For the reasons discussed in the December 2021 VRF TP NOPR and in the preceding paragraphs, in this final rule, DOE is adopting its proposal to specify in 10 CFR 429.134(v)(3)(ii) the duration of the time period used for validating critical parameters. The additional instruction results in a validation period lasting a minimum of three minutes and a maximum of four minutes. For tests using the longest allowable data collection interval,[22] the time required to obtain five sample readings would be four minutes (once at the start of the interval plus four successive measurements, once each minute). For tests using shorter data collection intervals, the validation time period would be either the time required to achieve five sample readings or three minutes, whichever is longer.

b. Validation Criteria

Regarding DOE's proposal to validate certified critical parameters based on the presence of a period (with duration discussed in section III.E.4.a of this document) having an average RSS points total less than or equal to 70 points, the CA IOUs commented that they agree that the RSS Point Total budget of 70 points should be large enough to account for any potential source of variability. (CA IOUs, No. 11 at pp. 2–3) In contrast, AHRI and Daikin commented that CVP testing has only been conducted on a limited subset of products, with very few water-source products and no products over 240,000 Btu/h. These commenters further asserted that no lab-to-lab test validation has been conducted, especially between manufacturer laboratories and third-party laboratories. AHRI and Daikin also asserted that manufacturers have observed that changes in the indoor chamber temperature ramp rate impact the unit's ability to meet the average RSS points total and to reach conditions of the CVP. For these reasons, AHRI and Daikin recommended that in the case that a CVP invalidates the certified critical parameter settings during enforcement testing, DOE should require that a second CVP be conducted at an adjusted ramp rate to re-attempt validation. (AHRI, No. 12 at pp. 4–5; Daikin, No. 13 at pp. 3–4)

Regarding AHRI and Daikin's claims about the potential for variation between different CVP test runs, as discussed in section III.E.1 of this final rule, the budget method (adopted at 10 CFR 429.134(v)(3)(ii) in this final rule) allows manufacturers flexibility in critical parameter control strategies while still constraining the overall variation in VRF multi-split system performance. Following Working Group meetings, DOE conducted testing and sensitivity analysis of several VRF multi-split systems, the results of which were incorporated into the development of the budget method for CVP critical parameter verification specified in Section C6 of AHRI 1230–2021. The 70-point threshold was developed as part of AHRI 1230 Technical Committee meetings in which DOE presented anonymized and aggregated test data. As part of those meetings, DOE presented its finding that a minimum point budget of 32 points was required to account for the lab-to-lab and test-to-test variability observed in critical parameter behavior between CVP runs for a single system. (EERE–2018–BT–STD–0003–0063 at p. 23) To account for additional variability (*e.g.,* sample-to-sample variability across the same VRF multi-split system and variability across different types of VRF multi-split systems), DOE recommended a 60-point budget to the Technical Committee. (*Id*) The Technical Committee ultimately agreed to specify a 70-point budget in AHRI 1230–2021. Additionally, in the December 2021 VRF TP NOPR, DOE specifically requested test data demonstrating any issues with repeatability and reproducibility of the CVP that would indicate that the 70-point budget for critical parameter variation included in the industry consensus test procedure AHRI 1230–2021 is insufficient. 86 FR 70644, 70662 (Dec. 10, 2021). DOE did not receive any data in response to this request. For these reasons, DOE concludes that based on all available data, the RSS points total budget of 70 points is appropriately flexible to account for any issues with lab-to-lab and unit-to-unit repeatability when conducting the CVP.

With regard to AHRI and Daikin's proposal to allow a second CVP to be conducted at an alternate ramp rate, DOE does not have sufficient information to support such an addition. As codified in this final rule, manufacturers will be responsible for reporting in their STI specific

[21] Section C4.4.2 of AHRI 1230–2021 defines the ''R2 period'' as beginning when the measured indoor dry-bulb temperature first crosses from above 82 °F to below 82 °F, and as ending when any indoor unit that was designated thermally active at the start of the CVP becomes thermally inactive.

[22] Table C2 of AHRI 1230–2021 specifies the minimum data collection intervals for recording data during the CVP.

instructions for conducting the CVP including ramp rate, starting temperature, and thermally active indoor units. The CVP then includes provisions for ensuring that the test laboratory properly conducts the CVP per manufacturer specifications. Manufacturers also will be required to report certified critical parameter values in their STI, which the manufacturer may develop based on a CVP conducted using the same instructions. These three provisions are all aligned to ensure the CVP is performed consistently and that results are more predictable (*i.e.,* manufacturers can set their own ramp rate and CVP conditions, within bounds of the test procedure, that would provide the most consistent results). Additionally, DOE reiterates that the budget method used for validating critical parameters was designed to give enough flexibility to account for lab-to-lab and test-to-test variation in CVP results. Allowing an additional CVP run to attempt validation of critical parameters would in effect expand the uncertainty allowance beyond that agreed upon by the AHRI 1230 Technical Committee and addressed in AHRI 1230–2021. Therefore, in this final rule DOE is not adopting the suggestion to allow a second CVP to be conducted at an alternate ramp rate.

AHRI further commented that if DOE's proposals regarding CVP validation of certified critical parameters were implemented as enforcement guidance instead of through regulation, then the provisions could be changed or rescinded more easily as industry gains experience with conducting the CVP. (AHRI, No. 12 at p. 5)

As discussed, the CVP provisions (including the RSS points total budget of 70 points) were developed using the data gathered by testing several VRF multi-split systems. These data showed that a 70-point budget would be sufficient to account for lab-to-lab and unit-to-unit test variability. The provisions have also been thoroughly discussed in Working Group and AHRI 1230 Technical Committee meetings prior to inclusion in the most recent industry consensus test procedure AHRI 1230–2021. Therefore, DOE concludes that the CVP provisions are appropriate for inclusion in DOE's regulations. Further, DOE finds that codifying the CVP provisions in regulation provides greater certainty for when and how the CVP would be used and prevents sudden shifts in policy or interpretation.

Based on discussion in the December 2021 VRF TP NOPR and in the preceding paragraphs, DOE is adopting its proposal at 10 CFR 429.134(v)(3)(ii) specifying that if at least one measurement period (with the aforementioned duration) exists before the first indoor unit goes thermally inactive that has an average RSS Points Total less than or equal to 70 points, then the certified critical parameter values are validated.

5. Determination of Alternate Critical Parameters

In the December 2021 VRF TP NOPR, DOE proposed that in cases in which a CVP is not conducted, or if a CVP is conducted and the manufacturer-specified critical parameters are validated, the critical parameter values certified in the STI are to be used as the initial control inputs when conducting the IEER cooling test at the corresponding full- or part-load cooling condition. 86 FR 70644, 70661 (Dec. 10, 2021). In cases in which a CVP fails to validate the certified critical parameter values, DOE proposed at 10 CFR 429.134(s)(3)(iii)(B) that alternate critical parameter values would be determined by averaging the value for each critical parameter from a specified time period of the CVP data, and that these alternate critical parameter values would be used for IEER testing in lieu of the certified critical parameter values. *Id.*

To provide further specification for determining these alternate parameters, DOE proposed to use the same procedure for determination of measurement period length as was proposed for validation of certified critical parameters in 10 CFR 429.134(s)(3)(ii)(A): the longer of three minutes or the time period needed to obtain five sample readings while meeting the minimum data collection interval requirements of Table C2 of AHRI 1230–2021. 86 FR 70644, 70661 (Dec. 10, 2021). DOE also proposed to select the measurement period for determining alternate critical parameter values (with the aforementioned duration) that has the lower average RSS points total over the selected period than over any other period in the CVP having the same duration. *Id.* If multiple such periods exist with the same RSS Points Total, DOE proposed to select the period closest to (but before) the time when the first indoor unit becomes thermally inactive (t_{Off}). *Id.*

Daikin agreed that neither the Working Group nor the AHRI 1230 Technical Committee resolved the question of how to determine alternate critical parameter values in the case where a CVP invalidates the manufacturer's certified values. Daikin concurred with DOE's suggested approach for determining alternate critical parameter settings. (Daikin, No. 13 at p. 3) DOE did not receive any other comments specific to the question of how to determine alternate critical parameters following a CVP that fails to validate the manufacturer-certified critical parameter settings. For the reasons discussed in the December 2021 VRF TP NOPR and in this section, DOE is adopting the provisions for determining alternate critical parameter values in this final rule as proposed.

F. Allowable Critical Parameter Adjustment

1. Adjustment of Certified Critical Parameter Values

Section 6.3.3 of AHRI 1230–2021 provides instructions for adjusting critical parameters during the four specified full- or part-load IEER cooling test conditions in order to meet cooling capacity targets or to adjust SHR to below the allowable limit. In the December 2021 VRF TP NOPR, DOE tentatively determined that amendments to this section of AHRI 1230–2021 are required and proposed to specify allowable critical parameter adjustments in section 5.2 of appendix D1 to subpart F of part 431. 86 FR 70644, 70662 (Dec. 10, 2021). Specifically, DOE proposed (1) instructions for calculating critical parameter variation (in terms of RSS Points Total) for steady-state IEER cooling tests for which the measured capacity is above the target load fraction; (2) clarification that upward adjustments to compressor speed (*i.e.,* when the measured cooling capacity is too low or when the SHR is above the allowable limit) are not constrained by a budget on RSS Points Total; and (3) clarification to the instructions for calculating critical parameter variation in the scenario where a VRF multi-split system contains multiple components corresponding to a single critical parameter (*e.g.,* multiple compressors). *Id.* at 86 FR 70662–70663.

Daikin expressed support for DOE's proposal to calculate normalized critical parameter variation during the adjustment process if tested capacity is above the target capacity and also supported the proposal to adjust critical parameters to meet capacity requirements. (Daikin, No. 13 at p. 4) AHRI supported the clarifications proposed by DOE and commented that the Department should provide example calculations for each case so as to provide additional clarity. Specifically, AHRI mentioned that for systems with multiple modules (*i.e.,* outdoor units), there are two types of critical parameters: (1) those that can be set for each module and (2) those that have one

value for multiple modules. (AHRI, No. 12 at p. 6)

For the reasons discussed in the December 2021 VRF TP NOPR and in the preceding paragraphs, DOE is finalizing its proposals to add clarifying language to the provisions for determining allowable critical parameter adjustments when conducting IEER testing.

Regarding AHRI's request that DOE provide example calculations for ''each case'' describing allowable critical parameter adjustments, the scope of AHRI's suggestion is unclear (*e.g.,* whether AHRI requested example calculations for different equipment classes of VRF multi-split systems or for different permutations of critical parameters). Further, DOE finds that the proposed instructions for critical parameter adjustments are sufficient for testing multi-module VRF multi-split systems, even if parameters are controlled jointly across modules. Section 5.2 of appendix D1 describes critical parameter adjustments and includes provisions that accommodate differential or shared adjustments of multiple instances of the same critical parameter (*e.g.,* two compressors). Because the existing test provisions sufficiently cover the scenario described by AHRI, and because AHRI did not provide any other examples of VRF multi-split system configurations or control schemes for which the proposed testing provisions for critical parameter adjustments are unclear, DOE is not adding example calculations for critical parameter adjustments in this final rule.

In the case that a VRF multi-split system configuration exists that raises questions about how the DOE test procedure should apply, DOE notes that it will receive general inquiries via email at *ApplianceStandardsQuestions@ee.doe.gov.* DOE also maintains a repository of frequently asked questions pertaining to additional guidance issued by DOE.[23] In addition, if it is ultimately determined that a VRF multi-split system configuration exists for which the critical parameter adjustment procedures will result in an inability to test the system or provide materially inaccurate performance results, manufacturers may petition DOE for a test procedure waiver under 10 CFR 431.401.

2. Adjustment of Alternate Critical Parameter Values

As described in section III.E.5 of this document, DOE proposed to clarify how, in the event that a manufacturer's certified critical parameter settings were invalidated through the CVP, alternate critical parameters would be determined and used as control inputs during DOE enforcement testing. 86 FR 70644, 70663 (Dec. 10, 2021). In the December 2021 VRF TP NOPR, DOE elaborated that in such a case, it may still be necessary to adjust the alternate critical parameter values in order to meet capacity tolerances and SHR limits for the IEER test. Accordingly, DOE proposed to include provisions at 10 CFR 429.134(s)(3)(iii)(B)(*3*) specifying that in the case of invalidated critical parameter values in which DOE determines alternate critical parameters, additional adjustments to the alternate critical parameters are allowed in order to comply with capacity and/or SHR requirements. *Id.*

Specifically, DOE proposed to rely on the methods for adjustment of critical parameters in proposed section 5.2 of appendix D1 to subpart F of part 431 with two modifications. *Id.* First, DOE proposed that in such a case, references in section 5.2 of appendix D1 to critical parameter values certified in the STI would be replaced with references to alternate critical parameter values determined under the CVP. Second, DOE proposed to determine the maximum operating state of each critical parameter (referred to as CP_{Max} in AHRI 1230–2021 and the proposed regulatory text) based on the maximum operating state observed during a CVP conducted at 100-percent cooling load conditions, instead of using the information certified to the STI for the 100-percent cooling load point. *Id.*

AHRI commented that it supports DOE's proposal to use alternate critical parameters for IEER adjustments in the case of invalidated STI critical parameters, as this proposal clarifies how a test would be run in this situation. (AHRI, No. 12 at p. 6) Daikin commented that DOE's proposed adjustments to meet capacity requirements, if not provided by the manufacturer in the STI, is acceptable. (Daikin, No. 13 at p. 4) DOE did not receive any additional comments on this topic.

Based on the discussion presented in the December 2021 VRF TP NOPR and in the preceding paragraphs, DOE is adopting its proposals for section 5.2 of appendix D1 to subpart F of part 431 regarding adjustment of alternate critical parameter values.

G. Certification, Compliance, and Enforcement

1. Determination of Represented Values

a. Introduction

VRF multi-split systems are, by definition, split-system commercial package air conditioners and heat pumps that employ an outdoor unit(s) and multiple separate indoor fan coil units connected in a single refrigerant circuit. 10 CFR 431.92. VRF multi-split heat pumps can be configured as heat recovery systems, which allows for recovered energy from the indoor units operating in one mode (*e.g.,* cooling) to be transferred to one or more other indoor units operating in the other mode (*e.g.,* heating). This necessitates a heat recovery box that is installed between the outdoor unit and indoor units. Additionally, VRF multi-split systems are available with different refrigerant options and are sold with a wide variety of components, including many that can optionally be installed on or within the unit, both in the factory and in the field. Each optional component may or may not affect a model's measured efficiency when tested to the DOE test procedure adopted in this final rule.

In the December 2021 VRF TP NOPR, DOE proposed several items related to configuration of the unit under test and determination of represented values. These proposals included instructions on how to select indoor unit models (via reference of the tested combination requirements specified in section 6.2.1 of AHRI 1230–2021) and provisions specifying the different represented values that must be made for each indoor unit type within a basic model, as well as provisions for determination of represented values for basic models distributed in commerce with specific components, heat recovery components, and multiple refrigerants. 86 FR 70644, 70663–70665 (Dec. 10, 2021). These proposals and related stakeholder comments are discussed in paragraph III.G.1.b of this document.

In this final rule, DOE is providing additional discussion to help clarify the interplay between the previously proposed representation requirements, the proposed indoor unit tested combination requirements, and the proposed approach for specific components. The approach finalized by this rule is substantively the same as the corresponding proposals in the December 2021 VRF TP NOPR. The provisions adopted in this final rule and the justification for adopting these

[23] DOE's website houses frequently asked questions (FAQs) pertaining to the DOE Appliance Standards Program. The FAQ list is available at: *https://www.energy.gov/eere/buildings/appliance-standards-guidance-and-frequently-asked-questions-faqs,* or interested parties may submit a new question at: *https://www.energy.gov/eere/buildings/appliance-standards-guidance-and-frequently-asked-questions.*

provisions are described in greater detail in section III.G.1.c of this document.

b. NOPR Proposals and Comments

i. Tested Combination and Indoor Unit Combinations

In the December 2021 VRF TP NOPR, DOE made two proposals pertaining to represented values for different combinations of VRF indoor unit models. First, DOE proposed to reference the tested combination provisions from section 6.2.1 of AHRI 1230–2021 in the test procedure at appendix D1. 86 FR 70644, 70663 (Dec. 10, 2021). These provisions instruct how to select indoor unit models to comprise a ducted, non-ducted, or small-duct high-velocity tested combination. Section 6.2.1 also specifies an indoor unit selection hierarchy based on indoor unit sub-type and other design characteristics. For example, to compose a non-ducted tested combination, AHRI 1230–2021 specifies compact 4-way ceiling cassettes as the highest-priority selection and further requires that the indoor unit model having the lowest normalized coil volume and lowest-efficiency indoor fan motor within the specified indoor unit type must be selected. Second, DOE proposed that manufacturers must determine separate represented values for each indoor unit tested combination that is distributed in commerce. 86 FR 70644, 70664 (Dec. 10, 2021). Through this approach, each VRF basic model would be required to include separate representations for each of the ducted, non-ducted, and small-duct, high-velocity indoor unit tested combinations (if distributed in commerce in such a combination). DOE also proposed that manufacturers would be allowed to make optional ''mixed'' representations based on the simple average of represented values of any two tested combinations within a basic model. *Id.*

In response, AHRI, Carrier, and Daikin commented that they support DOE's proposals for determining represented values for different indoor unit combinations/mixed combinations. (AHRI, No. 12 at p. 6; Carrier, No. 7 at p. 1; Daikin, No. 13 at p. 5). DOE did not receive any comments specially addressing its proposal to reference the tested combination provisions from section 6.2.1 of AHRI 1230–2021.

ii. Treatment of Specific Components

AHRI 1230–2021 outlines requirements for specific components in Appendix F, ''Unit Configuration for Standard Efficiency Determination—Informative.'' Appendix F provides discussion of components which would not be considered in representations, and provides instructions either to minimize their impact during testing or to determine representations for individual models with such components based on other individual models that do not include them. In the December 2021 VRF TP NOPR, instead of referencing Appendix F of AHRI 1230–2021, DOE tentatively determined that it was necessary to adopt similar instructions in a more comprehensive manner, so the Department proposed provisions in the appendix D1 test procedure, in the representation requirements at 10 CFR 429.43, and in the enforcement provisions at 10 CFR 429.134. 86 FR 70644, 70657 (Dec. 10, 2021).

Specifically, DOE proposed test provisions in section 6 of appendix D1 that instructed how to test a VRF multi-split system equipped with any specific component(s) listed in Table 6.1 [24] of that same section. 86 FR 70644, 70686 (Dec. 10, 2021). These provisions were designed to minimize the impact on measured performance caused by testing with the specific component(s) present. Additionally, DOE proposed representation requirements in 10 CFR 429.43(a)(4) that explicitly allowed representations for individual models with certain components to be based on testing for individual models without those components; the proposal included a table in 10 CFR 429.43(a)(4)(i) listing the two components for which these provisions would apply (air economizers and desiccant dehumidification components). 86 FR 70644, 70657–70658 (Dec. 10, 2021). DOE also proposed corresponding product enforcement provisions in 10 CFR 429.134 indicating that DOE would conduct enforcement testing on VRF multi-split systems having individual indoor unit models that do not include air economizers or dehumidification components, except in certain circumstances. 86 FR 70644, 70658 (Dec. 10, 2021).

DOE also proposed to adopt language more specific to VRF multi-split systems, as compared to the general language contained in section F2.4 of AHRI 1230–2021. Specifically, DOE proposed to use the term ''individual indoor unit models'' to account for potential discrepancies across individual indoor unit models that comprise the VRF multi-split system tested combination. 86 FR 70644, 70657 (Dec. 10, 2021). DOE's proposed approach would allow for the individual consideration of specific components on an indoor unit-by-indoor unit basis to account for scenarios in which individual indoor unit models in the tested combination differ in components.

For two components—coated coils and steam/hydronic heat coils—DOE did not propose to include these components in the list of specific components warranting enforcement relief (*i.e.,* provisions in 10 CFR 429.43(a)), nor did DOE propose any provisions to minimize their impact during testing (*i.e.,* provisions in appendix D1). DOE noted that coated coils and steam/hydronic heat coils were not included in the list of optional features in Section F2.4 of AHRI 1230–2021, and determined the industry consensus to be that coated coils and steam/hydronic heat options should not be treated as optional features for VRF multi-split systems and/or that VRF multi-split systems are not distributed in commerce with these features. 86 FR 70644, 70657 (Dec. 10, 2021).

Finally, DOE stated that, were DOE to adopt the provisions in appendix D1, 10 CFR 429.43, and 10 CFR 429.134 as proposed, DOE would rescind the Commercial HVAC Enforcement Policy to the extent it is applicable to VRF multi-split systems. 86 FR 70644, 70658 (Dec. 10, 2021).

In comments on the December 2021 VRF TP NOPR, Lennox, AHRI, and Carrier stated that they support DOE's proposal to include test provisions for specific components, as outlined in Table 6.1 of Appendix D1. (Lennox, No. 8 at p. 2; AHRI, No. 12 at p. 2; Carrier, No. 7 at p. 1) Further, AHRI encouraged DOE to specifically exclude VRF multi-split systems from the Commercial HVAC Enforcement Policy going forward so as to avoid confusion. (AHRI, No. 12 at p. 2) Daikin commented that coated coils, low ambient cooling dampers, and power correction capacitors are a part of the outdoor unit model and asserted that a clarification was needed at 10 CFR 429.43(a)(4) to designate both indoor and outdoor unit models, as opposed to just indoor unit models. (Daikin, No. 13 at p. 2)

With respect to DOE's proposals to exclude coated coils and steam/hydronic heat coils from the testing provisions and from consideration when determining represented values, Lennox, AHRI, and Daikin all commented that DOE should also consider including coated coils and

[24] Table 6.1 includes test provisions for VRF multi-split systems equipped with desiccant dehumidification components, air economizers, fresh air dampers, hail guards, low ambient cooling dampers, power correction capacitors, and/or ventilation energy recovery systems (VERS). 86 FR 70644, 70686–70687 (Dec. 10, 2021).

steam/hydronic heat coils in table 6.1, as contained in the DOE Commercial HVAC Enforcement Policy. (Lennox, No. 8 at p. 2; AHRI, No. 12 at p. 2; Daikin, No. 13 at p. 2) AHRI asserted that coated coils should not be required for testing because units will always be available without them (*i.e.,* represented values should not be required to be based on a VRF multi-split system with coated coils when there would always be an otherwise comparable model available without coated coils). (AHRI, No. 12 at p. 2) Daikin stated that adding steam/hydronic coils to table 6.1 would align regulations for VRF multi-split systems with those for other equipment categories, and that coated coils, low ambient cooling dampers, and power correction capacitors might be included in the outdoor section of VRF multi-split systems. (Daikin, No. 13 at p. 2)

In response, DOE has considered these comments and has determined that clarifications are warranted to the approach proposed in the December 2021 VRF TP NOPR regarding the treatment of certain components for determining represented values. Therefore, DOE is adopting the proposals made in the December 2021 VRF TP NOPR, with clarifications that are discussed in detail in section III.G.1.c of this final rule.

iii. Heat Recovery Components

Section 5.6 of AHRI 1230–2021 specifies that for all VRF heat recovery systems, the heat recovery control unit must be attached during all tests. Similarly, section F2.3 of AHRI 1230–2021 requires that all heat recovery components must be present and installed for testing individual models distributed in commerce with these components. DOE proposed in the December 2021 VRF TP NOPR to reference Section 5.6 of AHRI 1230–2021 in its proposed test procedures for VRF multi-split systems at appendix D1. 86 FR 70644, 70651 (Dec. 10, 2021). Consistent with section F2.3 of AHRI 1230–2021, DOE also proposed to specify in 10 CFR 429.43(a) that for basic models of VRF multi-split systems distributed in commerce with heat recovery components, the manufacturer must determine represented values for the basic model based on performance of an individual model distributed in commerce with heat recovery components. 86 FR 70644, 70656 (Dec. 10, 2021).

DOE did not receive any comments regarding heat recovery components in response to the December 2021 VRF TP NOPR. In this final rule, DOE is finalizing its proposed test provisions in appendix D1 but is removing its proposal to specify in 10 CFR 429.43(a) that VRF multi-split systems distributed in commerce with heat recovery components must determine represented value based on a configuration of the basic model with heat recovery components installed, as discussed in section III.G.1.c.ii of this final rule.

iv. Multiple Refrigerants

DOE proposed in the December 2021 VRF TP NOPR that in cases in which a basic model of VRF multi-split system can be used with multiple refrigerants without requiring different hardware, then a manufacturer must determine the represented values (*e.g.,* IEER, COP, and cooling capacity) for that basic model based on the refrigerant(s)—among all refrigerants listed on the unit's nameplate—that result in the lowest cooling efficiency. 86 FR 70644, 70665 (Dec. 10, 2021). DOE also clarified that, should the use of a different refrigerant require different hardware, this would represent a different basic model and, consequently, separate representations of energy efficiency would be required. *Id.*

The Joint Advocates, Lennox, and the CA IOUs expressed support for DOE's proposal to use the refrigerant listed on the unit's nameplate that results in the lowest cooling efficiency for represented values. (Joint Advocates, No. 9 at p. 1; Lennox, No. 8 at p. 3; CA IOUs, No. 11 at p. 4) The Joint Advocates commented that DOE's proposal would ensure that when manufacturers test a basic model, a refrigerant would not be selected that overstates the efficiency of the equipment as compared to if it were charged with another (less-efficient) refrigerant in the field. (Joint Advocates, No. 9 at p. 1) The Joint Advocates and the CA IOUs recommended allowing manufacturers to make additional representations for a basic model using different (*i.e.,* more-efficient) refrigerants to demonstrate the benefits of using more-efficient refrigerants. (Joint Advocates, No. 9 at p. 1; CA IOUs, No. 11 at p. 4)

DOE has considered these comments and has determined that the multiple refrigerant proposals made in the December 2021 VRF TP NOPR are not needed because the approach for determining represented values adopted in this final rule addresses the issue consistent with the NOPR proposals without need to specifically address multiple refrigerants. This matter is discussed in greater detail in section III.G.1.c of this final rule.

c. Final Rule Approach

i. Summary

As previously introduced, DOE is finalizing an approach for determining represented values that improves the clarity of, but is not substantively different than, the proposals in the December 2021 VRF TP NOPR. In this final rule, DOE is amending language in 10 CFR 429.43(a)(3)(ii) to clarify the interplay between the indoor unit tested combination, the representation requirements pertaining to specific components, and general requirements pertaining to represented values. DOE has structured the provisions at 10 CFR 429.43(a)(3)(ii) to reflect the different considerations when selecting outdoor vs. indoor units, and to highlight that the specific components currently subject to DOE enforcement relief (*i.e.,* desiccant dehumidification components and air economizers) are only applicable at the level of indoor units within a tested combination, not at the basic model level. DOE is specifying that for each indoor unit combination within a basic model (*i.e.,* ducted, non-ducted, or SDHV), the representation must be based on a combination of: (1) the least-efficient outdoor unit model distributed in commerce for that particular basic model which would be based on the least-efficient refrigerant (as discussed in section III.G.1.c.ii of this document); and (2) the combination of indoor units selected in accordance with the criteria described in section III.G.1.c.iii of this document. By taking this approach, DOE is clarifying the interaction between long-standing basic model provisions, tested combination requirements, and the treatment of specific components for VRF multi-split systems.

ii. Outdoor Unit and Heat Recovery

In this final rule DOE is: (1) clarifying that the least-efficient outdoor unit model within a basic model must be used for determining represented values; and (2) clarifying that the test procedure requires that VRF multi-split heat pumps with heat recovery must be tested with heat recovery components present, but without the need for representation requirements as initially proposed. DOE is not adopting any exemptions to the ''least-efficient'' requirement for outdoor unit(s) used to determine represented values because neither of the specific components listed in Table 2 to 10 CFR 429.43(a)(3)(ii)(B) (*i.e.,* air economizers and desiccant dehumidification components—as adopted in this final rule) are applicable for VRF outdoor units.

With respect to comments received regarding multiple refrigerants available for a basic model of VRF multi-split system, because the efficiency of the VRF multi-split system could be impacted by different refrigerant choices, the least-efficient outdoor model requirement necessitates consideration of the least-efficient refrigerant when determining represented values for that basic model. Upon further consideration, DOE has determined that the proposal in the December 2021 VRF TP NOPR regarding multiple refrigerants is already included substantively in the provision adopted at 10 CFR 429.43(a)(3) regarding least-efficient outdoor units, and that additional provisions would be redundant. As such, in this final rule, DOE is not adopting the refrigerant-specific language at 10 CFR 429.43(a)(3) that was proposed in the December 2021 NOPR.

Regarding heat recovery components, as described in section III.G.1.b.iv of this document, DOE proposed related testing provisions in appendix D1 and representation provisions in 10 CFR 429.43(a). In this final rule, DOE is finalizing its proposed test provisions in appendix D1 but is removing its proposal to specify in 10 CFR 429.43(a) that VRF multi-split systems distributed in commerce with heat recovery components must determine represented value based on a configuration of the basic model with heat recovery components installed. Upon further review of the test provisions referencing section 5.6 of AHRI 1230–2021, DOE has determined that all VRF multi-split heat pumps with heat recovery capability would always be required by to be configured with heat recovery components installed. Further, DOE's energy conservation standards for VRF multi-split systems specified at 10 CFR 431.97 classify systems with and without heat recovery to be in different equipment classes, such that a given VRF basic model does not contain systems with and without heat recovery (as such systems are certified under separate equipment classes).[25] The combination of these provisions ensures that represented values for VRF multi-split heat pumps with heat recovery are always determined with heat recovery components installed. Therefore, DOE finds its earlier proposal to be unnecessary, and accordingly, the Department is not adopting represented value provisions related to heat recovery components in this final rule.

iii. Indoor Unit Specification

DOE made several proposals in the December 2021 VRF TP NOPR pertaining to the selection of indoor unit models when determining represented values for the basic model of VRF multi-split system. 86 FR 70644, 70664–70665 (Dec. 10, 2021). As discussed elsewhere in this document, DOE proposed provisions related to different tested combinations of indoor units (see section III.G.1.b.i of this document), certification reporting requirements (see section III.G.2 of this document), and provisions related to treatment of specific components (see section III.G.1.b.ii of this document).

As described in section III.G.1.b.i of this document, DOE received only supportive comments in response to its proposals for determining represented values for different indoor unit tested combinations (*i.e.,* ducted, non-ducted, SDHV, and mixed representations thereof). In light of these comments and the reasoning provided in the December 2021 VRF TP NOPR, DOE is adopting its earlier proposals pertaining to this topic in this final rule.

The adopted provisions provide guidance for determining required represented values of indoor unit combinations (*i.e.,* ducted, non-ducted, SDHV) and provide guidance for determining optional mixed representations that are determined by taking a simple average of any two of the required representations. By adopting these provisions, each VRF outdoor unit may include up to six separate representations within the same basic model number.

Regarding certification requirements, as discussed in greater detail in section III.G.2 of this document, DOE proposed to require that manufacturers publicly report the indoor unit combination (*i.e.,* ducted, non-ducted, SDHV, or mixed) used to determine represented values, as well as all outdoor and indoor unit model numbers used to compose the tested combination. For the reasons discussed in the December 2021 VRF TP NOPR and in section III.G.2.a of this document, DOE is adopting these amended certification requirements as proposed. DOE also proposed to require that manufacturers supply information in their STI regarding whether specific components were present or absent when determining represented values for the basic model. As discussed in section III.G.2.b of this document, DOE is not adopting certification requirements related to specific components in this final rule.

Regarding specific components, DOE is clarifying the provisions at 10 CFR 429.43(a)(3) that cover the determination of represented values for VRF multi-split systems. In the December 2021 VRF TP NOPR, DOE proposed to individually consider specific components on an indoor-unit-by-indoor unit basis when determining represented values. 86 FR 70644, 70657 (Dec. 10, 2021). DOE's approach in this final rule is consistent with the approach in the NOPR in that it requires consideration of specific components for each indoor unit individually, rather than at the basic model level. DOE has also introduced the concept of ''fully-specified'' indoor unit model numbers in order to provide greater clarity about selection of indoor units and to explicitly tie these requirements to the aforementioned certification requirements.

For cases where an indoor unit model number is fully specified in the public certification (*i.e.,* the indoor unit model number includes sufficient information to identify the presence or absence of all components), DOE will require that the indoor unit model number, precisely as it appears as certified, shall be used for determining represented values. For example, for an indoor unit whose certified model number affirmatively designates the presence of dehumidification components, represented values must be determined based on the indoor unit model with dehumidification components installed, regardless of whether otherwise comparable indoor units are distributed in commerce without dehumidification components present. This approach does not conflict with the tested combination requirements in section 6.2 of AHRI 1230–2021, which sets minimum criteria for indoor model specification and does not disallow further specification (including specification of dehumidification components and/or air economizers).

For cases where an indoor unit model number is not fully-specified as part of the certified tested combination (*i.e.,* where the model number is constructed in such a way that does not fully specify

[25] DOE distinguishes certain VRF equipment classes by ''with heat recovery'' and ''without heat recovery'', and other equipment classes with ''no heating or electric resistance heating'' and ''all other types of heating.'' Footnote 1 to Table 13 to 10 CFR 431.97 specifies that VRF systems with heat recovery fall under the category of ''all other types of heating'' unless they also have electric resistance heating. In the March 2022 VRF ECS NOPR, DOE proposed to amend 10 CFR 431.97 to adopt the equipment class structure found in ASHRAE Standard 90.1–2016 for VRF multi-split systems, which, if adopted would create separate equipment classes for VRF heat pumps with and without heat recovery for all capacity ranges and heat rejection media (*i.e.,* replacing any class distinctions based on supplementary heating type). 87 FR 11335, 11346 (March 1, 2022).

the absence or presence of all components), DOE is applying the represented value requirements as proposed in the NOPR. This approach requires that for indoor unit model numbers that are not fully-specified in the certification, a fully-specified indoor unit must be selected to determine represented values for the basic model. This fully-specified indoor model number must be consistent with the certified indoor unit model number (*i.e.,* all specified digits must match), and, among the group of all indoor unit models having a consistent model number, must have the least number (which may include zero) of specific components (*i.e.,* air economizers and desiccant dehumidification components) installed.

Regarding DOE's proposed testing provisions for specific components in 10 CFR 431, subpart F, appendix D1, DOE is adopting the proposals from the December 2021 VRF TP NOPR. Specifically, DOE is finalizing provisions in section 6 to appendix D1 that provide instruction how to test a VRF multi-split system equipped with any specific component(s) listed in Table 6.1 [26] of that same section.

As discussed, DOE received comments suggesting that DOE should consider including coated coils and steam/hydronic heat coils in the list of specific components in table 6.1 to appendix D1. DOE also received similar comments pertaining to coated coils in response to other commercial HVAC equipment test procedure NOPRs, specifically the test procedure supplemental notice of proposed rulemaking (''SNOPR'') published for direct expansion-dedicated outdoor air systems (''DX–DOASes'') [27] (Docket No. EERE–2017–BT–TP–0018, AHRI, No. 34 at p. 4). In response to the DX–DOAS SNOPR, AHRI and Madison Indoor Air Quality (''MIAQ'') asserted that some coated coils impact performance, but that each coating is different (Docket No. EERE–2017–BT–TP–0018, AHRI, No. 34 at p. 4; MIAQ, No. 29 at p. 4).

AHRI and MIAQ's assertion that some coated coils do impact energy use suggests that there are other implementations of coated coils that do not impact energy consumption as measured by the adopted test procedure (*i.e.,* the implementation of coated coils does not necessarily or inherently impact energy use). DOE has no data indicating the range of impacts for those coatings that do affect energy use, or how other characteristics of the coatings, such as durability and cost, correlate with energy use impacts. Absent such data, DOE is unable to determine the specific range of impacts on energy use made by coated coils. Nevertheless, given that comments on the DX–DOAS SNOPR suggest that certain implementations of coated coils do not impact energy use, DOE has determined that for those units for which coated coils do impact energy use, representations should include those impacts, thereby providing full disclosure for commercial customers. Consequently, DOE is not incorporating coated coils into DOE's provisions specified in 10 CFR 429.43(a)(3) which allow for the exclusion of specified components when determining represented values for VRF multi-split systems. This approach is consistent with the one DOE has established in a final rule for the DX–DOAS test procedure. 87 FR 45164, 45186 (July 27, 2022).

Commenters did not indicate whether models are available with steam/hydronic heat, thereby supporting DOE's tentative conclusion in the December 2021 VRF TP NOPR that steam/hydronic heat components are not present in VRF multi-split systems and/or models with these components are not distributed in commerce. 86 FR 70644, 70657 (Dec. 10, 2021). Consequently, DOE is finalizing its proposal to exclude steam/hydronic heat from the specific components list for VRF multi-split systems in 10 CFR 429.43(a)(3).

As proposed in the December 2021 VRF TP NOPR, DOE sought to address VRF multi-split systems that include the specified excluded components both in the requirements for representation (*i.e.,* 10 CFR 429.43) and as part of the equipment specific enforcement provisions for assessing compliance (*i.e.,* 10 CFR 429.143). 86 FR 70644, 70656–70658 (Dec. 10, 2021). Instruction on which units to test for the purpose of representations are addressed in 10 CFR 429.43. DOE has determined that including parallel enforcement provisions in 10 CFR 429.134 would be redundant and potentially cause confusion, because DOE would select for enforcement only those individual models that are the basis for making basic model representations as specified in 10 CFR 429.43. Therefore, in this final rule, DOE is providing the requirements for making representations of VRF multi-split systems that include the specified components in 10 CFR 429.43, and is not including parallel direction in the enforcement provisions of 10 CFR 429.134 established in this final rule. However, DOE is finalizing the provision that allows enforcement testing of alternative individual models with specific components, if DOE cannot obtain for test the individual models without the components that are the basis of the representation.

In regards to the NOPR proposal that DOE shall rescind the commercial HVAC enforcement policy for VRF multi-split systems, DOE has provided substantive guidance for each component included in both the DOE Enforcement Policy and the ''Equipment Features Requiring Test Procedure Action'' from the term sheet agreed upon by an ASRAC working group for certain commercial HVAC equipment (''Commercial HVAC CCE Term Sheet'').[28] (EERE–2013–BT–NOC–0023–0052) Consequently, these documents would no longer be applicable to VRF multi-split systems and could potentially cause confusion. To prevent this confusion, DOE is clarifying in this final rule that the provisions established in this final rule will take precedence over those in the DOE Enforcement Policy and the Commercial HVAC CCE Term Sheet, and that the aforementioned documents will no longer be applicable to VRF multi-split systems. As previously discussed, this change will not take effect until the compliance date of amended energy conservation standards for VRF multi-split systems denominated in terms of IEER, should DOE adopt such standards.

2. Certification Reporting Requirements

a. Certification Requirements

DOE specifies certification reporting requirements for VRF multi-split systems in 10 CFR 429.43(b). Certification reporting requirements for VRF multi-split systems include both public equipment-specific information and STI. As previously described, in the December 2021 VRF TP NOPR DOE proposed to amend the certification reporting requirements for VRF multi-split systems to address the IEER metric but did not propose amendments to the current standards (in terms of EER). 86 FR 70644, 70665 (Dec. 10, 2021). Subsequently, in the March 2022 VRF ECS NOPR DOE proposed to amend

[26] Table 6.1 includes test provisions for VRF multi-split systems equipped with desiccant dehumidification components, air economizers, fresh air dampers, hail guards, low ambient cooling dampers, power correction capacitors, and/or ventilation energy recovery systems (VERS).

[27] *See* 86 FR 72874 (Dec. 23, 2021).

[28] In 2013, members of ASRAC formed the Commercial HVAC Working Group to engage in a negotiated rulemaking effort regarding the certification of certain commercial HVAC equipment, including VRF multi-split systems. The Commercial HVAC Working Group's recommendations are available at *www.regulations.gov* under Docket No. EERE–2013–BT–NOC–0023–0052.

standards for VRF multi-split systems to be in terms of the IEER cooling metric, with a proposed compliance date of January 1, 2024. 87 FR 11335, 11349 (March 1, 2022). Therefore, the amended certification reporting requirement proposals would only apply when certifying to a future IEER standard; existing certification reporting requirements used when certifying to the current EER standards would not change. In the December 2021 VRF TP NOPR, DOE proposed to add the following items to the public certification reporting requirements for VRF multi-split systems:

- IEER values (replacing the current certification requirement for EER values);
- The rated heating capacity, in Btu/h;
- The indoor unit combination used to determine the represented values for an individual combination (*i.e.,* a non-ducted, ducted, SDHV, or mixed indoor unit combination), and all outdoor and indoor unit model numbers used to compose the tested combination; and
- The refrigerant used to determine the represented values for a basic model (*e.g.,* EER, IEER, COP, and cooling capacity).

86 FR 70644, 70665 (Dec. 10, 2021). A draft certification template reflecting the proposed changes has been included in the docket.[29]

In response to DOE's certification proposals, the Joint Advocates commented that they support DOE's proposal to publicly report the heating capacity for VRF multi-split systems, stating that this requirement aligns with reporting requirements for the cooling metric and that consumers would be interested in this information. (Joint Advocates, No. 9 at p. 1) The CA IOUs supported DOE's certification proposals but requested that the certification report should clarify that COP is measured per the ''high temperature'' heating test at 47 °F, to prevent confusion with other temperatures at which heating COP tests can be conducted. As introduced in section III.G.1.b.v of this document, the CA IOUs also recommended allowing manufacturers to make additional representations for a basic model using different (*i.e.,* more-efficient) refrigerants. (CA IOUs, No. 11 at p. 3) The CA IOUs suggested a corresponding certification requirement that the global warming potential (GWP) of each refrigerant be listed along with the performance information. (CA IOUs, No. 11 at p. 4)

With respect to the CA IOUs' comment requesting clarification of the COP heating condition in the certification report, as discussed in section III.D.2 of this document, DOE acknowledges the need to clarify that the ratings for heating mode tests of air-cooled VRF multi-split heat pumps used for compliance with standards are those referred to as ''High Temperature Steady-state Test for Heating'' in AHRI 1230–2021 and measured at 47 °F outdoor ambient air temperature. Additionally, DOE acknowledges the need to clarify that the ratings for heating mode tests of water-source VRF multi-split heat pumps used for compliance with standards are those specified for ''Water Loop Heat Pumps'' in AHRI 1230–2021 and measured at 68 °F entering liquid temperature. Consistent with the test procedure provisions adopted in this final rule (as discussed in section III.D.2 of this document) and the CA IOUs' suggestion, DOE is amending the certification template to read ''Coefficient of Performance, measured at 47 °F for air-source VRF multi-split heat pumps or measured at 68 °F Entering Water Temperature for water-source VRF multi-split heat pumps.''

With respect to the CA IOU's comments regarding certification requirements for VRF multi-split systems available with multiple refrigerants, DOE has concluded that because the efficiency of the VRF multi-split system could be impacted by different refrigerant choices, the least-efficient outdoor model requirement necessitates consideration of the least-efficient refrigerant when determining represented values for that basic model (see discussion in III.G.1.c.ii of this document). In this final rule, DOE is also finalizing its proposal to require certification of the refrigerant used to determine the represented values for a basic model. By combining these provisions, a set of represented values will be determined for a given basic model based on the least-efficient outdoor unit (and, therefore, as discussed, the least-efficient refrigerant), and the refrigerant must be certified by the manufacturer. Therefore, DOE is not adopting the CA IOUs' suggestions to allow certification of multiple refrigerants, because it would be inconsistent with the Department's adopted requirement that the represented values for a basic model be based on the least-efficient outdoor unit. Correspondingly, because DOE is not adopting the CA IOU's suggestion to allow certification of multiple refrigerants, DOE has concluded that requiring certification of the associated refrigerant characteristics (*i.e.,* GWP) would provide minimal benefit, as there will not be ratings for different refrigerants within a basic model to compare. Therefore, DOE has concluded that requiring certification of refrigerant GWP would be unnecessarily burdensome.

DOE is adopting all other proposals related to certification reporting requirements, without change. As discussed, these amended certification reporting requirements are not required until the compliance date of amended energy conservation standards for VRF multi-split systems denominated in terms of IEER, should DOE adopt such standards.

b. Supplemental Testing Instructions

The December 2021 VRF TP NOPR included proposals to amend the STI provisions at 10 CFR 429.43(b)(4) to reflect the proposed amendments to the test procedure and the proposed adoption of the IEER metric. 86 FR 70644, 70666 (Dec. 10, 2021). DOE proposed amendments and additions to the STI requirements as follows:

- Identification of the indoor units to be thermally active for each IEER test point;
- The rated indoor airflow for the full-load cooling, full-load heating, and all part-load cooling tests (for each indoor unit), in standard cubic feet per minute (scfm);
- The indoor airflow-control setting to be used in the full-load cooling test and the indoor airflow control setting to be used in the full-load heating test (for each indoor unit);
- For water-cooled units, the rated water flow rate in gallons per minute (gpm);
- System start-up or initialization procedures, including conditions and durations;
- The duration of the compressor break-in period. (Existing requirements in 10 CFR 431.96(c) require manufacturers to include this information in the test data underlying the certified ratings that must be maintained according to 10 CFR 429.71);
- Instructions for adjustment of critical parameters to meet capacity targets and/or SHR limits, including hierarchy for adjusting;
- The layout of the system set-up for testing (previously required upon request) including a piping diagram, set-up instructions for indoor units and outdoor units, charging instructions, a control wiring diagram, and

[29] The draft certification template columns can be found in the docket at: *www.regulations.gov/document/EERE-2021-BT-TP-0019-0001.*

identification of the location of each critical parameter;

- Explicitly providing that the nominal cooling capacity and nominal heating capacity (if applicable) in British thermal units per hour (Btu/h) must be certified for each outdoor unit and indoor unit;
- Requiring testing instructions for conducting testing for all indoor unit combinations with distinct represented values within a basic model, as applicable;
- Removing the current requirement to report compressor frequency setpoints and instead require reporting operational settings for all critical parameters to be manually controlled for each of the four IEER cooling test conditions and for the COP heating test;
- Removing the reporting requirement regarding whether the model will operate at test conditions without manufacturer programming because the VRF enforcement provisions allow for a manufacturer representative to be on site for DOE testing;
- Removing the reporting requirement for rated static pressure, which is unnecessary because AHRI 1230–2021 includes ESP requirements for testing; and
- The frequency of oil-recovery cycles.

Further, in the December 2021 VRF TP NOPR, DOE proposed at 10 CFR 429.43(b)(4) a certification reporting requirement for supplemental test instructions for VRF multi-split systems regarding specific components, corresponding to the proposed representation requirements for specific components at 10 CFR 429.43(a)(4). Specifically, DOE proposed that the manufacturer must certify in the STI for which, if any, specific components (as listed in 10 CFR 429.43(a)(4)(i)) the following provisions are applicable: (1) the indoor unit model(s) in a tested combination within a basic model include both individual indoor unit models distributed in commerce with the specific component and individual indoor unit models distributed in commerce without the specific component; (2) at least one of the individual indoor unit models distributed in commerce without the specific component is otherwise identical to any given individual indoor unit model distributed in commerce with the specific component; and (3) represented values for the tested combination are based on performance of individual indoor unit models distributed in commerce without the specific component. 86 FR 70644, 70666–70667 (Dec. 10, 2021). These proposed provisions would require manufacturers to report whether the represented values for that VRF multi-split system basic model were determined based on the presence or absence of air economizers and/or desiccant dehumidification components.

In commenting on DOE's proposals in this area, AHRI and Carrier stated that STI requirements may need to include provisions that specify which, if any, components were used when calculating efficiency ratings. (AHRI, No. 12 at p. 2; Carrier, No. 7 at p. 1)

In response and as described in section III.G.1.c.iii of this document, DOE is finalizing an approach in this rule requiring that if an indoor unit model number is not fully specified in the public certification, then represented values must be determined from a fully-specified individual indoor unit model distributed in commerce that must be consistent with the certified indoor unit model number (*i.e.,* all specified digits must match). Among the group of all indoor unit models having a consistent model number, that VRF system must have the least number (which may include zero) of specific components installed. Because the representation requirements adopted in this final rule provide clear direction as to how to determine represented values for basic models that include specific components, DOE concludes that a certification requirement for manufacturers to report whether representations are based on model(s) with specific components installed would be duplicative and would impose unnecessary burden on manufacturers. Therefore, DOE is not adopting any certification requirements related to specific components in this final rule.

DOE also proposed to require reporting as part of the STI the following manufacturer-specified input conditions for conducting a CVP at each of the four IEER cooling test conditions:

☐ The required thermostat setpoints to ensure control for 80 °F dry-bulb temperature when accounting for setpoint bias;

☐ The starting indoor dry-bulb temperature; and

☐ The indoor dry-bulb temperature ramp rate.

Id.

The CA IOUs commented that the system controls setting for steady-state tests should be included in the STI requirements. Specifically, the CA IOUs suggested expanding the requirement for the ''required dip switch/control settings for step or variable components'' to instead require ''Dip switch/Control Settings from the manufacturer's installation instructions used for the full-load cooling and full-load heating tests.'' The CA IOUs asserted that this change would reduce the test burden when determining which control setting to use for the CVP as part of enforcement testing. (CA IOUs, No. 11 at p. 4) AHRI commented that some certification reporting requirements, such as compressor speed, critical parameter settings, and system device required for testing, are confidential business information and that they should be designated as such for certification. AHRI elaborated on this point by stating that the information included in the STI is confidential and should be designated as such. (AHRI, No. 12 at pp. 6–7) Similarly, Daikin commented that they support DOE's proposal for certification reporting requirements, provided that all confidential information may be submitted in the STI, because the STI is not available to the public. (Daikin, No. 13 at p. 5)

With respect to the CA IOU's request to amend the language of STI reporting requirements for dip switch/control settings, DOE interprets this suggestion to mean that manufacturers would be required to specify all dip switch/control settings required for conducting the full-load cooling and heating tests. This would include all settings for ''step or variable components'' in addition to any other settings required for testing that are not otherwise dictated by the test procedure but may impact system behavior—for example, ''mode-type'' settings (*e.g.,* eco-mode) or settings related to another function (*e.g.,* noise reduction settings). DOE finds that the CA IOUs' proposal would improve the clarity of existing certification requirements, as it would ensure that the control settings needed for testing are readily identifiable and that they are used in a consistent manner during testing. Further, DOE finds that the CA IOUs' suggestion would not require additional collection of information by manufacturers, because the settings used for conducting testing would be readily available to manufacturers. Therefore, DOE is adopting the STI certification requirements for VRF multi-split systems as proposed in the December 2021 VRF TP NOPR, with the clarification that certification of dip switch/control settings applies more broadly than just step/variable components. As discussed previously, these amended STI certification requirements are not required until the compliance date of amended energy conservation standards denominated in

terms of IEER, should DOE adopt such standards.

With respect to AHRI and Daikin's comments, DOE notes that certification reports routinely include both public and non-public information. Specifically, 10 CFR 429.43(b)(2) specifies requirements for public equipment-specific information, and 10 CFR 429.43(b)(3) and (4) specify requirements for equipment-specific information and supplemental information that are non-public. DOE notes that the treatment of confidential business information is addressed pursuant to the regulations at 10 CFR 1004.11. Any person submitting information that they believe to be confidential and exempt by law from public disclosure should submit via two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. While DOE is responsible for making the final determination with regard to the disclosure or nondisclosure of information contained in requested documents, DOE will consider the submitter's views in making its determination. 10 CFR 1004.11(a). Accordingly, in light of the existing framework for handling confidential business information, DOE does not find it necessary to adopt the additional measures suggested by AHRI and Daikin. For the reasons stated in the December 2021 VRF TP NOPR and the paragraphs here, DOE is adopting its proposed amendments related to the supplemental testing instructions for VRF multi-split systems along with the previously discussed modifications suggested by the CA IOUs.

3. Models Required for AEDM Validation

In the December 2021 VRF TP NOPR, DOE proposed that the manufacturer must validate an AEDM used to make representations for only a single type of indoor unit combination (*i.e.,* ducted, non-ducted, or SDHV indoor unit combinations) within or across all its basic models by testing at least a single tested combination of that type of indoor unit combination for each of the two selected basic models. 86 FR 70644, 70667 (Dec. 10, 2021). If a manufacturer makes representations for two types of indoor unit combinations (*i.e.,* ducted, non-ducted, and/or SDHV indoor unit combinations) within or across all its basic models to which the AEDM applies, DOE proposed that the manufacturer must test at least: (1) a single tested combination of a selected basic model as the first of those two types of indoor unit combination, and (2) a single tested combination of a different selected basic model as the second of those two types of indoor unit combination. *Id.* If a manufacturer makes representations for all three types of indoor unit combinations (*i.e.,* ducted, non-ducted, and SDHV indoor unit combinations) within or across all its basic models to which the AEDM applies, DOE proposed that the manufacturer must test at least a single tested combination of a selected basic model as a non-ducted tested combination and a single tested combination of a different selected basic model as a ducted tested combination. *Id.*

In response, AHRI and Daikin commented in support of DOE's proposal to amend the applicable requirements for AEDM validation. (AHRI, No. 12 at p. 7; Daikin, No. 13 at p. 5) DOE received no other comments on its AEDM proposals.

Accordingly, DOE is finalizing its proposed AEDM validation requirements for VRF multi-split systems in 10 CFR 429.43(a)(2) and 10 CFR 429.70 to be similar to the sampling plan requirements for tested units, as discussed in section III.G.7 of this final rule. Furthermore, DOE has concluded that these AEDM validation requirements are consistent with AHRI 1230–2021, because they ensure the values developed with an AEDM conform to the results obtained using AHRI 1230–2021.

4. Manufacturer Involvement

a. Role of Manufacturer Representative

In light of the complexity of VRF multi-split systems, the DOE test procedure at 10 CFR 431.96(f) does allow for limited manufacturer involvement, specifying that a manufacturer's representative is allowed to witness assessment and/or enforcement testing, inspect and discuss set-up only with a DOE representative, and adjust only the modulating components in the presence of a DOE representative that are necessary to achieve steady-state operation. In the December 2021 VRF TP NOPR, DOE proposed to establish new provisions for manufacturer involvement as part of the product-specific enforcement provisions at 10 CFR 429.134(s)(2). 86 FR 70644, 70667 (Dec. 10, 2021). The proposals largely align with Sections 5.1.2 and 6.3.3 of AHRI 1230–2021 but prescribe more precisely the actions that a manufacturer's representative may take. Specifically, DOE proposed that a manufacturer's representative is allowed to support commissioning of the VRF multi-split system and to witness DOE assessment or enforcement testing. *Id* at 86 FR 70667–70668. For all cooling and heating tests, DOE proposed that all control settings other than critical parameters must be set by a member of the third-party laboratory, and that a manufacturer's representative may initially set all critical parameters to their certified values. *Id.* at 86 FR 70668. For IEER cooling tests only, DOE proposed to specify that if additional adjustments to critical parameters are required for meeting capacity targets and/or SHR limits, a manufacturer's representative may make such adjustments in accordance with section 5.1 of appendix D1 using a proprietary control tool. *Id.* DOE further proposed that initial setting and any additional critical parameter adjustments performed by a manufacturer's representative during IEER testing must be monitored by third-party laboratory personnel using a service tool. *Id.* For the heating test, DOE proposed that the manufacturer's representative would not be permitted to make any critical parameter adjustments during testing and would only be allowed to initially set critical parameters to their certified values. *Id.*

The CA IOUs, Joint Advocates, and Lennox commented that they support DOE's proposal to specify the parameters of manufacturer involvement during testing. (CA IOUs, No. 11 at p. 3; Joint Advocates, No. 9 at p. 1; Lennox, No. 8 at p. 3) Joint Advocates further asserted that the language in Sections 5.1.2 and 6.3.3 of AHRI 1230–2021 is ambiguous, and that DOE's proposed language clarifies the role of the manufacturer's representative during testing. (Joint Advocates, No. 9 at p. 1) The CA IOUs stated that DOE's proposals strike a reasonable balance between ensuring objective/repeatable ratings and the complexity associated with testing VRF multi-split systems. (CA IOUs, No. 11 at p. 3)

AHRI commented that, due to the need for proprietary software, a manufacturer's representative, if present, should set the control settings, observed by a member of the third-party lab. They elaborated that a member of a third-party laboratory should set the critical parameters in the case where a manufacturer's representative is unable to be physically available or is choosing not to be present. AHRI further commented that they agree with DOE's proposals with respect to manufacturer involvement for cooling tests but argued that the manufacturer's representative should also be allowed to adjust the

critical parameters for heating tests (similar to IEER cooling tests). (AHRI, No. 12 at pp. 7–8) Specifically, AHRI argued that just as critical parameter adjustments are needed for cooling tests to meet capacity targets and/or SHR limits, small adjustments to critical parameters may be needed during heating tests to account for set-up variations between manufacturer and third-party laboratories. Further, AHRI asserted that on this topic, there is a conflict between the language proposed in the preamble and the proposed regulatory text of the December 2021 VRF TP NOPR, so further clarification is needed. The commenter referenced language from the NOPR's preamble (86 FR 70644, 70668 (Dec. 10, 2021)) stating that a manufacturer's representative may not make critical parameter adjustments during heating tests, and would only be allowed to initially set critical parameters to their certified values. AHRI contrasted this with language in the proposed regulatory text at 10 CFR 429.134(s)(2)(ii) that would allow the manufacturer's representative to adjust the critical parameters for heating and IEER cooling tests (86 FR 70644, 70681 (Dec. 10, 2021)). (AHRI, No. 12 at pp. 7–8)

Regarding AHRI's request that a manufacturer's representative should set the control settings rather than a member of the third-party laboratory, DOE interprets this request to refer to control settings other than the critical parameter settings (*e.g.,* airflow control settings) because, as discussed, DOE proposed that the manufacturer's representative would set critical parameter settings to their certified values. DOE finds that requiring a member of the laboratory to set other control settings rather than a manufacturer's representative will improve transparency into testing practices by ensuring that settings used for testing match the settings specified in the manufacturer STI. Also, AHRI's suggestion conflicts with the language present in AHRI 1230–2021 regarding control settings other than critical parameters. Specifically, Section 5.1.2.3 of AHRI 1230–2021 states that ''control settings shall be set by a member of the laboratory. All control settings are to remain unchanged for all load points once system set up has been completed.'' DOE's proposed approach (*i.e.,* requiring that all control settings other than critical parameters be set by a member of the third-party laboratory) is consistent with the language from Section 5.1.2.3 of AHRI 1230–2021, which DOE understands to reflect the industry consensus approach and the intent of the Working Group.

DOE interprets AHRI's concern about ''proprietary software'' to suggest that a member of the third-party laboratory should not be allowed to interact with such software. DOE finds that the use of proprietary software is not a valid reason to preclude involvement of third-party laboratory personnel during testing. Per DOE's proposal, a manufacturer's representative would be allowed to support commissioning of the VRF multi-split system to ensure that any proprietary software is being properly utilized by a member of the third-party laboratory. The amended STI certification requirements (described in section III.G.2.b of this document) ensure that members of the third-party laboratory will be equipped with all necessary information in order to set control settings during testing. If a manufacturer's representative is not available for testing, then testing would proceed with a member of the third-party laboratory using the control tool as provided by the manufacturer (see discussion in section III.G.4.b of this document)—an approach which was similarly suggested by AHRI in their comment. (AHRI, No. 12 at p. 8) Therefore, DOE is finalizing its proposal to require that members of the third-party laboratory set all control settings (other than critical parameters) during testing.

With regard to AHRI's argument for allowing critical parameter adjustments for heating tests, the cooling capacity targets and SHR limits specified in Section 6.3.3 of AHRI 1230–2021 and Section 5.2 of the proposed test procedure in appendix D1 do not apply to heating tests, and neither DOE's proposed test procedure nor AHRI 1230–2021 include any restrictions for heating tests that would warrant critical parameter adjustments. Further, DOE disagrees with AHRI's claim that critical parameter adjustments are needed for heating tests to account for set-up variation between manufacturer and third-party laboratories. DOE concludes that the STI provides manufacturers sufficient opportunity to certify critical parameters, control settings, and any additional testing information needed for the third-party laboratories to consistently test VRF multi-split systems. Therefore, DOE finds that allowing for critical parameter adjustments during heating tests is unnecessary and is inconsistent with the industry consensus test procedure recommended by the Working Group.

Regarding AHRI's claim of contradictory language, the language in 10 CFR 429.134(s)(2)(ii) proposed in the December 2021 VRF TP NOPR states, in relevant part, the following under a heading of ''Manufacturer involvement in heating tests and IEER cooling tests'': ''Critical parameters may be manually controlled by a manufacturer's representative, including initial setting to the certified values and additional adjustments (as described in sections 5.1 and 5.2 of appendix D1 to subpart F of part 431, respectively).'' 86 FR 70644, 70681 (Dec. 10, 2021). Neither section 5.1 nor section 5.2 include any provisions allowing critical parameter adjustments during heating tests. Specifically, section 5.1 of proposed appendix D1 specifies provisions for initially setting control settings applicable for cooling and heating tests, and section 5.2 specifies provisions for allowable critical parameter adjustments that apply only for IEER cooling tests. Because the phrasing in proposed 10 CFR 429.134(s)(2)(ii) allows critical parameter adjustments as described in sections 5.1 and 5.2 of appendix D1, which do not allow for critical parameter adjustments during heating tests, DOE concludes that the proposed regulatory text is consistent with the preamble discussion highlighted by AHRI (86 FR 70644, 70668 (Dec. 10, 2021)). However, DOE recognizes the potential to improve the clarity of the regulatory text regarding the specific adjustments that can be made by a manufacturer representative.

Accordingly, in this final rule DOE is adopting the proposed provisions for manufacturer involvement as part of product-specific enforcement provisions at 10 CFR 429.134(v)(2). However, in light of the confusion reflected in AHRI's comment, DOE is adopting language in 10 CFR 429.134(v)(2) that clarifies that critical parameter adjustments apply only to IEER cooling tests, not to heating tests.

b. Control Tool

In the case that a manufacturer is not present for assessment or enforcement testing, third-party laboratory personnel may need a manufacturer's control tool to set critical parameters to the initial settings or make additional adjustments required by the test procedure. In the December 2021 VRF TP NOPR, DOE proposed to amend its enforcement test notice requirements for VRF multi-split systems at 10 CFR 429.110(b)(1)(iv) to require manufacturers to include a means of control to set and adjust critical parameters with all systems provided for enforcement testing. 86 FR 70644, 70668 (Dec. 10, 2021). Correspondingly, DOE proposed provisions for VRF multi-split systems at 10 CFR 429.104(b) that would require

manufacturers to provide a means of control for assessment testing, although manufacturers would not be required to provide the VRF multi-split system for assessment testing. *Id.* This proposal would enable the laboratory staff to perform IEER and heating tests in the event that a manufacturer's representative is not available for assessment and/or enforcement testing. *Id.* DOE also proposed that, if a manufacturer's representative is not present for testing, a member of the third-party laboratory shall set and adjust critical parameter values in accordance with section 5.1 of appendix D1 using the means of control provided by the manufacturer in response to the test notice. *Id.*

AHRI commented that the means of control of the unit could not be shipped ''from a retailer or distributor'' because it is not sold with the unit and, therefore, not sold by a distributor. They further commented that the means of control would need to be provided by the manufacturer, and preferably by the manufacturer's representative due to confidentiality. They suggested the following language: ''If a manufacturer's representative is not present for testing, a member of the third-party laboratory must set and adjust critical parameters using the provided means of control described in § 429.110(b)(1)(iv) for enforcement testing.'' (AHRI, No. 12 at pp. 7–8)

Daikin commented that DOE's proposal regarding manufacturer involvement during assessment and enforcement testing is acceptable, provided that, should testing be scheduled and then delayed due to unforeseen circumstances (*e.g.,* travel issues, positive COVID–19 tests), the provision stating ''If a manufacturer's representative is not present for testing, a member of the third-party laboratory must set and adjust critical parameters . . .'' would not be invoked, but rather the testing would be rescheduled. Daikin further commented that a means of control for running the CVP would not be sold by retailers or distributors, as it contains confidential company intellectual property. Daikin suggested regulatory text that would require the manufacturer to ship any means of control necessary for conducting testing, if requested by DOE. Daikin also suggested language specifying that the means of control may be provided separately from the system(s) selected for testing, stating that it is not appropriate to ship the controls tool (usually a laptop) along with the VRF equipment via less than truckload (LTL) freight shipping. (Daikin, No. 13 at pp. 5–6)

With regard to the logistics around sending manufacturer control tools, DOE acknowledges the comments from AHRI and Daikin indicating that means of control are not typically provided with a VRF multi-split system and would, therefore, not come from a retailer or distributor, but directly from the manufacturer, and potentially separate from the VRF equipment itself. Consequently, DOE is adopting the proposed provisions at 10 CFR 429.104(b) and 10 CFR 429.110(b)(1)(iv) with modifications to specify that, while manufacturers must provide a means of control for assessment testing, the means of control (necessary for testing conducted in accordance with appendix D1) may be shipped directly from the manufacturer, and separately from the system(s) selected for testing. These revisions are consistent with the language proposed by Daikin in their comment.

With regard to Daikin's suggestion that enforcement testing be rescheduled if the manufacturer is unable to attend due to ''unforeseen circumstances,'' DOE will consider such circumstances as they arise on a case-by-case basis, and the Department will balance between providing reasonable flexibility and maintaining the integrity of the enforcement program. With regard to AHRI's suggestion that if a manufacturer's representative is not present for testing, a member of the third-party laboratory must set and adjust critical parameters using the provided means of control. DOE finds that this suggestion is already consistent with the proposed provisions covering manufacturer involvement and with the discussion in this section. In consideration of all input received on this topic, DOE is adopting its proposed provisions at 10 CFR 429.104, 10 CFR 429.110, and 10 CFR 429.134 as proposed, with the additional clarifications previously discussed in this section.

5. Break-In Period

The current Federal test procedure for VRF multi-split systems specifies at 10 CFR 431.96(c) that manufacturers may optionally specify a ''break-in'' period, not to exceed 20 hours, to operate the equipment under test prior to conducting the test method specified in by AHRI 1230–2010. In the December 2021 VRF TP NOPR, DOE proposed to include similar provisions for VRF multi-split systems, but as part of the STI certification requirements rather than the proposed test procedure. 86 FR 70644, 70666 (Dec. 10, 2021). DOE did not receive any comments in response to this proposal.

However, DOE inadvertently omitted the 20-hour maximum time period from the proposed STI certification requirements. A 20-hour maximum time period prevents DOE testing from being unduly burdensome and is consistent with the current Federal test procedures for VRF multi-split systems as well as numerous other categories of air conditioners and heat pumps, including three-phase CUAC/HPs with cooling capacity less than 65,000 Btu/h, single package vertical units, computer room air conditioners, and central air conditioners and heat pumps. Therefore, DOE concludes that a 20-hour limit on the specified break-in period should also apply to testing VRF multi-split systems according to Appendix D1.

As such, for the reasons previously stated, DOE is specifying in 10 CFR 429.43(b)(4) that a manufacturer may certify a compressor break-in period duration of 20 hours or less in its STI. Further, DOE is adding a clarifying provision at 10 CFR 429.134(v)(4) stating that, during assessment and enforcement testing, DOE will perform a break-in period on VRF multi-split systems using a duration specified by the manufacturer only if a break-in period duration is specified in the STI.

6. Certified Critical Parameter Operational Settings

DOE proposed in the December 2021 VRF TP NOPR to add a certification reporting provision specific to VRF multi-split systems in 10 CFR 429.43(b)(5) stating that if a manufacturer becomes aware that any of the certified operational settings for the critical parameters are determined to be invalid according to the results of a CVP, whether that CVP be performed by the manufacturer or another party, the manufacturer would be required to re-certify the operational settings of those critical parameters for all affected basic models, as well as re-rate and re-certify the affected basic models. 86 FR 70644, 70668 (Dec. 10, 2021). DOE also proposed to amend the enforcement testing requirements at 10 CFR 429.110(a) to state that DOE may initiate enforcement testing for VRF multi-split systems if DOE has reason to believe that the model is not in compliance, has invalid certified operational settings for critical parameter values, or has an otherwise invalid certified rating. *Id.* at 86 FR 70669.

Joint Advocates commented that DOE should provide additional clarification in the case when a manufacturer becomes aware that their certified critical parameter values have been invalidated, and these commenters

specifically suggested that DOE should specify a timeline between becoming aware of the invalid parameters and recertifying the impacted models. (Joint Advocates, No. 9 at p. 2) The CA IOUs commented that they support DOE's proposal for evaluating compliance of a system whose STI-reported critical parameters have been invalidated. (CA IOUs, No. 11 at p. 2) AHRI commented that in the context of a ''another party'' (*i.e.,* other than DOE) conducting a CVP that results in invalidated operational settings for critical parameters for a basic model, DOE should clarify that ''another party'' should not be a competitor, university, or party other than DOE. They commented that only DOE, a third-party lab contracted by DOE, or AHRI should have access to the STI. Further, they commented that if ''another party'' becomes aware of a potential issue, an investigation should take place rather than enforcement action. (AHRI, No. 12 at p. 8)

In response, regarding the comments received from the Joint Advocates and AHRI about DOE's procedures for recertification and for initiating enforcement testing, DOE notes that these procedures pertain to DOE enforcement testing policy more generally, not just to VRF multi-split systems. Under 10 CFR 429.102(a)(8), it is a prohibited act for a manufacturer or private labeler to knowingly misrepresent the efficiency rating of any covered product or covered equipment distributed in commerce in a manner that is not supported by test data (*e.g.,* a manufacturer determines IEER rating based on certified critical parameter values which are later invalidated via a CVP). For any other regulated product types, DOE does not specify in regulations a required timeline for recertification or any constraints on the information sources that DOE may consider as part of an enforcement case. For other categories of regulated air conditioners and heat pumps for which similar proprietary information may be included in STI or non-public sections of certification reports, the treatment of any proprietary aspects of the certification materials has been adequately addressed under the existing enforcement regulations without any product-specific restrictions. Therefore, while DOE acknowledges AHRI's concern that the critical parameter settings necessary for testing contain sensitive information, DOE has concluded that VRF multi-split systems do not warrant additional product-specific restrictions to the existing enforcement regulations. Therefore, DOE is not adopting a timeline regarding re-certification or defining which entities are able to submit information that may instigate potential enforcement action for VRF multi-split systems in this final rule. DOE will consider any appropriately submitted information in its assessment of compliance on a case-by-case basis. Based on the discussion presented in the December 2021 VRF TP NOPR and in the preceding paragraphs, DOE is adopting the provisions as proposed in the NOPR regarding the CCE process in the event that certified critical parameter operational settings have been invalidated by a CVP. This process is visually represented in Figure 1 in section II of this document.

7. Enforcement Sampling Plan

The enforcement sampling plan for VRF multi-split systems was last amended in a final rule published in the **Federal Register** on March 7, 2011, which addressed certification, compliance, and enforcement for consumer products and commercial and industrial equipment. 76 FR 12422 (''March 2011 CCE Final Rule''). In the March 2011 CCE Final Rule, DOE specified flexible sampling provisions for certain covered products and equipment for which there is a lower market volume and/or manufacturing tends to be more customized. 76 FR 12422, 12436 (March 7, 2011). DOE included among such covered equipment commercial heating, air-conditioning, and ventilation equipment, which includes VRF multi-split systems. *Id.* As established by the March 2011 CCE Final Rule, 10 CFR 429.110(e)(2) states that for commercial air conditioners and heat pumps (which includes VRF multi-split systems), DOE will use an initial sample size of not more than four units when determining a basic model's compliance with applicable energy conservation standards.

In the December 2021 VRF TP NOPR, DOE proposed to amend its enforcement sampling plan requirements specific to VRF multi-split systems to require a sample size of two VRF multi-split systems. DOE proposed a reduced sample size to reflect what the Department considers to be an adequate sample size for assessment and enforcement testing but that also recognizes of the involved nature of testing VRF multi-split systems. DOE did not propose to amend the process for determining compliance with energy conservation standards (*i.e.,* the compliance determination would be made for VRF multi-split systems using the sampling plan found in appendix B to subpart C of part 429 with a first sample size of $n_1 = 2$). 86 FR 70644, 70669 (Dec. 10, 2021).

The Joint Advocates commented that they support DOE's proposed sampling plan, due to the complexity of the test procedure commissioning for VRF equipment. (Joint Advocates, No. 9 at p. 2). Daikin agreed that the cost burden of testing VRF multi-split systems is high, including the equipment itself, copper piping, refrigerant, and laboratory testing. (Daikin, No. 13 at p. 6)

However, Daikin expressed concern with using a sample size of two combined with the sampling plan found in appendix B to subpart C of part 429. Specifically, Daikin worried that the sample size of only two units would be unlikely to produce a sample mean and standard deviation that match the population mean and standard deviation. Daikin provided examples illustrating that a two-unit sample with lower and more varied test results could be determined compliant with the standard (*e.g.,* first sample testing at 16.1 and the second sample testing at 15.5 would be considered to meet a 17 IEER standard), while a different two-unit sample with higher and less varied test results could be determined non-compliant (*e.g.,* first sample testing at 16.1 and the second sample testing at 16.2 would be considered to fail to meet a 17 IEER standard). Daikin concluded by asserting that it is not impractical, due to inherent statistics, to test four samples for enforcement. (Daikin, No. 13 at p. 6) AHRI commented that while costs associated with procurement of VRF multi-split systems may be high, there is not sufficient technical justification to deviate from the four-unit sample used for enforcement testing. AHRI stated that using a statistical sample to develop testing is an important feature of DOE's enforcement program. (AHRI, No. 12 at p. 9)

DOE recognizes the concerns from AHRI and Daikin regarding the proposed reduced enforcement sampling plan for VRF multi-split systems. In particular, DOE acknowledges Daikin's comments that modifying the regulations to specify a two-system enforcement sample with the existing sampling plan at appendix B to subpart C of part 429 could result in further variation between the sample standard deviation and the population standard deviation. Therefore, DOE is not amending the enforcement sampling plan for VRF multi-split systems at 10 CFR 429.110(e)(2) as proposed, which would have reduced the required sample size from four units to two units. Figure 1 in section II of this document reflects this determination.

Although DOE is not amending the enforcement sampling plan for VRF multi-split systems in this final rule, DOE notes that stakeholder comments agreed with DOE's position in the December 2021 VRF TP NOPR that the burden associated with testing VRF multi-split systems is significantly higher than for other types of commercial HVAC equipment. In the March 2011 CCE Final Rule, DOE established an initial sample size of four units for this equipment and included provisions that provides for testing of fewer than four units if they are unavailable at the time that the test notice is received. 10 CFR 429.110(e)(3). The enforcement provisions also include a general provision applicable to all covered products and equipment that states if testing of the available or subsequently available units of a basic model would be impractical, as for example when a basic model has unusual testing requirements or has limited production, DOE may in its discretion decide to base the determination of compliance on the testing of fewer than the otherwise required number of units. 10 CFR 429.110(e)(7). DOE explained in the March 2011 CCE Final Rule that it would, in its evaluation of testing availability, take into consideration the units themselves as well as availability of third-party testing facilities to run the DOE test procedure. 76 FR 12422, 12436 (March 7, 2011).

8. Certified vs. Tested Performance

In the December 2021 VRF TP NOPR, DOE proposed a process for assessment and enforcement testing for VRF multi-split systems to incorporate the CVP, which was illustrated via a flowchart in Figure 1 of that NOPR (repeated here as Figure 2). 86 FR 70644, 70662 (Dec. 10, 2021). One of the paths in the diagram showed that if a system was tested for IEER and was determined to be in compliance with the Federal standards, but did not meet the certified IEER value, then it would constitute an improper certification and manufacturers would be required to re-rate and recertify that model.

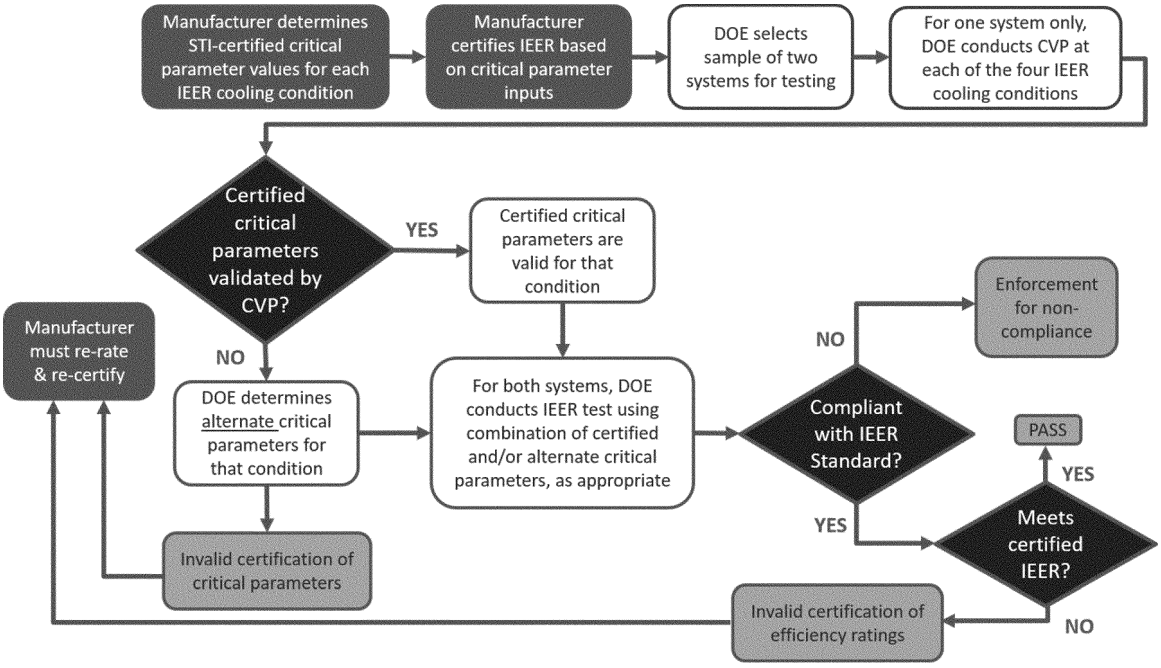

Figure III-1: DOE's Proposed Enforcement Process from the December 2021 VRF TP NOPR

Daikin commented that this figure illustrates that regardless of whether a CVP is performed, the basic model must be re-rated if the IEER testing results are deemed invalid. Daikin asserted that the proposed regulatory text did not indicate that if critical parameters are validated but the IEER is not validated then a re-rate is required, as indicated in the figure. (Daikin, No. 13 at p. 7)

AHRI asserted that DOE's proposal would introduce a tolerance on the certified IEER and claimed that DOE's proposal for certified IEER to be within any tolerance of the rated IEER would create a more stringent requirement for VRF equipment than for other Federally-regulated products. AHRI further asserted that verification of published ratings is the purpose of the AHRI certification program, and that DOE's enforcement authority is to ensure compliance with energy conservation standards. However, AHRI acknowledged DOE's enforcement authority under 10 CFR 429.102(a)(8), 10 CFR 429.102(b), and 10 CFR 429.106(a), and further recognized that 10 CFR 429.114(b) provides that DOE may issue a notice of noncompliance determination in the event that the Department determines a manufacturer has failed to comply with an applicable certification requirement with respect to a particular basic model. However, AHRI argued that besides DOE's

regulations for application of an AEDM at 10 CFR 429.70,[30] there are no other references to or requirements surrounding the accuracy of certified ratings in subpart B—Certification. (AHRI, No. 12 at p. 9)

In response, DOE clarifies that it did not propose and is not adopting amendments to the enforcement process as it pertains to validating certified performance with test results. DOE did not propose any percentage agreement between certified and tested performance, and is not making any such amendment to its regulations in this final rule. As acknowledged by AHRI in their comment, in the event that DOE determines a manufacturer has failed to comply with an applicable certification requirement with respect to a particular basic model, DOE may issue a notice of noncompliance determination to the manufacturer or private labeler. 10 CFR 429.114(b). This notice of noncompliance determination will notify the manufacturer or private labeler of its obligations including the obligation to immediately comply with the applicable certification requirement. 10 CFR 429.114(b)(2). To avoid further confusion, DOE has clarified these mechanisms in a revised CCE process diagram for this final rule (see Figure 1 at section II of this document).

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H. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 360 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) To the extent the modified test procedure adopted in this final rule is required only for the evaluation and issuance of updated efficiency standards (*e.g.,* standards using the IEER metric), compliance with the amended test procedure does not require use of such modified test procedure provisions until the compliance date of updated standards.

I. Test Procedure Costs

In this final rule, DOE amends the current test procedure for VRF multi-split systems at 10 CFR 431.96 by: (1) incorporating by reference AHRI 1230–2021 and ANSI/ASHRAE 37–2009; and (2) establishing provisions for determining IEER for VRF multi-split systems. DOE also amends its CCE provisions for VRF multi-split systems to provide information that is necessary for testing VRF multi-split systems consistent with the updated industry test procedure AHRI 1230–2021. Most significantly, these changes include the incorporation of the CVP from AHRI 1230–2021 into DOE's product-specific enforcement provisions at 10 CFR 429.134, as well as accompanying certification requirements at 10 CFR 429.43.

DOE has determined that these amended test procedures will be more representative of an average use cycle and will not be unduly burdensome for manufacturers to conduct. The amended appendix D, measuring EER and COP per ANSI/AHRI 1230–2010, is simply a relocation of and does not contain any changes to the current Federal test procedure, and, therefore, it will not require retesting solely as a result of DOE's adoption of this amendment to the test procedure. The test procedure in appendix D1, measuring IEER and COP per AHRI 1230–2021, will lead to an increase in cost from appendix D testing. DOE estimates that the cost for third-party laboratory testing according to appendix D1 for measuring IEER and COP to be $7,500—$27,000 per VRF multi-split heat pump system, depending on size and configuration.

As discussed in section III.D.1 of this document, the test procedure provisions regarding IEER will not be mandatory unless DOE amends the energy conservation standards for VRF multi-split systems based on IEER. In the event testing is required pursuant to appendix D1, DOE has determined that the new test procedure would not be expected to increase the testing burden on VRF multi-split system manufacturers. All VRF multi-split system manufacturers are AHRI members; DOE is adopting the relevant provisions of the prevailing industry test procedure that was established for use in AHRI's certification program (which DOE presumes will be updated to include IEER in terms of the latest industry test procedure AHRI 1230–2021). Therefore, DOE expects that manufacturers will begin testing using the test methods in AHRI 1230–2021, and the testing burden will already be incurred by AHRI members participating in AHRI's certification program. Additionally, DOE has determined that the test procedure amendments will not require manufacturers to redesign any of the covered equipment, will not require

[30] AHRI acknowledged that10 CFR 429.70 requires that for covered products with an energy efficiency metric, the predicted efficiency of each model calculated by applying the AEDM may not be more than five percent greater than the efficiency determined from the corresponding test of the model.

[31] AHRI acknowledged that 10 CFR 429.70 requires that for covered products with an energy efficiency metric, the predicted efficiency of each model calculated by applying the AEDM may not be more than five percent greater than the efficiency determined from the corresponding test of the model.

changes to how the equipment is manufactured, and will not impact the utility of the equipment.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

DOE reviewed this rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the rule will not have a significant economic impact on a substantial number of small entities. The factual basis of this certification is set forth in the following paragraphs.

DOE is amending the test procedures for VRF multi-split systems to satisfy its statutory requirements under EPCA to remain consistent with updates to the applicable industry test procedure and to re-evaluate its test procedures at least once every 7 years. (42 U.S.C. 6314(a)(4)(A) and (B); 42 U.S.C. 6314(a)(1)(A))

DOE is updating 10 CFR 431.96, ''Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps,'' as follows: (1) incorporate by reference AHRI 1230–2021 and ANSI/ASHRAE 37–2009, as corrected by the Errata Sheet issued March 27, 2019; and (2) establish provisions for determining IEER for VRF multi-split systems. DOE is adding new appendices D and D1 to subpart F of part 431, both titled ''Uniform test method for measuring the energy consumption of variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 Btu/h),'' (''appendix D'' and ''appendix D1'', respectively). The current DOE test procedure for VRF multi-split systems is being relocated to appendix D without change, and the new test procedure adopting AHRI 1230–2021 is being established in appendix D1 for determining IEER. Compliance with appendix D1 is not required until the compliance date of amended energy conservation standards for VRF multi-split systems that rely on IEER, should DOE adopt such standards.

DOE is also updating its certification, compliance, and enforcement (''CCE'') provisions for VRF multi-split systems to provide information that is necessary for testing VRF multi-split systems consistent with the updated industry test procedure AHRI 1230–2021. Most significantly, these changes include the incorporation of the controls verification procedure (''CVP'') from AHRI 1230–2021 into DOE's product-specific enforcement provisions at 10 CFR 429.134, as well as accompanying certification requirements at 10 CFR 429.43.

For manufacturers of VRF multi-split systems, the Small Business Administration (''SBA'') has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category. The equipment covered by this rule is classified under North American Industry Classification System (''NAICS'') code 333415,[32] ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. DOE identified manufacturers using DOE's Compliance Certification Database[33] and the AHRI database.[34] DOE identified ten original equipment manufacturers (''OEMs'') of the covered equipment.

In reviewing the ten OEMs for the December 2021 VRF TP NOPR, DOE did not identify any companies that met the SBA criteria for a small entity because all identified OEMs surpassed the SBA's employee threshold. 86 FR 70644,

[32] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support-table-size-standards* (Last accessed on July 7, 2022).

[33] DOE's Compliance Certification Database is available at: *www.regulations.doe.gov/ccms* (Last accessed April 22, 2022).

[34] The AHRI Database is available at: *www.ahridirectory.org/* (Last accessed April 22, 2022).

70671 (Dec. 10, 2021). DOE tentatively concluded that the proposed rule would not have a significant economic impact on a substantial number of small entities. DOE requested comment regarding this assessment in the December 2021 VRF TP NOPR. *Id.* Because no comments were received in response to this request and having subsequently found no additional information to the contrary, DOE finalizes its conclusion that this final rule will not have a significant economic impact on a substantial number of small entities.

Therefore, in the absence of small business manufacturers, DOE concludes that the cost effects accruing from this test procedure final rule will not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of VRF multi-split systems must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including VRF multi-split systems. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing; (2) labeling; (3) Federal energy conservation standards, and (4) certification and enforcement procedures. For covered equipment, relevant provisions of the Act include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

DOE's certification and compliance activities ensure accurate and comprehensive information about the energy and water use characteristics of covered products and covered equipment sold in the United States. Manufacturers of all covered products and covered equipment must submit a certification report before a basic model is distributed in commerce, annually thereafter, and if the basic model is redesigned in such a manner to increase the consumption or decrease the efficiency of the basic model such that the certified rating is no longer supported by the test data. Additionally, manufacturers must report when production of a basic model has ceased and is no longer offered for sale as part of the next annual certification report following such cessation. DOE requires the manufacturer of any covered product or covered equipment to establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of 10 CFR part 429 and 10 CFR part 431. Certification reports provide DOE and consumers with comprehensive, up-to date efficiency information and support effective enforcement.

DOE requires manufacturers or their party representatives to prepare and submit certification reports and compliance statements using DOE's electronic web-based tool, the CCMS, which is the primary mechanism for submitting certification reports to DOE. CCMS currently has product-specific and equipment-specific templates which manufacturers are required to use when submitting certification data to DOE. DOE believes the availability of electronic filing through the CCMS system reduces reporting burdens, streamlines the process, and provides DOE with needed information in a standardized, more accessible form. This electronic filing system also ensures that records are recorded in a permanent, systematic way.

In this final rule, DOE is amending the reporting requirements for VRF multi-split systems as discussed in section III.G.2 of this document. DOE sent a revised information collection approval to OMB under the existing Control Number 1910–1400, which reflected the changes in this rulemaking as an amendment to the existing information collection. More specifically, in this final rule, DOE is adding IEER, rated heating capacity, indoor unit combination, and the refrigerant used to determine the represented values for a basic model to the certification reporting requirements for VRF multi-split systems. These amended certification requirements enable the use of the industry test procedure, AHRI 1230–2021 (which, as described in III.C.1 of this document, DOE has concluded is more representative for measuring VRF performance). AHRI supported DOE's proposal to adopt IEER as determined under AHRI 1230–2021 in the federal test procedure for VRF multi-split systems. (AHRI, No. 12 at p. 2) DOE infers from AHRI's supportive comments that AHRI also plans to use AHRI 1230–2021 as the test procedure for its certification program for VRF multi-split systems. Therefore, DOE expects that manufacturers will already have the required certification information in order to test according to the amended industry test procedure. Additionally, AHRI 1230–2021 includes an informative appendix D, which specifies rated heating capacity and indoor unit combination as fields to include in the OEM's certified supplemental testing instructions. Therefore, DOE concludes that adopting the certification requirements in this final rule will not constitute additional burden, as compared to expected industry practice.

DOE is requiring in this final rule that respondents must submit electronic forms using DOE's online CCMS. DOE's CCMS is accessible at: *www.regulations.doe.gov/ccms,* and includes instructions for users, registration forms, and the product-specific reporting templates required for use when submitting information to CCMS. DOE also concludes that manufacturers will rely on existing record keeping systems to maintain the additional information reported.

OMB has approved this revised information collection under existing OMB Control Number 1910–1400. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE amends the test procedure for VRF multi-split systems, amendments which it expects will be used to develop and implement future energy conservation standards for such

equipment. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at: *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a

Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the Federal test procedure for VRF multi-split systems adopted in this final rule incorporates testing methods contained in certain sections of the following applicable commercial test standards: AHRI 1230–2021 and ANSI/ASHRAE 37–2009. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the following test standards:

(1) AHRI 1230–2021 is an industry-accepted test procedure for measuring the performance of VRF multi-split systems. AHRI 1230–2021 is available on AHRI's website at *www.ahrinet.org/search-standards.aspx.*

(2) ANSI/AHRI 1230–2010 is an industry-accepted test procedure for measuring the performance of VRF multi-split systems. ANSI/AHRI 1230–2010 is available on AHRI's website at *www.ahrinet.org/search-standards.aspx.*

(3) ANSI/ASHRAE Standard 37–2009. ANSI/ASHRAE Standard 37–2009 is an industry-accepted test procedure that provides a method of test for many categories of air conditioning and heating equipment. ANSI/ASHRAE Standard 37–2009 is available on ANSI's website at *webstore.ansi.org/RecordDetail.aspx?sku=ANSI%2FASHRAE+Standard+37–2009.*

(4) ASHRAE Errata Sheet to ANSI/ASHRAE Standard 37–2009 is a technical corrections sheet for ANSI/ASHRAE 37–2009. The errata sheet for ANSI/ASHRAE 37–2009 is reasonably available on ASHRAE's website at: *www.ashrae.org/.*

The following standards were previously approved for incorporation by reference in the section where they appear and no change is made: AHRI 210/240–2008, AHRI 340/360–2007, AHRI 390–2003, ASHRAE 127–2007, and ISO Standard 13256–1.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on October 6, 2022, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 12, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 431 of chapter II, of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.4 by:
■ a. Revising paragraph (a); and
■ b. Redesignating paragraph (c)(2) as (c)(3) and adding new paragraph (c)(2).

The revision and addition read as follows.

§ 429.4 Materials incorporated by reference.

(a) 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 U.S. Department of Energy (DOE) must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at DOE and at the National Archives and Records Administration (NARA). Contact DOE at: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–9127, *Buildings@ee.doe.gov, www.energy.gov/eere/buildings/building-technologies-office.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to:*www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the sources in the following paragraphs of this section.

* * * * *

(c) * * *

(2) AHRI Standard 1230(I–P) (''AHRI 1230–2021''), *2021 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment,* copyright 2021; IBR approved for §§ 429.43; 429.134.

* * * * *

■ 3. Amend § 429.43 by:
■ a. Revising paragraphs (a) introductory text, (a)(1)(ii)(A) introductory text, and (a)(1)(ii)(B) introductory text;
■ b. Redesignating table 1 to paragraph (a)(3) as table 1 to paragraph (a)(3)(i)(A);
■ c. In paragraph (a)(3)(i), removing the text ''Table 1 to paragraph (a)(3)'', wherever it appears, and adding in its place the text ''table 1 to paragraph (a)(3)(i)(A)'' and removing the text ''Table 1'', wherever is appears, and adding in its place the text ''table 1'';
■ d. Adding reserved paragraph (a)(3)(i)(B);
■ e. Adding paragraph (a)(3)(ii);
■ f. Revising paragraphs (b)(2)(xi) and (xii);
■ g. Removing paragraph (b)(2)(xiii);
■ h. Redesignating paragraphs (b)(2)(xiv) and (xv) as (b)(2)(xiii) and (xiv), respectively;
■ i. Revising paragraphs (b)(4)(vii) and (viii);
■ j. Removing paragraph (b)(4)(ix);
■ k. Redesignating paragraphs (b)(4)(x) through (b)(4)(xiv) as (b)(4)(ix) through (b)(4)(xiii), respectively; and
■ l. Adding paragraph (b)(5).

The revisions and additions read as follows.

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.

(a) Determination of represented values. Manufacturers must determine the represented values, which include the certified ratings, for each basic model of commercial HVAC equipment either by testing, in conjunction with the applicable sampling provisions, or by applying an AEDM.

(1) * * *

(ii) * * *

(A) Any represented value of energy consumption or other measure of energy use of a basic model, or of a tested combination for variable refrigerant flow multi-split air conditioners and heat pumps certified to standards in terms of IEER as provided at paragraph (a)(3)(ii)(C) of this section, for which consumers would favor lower values shall be greater than or equal to the higher of:

* * * * *

(B) Any represented value of energy efficiency or other measure of energy consumption of a basic model, or of a tested combination for variable refrigerant flow multi-split air conditioners and heat pumps certified to standards in terms of IEER as provided at paragraph (a)(3)(ii)(C) of this section, for which consumers would favor higher values shall be less than or equal to the lower of:

* * * * *

(3) * * *

(i) * * *

(B) [Reserved]

(ii) Variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with cooling capacity less than 65,000 btu/h). When certifying to standards in terms of IEER, the following provisions apply.

(A) *Outdoor Unit Model Selection.* All representations for basic models of VRF multi-split systems must be based on the least-efficient outdoor unit model(s) distributed in commerce within the basic model.

(B) *Indoor Unit Model Selection.* A manufacturer must determine represented values for basic models of VRF multi-split systems based on the following provisions regarding selection of indoor units:

(*1*) The combination of indoor unit models shall be selected per the certified tested combination in the STI, subject to the provisions in paragraph (a)(3)(ii)(B)(*2*) of this section.

(*2*) For each indoor unit model identified in the tested combination for which the model number certified in the STI does not fully specify the presence or absence of all components, a fully-specified indoor unit model shall be selected that meets the following qualifications:

(*i*) Is distributed in commerce; and

(*ii*) Has a model number consistent with the certified indoor unit model number (*i.e.,* shares all digits of the model number that are specified in the certified indoor unit model number); and

(*iii*) Among the group of all indoor models meeting the criteria from paragraphs (a)(3)(ii)(B)(*2*)(*i*) and (*ii*) of this section, has the least number (which could be zero) of components listed in Table 2 to paragraph (a)(3)(ii)(B)(*2*) of this section.

TABLE 2 TO PARAGRAPH (a)(3)(ii)(B)(*2*)—SPECIFIC COMPONENTS FOR VARIABLE REFRIGERANT FLOW MULTI-SPLIT SYSTEMS

Component	Description
Air economizers	An automatic system that enables a cooling system to supply and use outdoor air to reduce or eliminate the need for mechanical cooling during mild or cold weather.
Dehumidification Components	An assembly that reduced the moisture content of the supply air through moisture transfer with solid or liquid desiccants.

(C) *Represented Values for Different Indoor Unit Combinations.* (*1*) If a basic model includes only one type of indoor unit combination (*i.e.,* ducted, non-ducted, or SDHV), a manufacturer must determine the represented values for the basic model in accordance with the sampling plan set forth in § 429.11 and paragraph (a)(1) of this section if the represented values are determined through testing, or in accordance with the provisions for applying an AEDM set forth in paragraph (a)(2) of this section and § 429.70. Indoor unit models must be selected in accordance

with paragraph (a)(3)(ii)(B) of this section.

(*2*) If a basic model includes more than one type of indoor unit combination (*i.e.,* ducted, non-ducted, and/or SDHV):

(*i*) A manufacturer must determine separate represented values for each type of indoor unit combination. If the represented values are determined through testing, a manufacturer must test, at a minimum, a single tested combination that represents each type of indoor unit combination included in that basic model. A manufacturer may alternatively determine separate represented values through application of an AEDM as set forth in paragraph (a)(2) of this section and § 429.70. Indoor unit models within the indoor unit combination must be selected in accordance with paragraph (a)(3)(ii)(B) of this section.

(*ii*) A manufacturer may also determine optional ''mixed'' representations by calculating the mean value across any two required representations described in the paragraph (a)(3)(ii)(C)(*2*)(*i*) of this section (*i.e.,* a representation for ''mixed ducted/non-ducted'' would be determined by averaging the ducted representation and the non-ducted representation; a representation for ''mixed ducted/SDHV'' would be determined by averaging the ducted representation and the SDHV representation, and a representation for ''mixed non-ducted/SDHV'' would be determined by averaging the non-ducted representation and the SDHV representation).

(b) * * *

(2) * * *

(xi) Variable refrigerant flow multi-split air-cooled air conditioners (other than air-cooled with rated cooling capacity less than 65,000 btu/h):

(A) When certifying compliance with an EER standard: The energy efficiency ratio (EER in British thermal units per Watt-hour (Btu/Wh)), rated cooling capacity in British thermal units per hour (Btu/h), and the type(s) of heating used by the basic model (*e.g.,* electric, gas, hydronic, none).

(B) When certifying compliance with an IEER standard, the following must be certified for each tested combination as required under paragraph (a)(3)(ii)(C) of this section: The integrated energy efficiency ratio (IEER) in British thermal units per Watt-hour (Btu/Wh)); the rated cooling capacity in British thermal units per hour (Btu/h); whether the represented values are for a non-ducted, ducted, or SDHV tested combination, or for a mixed representation of any two of the tested combinations; and the outdoor unit(s) and indoor units identified in the tested combination. The following must be certified for each basic model: the type(s) of heating used (*i.e.,* electric, gas, hydronic, none); and the refrigerant used to determine the represented values.

(xii) Variable refrigerant flow multi-split heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h):

(A) When certifying compliance with an EER standard: The energy efficiency ratio (EER in British thermal units per Watt-hour (Btu/Wh)), the coefficient of performance (COP), rated cooling capacity in British thermal units per hour (Btu/h), and the type(s) of heating used by the basic model (*e.g.,* electric, gas, hydronic, none).

(B) When certifying compliance with an IEER standard, the following must be certified for each tested combination as required under paragraph (a)(3)(ii)(C) of this section: The integrated energy efficiency ratio (IEER) in British thermal units per Watt-hour (Btu/Wh); the coefficient of performance (COP); the rated cooling capacity in British thermal units per hour (Btu/h); the rated heating capacity (Btu/h); whether the represented values are for a non-ducted, ducted, or SDHV tested combination, or for a mixed representation of any two of the tested combinations; and the outdoor unit(s) and indoor units identified in the tested combination. The following must be certified for each basic model: the type(s) of heating used (*i.e.,* electric, gas, hydronic, none); and the refrigerant used to determine the represented values.

* * * * *

(4) * * *

(vii) Variable refrigerant flow multi-split air-cooled air conditioners (other than air-cooled with rated cooling capacity less than 65,000 btu/h):

(A) When certifying compliance with an EER standard: The nominal cooling capacity in British thermal units per hour (Btu/h); outdoor unit(s) and indoor units identified in the tested combination; components needed for heat recovery, if applicable; rated airflow in standard cubic feet per minute (scfm) for each indoor unit; rated static pressure in inches of water; compressor frequency setpoints; required dip switch/control settings for step or variable components; a statement whether the model will operate at test conditions without manufacturer programming; any additional testing instructions if applicable; if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating; and which, if any, special features were included in rating the basic model. Additionally, upon DOE request, the manufacturer must provide a layout of the system set-up for testing including charging instructions consistent with the installation manual.

(B) When certifying compliance with an IEER standard (for requirements in this list pertaining to or affected by indoor units, the requirements must be certified for each tested combination as required under paragraph (a)(3)(ii)(C) of this section): The nominal cooling capacity in British thermal units per hour (Btu/h) for each indoor and outdoor unit; identification of the indoor units to be thermally active for each IEER test point; the rated indoor airflow for the full-load cooling and all part-load cooling tests (for each indoor unit) in standard cubic feet per minute (scfm); the indoor airflow-control setting to be used in the full-load cooling test (for each indoor unit); system start-up or initialization procedures, including conditions and duration; compressor break-in period duration of 20 hours or less; the frequency of oil recovery cycles; operational settings for all critical parameters to be controlled at each of the four IEER cooling test conditions; all dip switch/control settings used for the full-load cooling test; identification of any system control device required for testing; a hierarchy of instructions for adjustment of critical parameters to reduce cooling capacity during IEER cooling tests (to be used if, using initial critical parameter settings, the measured cooling capacity is more than 3 percent above the target cooling capacity); any additional testing instructions if applicable; and if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating. Instructions for conducting a controls verification procedure (as described in Appendix C of AHRI 1230–2021, (incorporated by reference, *see* § 429.4) at each of the four IEER cooling test conditions must also be provided, including: the required thermostat

setpoints to ensure control for 80 °F dry-bulb temperature when accounting for setpoint bias, the starting indoor dry-bulb temperature, and the indoor dry-bulb temperature ramp rate (R2). Additionally, the manufacturer must provide a layout of the system set-up for testing (including a piping diagram, a power wiring diagram, a control wiring diagram, and identification of the location of the component(s) corresponding to each critical parameter to be controlled), set-up instructions for indoor units and outdoor units, and charging instructions consistent with the installation manual.

(viii) Variable refrigerant flow multi-split heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h):

(A) When certifying compliance with an EER standard: The nominal cooling capacity in British thermal units per hour (Btu/h); rated heating capacity in British thermal units per hour (Btu/h); outdoor unit(s) and indoor units identified in the tested combination; components needed for heat recovery, if applicable; rated airflow in standard cubic feet per minute (scfm) for each indoor unit; water flow rate in gallons per minute (gpm) for water-cooled units only; rated static pressure in inches of water; compressor frequency setpoints; required dip switch/control settings for step or variable components; a statement whether the model will operate at test conditions without manufacturer programming; any additional testing instructions if applicable; if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating; and which, if any, special features were included in rating the basic model. Additionally, upon DOE request, the manufacturer must provide a layout of the system set-up for testing including charging instructions consistent with the installation manual.

(B) When certifying compliance with an IEER standard (for requirements in this list pertaining to or affected by indoor units, the requirements must be certified for each tested combination as required under paragraph (a)(3)(ii)(C) of this section): The nominal cooling capacity in British thermal units per hour (Btu/h) for each indoor and outdoor unit; the nominal heating capacity (Btu/h) for each indoor and outdoor unit; components needed for heat recovery, if applicable; identification of the indoor units to be thermally active for each IEER test point; the rated indoor airflow for the full-load cooling, full-load heating, and all part-load cooling tests (for each indoor unit) in standard cubic feet per minute (scfm); the indoor airflow-control setting to be used in the full-load cooling test (for each indoor unit); the airflow-control setting to be used in the full-load heating test (for each indoor unit); for water-cooled units—the rated water flow rate in gallons per minute (gpm); system start-up or initialization procedures, including conditions and duration; compressor break-in period duration of 20 hours or less; the frequency of oil-recovery cycles; operational settings for all critical parameters to be controlled at each of the four IEER cooling test conditions; operational settings for all critical parameters to be controlled for the heating test; all dip switch/control settings used for the full-load cooling and full-load heating tests; identification of any system control device required for testing; a hierarchy of instructions for adjustment of critical parameters to reduce cooling capacity during IEER cooling tests (to be used if, using initial critical parameter settings, the measured cooling capacity is more than 3 percent above the target cooling capacity); any additional testing instructions if applicable; and if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating. Instructions for conducting a controls verification procedure (as described in Appendix C of AHRI 1230–2021) at each of the four IEER cooling test conditions must also be provided, including the required thermostat setpoints to ensure control for 80 °F dry-bulb temperature when accounting for setpoint bias, the starting indoor dry-bulb temperature, and the indoor dry-bulb temperature ramp rate (R2). Additionally, the manufacturer must provide a layout of the system set-up for testing (including a piping diagram, a power wiring diagram, a control wiring diagram, and identification of the location of the component(s) corresponding to each critical parameter to be adjusted), set-up instructions for indoor units and outdoor units, and charging instructions consistent with the installation manual.

* * * * *

(5) For variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h), if a manufacturer has knowledge that any of its certified operational settings for critical parameters to be controlled during IEER tests (per paragraph (b)(4)(vii)(B) or (b)(4)(viii)(B) of this section) are invalid according to the results of a controls verification procedure conducted according to § 429.134(v)(3), then the manufacturer must re-rate and re-certify using valid operational settings for critical parameters for all affected basic models.

* * * * *

■ 4. Amend § 429.70 by revising paragraph (c)(2)(i) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

* * * * *

(c) * * *

(2) * * *

(i) The manufacturer must select at least the minimum number of basic models for each validation class specified in paragraph (c)(2)(iv) of this section to which the particular AEDM applies. Using the AEDM, calculate the energy use or efficiency for each of the selected basic models.

(A) Except for variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h) when certifying to standards in terms of IEER, test a single unit of each selected basic model in accordance with paragraph (c)(2)(iii) of this section. Compare the results from the single unit test and the AEDM energy use or efficiency output according to paragraph (c)(2)(ii) of this section. The manufacturer is responsible for ensuring the accuracy and reliability of the AEDM.

(B) For variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h) when certifying to standards in terms of IEER, the following provisions apply.

(*1*) If a manufacturer makes representations for a single type of indoor unit combination (*i.e.,* only ducted, non-ducted, or SDHV indoor unit combinations) across all the basic models for which an AEDM applies, the manufacturer must test at least a single tested combination of that type of indoor unit combination for each selected basic model in accordance with paragraph (c)(2)(iii) of this section.

(*2*) If a manufacturer makes representations for two types of indoor unit combinations (*i.e.,* ducted, non-ducted, and/or SDHV) within or across all the basic models for which the AEDM applies, the manufacturer must test at least a single tested combination of a selected basic model for one of those two types of indoor unit combination, and at least a single tested combination of a different selected basic model for the other of those two types of indoor unit combination, each tested in accordance with paragraph (c)(2)(iii) of this section.

(*3*) If a manufacturer makes representations for all three types of indoor unit combinations (*i.e.,* ducted, non-ducted, and SDHV) within or across basic models for which the AEDM applies, the manufacturer must test at least a single tested combination of a selected basic model as a non-ducted tested combination and a single tested combination of a different selected basic model as a ducted tested combination, each in accordance with paragraph (c)(2)(iii) of this section.

(*4*) In all cases, compare the results from each tested basic model and the AEDM energy use or efficiency output according to paragraph (c)(2)(ii) of this section. The manufacturer is responsible for ensuring the accuracy and reliability of the AEDM.

* * * * *

■ 5. Section 429.104 is revised to read as follows:

§ 429.104 Assessment testing.

(a) DOE may, at any time, test a basic model to assess whether the basic model is in compliance with the applicable energy conservation standard(s).

(b) For variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h), when DOE may require that the manufacturer of a basic model ship at its expense any means of control for the basic model necessary for conducting testing in accordance with Appendix D1 to subpart F of 10 CFR part 431 of this subchapter.

■ 6. Amend § 429.110 by:

■ a. Redesignating paragraphs (a)(2) and (3) as paragraphs (a)(3) and (4), respectively;

■ b. Adding new paragraph (a)(2); and

■ c. Revising paragraph (b)(1)(iv).

The addition and revision read as follows.

§ 429.110 Enforcement testing.

(a) * * *

(2) For variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 Btu/h), when determining compliance with an energy conservation standard based on IEER, DOE may test for enforcement if DOE has reason to believe that a basic model is not in compliance, has invalid certified operational settings for critical parameter values, or has an otherwise invalid certified rating.

* * * * *

(b) * * *

(1) * * *

(iv) DOE may require in the test notice that the manufacturer of a basic model ship or cause to be shipped from a retailer or distributor at its expense the requested number of units of a basic model specified in such test notice to the testing laboratory specified in the test notice. The manufacturer shall ship the specified initial test unit(s) of the basic model to the testing laboratory within 5 working days from the time unit(s) are selected. For variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h) the manufacturer shall also ship any means of control necessary for conducting testing in accordance with appendix D1 to subpart F of 10 CFR part 431 of this subchapter. The manufacturer may ship the means of control separately from the system(s) selected for testing.

* * * * *

■ 7. Amend § 429.134 by:

■ a. In paragraph (s)(1), removing the text ''Table 1 of § 429.43(a)(3)'' and adding in its place the text ''table 1 to § 429.43(a)(3)(i)(A)''; and

■ b. Adding paragraph (v) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(v) *Variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 btu/h).* The following provisions apply for assessment and enforcement testing of models subject to standards in terms of IEER:

(1) *Specific components.* For each indoor unit model identified in the tested combination for which the model number certified in the STI does not fully specify the presence or absence of components listed at table 2 to 10 CFR 429.43(a)(3)(ii)(B), the following provision applies. If DOE is not able to obtain an individual model with the least number of those components, then DOE may test a system that includes any individual indoor unit model that has a model number consistent with the certified indoor unit model number.

(2) *Manufacturer involvement in assessment or enforcement testing.* A manufacturer's representative will be allowed to support commissioning and witness assessment and/or enforcement testing for variable refrigerant flow multi-split air conditioners and heat pumps, including during the controls verification procedures (CVPs) specified in paragraph (v)(3) of this section, with allowance for additional involvement as described in the following provisions.

(i) *Manufacturer involvement in CVP.* Control settings must be set by a member of the third-party laboratory consistent with the provisions in section 5.1 of appendix D1 to subpart F of 10 CFR part 431. Critical parameters must operate automatically from the system controls and must not be manually controlled or adjusted at any point by any party during the CVP.

(ii) *Manufacturer involvement in heating tests and IEER cooling tests.* All control settings other than critical parameters must be set by a member of the third-party laboratory consistent with the provisions of section 5.1 of appendix D1 to subpart F of 10 CFR part 431. In heating tests and IEER cooling tests, critical parameters may be manually controlled by a manufacturer's representative and initially set to their certified values as described in section 5.1 of appendix D1 to subpart F of 10 CFR part 431. During IEER cooling mode tests only, a manufacturer's representative may also make additional adjustments to the critical parameters as described in section 5.2 of appendix D1 to subpart F of 10 CFR part 431. Setting and adjustment of critical parameters by a manufacturer's representative must be monitored by third-party laboratory personnel using a service tool. Other than critical parameter adjustments made in accordance with section 5.3 of appendix D1 to subpart F of 10 CFR part 431, the manufacturer's representative must not make any other adjustments to the VRF multi-split system under test. If a manufacturer's representative is not present for testing, a member of the third-party laboratory must set and adjust critical parameters using the means of control provided by the manufacturer, as described in § 429.110(b)(1)(iv) for enforcement testing and § 429.104 for assessment testing.

(3) *Controls Verification Procedure (CVP).* This procedure validates the certified values of critical parameters for which positions may be manually set during the full- and part-load IEER cooling test conditions specified at appendix D1 to subpart F of 10 CFR part

431. The CVP will only be conducted for a single system.

(i) *Conducting the CVP*—The CVP will be conducted at all of the four IEER cooling test conditions as specified in appendix D1 to subpart F of 10 CFR part 431; the CVP is not conducted at any heating test conditions. The CVP will first be performed at the full-load cooling condition before being conducted at part-load cooling conditions and must be conducted per Appendix C of AHRI 1230–2021 (incorporated by reference, see § 429.4).

(ii) *Validating critical parameters*—At each load point, certified critical parameter values will be validated or invalidated according to Section C6 of AHRI 1230–2021 with the following amendments:

(A) The duration of the period used for validating certified critical parameter values must be whichever of the following is longer: three minutes, or the time period needed to obtain five sample readings while meeting the minimum data collection interval requirements of Table C2 of AHRI 1230–2021.

(B) If at least one measurement period with duration identified in paragraph (v)(3)(ii)(A) of this section exists before t_{OFF} that has an average root-sum-square (''RSS'') points total (as defined in Section 3.27 of AHRI 1230–2021) over the measurement period that is less than or equal to 70 points, the certified critical parameter values are valid.

(C) If no measurement period with duration identified in paragraph (v)(3)(ii)(A) of this section exists before t_{OFF} that has an average RSS points total over the measurement period that is less than or equal to 70 points, the certified critical parameter values are invalid.

(iii) *Determining critical parameters for use in steady-state IEER cooling tests.* If, following a CVP, IEER testing is conducted per appendix D1 to subpart F of 10 CFR part 431, the following provisions apply:

(A) *Validated critical parameter settings.* At each load point, if certified critical parameter values are found to be valid according to the results of the CVP, initially set critical parameters to their certified values for the IEER test at the corresponding full- or part-load cooling condition. Perform additional adjustments to critical parameters as described in section 5.2 of appendix D1 to subpart F of 10 CFR part 431.

(B) *Invalidated critical parameter settings.* At each load point, if certified critical parameter values identified pursuant to paragraph (v)(3) of this section are found to be invalid according to the results of the CVP, determine alternate critical parameter values for use in the corresponding IEER test (as specified in appendix D1 to subpart F of 10 CFR part 431) as follows:

(*1*) Select the CVP measurement period—this period must have duration determined per paragraph (v)(3)(ii)(A) of this section and must be the period where the RSS points total has a lower average value over the measurement period than over any other time period in the CVP of the same duration. If multiple periods exist with the same RSS points total, select the measurement period closest to but before the time that the first indoor unit switches to thermally inactive (denoted as ''t_{off}'' in AHRI 1230–2021).

(*2*) Determine alternate critical parameters—calculate the average position for each critical parameter during the measurement period selected in paragraph (v)(3)(iii)(B)(*1*) of this section. When initially setting critical parameters per section 5.1 of appendix D1 to subpart F of 10 CFR part 431, instead of using the certified critical parameter values, use the alternate critical parameter values as control inputs. The same initial alternate critical parameter values must be used for all systems in the assessment/enforcement sample (though critical parameter adjustments as needed to achieve target capacity or sensible heat ratio (SHR) limits are made independently for each tested system, per paragraph (v)(3)(iii)(B)(*3)* of this section.

(*3*) For each system, determine whether critical parameter adjustments are needed to achieve the target capacity or SHR limit for an IEER cooling test. Perform critical parameter adjustments independently on each system as described in section 5.2 of appendix D1 to subpart F of 10 CFR part 431, with the following exceptions:

(*i*) Replace all references to ''certified critical parameter values'' with ''alternate critical parameter values'' as determined in paragraph (v)(3)(iii)(B) of this section.

(*ii*) Determine CP_{Max} from a CVP conducted at full-load cooling conditions as the maximum value observed during the R2 period as described in Section C.4.4.2.3 of AHRI 1230–2021. If multiple components corresponding to a single parameter are present, determine CP_{Max} at the point during the R2 period at which the average value across all components corresponding to that critical parameter is maximized.

(4) *Break-in period.* DOE will perform a compressor break-in period during assessment or enforcement testing using a duration specified by the manufacturer only if a break-in period duration is provided in the supplemental testing instructions.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 8. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C 6291–6317; 28 U.S.C 2461 note.

■ 9. Section 431.92 is amended by revising the definition of ''Integrated energy efficiency ratio, or IEER'' to read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Integrated energy efficiency ratio, or IEER, means a weighted average calculation of mechanical cooling EERs determined for four load levels and corresponding rating conditions, expressed in Btu/watt-hour. IEER is measured per appendix A to this subpart for air-cooled small (≥65,000 Btu/h), large, and very large commercial package air conditioning and heating equipment and measured per appendix D1 to this subpart for variable refrigerant flow multi-split air conditioners and heat pumps (other than air-cooled with rated cooling capacity less than 65,000 Btu/h).

* * * * *

■ 10. Amend § 431.95 by:
■ a. Revising paragraph (b)(7);
■ b. Adding paragraph (b)(8);
■ c. Revising paragraph (c)(2);
■ d. Redesignating paragraphs (c)(3) through (7) as (c)(4) through (8); and
■ e. Adding new paragraph (c)(3).

The revisions and addition read as follows:

§ 431.95 Materials incorporated by reference.

* * * * *

(b) * * *

(7) ANSI/AHRI Standard 1230–2010, (''ANSI/AHRI 1230–2010''), ''2010 Standard for *Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment,*'' approved August 2, 2010 and updated by addendum 1 in March 2011; IBR approved for § 431.96 and appendix D to this subpart.

(8) AHRI Standard 1230 (I–P), (''AHRI 1230–2021'), ''*2021 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment*'', copyright in 2021; IBR approved for appendix D1 to this subpart.

(c) * * *

(2) ANSI/ASHRAE Standard 37–2009, (''ANSI/ASHRAE 37–2009''), ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE approved June 24, 2009; IBR approved for § 431.96 and appendices A, B, and D1 to this subpart.

(3) Errata Sheet for ANSI/ASHRAE Standard 37–2009, *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,* March 27, 2019; IBR approved for appendix D1 to this subpart.

* * * * *

■ 11. Amend § 431.96 by revising paragraph (b)(1) and table 1 to paragraph (b) to read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

* * * * *

(b) * * *

(1) Determine the energy efficiency of each type of covered equipment by conducting the test procedure(s) listed in table 1 to this paragraph (b) along with any additional testing provisions set forth in paragraphs (c) through (g) of this section and appendices A through D1 of this subpart, that apply to the energy efficiency descriptor for that equipment, category, and cooling capacity. The omitted sections of the test procedures listed in table 1 to this paragraph (b) must not be used. For equipment with multiple appendices listed in table 1 to this paragraph (b), consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

* * * * *

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity or moisture removal capacity [2]	Energy efficiency descriptor	Use tests, conditions, and procedures [1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
	Air-Cooled AC and HP	≥65,000 Btu/h and <135,000 Btu/h.	EER, IEER, and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h	EER	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <135,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
	Water-Source HP	<135,000 Btu/h	EER and COP	ISO Standard 13256–1	Paragraph (e).
Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥135,000 Btu/h and <240,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Very Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥240,000 Btu/h and <760,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Paragraph (g) of this section.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners.	AC	<65,000 Btu/h	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <760,000 Btu/h.	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
Variable Refrigerant Flow Multi-split Systems.	AC	<65,000 Btu/h (3-phase)	SEER	ANSI/AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<65,000 Btu/h (3-phase)	SEER and HSPF	ANSI/AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	AC and HP	≥65,000 Btu/h and <760,000 Btu/h.	EER and COP	Appendix D to this subpart [3].	None.
		≥65,000 Btu/h and <760,000 Btu/h.	IEER and COP	Appendix D1 to this subpart [3].	None.
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<760,000 Btu/h	EER and COP	Appendix D to this subpart [3].	None.
		<760,000 Btu/h	IEER and COP	Appendix D1 to this subpart [3].	None.
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	AHRI 390–2003 (omit section 6.4).	Paragraphs (c) and (e).
Direct Expansion-Dedicated Outdoor Air Systems.	All	<324 lbs. of moisture removal/hr.	ISMRE2 and ISCOP2	Appendix B to this subpart.	None.

[1] Incorporated by reference; see § 431.95.
[2] Moisture removal capacity applies only to direct expansion-dedicated outdoor air systems.

[3] For equipment with multiple appendices listed in this table 1, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

* * * * *

Appendix C to Subpart F of Part 431 [Reserved]

■ 12. Add reserved appendix C to subpart F of part 431.

■ 13. Add appendix D to subpart F of part 431 to read as follows:

Appendix D to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps (Other Than Air-Cooled With Rated Cooling Capacity Less Than 65,000 Btu/h)

Note: Manufacturers must use the results of testing under this appendix to determine compliance with the relevant standard from § 431.97 as that standard appeared in the January 1, 2022 edition of 10 CFR parts 200–499. Specifically, representations must be based upon results generated either under this appendix or under 10 CFR 431.96 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2022.

For any amended standards for variable refrigerant flow multi-split air conditioners and heat pumps that rely on integrated energy efficiency ratio (IEER) published after January 1, 2022, manufacturers must use the results of testing under appendix D1 of this subpart to determine compliance. Representations related to energy consumption must be made in accordance with the appropriate appendix that applies (*i.e.,* appendix D or appendix D1) when determining compliance with the relevant standard.

1. Incorporation by Reference

DOE incorporated by reference in § 431.95, the entire standard for ANSI/AHRI 1230–2010. However, enumerated provisions of ANSI/AHRI 1230–2010, as listed in this section 1, are excluded. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

1.1 ANSI/AHRI 1230–2010:

(a) Section 5.1.2—Manufacturer involvement.

(b) Section 6.6—Verification testing and uncertainty is inapplicable as specified in section 2.2 of this appendix.

1.2 [Reserved.]

2. *General.* Determine the energy efficiency ratio (EER) and coefficient of performance (COP) (as applicable) in accordance with ANSI/AHRI 1230–2010.

Note: Sections 3 through 6 of this appendix provide additional instructions for determining EER and COP.

3. *Optional break-in period.* Manufacturers may optionally specify a ''break-in'' period, not to exceed 20 hours, to operate the equipment under test prior to conducting the test method specified in this appendix. A manufacturer who elects to use an optional compressor break-in period in its certification testing should record this period's duration as part of the information in the supplemental testing instructions under 10 CFR 429.43.

4. *Refrigerant line length corrections.* For test set-ups where it is physically impossible for the laboratory to use the required line length listed in Table 3 of the ANSI/AHRI 1230–2010, then the actual refrigerant line length used by the laboratory may exceed the required length and the following cooling capacity correction factors are applied:

Piping length beyond minimum, X (ft)	Piping length beyond minimum, Y (m)	Cooling capacity correction (%)
0> X ≤20	0> Y ≤6.1	1
20> X ≤40	6.1> Y ≤12.2	2
40> X ≤60	12.2> Y ≤18.3	3
60> X ≤80	18.3> Y ≤24.4	4
80> X ≤100	24.4> Y ≤30.5	5
100> X ≤120	30.5>Y ≤36.6	6

5. *Additional provisions for equipment set-up.* The only additional specifications that may be used in setting up the basic model for test are those set forth in the installation and operation manual shipped with the unit. Each unit should be set up for test in accordance with the manufacturer installation and operation manuals. Sections 5.1 through 5.3 of this appendix provide specifications for addressing key information typically found in the installation and operation manuals.

5.1. If a manufacturer specifies a range of superheat, sub-cooling, and/or refrigerant pressure in its installation and operation manual for a given basic model, any value(s) within that range may be used to determine refrigerant charge or mass of refrigerant, unless the manufacturer clearly specifies a rating value in its installation and operation manual, in which case the specified rating value must be used.

5.2. The airflow rate used for testing must be that set forth in the installation and operation manual being shipped to the commercial customer with the basic model and clearly identified as that used to generate the DOE performance ratings. If a rated airflow value for testing is not clearly identified, a value of 400 standard cubic feet per minute (scfm) per ton must be used.

5.3. The test set-up and the fixed compressor speeds (*i.e.,* the maximum, minimum, and any intermediate speeds used for testing) should be recorded and maintained as part of the test data underlying the certified ratings that is required to be maintained under 10 CFR 429.71.

6. *Manufacturer involvement in assessment or enforcement testing.* A manufacturer's representative will be allowed to witness assessment and/or enforcement testing for variable refrigerant flow multi-split air conditioners and heat pumps. The manufacturer's representative will be allowed to inspect and discuss set-up only with a DOE representative. During testing, the manufacturer's representative may adjust only the modulating components that are necessary to achieve steady-state operation in the presence of a DOE representative. Only previously documented specifications for set-up as specified under sections 4 and 5 of this appendix will be used.

■ 14. Add appendix D1 to subpart F of part 431 to read as follows:

Appendix D1 to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps (Other Than Air-Cooled With Rated Cooling Capacity Less Than 65,000 Btu/h)

Note: Manufacturers must use the results of testing under this appendix to determine compliance with any amended standards for variable refrigerant flow multi-split air conditioners and heat pumps provided in § 431.97 that are published after January 1, 2022, and that rely on integrated energy efficiency ratio (IEER). Representations related to energy consumption must be made in accordance with the appropriate appendix that applies (*i.e.,* appendix D or appendix D1) when determining compliance with the relevant standard.

1. Incorporation by Reference

DOE incorporated by reference in § 431.95, the entire standard for AHRI 1230–2021 and ANSI/ASHRAE 37–2009, as corrected by the Errata sheet for ANSI/ASHRAE 37–2009 issued on March 27, 2019 (''ANSI/ASHRAE 37–2009 (as corrected)''). However, only

enumerated provisions of AHRI 1230–2021 and ANSI/ASHRAE 37–2009 are required or excluded, as listed in this section 1. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

1.1 Provisions Required

1.1.1 AHRI 1230–2021

(a) Section 3—Definitions, except section 3.11, as specified in section 2 of this appendix,

(b) Section 5—Test Requirements, except section 5.1.2, as specified in sections 2 and 5.1 of this appendix,

(c) Section 6—Rating Requirements, except sections 6.3.3 and 6.5, as specified in sections 2, 4.1, 4.1.1, 4.2, 4.2.1, and 5.1 of this appendix,

(d) Section 11—Calculations is applicable as specified in sections 2, 5.2.1.2, and 5.2.2 of this appendix,

(e) Section 12—Symbols, Subscripts, and Superscripts as specified in section 2 of this appendix,

(f) Appendix E—ANSI/ASHRAE Standard 37–2009 Clarifications/Exceptions—Normative as specified in section 2 of this appendix.

1.1.2 [Reserved]

1.2 Provisions Excluded

1.2.1 ANSI/ASHRAE 37–2009 (as Corrected)

(a) Section 1—Purpose,

(b) Section 2—Scope, and

(c) Section 4—Classification.

2. *General.* Determine IEER and coefficient of performance (COP) (as applicable) in accordance with AHRI 1230–2021 and ANSI/ASHRAE 37–2009 (as corrected). Sections 3 through 5 of this appendix provide additional instructions for determining IEER and COP. In cases where there is a conflict, the language of this appendix takes highest precedence, followed by AHRI 1230–2021, followed by ANSI/ASHRAE 37–2009 (as corrected).

Note: The controls verification procedure specified in Appendix C of AHRI 1230–2021 is referenced as part of DOE's certification provisions at § 429.43(b) and product-specific enforcement provisions located at § 429.134(v)(3).

3. Definitions

3.1. *Critical Parameter(s)* are the following settings of modulating components of variable refrigerant flow multi-split air conditioners and heat pumps: compressor speed(s), outdoor fan speed(s), and outdoor variable valve position(s).

4. Test Conditions

4.1 *Test Conditions for Air-Cooled VRF Multi-split Systems with Rated Cooling Capacity Greater Than 65,000 Btu/h.* When testing to certify to the energy conservation standards in § 431.97, test using the ''Standard Rating Conditions, Cooling'' and ''Standard Rating Part-Load Conditions (IEER)'' conditions for cooling mode tests and ''Standard Rating Conditions (High Temperature Steady-state Test for Heating)'' conditions for heat pump heating mode tests, as specified in Table 9 in Section 6 of AHRI 1230–2021.

4.1.1 Representations of COP for air-cooled VRF multi-split systems with rated cooling capacity greater than 65,000 Btu/h made using the ''Low Temperature Operation, Heating'' condition specified in Table 9 in Section 6 of AHRI 1230–2021 are optional.

4.2 *Test Conditions for Water-source VRF Multi-split Systems.* When testing to certify to the energy conservation standards in § 431.97, test using the ''Part-load Conditions (IEER)'' conditions specified for ''Water Loop Heat Pumps'' in Table 10 of AHRI 1230–2021 for cooling mode tests and the ''Standard Rating Test'' conditions specified for ''Water Loop Heat Pumps'' in Table 11 in Section 6 of AHRI 1230–2021 for heat pump heating mode tests.

4.2.1 For water-source VRF multi-split systems, representations of EER made using the ''Standard Rating Test'' conditions specified for ''Ground-loop Heat pumps'' in Table 10 of Section 6 of AHRI 1230–2021 and representations of COP made using the ''Standard Rating Test'' conditions specified for ''Ground-loop Heat Pumps'' in Table 11 of Section 6 of AHRI 1230–2021 are optional.

5. Test Procedure

5.1 *Control Settings.* Control settings must be set in accordance with Sections 5.1.3, 5.1.4, 5.1.5, and 5.2 of AHRI 1230–2021. For systems equipped with head pressure controls, the head pressure controls must be set per manufacturer installation instructions or per factory settings if no instructions are provided. Indoor airflow-control settings must be set in accordance with Section 6.3.1 of AHRI 1230–2021. At each load point, critical parameters must be set to the values certified in the supplemental testing instructions (STI) provided by the manufacturer pursuant to § 429.43(b)(4) of this chapter. In cases in which a certified critical parameter value is not in the STI, the system must operate per commands from the system controls for that parameter. Once set, control settings must remain unchanged for the remainder of the test (except for allowable adjustment of critical parameters as described in section 5.2 of this appendix).

5.2 *Allowable Critical Parameter Adjustments for IEER Cooling Tests.* The following sections describe allowable adjustments to critical parameters after the initial system set-up (during which all control settings, including certified critical parameters, are set). Adjust critical parameters in order to achieve full- and part-load cooling capacity targets and sensible heat ratio (SHR) limits.

5.2.1 *Critical Parameter Adjustments for Meeting Cooling Capacity Targets.* Once critical parameters have been set to the values certified in the STI, if the unit cannot operate within 3% of the target cooling capacity (*i.e.,* within 3% of the load fraction for a given part-load cooling test (75%, 50%, or 25% load) or within 3% of the certified cooling capacity for a 100% full-load cooling test), manually-controlled critical parameters must be adjusted according to the following provisions:

5.2.1.1. *Cooling Capacity is Below Lower Tolerance.* If, for any test, the cooling capacity operates below the lower tolerance for the target cooling capacity, increase the compressor speed(s) beyond the STI-certified value(s) until the cooling capacity operates within 3% of the target cooling capacity. If multiple compressors are present in the system, increase compressor speed by the same absolute increment in RPM or Hz for each compressor for which the following conditions apply:

(a) The STI specifies a non-zero compressor speed for the compressor for that test and

(b) The compressor has not yet reached its maximum capable operating speed. The compressor speed(s) must not be less than the STI-certified value(s) at any point during the test. Upward adjustments to compressor speed are not constrained by a budget on RSS Points Total (See section 5.2.1.2.1 of this appendix).

5.2.1.2 *Cooling Capacity is Above Upper Tolerance.* If, for any test, the cooling capacity operates above the upper tolerance for the target cooling capacity, adjust any manually-controlled critical parameters per the STI. If the STI does not include a hierarchy of instructions for adjustment of critical parameters to reduce cooling capacity during IEER cooling tests, then reduce only the compressor speed(s) to reduce cooling capacity. If multiple compressors are present in the system, decrease compressor speed by the same absolute increment for each compressor for which the following conditions apply:

(a) The STI specifies a non-zero compressor speed for the compressor for that test and

(b) The compressor has not yet reached minimum speed. Continue reducing cooling capacity in this manner until one of the following occurs:

(1) The unit operates within 3% of the target cooling capacity; or

(2) The RSS point total reaches a budget of 70 points (see section 5.2.1.2.1 of this appendix). For the 75%, 50%, and 25% part-load cooling test points, if the RSS point total reaches 70 during critical parameter adjustments before the capacity operates within 3% of the target cooling capacity, stop adjustment and follow cyclic degradation procedures in accordance with Section 11.2.2.1 of AHRI 1230–2021.

5.2.1.2.1 *Measuring Critical Parameter Variation During Adjustment Period.* When adjusting critical parameters to reduce cooling capacity, critical parameter variation must be calculated each time the critical parameters are adjusted, using the following equations:

(a) First, use equation 5.2–1 to calculate the absolute parameter percent difference () between each adjusted critical parameter and the value for that parameter certified in the STI.

Equation 5.2-1 $$PPD_i = \left|\frac{CP_{i,Adj} - CP_{i,STI}}{CP_{Max}}\right| \times 100$$

Where:

''i'' identifies the critical parameter—either compressors speed(s), outdoor fan speed(s), or outdoor variable valve position(s)

$CP_{i,Adj}$ = The adjusted position of critical parameter ''i'' recorded at each measurement interval. If multiple components corresponding to a single parameter are present (*e.g.,* multiple compressors), calculate the average position across all components corresponding to that parameter at each measurement interval when determining $CP_{i,Adj}$.

$CP_{i,STI}$ = The position of critical parameter ''i'' as certified in the STI. If multiple components corresponding to a single parameter are present, calculate the average position across all components corresponding to that parameter at each measurement interval when determining $CP_{i,STI}$.

CP_{Max} = The maximum operating position for Critical Parameter ''i'' as certified in the STI for the 100% load condition. If multiple components corresponding to a single parameter are present, calculate as the average value across all components corresponding to that critical parameter certified in the STI for the 100% load condition.

(b) Next, use equation 5.2–2 to this section to determine the accrued points for each critical parameter:

Equation 5.2-2 $$Points_i = PPD_i \times NPV_i$$

Where:

''i'' identifies the critical parameter—either compressors speed(s), outdoor fan speed(s), or outdoor variable valve position(s)

NPV_i = the nominal point value for critical parameter ''i'' as follows:

TABLE 5.1—CRITICAL PARAMETER NOMINAL POINT VALUES

Critical parameter	Nominal point value
Compressor Speed(s)	13
Outdoor Fan Speed(s)	7
Outdoor Variable Valve Position(s)	1

(c) Finally, use equation 5.2–3 to this section to calculate the root-sum-squared (RSS) Points Total across all critical parameters.

Equation 5.2-3 $$RSS\ Points = \sqrt{\left(Points_{Compressors}\right)^2 + (Points_{Fans})^2 + (Points_{Valves})^2}$$

5.2.2 *Critical Parameter Adjustments for Meeting SHR Limits.* The SHR for the 100% load test point and the 75% part-load test point must not be higher than 0.82 and 0.85, respectively (measured to the nearest hundredth). If the SHR is above the allowable limit, increase the compressor speed(s) until either the SHR is less than or equal to the allowable limit or the cooling capacity reaches 3% greater than the target cooling capacity for that test, whichever happens first. If multiple compressors are present in the system, increase compressor speed by the same absolute increment for each compressor for which the following conditions apply:

(a) The STI specifies a non-zero compressor speed for the compressor for that test and

(b) The compressor has not yet reached maximum speed. Upwards adjustments to compressor speed are not constrained by a budget on RSS Points Total. Should the SHR remain above the maximum limit when the cooling capacity reaches its upper 3% tolerance, no further compressor adjustments shall be made, and the calculation procedures specified in Section 11.2.2.2 of AHRI 1230–2021 must be applied using the adjusted SHR value obtained after increasing the compressor speed(s).

6. *Set-Up and Test Provisions for Specific Components.* When testing a VRF multi-split system that includes any of the specific components listed in table 6.1 to this appendix, test in accordance with the set-up and test provisions specified in table 6.1.

TABLE 6.1—TEST PROVISIONS FOR SPECIFIC COMPONENTS

Component	Description	Test provisions
Desiccant Dehumidification Components.	An assembly that reduces the moisture content of the supply air through moisture transfer with solid or liquid desiccants.	Disable desiccant dehumidification components for testing.
Air Economizers	An automatic system that enables a cooling system to supply outdoor air to reduce or eliminate the need for mechanical cooling during mild or cold weather.	For any air economizer that is factory-installed, place the economizer in the 100% return position and close and seal the outside air dampers for testing. For any modular air economizer shipped with the unit but not factory-installed, do not install the economizer for testing.
Fresh Air Dampers	An assembly with dampers and means to set the damper position in a closed and one open position to allow air to be drawn into the equipment when the indoor fan is operating.	For any fresh air dampers that are factory-installed, close and seal the dampers for testing. For any modular fresh air dampers shipped with the unit but not factory-installed, do not install the dampers for testing.
Hail Guards	A grille or similar structure mounted to the outside of the unit covering the outdoor coil to protect the coil from hail, flying debris, and damage from large objects.	Remove hail guards for testing.

TABLE 6.1—TEST PROVISIONS FOR SPECIFIC COMPONENTS—Continued

Component	Description	Test provisions
Low Ambient Cooling Dampers.	An assembly with dampers and means to set the dampers in a position to recirculate the warmer condenser discharge air to allow for reliable operation at low outdoor ambient conditions.	Remove low ambient cooling dampers for testing.
Power Correction Capacitors	A capacitor that increases the power factor measured at the line connection to the equipment. These devices are a requirement of the power distribution system supplying the unit.	Remove power correction capacitors for testing.
Ventilation Energy Recovery Systems (VERS).	An assembly that preconditions outdoor air entering the equipment through direct or indirect thermal and/or moisture exchange with the exhaust air, which is defined as the building air being exhausted to the outside from the equipment.	For any VERS that is factory-installed, place the VERS in the 100% return position and close and seal the outside air dampers and exhaust air dampers for testing, and do not energize any VERS subcomponents (*e.g.,* energy recovery wheel motors). For any VERS module shipped with the unit but not factory-installed, do not install the VERS for testing.

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Part III

Department of the Treasury

31 CFR Part 1
Privacy Act Regulations; Final Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 1

RIN 1505–AC80

Privacy Act Regulations

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of the Treasury's (Department) regulations under the Privacy Act of 1974, as amended. Treasury is revising these regulations to update certain provisions to reflect developments in Privacy Act case law and changes in the names of some of the Treasury bureaus and offices since the regulations were last updated. Additionally, the regulations are being updated to ensure compliance with requirements in the Social Security Number Fraud Prevention Act of 2017. This final rule adopts the July 25, 2022, proposed rule with minor changes.

DATES: This rule is effective November 21, 2022.

FOR FURTHER INFORMATION CONTACT: Ryan Law, Deputy Assistant Secretary for Privacy, Transparency and Records, 202–622–0930, extension 2 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This final rule updates the Department's Privacy Act (5 U.S.C. 552a) regulations in 31 CFR part 1, subpart C, and revises §§ 1.20 (Purpose and scope of this subpart), 1.23 (Publication in the **Federal Register**—Notices of systems of records, general exemptions, specific exemptions, review of all systems), 1.24 (Disclosure of records to person other than the individual to whom they pertain), 1.25 (Accounting of disclosures), 1.26 (Procedures for notification and access to records pertaining to individuals—format and fees for request for access), 1.27 (Procedures for amendment of records pertaining to individuals—format, agency review and appeal from initial adverse agency determination), 1.28 (Training, rules of conduct, penalties for non-compliance), 1.32 (Collection, Use, Disclosure and Protection of Social Security numbers), 1.35 (Information forms), and 1.36 (Systems exempt in whole or in part from provisions of the Privacy Act and this part). Sections 1.20, 1.23, 1.24, 1.25, 1.26, 1.27, 1.28, 1.32, 1.35, and 1.36 all address and reflect changes to Office of Management Budget (OMB) Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication Under the Privacy Act'' [81 FR 94424, December 23, 2016] in addition to the Social Security Number Fraud Prevention Act of 2017, Public Law 115–59; 42 U.S.C. 405.

The rule also amends the Department's Privacy Act Regulations to account for issues that have arisen since the regulations were last updated. For example, these changes reflect additional privacy and civil liberties responsibilities delegated to the Treasury's Assistant Secretary for Management and changes to § 1.20 reflect the creation of the new Special Inspector General for Pandemic Recovery, and all offices reporting to such official, including immediate staff. Section 1.23 makes modifications to reflect changes to OMB Circular A–130, ''Managing Information as a Strategic Resource.'' [81 FR 49689, July 28, 2016] Section 1.24 includes modifications to correct errors discovered in the original publication of this regulation. These modifications include the addition of language to reflect the amendment of the Privacy Act by the Debt Collection Act of 1982 (which stated the circumstances under which Federal agencies could disclose individual records to consumer reporting agencies). In §§ 1.25 and 1.26, clarifying changes are made to correct grammatical errors.

In §§ 1.27 and 1.35, minor changes were made to align with the authority vested in agencies to promulgate exemptions to certain provisions in the Privacy Act. Section 1.28 is updated to establish the roles and responsibilities of the Deputy Assistant Secretary for Privacy, Transparency, and Records to ensure compliance with the Senior Agency Official Privacy oversight requirements in OMB M–16–24, ''Role and Designation of Senior Agency Officials for Privacy'' in accordance with E.O. 13719, Establishment of the Federal Privacy Council.'' [81 FR 7685, February 12, 2016]

Within § 1.32, Treasury formalized the policy for the use of Social Security numbers and added provisions to ensure compliance with the Social Security Number Fraud Prevention Act of 2017. Further, § 1.36 updates the Treasury systems that claim exemptions under sections (j)(2) and (k) (subsections 1–6) of the Privacy Act.

Finally, the appendices to the current regulation were revised to reflect changes in the Treasury's organizational structure. Appendices pertaining to the Bureau of Public Debt and Financial Management Service have been deleted as these components were consolidated under the new Treasury Bureau of the Fiscal Service. A new Bureau of the Fiscal Service appendix (appendix G) was added to reflect this consolidation. Appendix E was added to reflect the creation of the Alcohol and Tobacco Tax and Trade Bureau (TTB). Appendices C (United States Customs Service), D (United States Secret Service), and J (Federal Law Enforcement Training Center) were deleted to reflect that these former bureaus are no longer part of Treasury.

Comments on the Proposed Rule

Treasury received one comment on the proposed rule (July 25, 2022; 87 FR 44049).

Comment: ''We respectfully request that the Department of the Treasury update these regulations to replace the term 'physician' with 'licensed health care professional.' This will maintain the privacy protection that is in place, while also ensuring that an individual who selects a nurse practitioner, or other licensed health care professional, as their provider of choice, is authorized to designate that clinician as the recipient of their medical records.''

Response: In the final rule, Treasury replaced references to ''physician'' with ''health professional.''

Changes Between the Proposed Rule and Final Rule

Except for the replacement of the term ''physician,'' as described above, this final rule makes no substantive changes to the regulatory text of the proposed rule.

The Final Rule also reflects technical changes made to reflect modification of the names of some of the Treasury bureaus and offices since the regulations were last updated. The need for these technical modifications was discovered after publication of the proposed rule.

Regulatory Planning and Review

This final rule has been determined to be not significant for purposes of review under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires agencies to prepare an initial regulatory flexibility analysis (IRFA) to determine the economic impact of the rule on small entities. A small entity is defined as either a small business, a small organization, or a small governmental jurisdiction; an individual is not a small entity. Section 605(b) of the RFA allows an agency to prepare a certification in lieu of an IRFA if the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), it is hereby certified that this final rule will not have a significant economic impact on

a substantial number of small entities. The Privacy Act primarily affects individuals and not entities and the rule would impose no duties or obligations on small entities.

List of Subjects in 31 CFR Part 1

Privacy.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 1 as follows:

PART 1—DISCLOSURE OF RECORDS

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

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 301, 321; 31 U.S.C. 3717.

■ 2. Revise subpart C to read as follows:

Subpart C—Privacy Act

Sec.

1.20 Purpose and scope of this subpart.
1.21 Definitions.
1.22 Requirements relating to systems of records.
1.23 Publication in the **Federal Register**—Notices of systems of records, general exemptions, specific exemptions, review of all systems.
1.24 Disclosure of records to person other than the individual to whom they pertain.
1.25 Accounting of disclosures.
1.26 Procedures for notification and access to records pertaining to individuals—format and fees for request for access.
1.27 Procedures for amendment of records pertaining to individuals—format, agency review and appeal from initial adverse agency determination.
1.28 Training, rules of conduct, penalties for non-compliance.
1.29 Records transferred to Federal Records Center or National Archives of the United States.
1.30 Application to system of records maintained by Government contractors.
1.31 Sale or rental of mailing lists.
1.32 Collection, use, disclosure, and protection of Social Security numbers.
1.34 Guardianship.
1.35 Information forms.
1.36 Systems exempt in whole or in part from provisions of the Privacy Act and this part.
Appendix A to Subpart C of Part 1—Departmental Offices
Appendix B to Subpart C of Part 1—Internal Revenue Service
Appendix C to Subpart C of Part 1—Alcohol and Tobacco Tax and Trade Bureau
Appendix D to Subpart C of Part 1—Bureau of Engraving and Printing
Appendix E to Subpart C of Part 1—Bureau of the Fiscal Service
Appendix F to Subpart C of Part 1—United States Mint
Appendix G to Subpart C of Part 1—Office of the Comptroller of the Currency
Appendix H to Subpart C of Part 1—Financial Crimes Enforcement Network

Subpart C—Privacy Act

§ 1.20 Purpose and scope of this subpart.

(a) The regulations in this subpart are issued to implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). This subpart applies to all records which are contained in systems of records maintained by the Department of the Treasury (Department or Treasury). They do not relate to those personnel records of Federal Government employees, which are under the Office of Personnel Management's (OPM) jurisdiction to the extent such records are subject to OPM regulations. This subpart applies to all Treasury components. Any reference in this subpart to the Department or its officials, employees, or records must be deemed to refer also to the components or their officials, employees, or records. This subpart sets forth the requirements applicable to Treasury employees (including, to the extent required by the contract or 5 U.S.C. 552a(m), Government contractors and employees of such contractors) maintaining, collecting, using, or disseminating records pertaining to individuals. They also set forth the procedures by which individuals may request notification of whether the Treasury maintains or has disclosed a record pertaining to them or may seek access to such records maintained in any nonexempt system of records, request correction of such records, appeal any initial adverse determination of any request for amendment, or seek an accounting of disclosures of such records. For the convenience of interested persons, Treasury components may reproduce the regulations in this subpart in their entirety (less any appendices not applicable to the component in question) in those titles of the Code of Federal Regulations (CFR) which normally contain regulations applicable to such components. In connection with such reproduction, and at other appropriate times, components may issue supplementary regulations applicable only to the component in question, which are consistent with the regulations in this subpart. In the event of any actual or apparent inconsistency, the Departmentwide regulations in this subpart must govern. Individuals interested in the records of a particular component should, therefore, also consult the Code of Federal Regulations for any rules or regulations promulgated specifically with respect to that component (see the appendices to this subpart for cross references). The head of each component is hereby also authorized to substitute other appropriate officials for those designated and correct addresses specified in the appendix to this subpart applicable to the component. For purposes of this subpart, Treasury components consist of the following offices and bureaus:

(1) The Departmental Offices, which include the offices of:

(i) The Secretary of the Treasury, including immediate staff;

(ii) The Deputy Secretary of the Treasury, including immediate staff;

(iii) The Chief of Staff, including immediate staff;

(iv) The Executive Secretary of the Treasury, and all offices reporting to such official, including immediate staff;

(v) Under Secretary for the Office of International Affairs, and all offices reporting to such official, including immediate staff;

(vi) Assistant Secretary for the Office of International Trade and Development, and all offices reporting to such official, including immediate staff;

(vii) Assistant Secretary for the Office of International Finance, and all offices reporting to such official, including immediate staff;

(viii) Assistant Secretary for the Office of Investment Security, and all offices reporting to such official, including immediate staff;

(ix) Under Secretary for the Office of Domestic Finance, and all offices reporting to such official, including immediate staff;

(x) Assistant Secretary for the Office of Financial Institutions, and all offices reporting to such official, including immediate staff;

(xi) Assistant Secretary for the Office of Financial Markets, and all offices reporting to such official, including immediate staff;

(xii) Assistant Secretary for the Office of the Fiscal Service, and all offices reporting to such official, including immediate staff;

(xiii) Under Secretary for the Office of Terrorism & Financial Intelligence, and all offices reporting to such official, including immediate staff;

(xiv) Assistant Secretary for the Office of Terrorist Financing and Financial Crimes, and all offices reporting to such official, including immediate staff;

(xv) Assistant Secretary for the Office of Intelligence and Analysis, and all offices reporting to such official, including immediate staff;

(xvi) Office of General Counsel and all offices reporting to such official, including immediate staff; except legal counsel to the components listed in paragraphs (a)(23) through (26) and (b) through (h) of this section;

(xvii) Treasurer of the United States including immediate staff;

(xviii) Assistant Secretary for the Office for Legislative Affairs, and all offices reporting to such official, including immediate staff;

(xix) Assistant Secretary for the Office of Management, and all offices reporting to such official(s), including immediate staff;

(xx) Assistant Secretary for the Office of Public Affairs, and all offices reporting to such official, including immediate staff;

(xxi) Assistant Secretary for the Office of Economic Policy, and all offices reporting to such official, including immediate staff;

(xxii) Assistant Secretary for the Office of Tax Policy, and all offices reporting to such official, including immediate staff;

(xxiii) The Inspector General and all offices reporting to such official, including immediate staff;

(xxiv) The Treasury Inspector General for Tax Administration, and all offices reporting to such official, including immediate staff;

(xxv) The Special Inspector General, Troubled Asset Relief Program, and all offices reporting to such official, including immediate staff;

(xxvi) The Special Inspector General for Pandemic Recovery, and all offices reporting to such official, including immediate staff;

(2) Alcohol and Tobacco Tax and Trade Bureau.

(3) Internal Revenue Service.

(4) Office of the Comptroller of the Currency.

(5) Bureau of Engraving and Printing.

(6) United States Mint.

(7) Financial Crimes Enforcement Network.

(8) Bureau of the Fiscal Service.

(b) For purposes of this subpart, the office of the legal counsel for the components listed in paragraphs (a)(1)(xxiii) through (xxvi) and (a)(2) through (8) of this section are to be considered a part of such components. Any office, which is now in existence or may after October 20, 2022 be established, which is not specifically listed or known to be a component of any of those listed in paragraphs (a)(1) through (8) of this section, must be deemed a part of the Departmental Offices for the purpose of this subpart.

§ 1.21 Definitions.

(a) The term *agency* means agency as defined in 5 U.S.C. 552(e).

(b) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) The term *maintain* includes maintain, collect, use, or disseminate.

(d) The term *record* means any item, collection, or grouping of information about an individual that is maintained by the Treasury or its components. This includes, but is not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(e) The term *system of records* means a group of any records under the control of the Treasury or any component from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(f) The term *statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) The term *routine use* means the disclosure of a record that is compatible with the purpose for which the record was collected.

(h) The term *component* means a Treasury bureau or office as set forth in § 1.20 and in the appendices to this subpart. (See 5 U.S.C. 552a(a).)

(i) The term *request for access* means a request made pursuant to 5 U.S.C. 552a(d)(1).

(j) The term *request for amendment* means a request made pursuant to 5 U.S.C. 552a(d)(2).

(k) The term *request for accounting* means a request made pursuant to 5 U.S.C. 552a(c)(3).

(l) The term *Privacy Act* means the Privacy Act of 1974 (5 U.S.C. 552a).

§ 1.22 Requirements relating to systems of records.

(a) *In general.* Subject to 5 U.S.C. 552a(j) and (k) and § 1.23(c), each component shall, in conformance with the Privacy Act:

(1) Maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by the statute or by Executive order of the President. (*See* 5 U.S.C. 552a(e)(1).)

(2) Collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. (*See* 5 U.S.C. 552a(e)(2).)

(b) *Requests for information from individuals.* Subject to 5 U.S.C. 552a(j) and § 1.23(c)(1), each component of the Treasury shall inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual:

(1) The authority (whether granted by statute, or by Executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published pursuant to 5 U.S.C. 552a(e)(4)(D); and

(4) The effects on such individual, if any, of not providing all or any part of the requested information. (*See* 5 U.S.C. 552a(e)(3).)

(c) *Report on new systems.* Each component of the Treasury shall provide adequate advance notice to Congress and the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers. (*See* 5 U.S.C. 552a(o).)

(d) *Accurate and secure maintenance of records.* Each component shall:

(1) Subject to 5 U.S.C. 552a(j) and § 1.23(c)(1), maintain all records which are used in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination (*see* 5 U.S.C. 552a(e)(5));

(2) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to the Privacy Act (*see* subpart A of this part), make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for Department of the Treasury purposes (*see* 5 U.S.C. 552a(e)(6)); and

(3) Establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm,

embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. (*See* 5 U.S.C. 552a(e)(10).)

(i) System managers, with the approval of the head of their offices within a component, shall establish administrative and physical controls, consistent with Department regulations in this part, to insure the protection of records systems from unauthorized access or disclosure and from physical damage or destruction. The controls instituted shall be proportional to the degree of sensitivity of the records but at a minimum must insure that records other than those available to the general public under the Freedom of Information Act (5 U.S.C. 552), are protected from public view, that the area in which the records are stored is supervised during all business hours and physically secure during nonbusiness hours to prevent unauthorized personnel from obtaining access to the records. Automated systems shall comply with the security standards promulgated by the National Institute of Standards and Technology (NIST).

(ii) System managers, with the approval of the head of their offices within a component, shall adopt access restrictions to insure that access to the records is limited to those individuals within the agency who have a need to access the records in order to perform their duties. Procedures shall also be adopted to prevent accidental access to, or dissemination of, records.

(e) *Prohibition against maintenance of records concerning First Amendment rights.* No component shall maintain a record describing how any individual exercises rights guaranteed by the First Amendment (*e.g.* speech), unless the maintenance of such record is:

(1) Expressly authorized by statute; or

(2) Expressly authorized by the individual about whom the record is maintained; or

(3) Pertinent to and within the scope of an authorized law enforcement activity. (See 5 U.S.C. 552a(e)(7).)

(f) *Notification of disclosure under compulsory legal process.* Subject to 5 U.S.C. 552a(j) and § 1.23(c)(1), when records concerning an individual are subpoenaed by a Grand Jury, Court, or quasi-judicial agency, or disclosed in accordance with an ex parte court order pursuant to 26 U.S.C. 6103(i), the official served with the subpoena or court order shall make reasonable efforts to assure that notice of any disclosure is provided to the individual. Notice shall be provided within five working days of making the records available under compulsory legal process or, in the case of a Grand Jury subpoena or an ex parte order, within five days of its becoming a matter of public record. Notice shall be mailed to the last known address of the individual and shall contain the following information: the date and authority to which the subpoena is, or was returnable, or the date of and court issuing the ex parte order, the name and number of the case or proceeding, and the nature of the information sought and provided. Notice of the issuance of a subpoena or an ex parte order is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a(e)(8) and this section, pursuant to 5 U.S.C. 552a(j) and § 1.23(c)(1), by a Notice of Exemption published in the **Federal Register**. (*See* 5 U.S.C. 552a(e)(8).)

(g) *Emergency disclosure.* If information concerning an individual has been disclosed to any person under compelling circumstances affecting health or safety, the individual shall be notified at the last known address within 5 days of the disclosure (excluding Saturdays, Sundays, and legal public holidays). Notification shall include the following information: The nature of the information disclosed, the person or agency to whom it was disclosed, the date of disclosure, and the compelling circumstances justifying the disclosure. Notification shall be given by the officer who made or authorized the disclosure. (*See* 5 U.S.C. 552a (b)(8).)

§ 1.23 Publication in the Federal Register—Notices of systems of records, general exemptions, specific exemptions, review of all systems.

(a) *Notices of systems of records to be published in the* ***Federal Register***. (1) The Office of the Federal Register publishes a biennial compilation of all system notices (''Privacy Act Issuances''), as specified in 5 U.S.C. 552a(f). In the interim (between biennial compilations), the Department must list and provide links on its website to complete, up-to-date versions of all Treasury system of records notices (SORNs), including citations and links to all **Federal Register** notices that reflect substantial modifications to each SORN.

(2) In addition, the Department must publish in the **Federal Register** upon establishment or significant revision a notice of the existence and character of any new or significantly revised systems of records. Unless otherwise instructed, each notice must include:

(i) The system name and number, and location of the system;

(ii) The title and business address of the Treasury official who is responsible for the system of records;

(iii) Security classification, and indication of whether any information in the system is classified;

(iv) Authority for maintenance of the system, the specific authority that authorizes the maintenance of the records in the system;

(v) Purpose(s) of the system, a description of the purpose(s) for maintaining the system;

(vi) The categories of individuals on whom records are maintained in the system;

(vii) The categories of records maintained in the system;

(viii) The categories of sources of records in the system (*see* 5 U.S.C. 552a(e)(4));

(ix) Each routine uses of the records contained in the system, including the categories of users and the purpose of such use;

(xx) The policies and practices of the component regarding storage, retrievability, access controls, retention, and disposal of the records;

(xxi) The procedures of the component whereby an individual can be notified if the system of records contains a record pertaining to the individual, including reasonable times, places, and identification requirements;

(xxii) The procedures of the component whereby an individual can be notified on how to gain access to any record pertaining to such individual that may be contained in the system of records, and how to contest its content;

(xxiii) Exemptions promulgated for the system; and

(xxiv) History (any previously published notices).

(b) *Notice of new or modified routine uses to be published in the* ***Federal Register***. At least 30 days prior to a new use or modification of a routine use, as published under paragraph (a)(3)(iv) of this section, Treasury must publish in the **Federal Register** notice of such new or modified use of the information in the system and allow for interested persons to submit written data, views, or arguments to the components. (*See* 5 U.S.C. 552a(e)(11).)

(c) *Promulgation of rules exempting systems from certain requirements*—(1) *General exemptions.* In accordance with existing procedures applicable to a Treasury component's issuance of regulations, the head of each such component may adopt rules, in accordance with the requirements (including general notice) of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e), to exempt any system of records within the component from any part of the Privacy

Act and the regulations in this subpart except subsections (b) (§ 1.24, conditions of disclosure), (c)(1) (§ 1.25, keep accurate accounting of disclosures), (c)(2) (§ 1.25, retain accounting for five years or life of record), (e)(4)(A) through (F) (paragraph (a) of this section, publication of annual notice of systems of records), (e)(6) (§ 1.22(d), accuracy of records prior to dissemination), (e)(7) (§ 1.22(e), maintenance of records on First Amendment rights), (e)(9) (§ 1.28, establish rules of conduct), (e)(10) (§ 1.22(d)(3), establish safeguards for records), (e)(11) (paragraph (c) of this section, publish new intended use), and (i) (§ 1.28(c), criminal penalties) if the systems of records maintained by the component which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of:

(i) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole, and probation status;

(ii) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(iii) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. (*See* 5 U.S.C. 552a(j).)

(2) *Specific exemptions.* In accordance with existing procedures applicable to a Treasury component's issuance of regulations, the head of each such component may adopt rules, in accordance with the requirements (including general notice) of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e), to exempt any system of records within the component from 5 U.S.C. 552a(c)(3) (§ 1.25(c)(2), accounting of certain disclosures available to the individual), (d) (§ 1.26(a), access to records), (e)(1) (§ 1.22(a)(1), maintenance of information to accomplish purposes authorized by statute or executive order only), (e)(4)(G) (paragraph (a)(7) of this section, publication of procedures for notification), (e)(4)(H) (paragraph (a)(8) of this section, publication of procedures for access and contest), (e)(4)(I) (paragraph (a)(9) of this section, publication of sources of records), and (f) (§ 1.26, promulgate rules for notification, access and contest), if the system of records is:

(i) Subject to the provisions of 5 U.S.C. 552(b)(1);

(ii) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act and paragraph (a)(1) of this section. If any individual is denied any right, privilege, or benefit that such individual would otherwise be entitled to by Federal law, or for which such individual would otherwise be eligible, as a result of the maintenance of this material, provide such material to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence;

(iii) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(iv) Required by statute to be maintained and used solely as statistical records;

(v) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence;

(vi) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(vii) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(3) *Reasons for exemptions.* As of November 21, 2022, the head of the component must include in the statement required under 5 U.S.C. 553(c) the reasons why the system of records is to be exempted from a provision of the Privacy Act and this part. (*See* 5 U.S.C. 552a(j) and (k).)

(d) *Review and report to the Office of Management and Budget (OMB).* The Department must ensure that the following reviews are conducted:

(1) The Data Integrity Board must conduct a review of all matching programs in which the Department has participated during the calendar year and report to OMB of the following year.

(2) Each component must perform the following reviews with a frequency sufficient to ensure compliance and manage risks:

(i) Review the language of each contract that involves the creation, collection, use, processing, storage, maintenance, dissemination, disclosure, or disposal of information and ensure that the applicable requirements in the Privacy Act and OMB policies are enforceable on the contractor and its employees consistent with the agency's authority;

(ii) Ensure that all routine uses remain appropriate and that the recipient's use of the records continues to be compatible with the purpose for which the information was collected;

(iii) Ensure that each exemption claimed for a system of records pursuant to 5 U.S.C. 552a(j) and (k) remains appropriate and necessary;

(iv) Ensure Departmental and component training practices are sufficient and that personnel understand the requirements of the Privacy Act, OMB guidance, the agency's implementing regulations and policies, and any job-specific requirements;

(v) Review all component SORNs as needed to ensure they remain accurate, up-to-date, and appropriately scoped; that all SORNs are published in the **Federal Register**; that all SORNs include the information required by OMB Circular A–108; and that all significant changes to SORNs have been reported to OMB and Congress; and

(vi) Be prepared to report to the Office of Privacy, Transparency, & Records, as part of the annual Federal Information Security Management Act (FISMA), as amended by the Federal Information Security Modernization Act of 2014, Public Law 113–283, reporting process, the results of the reviews conducted as required by this section, including any corrective action taken to resolve problems uncovered.

§ 1.24 Disclosure of records to person other than the individual to whom they pertain.

(a) *Conditions of disclosure.* No component of Treasury is required to disclose any record which is contained in a system of records maintained by it by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, or the parent, if a minor, or legal guardian, if incompetent, of such individual, unless disclosure of the record would be:

(1) To those offices and employees of the Treasury who have a need for the record in the performance of their duties;

(2) Required under 5 U.S.C. 552 (subpart A of this part);

(3) For a routine use as defined in 5 U.S.C. 552a(a)(7) and § 1.21(g) and as described under 5 U.S.C. 552a(e)(4)(D) and § 1.23(a)(4);

(4) To the Bureau of the Census for the purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the U.S. Code;

(5) To a recipient who has provided the component with advance adequate written assurance that the record will be used solely as statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of the General Services Administration or the designee of such official to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if:

(i) The activity is authorized by law; and

(ii) The head of the agency or instrumentality has made a written request to the Treasury specifying the particular portion desired and the law enforcement activities for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent a matter is within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or the authorized representatives of such official, in the course of the performance of the duties of the Government Accountability Office;

(11) Pursuant to the order of a court of competent jurisdiction (see 5 U.S.C. 552a(b)); or

(12) To a consumer reporting agency in accordance with 13 U.S.C. 3711(e).

(b) [Reserved]

§ 1.25 Accounting of disclosures.

(a) *Accounting of certain disclosures.* Each component, with respect to each system of records under its control, must:

(1) Keep an accurate accounting of:

(i) The date, nature, and purpose of each disclosure of a record to any person or to an agency made under 5 U.S.C. 552a(b) and § 1.24; and

(ii) The name and address of the person to whom or agency to which the disclosure is made;

(2) Retain the accounting made under paragraph (a)(1) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made; and

(3) Inform any person or other agency about any correction or notation of dispute made by the component in accordance with 5 U.S.C. 552a(d) and § 1.28 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made. (*See* 5 U.S.C. 552(c).)

(b) *Accounting systems.* To permit the accounting required by paragraph (a) of this section, system managers, with the approval of the head of their offices within a component, must establish or implement a system of accounting for all disclosures of records, either orally or in writing, made outside the Department of the Treasury. Accounting records must:

(1) Be established in the least expensive and most convenient form that will permit the system manager to advise individuals, promptly upon request, what records concerning them have been disclosed and to whom;

(2) Provide, as a minimum, the identification of the particular record disclosed, the name and address of the person to whom or agency to which the record was disclosed, and the date, nature, and purpose of the disclosure; and

(3) Be maintained for 5 years or until the record is destroyed or transferred to the National Archives and Records Administration or Federal Records Center for storage, in which event, the accounting pertaining to those records, unless maintained separately, must be transferred with the records themselves.

(c) *Exemptions from accounting requirements.* No accounting is required for disclosure of records:

(1) To those officers and employees of the Department of the Treasury who have a need for the record in the performance of their duties; or

(2) If disclosure would be required under 5 U.S.C. 552 and subpart A of this part.

(d) *Access to accounting by individual.* (1) Subject to paragraphs (c) and (d)(2) of this section, each component must establish {i} procedures for making the accounting required under paragraph (a) of this section available to the individual to whom the record pertains and {ii} thereafter make such accounting available in accordance therewith at the request of the individual. The procedures may require the requester to provide reasonable identification. (*See* appendices A through H to this subpart.)

(2) Access to accounting of disclosures may be withheld from the individual named in the record only if the disclosures were:

(i) Made under 5 U.S.C. 552a (b)(7) and § 1.24(a)(7); or

(ii) Under a system of records exempted from the requirements of 5 U.S.C. 552a(c)(3) in accordance with 5 U.S.C. 552(j) or (k) and § 1.23(c). (*See* 5 U.S.C. 552a(c).)

§ 1.26 Procedures for notification and access to records pertaining to individuals—format and fees for request for access.

(a) *Procedures for notification and access.* Each component must, in accordance with the requirements of 5 U.S.C. 552a(d)(1), set forth in the appendix to this subpart applicable to such component procedures whereby an individual can be notified, in response to a request, if any system of records named by the individual contains a record pertaining to that individual. In addition, such procedures must set forth the requirements for access to such records. At a minimum, such procedures must specify the times during, and the places at which access will be afforded, together with such identification as may be required of the individual before access. (*See* 5 U.S.C. 552a(f)(1), (2) and (3).)

(b) *Access.* Each component, in accordance with the procedures prescribed under paragraph (a) of this section, must allow an individual, upon request, to gain access to records or to

any information pertaining to such individual which is contained in a system of records. Permit the individual to review the record and have a copy made of all or any portion of the record in a comprehensible form. Also permit the individual to be accompanied by any person of the individual's choosing to review the record, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence. (*See* 5 U.S.C. 552a(d)(1).)

(c) *Exceptions.* Neither the procedures prescribed under paragraph (a) of this section nor the requirements for access under paragraph (b) of this section apply to:

(1) Systems of records exempted pursuant to 5 U.S.C. 552a(j) and (k) and § 1.23(c);

(2) Information compiled in reasonable anticipation of a civil action or proceeding (see 5 U.S.C. 552(d)(5)); or

(3) Information pertaining to an individual which is contained in, and inseparable from, another individual's record.

(d) *Format of request.* (1) A request for notification of whether a record exists must:

(i) Be made in writing and signed by the person making the request, who must be the individual about whom the record is maintained or such individual's duly authorized representative (*see* § 1.34);

(ii) State that it is made pursuant to the Privacy Act or the regulations in this subpart, or have ''Privacy Act Request'' written on both the request and on the envelope, if not submitted via a component-provided electronic method;

(iii) Give the name of the system or subsystem or categories of records to which access is sought, as specified in ''Privacy Act Issuances'' published by the Office of the Federal Register and referenced in the appendices to this subpart;

(iv) Describe the nature of the record sought, the date of the record or the period in which the record was compiled or otherwise describe the record in sufficient detail to enable Department personnel to locate the system of records containing the record with a reasonable amount of effort;

(v) Provide such identification of the requester as may be specified in the appropriate appendix to this subpart; and

(vi) Be addressed or delivered in person or by a component-provided electronic method to the office or officer of the component indicated for the particular system or subsystem or categories of records to which the individual seeks access, as specified in ''Privacy Act Issuances'' published by the Office of the Federal Register and referenced in the appendices to this subpart. As explained in appendix A to this subpart, requesters may send a written request to the Departmental Offices seeking assistance in identifying the appropriate component or in preparing a request for notification. Requesters seeking such assistance should submit a written request addressed to the Departmental Offices at the address specified in appendix A to this part.

(2) A request for access to records must, in addition to complying with paragraphs (d)(1)(i) through (vi) of this section:

(i) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them;

(ii) If a requester wants a copy of their records, they must clearly state in the request that they agree to pay the fees for duplication as ultimately determined in accordance with subpart A to this subpart (§ 1.7), unless such fees are waived under that section by the system manager or other appropriate official as indicated in the appropriate appendix to this subpart; and

(iii) Comply with any other requirement set forth in the applicable appendix to this subpart or the ''System of Records Notice'' applicable to the system in question. Any request for access which does not comply with the requirements in the preceding sentence and those set forth elsewhere in this subpart, will not be deemed subject to the time constraints of this section, unless and until amended to comply with all requirements in this subpart. Components must advise the requester of any specific deficiencies so the requester can amend the request so it can be processed. This section applies only to records maintained in a system of records that are also in the possession or control of the component. (*See* 5 U.S.C. 552a(d) and (f).)

(e) *Requests for records not in control of component.* (1) Treasury employees must make reasonable efforts to assist an oral requester to learn to which office or officer a written request should be sent. When the request is for a record which is not in the possession or control of any Treasury component, the requester must be advised of this fact.

(2) Where the record requested originated with a Federal agency other than Treasury or its components and was classified (*e.g.,* National Defense or Intelligence Information) or otherwise restrictively endorsed (*e.g.,* Office of Personnel Management records of Federal Bureau of Investigation reports) by the originating agency, and a copy is in the possession of a Treasury component, the component will refer that portion of the request to the originating agency for determination of all Privacy Act issues. In the case of a referral to another agency under this paragraph (e)(2), the component will notify the requester that such portion of the request has been so referred and that the requester may expect to hear from that agency.

(3) When information sought from a system manager or other appropriate Treasury official includes information originating with other Federal agencies that is not classified or otherwise restrictively endorsed, the system manager or other appropriate Treasury official receiving the request must consult with the originating agency prior to making a decision to disclose or withhold the record. The system manager or other appropriate Treasury official maintaining the record must decide if disclosure is required. (*See* 5 U.S.C. 552a(d) and (f).)

(f) *Date of receipt of request.* For purposes of this subpart, the date of receipt of a request for notification or access to records shall be the date on which the requester satisfied all the requirements of paragraph (d) of this section. Requests for notification or access to records and any separate agreement to pay for copies must be stamped or endorsed with the date the receiving office/component received all information needed to satisfy the requirements in this section. The date of receipt of the last required document will be the date of receipt of the request for the purposes of this subpart. (*See* 5 U.S.C. 552a(d) and (f).)

(g) *Notification of determination*—(1) *In general.* The component officers designated in the appendices to this subpart must send the requester any required notifications, including notices stating the component has responsive records and whether it will provide access to the records requested. The component will mail notification of the determination within 30 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (f) of this section. If it is not possible to respond within 30 days, the relevant component officer must inform the requester (prior to the expiration of the 30-day timeframe), stating the reason for the delay (*e.g.,* volume of records requested, scattered location of the records, need to consult other agencies, or the difficulty of the legal issues involved) and when

a response will be dispatched. (*See* 5 U.S.C. 552a(d) and (f).)

(2) *Granting of access.* When the component determines that the request for access will be granted and the requester seeks a copy of the responsive records, the component must furnish such copy in a form comprehensible to the requester, together with a statement of the applicable duplication fees. If the requester indicates they want to exercise their right to inspect the responsive records, the component officer designated in the relevant appendix to this subpart must promptly notify the requester in writing of the determination, including when and where the requested records may be inspected. A requester seeking to inspect such records may be accompanied by another person of their choosing. The requester seeking access must sign a form indicating that Treasury is authorized to discuss the contents of the subject record in the accompanying person's presence. If, after making the inspection, the requester requests a copy of all or a portion of the requested records and pays the applicable fees for duplication, the component must provide a copy of the records in a form comprehensible to the requester. Fees to be charged are as prescribed by subpart A to this subpart (§ 1.7). Components may charge for processing requests under the Freedom of Information Act, under the provisions of this section, or may issue their own fee schedules, which must be consistent with the OMB Guidelines. (*See* 5 U.S.C. 552a(d) and (f).)

(3) *Requirements for access to medical records.* When access is requested to medical records, including psychological records, the responsible official may determine that such release could have an adverse effect on the individual and that release will be made only to a health professional authorized in writing to have access to such records by the individual making the request. Upon receipt of the authorization, the health professional will be permitted to review the records or to receive copies of the records by mail, upon proper verification of identity. (*See* 5 U.S.C. 552a(f) (3).)

(4) *Denial of request.* When a component makes a determination to deny a request for notification of whether a record exists or deny access to existing responsive records (whether in whole or part or subject to conditions or exceptions), the component must notify the requester of the denial by mail in accordance with paragraph (g)(1) of this section. The letter of notification must specify the city or other location where the requested records are situated (if known), contain a statement of the reasons for not granting the request as made, set forth the name and title or position of the responsible official and advise the requester of the right to file suit in accordance with 5 U.S.C. 552a (g)(1)(B).

(5) *Prohibition against the use of 5 U.S.C. 552(b) exemptions.* A component may not invoke exemptions from disclosure under 5 U.S.C. 552(b) (subpart A to this part (§ 1.2 (c))), for the purpose of withholding from a requester any record which would otherwise be accessible to the requester under the Privacy Act and this subpart. (*See* 5 U.S.C. 552a(t).)

(6) *Records exempt in whole or in part.* (i) If Treasury deems it necessary to assert an exemption in response to a request for notification of the existence of or access to records, it will neither confirm nor deny the existence of the records if the records were exempted from individual access pursuant to 5 U.S.C. 552a(j) or were compiled in reasonable anticipation of a civil action or proceeding in either a court or before an administrative tribunal. If Treasury asserts such an exemption, it must advise the requester only that it has identified no records available pursuant to the Privacy Act.

(ii) Process requests from individuals for access to records which Treasury exempted from access pursuant to 5 U.S.C. 552a(k) as follows:

(A) Requests for information classified pursuant to Executive Order 12958, 13526, or successor or prior Executive orders require the responsible Treasury component to review the information to determine whether it continues to warrant classification pursuant to an Executive order. Information which no longer warrants classification under these criteria must be declassified and made available to the individual. If the information continues to warrant classification, the component must notify the requester that the information sought is classified, that it has been reviewed and continues to warrant classification, and that Treasury exempted it from access pursuant to 5 U.S.C. 552(b)(1) and 5 U.S.C. 552a(k)(1). Classified information maintained in records Treasury exempted pursuant to 5 U.S.C. 552a(j) must be reviewed as required by this paragraph (g)(6)(ii)(A), but the response to the individual must be in the form prescribed by paragraph (g)(6)(i) of this section.

(B) Components must respond to requests for information maintained in records that Treasury exempted from disclosure pursuant to 5 U.S.C. 552a(k)(2) in the manner provided in paragraph (g)(6)(i) of this section unless the requester shows that the component has used or is using the information to deny them any right, privilege, or benefit for which they are eligible or to which they would otherwise be entitled under Federal law. If the requester makes such a showing, the component must advise the requester of the existence of the records, extract any information from the records that would identify a confidential source, or provide a summary extract of the records to the requester in a manner which protects the source to the maximum degree possible.

(C) Information a component compiled in its records as part of an employee background investigation that Treasury exempted from disclosure pursuant to 5 U.S.C. 552a(k)(5) must be made available to a requester unless the record identifies a confidential source(s). Information in the record that identifies confidential source(s) must be extracted or summarized in a manner which protects the source(s) to the maximum degree possible and the summary or extract must be provided to the requester.

(D) Testing or examination material that Treasury exempted pursuant to 5 U.S.C. 552a(k)(6) must not be made available to a requester if disclosure would compromise the objectivity or fairness of the testing or examination process but may be made available if no such compromise possibility exists. (*See* 5 U.S.C. 552a(d)(5), (j), and (k).)

§ 1.27 Procedures for amendment of records pertaining to individuals—format, agency review, and appeal from initial adverse agency determination.

(a) *In general.* Subject to the application of exemptions Treasury promulgated in accordance with § 1.23(c), and subject to paragraph (f) of this section, each component of the Department of the Treasury must, in conformance with 5 U.S.C. 552a(d)(2), permit an individual to request amendment of a record pertaining to such individual. Any request for amendment of records or any appeal that does not fully comply with the requirements of this section and any additional specific requirements imposed by the component in the applicable appendix to this subpart will not be deemed subject to the time constraints of paragraph (e) of this section, unless and until the request is amended to meet all requirements. However, components will advise the requester in what respect the request or appeal is non-compliant so that it may be resubmitted or amended. (*See* 5 U.S.C. 552a(d) and (f).)

(b) *Form of request to amend records.* In order to be subject to the provisions of this section, a request to amend records must:

(1) Be made in writing and signed by the individual making the request, who must be the individual about whom the record is maintained, or the duly authorized representative of such individual;

(2) State that it is made under the Privacy Act or the regulations in this subpart, with ''Privacy Act Amendment Request'' written on both the request and on the envelope;

(3) Be addressed to the office or officer of the component specified for such purposes in ''Privacy Act Issuances'' published by the Office of the Federal Register and referenced in the appendices to this subpart for that purpose; and

(4) Reasonably describe the records which the individual believes require amendment, including, to the best of the requester's knowledge, dates of previous letters the requester sent to the component seeking access to their records and dates of letters in which the component provided notification to the requester concerning access, if any, and the individual's documentation justifying the proposed correction. (*See* 5 U.S.C. 552a(d) and (f).)

(c) *Date of receipt of request.* For purposes of this subpart, the date of receipt of a request for amendment of records must be the date on which the requester satisfies all the requirements of paragraph (b) of this section. The receiving office or officer must stamp or otherwise endorse the date of receipt of the request. (*See* 5 U.S.C. 552a(d) and (f).)

(d) *Review of requests to amend records.* Officials responsible for review of requests to amend records pertaining to an individual, as specified in the appropriate appendix to this subpart, must:

(1) Not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(2) Promptly, either—

(i) Make any correction to any portion which the individual believes, and the official agrees is not accurate, relevant, timely, or complete; or

(ii) Inform the individual of the refusal to amend the record in accordance with the individual's request, the reason for the refusal, and the name and business address of the officer designated in the applicable appendix to this subpart, as the person who is to review such refusal. (*See* 5 U.S.C. 552a(d) and (f).).

(e) *Administrative appeal*—(1) *In general.* Each component must permit individuals to request a review of initial decisions made under paragraph (d) of this section when an individual disagrees with a refusal to amend the record. (*See* 5 U.S.C. 552a(d), (f), and (g)(1).)

(2) *Form of request for administrative review of refusal to amend record.* At any time within 35 days after the date of the notification of the initial decision described in paragraph (d)(2)(ii) of this section, the requester may submit an administrative appeal from such refusal to the official specified in the notification of the initial decision and the appropriate appendix to this subpart. The appeal must:

(i) Be made in writing, stating any arguments in support thereof and be signed by the requester to whom the record pertains, or the duly authorized representative of such individual;

(ii) Be addressed and mailed or hand delivered within 35 days of the date of the initial decision to the office or officer specified in the appropriate appendix to this subpart and in the notification. (*See* the appendices to this subpart for the address to which appeals made by mail should be addressed.);

(iii) Be clearly marked ''Privacy Act Amendment Appeal'' on the appeal and on the envelope;

(iv) Reasonably describe the records the individual seeks to amend; and

(v) Specify the date of the initial request to amend records, and the date of the component's letter providing notification that the request was denied. (*See* 5 U.S.C. 552a(d) and (f).)

(3) *Date of receipt.* Promptly stamp or endorse appeals with the date of their receipt by the office to which the appeal is addressed. Such stamped or endorsed date will be deemed to be the date of receipt for all purposes of this subpart. The responsible official in the office to which the appeal was addressed must acknowledge receipt of the appeal within 10 days (excluding Saturdays, Sundays, and legal public holidays) from the date of the receipt (unless the determination on appeal is dispatched in 10 days, in which case, no acknowledgement is required). The letter acknowledging receipt of the appeal must advise the requester of the date of receipt established by the foregoing and the number of days the responsible official has to decide the administrative appeal (including days included/not included in determining the deadline). (*See* 5 U.S.C. 552a(d) and (f).)

(4) *Review of administrative appeals from denial of requests to amend records.* Officials responsible for deciding administrative appeals from denials of requests to amend records pertaining to an individual, as specified in the appendices to this subpart must: Complete the review and notify the requester of the final agency decision within 30 days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of such appeal, unless the time is extended by the head of the agency or the delegate of such official, for good cause shown. If the final agency decision is to refuse to amend the record, in whole or in part, the requester must also be advised of the reasons the appeal was denied and their right—

(i) To file a concise ''Statement of Disagreement'' (including the procedures for filing this statement) setting forth the reasons they disagree with the final agency decision; and/or

(ii) To judicial review of the final agency decision refusing to amend the record(s) (under 5 U.S.C. 552a(g)(1)(A)). (*See* 5 U.S.C. 552a(d), (f), and (g)(1).)

(5) *Notation on record and distribution of statements of disagreement.* The system manager is responsible, in any disclosure containing information about which an individual has filed a ''Statement of Disagreement'', occurring after the filing of the statement under paragraph (e)(4) of this section, for clearly noting any portion of the record which is disputed and providing copies of the statement and, if deemed appropriate, a concise statement of the component's reasons for not making the amendments requested to persons or other agencies to whom the disputed record has been disclosed. (*See* 5 U.S.C. 552a(d)(4).)

(f) *Records not subject to correction under the Privacy Act.* The following records are not subject to correction or amendment by individuals:

(1) Transcripts or written statements made under oath;

(2) Transcripts of Grand Jury proceedings, judicial or quasi-judicial proceedings which form the official record of those proceedings;

(3) Pre-sentence reports comprising the property of the courts but maintained in agency files;

(4) Records pertaining to the determination, the collection, and the payment of the Federal taxes;

(5) Records duly exempted from correction by notice published in the **Federal Register**; and

(6) Records compiled in reasonable anticipation of a civil action or proceeding.

§ 1.28 Training, rules of conduct, penalties for non-compliance.

(a) *Training.* The Deputy Assistant Secretary for Privacy, Transparency, & Records must institute a Departmental training program to instruct Treasury employees and employees of Government contractors covered by 5 U.S.C. 552a(m), who are involved in the design, development, operation, or maintenance of any system of records, on a continuing basis with respect to the duties and responsibilities imposed on them and the rights conferred on individuals by the Privacy Act, the regulations in this subpart, including the appendices thereto, and any other related regulations. Such training must provide suitable emphasis on the civil and criminal penalties imposed on the Department and the individual employees by the Privacy Act for non-compliance with specified requirements of the Act as implemented by the regulations in this subpart. Components may supplement or supplant the departmental annual privacy awareness training to address Privacy Act issues unique to their missions. (*See* 5 U.S.C. 552a(e)(9).)

(b) *Rules of conduct.* In addition to the Standards of Conduct published in part O of this title, particularly 31 CFR 0.735–44, the following applies to Treasury employees (including, to the extent required by the contract or 5 U.S.C. 552a(m), Government contractors and employees of such contractors), who are involved in the design, development, operation, or maintenance of any system of records, or in maintaining any records, for or on behalf of the Department, including any component thereof.

(1) The head of each office of a component of the Department is responsible for assuring that employees subject to such official's supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and the regulations in this subpart, and that such employees are made aware of their individual and collective responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness and completeness, to avoid unauthorized disclosure either orally or in writing, and to insure that no system of records is maintained without public notice.

(2) Treasury must:

(i) Collect no information about individuals for maintenance in a system of records unless authorized to collect it to achieve a function or carry out a responsibility of the Department;

(ii) Collect from individuals only that information which is relevant and necessary to perform Department functions or responsibilities, unless related to a system exempted under 5 U.S.C. 552a(j) or (k);

(iii) Collect information, to the greatest extent practicable, directly from the individual to whom it relates, unless related to a system exempted under 5 U.S.C. 552a(j);

(iv) Inform individuals (and third parties, if feasible) from whom information is collected of the authority and purposes for collection, the use that will be made of the information, and the effects, both legal and practical, of not furnishing the information;

(v) Neither collect, maintain, use nor disseminate information concerning an individual's mere exercise of their First Amendment rights, including: an individual's religious or political beliefs or activities; membership in associations or organizations; freedom of speech and of the press, and freedom of assembly and petition, unless:

(A) The individual expressly authorizes it (for example, volunteering relevant and necessary information to obtain a benefit or enforce a right);

(B) A statute expressly/explicitly authorizes the collection, maintenance, use or dissemination of the information (whether or not the statute specifically refers to the First Amendment); or

(C) The activities involved are pertinent to and within the scope of an authorized investigation, adjudication or correctional activity;

(vi) Advise their supervisors of the existence or contemplated development of any record system which is capable of retrieving information about individuals by individual identifier (to determine if actual retrieval is or will necessarily occur with some degree of regularity when the system of records becomes operational);

(vii) Disseminate outside the Department no information from a system of records without the written consent of the individual who is the subject of the records unless disclosure is authorized by one of the 12 exemptions in 5 U.S.C. 552a(b), which includes disclosure pursuant to a routine use published in a system of records notice in the **Federal Register**;

(viii) Assure that an accounting is kept in the prescribed form of information about individuals that is maintained in a system of records and disseminated outside the Department, whether made orally or in writing, unless disclosed under 5 U.S.C. 552 and subpart A of this part;

(ix) Collect, maintain, use, and disseminate information about individuals in a manner that ensures that no inadvertent disclosure of the information is made either within or outside the Department; and

(x) Assure that the proper Department authorities (*e.g.,* component privacy officer, legal counsel) are aware of any information in a system maintained by the Department which is not/might not be authorized under the provisions of the Privacy Act, including information on how an individual exercises their First Amendment rights, information that is/may be inaccurate, irrelevant, or so incomplete as to risk unfairness to the individual concerned if used to make adverse determinations.

(c) *Criminal penalties.* (1) The Privacy Act imposes criminal penalties on the conduct of Government officers or employees as follows: Any officer or employee of an agency (which term includes Treasury):

(i) Who by virtue of their employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section (*see* 5 U.S.C. 552a) or regulations in this subpart established under the Privacy Act, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it; or

(ii) Who willfully maintains a system of records without meeting the notice requirements of paragraph (e)(4) of this section (*see* 5 U.S.C. 552a)—shall be guilty of a misdemeanor and fined not more than $5,000.

(2) The Privacy Act also imposes a collateral criminal penalty (misdemeanor and a fine of not more than $5,000) on the conduct of any person who knowingly and willfully requests or obtains records covered by the Privacy Act from an agency under false pretenses.

(3) For the purposes of 5 U.S.C. 552a(i), the provisions of paragraph (c)(1) of this section are applicable to Government contractors and employees of such contractors who by contract, operate by or on behalf of the Treasury a system of records to accomplish a Departmental function. Such contractor and employees are considered employees of the Treasury for the purposes of 5 U.S.C. 552a(i). (*See* 5 U.S.C. 552a(i) and (m).)

§ 1.29 Records transferred to Federal Records Center or National Archives of the United States.

(a) *Records transferred for storage in the Federal Records Center.* Records pertaining to an identifiable individual which are transferred to the Federal Records Center in accordance with 44

U.S.C. 3103 must, for the purposes of the Privacy Act, be considered to be maintained by the component which deposited the record and must be subject to the provisions of the Privacy Act and this subpart. The Federal Records Center must not disclose such records except to Treasury or to others under rules consistent with the Privacy Act. These rules may be established by Treasury or a component. If such records are retrieved for the purpose of making a determination about an individual, Treasury or the relevant component must review them for accuracy, relevance, timeliness, and completeness.

(b) *Records transferred to the National Archives of the United States*—(1) *Records transferred to National Archives prior to September 27, 1975.* Records pertaining to an identifiable individual transferred to the National Archives prior to September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, are deemed records maintained by the National Archives, and:

(i) Must not be subject to the Privacy Act.

(ii) Except, that a statement describing such records (modeled after 5 U.S.C. 552a(e)(4)(A) through (G)) must be published in the **Federal Register**.

(2) *Records transferred to National Archives on or after September 27, 1975.* Records pertaining to an identifiable individual transferred to the National Archives as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after September 27, 1975, must be deemed records maintained by the National Archives, and:

(i) Must not be subject to the Privacy Act.

(ii) Except, that a statement describing such records in accordance with 5 U.S.C. 552a(e)(4)(A) through (G) must be published in the **Federal Register** and rules of conduct and training in accordance with 5 U.S.C. 552(e)(9) are to be established by the National Archives. (*See* 5 U.S.C. 552a(e).)

§ 1.30 Application to system of records maintained by Government contractors.

When a component contracts for the operation of a system of records, to accomplish a Treasury function, the provisions of the Privacy Act and this subpart must be applied to such system. The relevant component is responsible for ensuring that the contractor complies with the contract requirements relating to privacy.

§ 1.31 Sale or rental of mailing lists.

(a) *In general.* An individual's name and address must not be sold or rented by a component unless such action is specifically authorized by law.

(b) *Withholding of names and addresses.* This section must not be construed to require the withholding of names and addresses otherwise permitted to be made public. (*See* 5 U.S.C. 552a(n).)

§ 1.32 Collection, use, disclosure, and protection of Social Security numbers.

(a) Treasury must only collect full Social Security numbers (SSNs) when relevant and necessary to accomplish a legally authorized purpose related to a Treasury mission. In the absence of another compelling justification for the use of the full SSN (approved by the relevant component Head and the Departmental Senior Agency Official for Privacy), Treasury must only collect and maintain full SSNs:

(1) As a unique identifier for identity verification purposes related to cyber security, law enforcement, intelligence, and/or security background investigations;

(2) When required by external entities to perform a function for or on behalf of Treasury;

(3) When collection is expressly required by statute or regulation;

(4) For statistical and other research purposes;

(5) To ensure the delivery of government benefits, privileges, and services; and

(6) When there are no reasonable, alternative means for meeting business requirements.

(b) Treasury must not display the Social Security number on the outside of any package sent by mail.

(c) Treasury must not display the Social Security number on any document sent by mail unless there are no reasonable, alternative means for meeting business requirements and masking or truncating/partially redacting the SSN are not feasible.

(d) Whenever feasible, Treasury must mask, or truncate/partially redact Social Security numbers visible to authorized Treasury/component information technology users so they only see the portion (if any) of the Social Security number required to perform their official Treasury duties.

(e) An individual must not be denied any right, benefit, or privilege provided by law by a component because of such individual's refusal to disclose their Social Security number.

(f) The provisions of paragraph (e) of this section do not apply with respect to:

(1) Any disclosure which is required by Federal statute; or

(2) The disclosure of a Social Security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(g) When Treasury requests that an individual discloses their Social Security number, it must inform the individual:

(1) Whether that disclosure is mandatory or voluntary;

(2) By what statutory or other authority such number is solicited; and

(3) What uses are made of the number.

(h) Treasury must provide the information in this section in the notice discussed in § 1.28(b)(2)(iv). (*See* section 7 of the Privacy Act of 1974 set forth at 5 U.S.C. 552a, note.)

§ 1.34 Guardianship.

The parent or guardian of a minor or a person judicially determined to be incompetent must, in addition to establishing the identity of the minor or other person represented, establish parentage or guardianship by furnishing a copy of a birth certificate showing parentage or a court order establishing the guardianship and may thereafter, act on behalf of such individual. (*See* 5 U.S.C. 552a(h).)

§ 1.35 Information forms.

(a) *Review of forms.* Except for forms developed and used by components, the Deputy Assistant Secretary for Privacy, Transparency, & Records must review all forms Treasury develops and uses to collect information from and about individuals. Component heads are responsible for reviewing forms used by their component to collect information from and about individuals.

(b) *Scope of review.* The responsible officers must review each form for the purpose of eliminating any requirement for information that is not relevant and necessary to carry out an agency function and to accomplish the following objectives:

(1) To ensure that Treasury does not collect information concerning religion, political beliefs or activities, association memberships, or the exercise of other First Amendment rights except as authorized in § 1.28(b)(2)(v);

(2) To ensure that the form on which information is collected (or a separate form that can be retained by the individual) makes clear what information the individual is required to disclose by law (and the statutory of other authority for that requirement),

and what information requested is voluntary;

(3) To ensure that the form on which information is collected (or a separate form that can be retained by the individual) states clearly the principal purpose or purposes for which Treasury is collecting the information, and summarizes concisely the routine uses that will be made of the information;

(4) To ensure that the form on which information is collected (or a separate form that can be retained by the individual) clearly indicates to the individual the effect that not providing all, or part of the requested information will have on their rights, benefits, or privileges of; and

(5) To ensure that any form on which Treasury requests a Social Security number (SSN) (or a separate form that can be retained by the individual) clearly advises the individual of the statute or regulation requiring disclosure of the SSN or clearly advises the individual that disclosure is voluntary and that they will not be denied any right, benefit, or privilege if they refuse to voluntarily disclose it, and the uses that will be made of the SSN whether disclosed mandatorily or voluntarily.

(c) *Revision of forms.* The responsible officers must revise any form which does not meet the objectives specified in the Privacy Act as discussed in this section. A separate statement may be used in instances when a form does not conform. This statement will accompany a form and must include all the information necessary to accomplish the objectives specified in the Privacy Act and this section.

§ 1.36 Systems exempt in whole or in part from provisions of the Privacy Act and this part.

(a) *In general.* In accordance with 5 U.S.C. 552a(j) and (k) and § 1.23(c), Treasury hereby exempts the systems of records identified in paragraphs (c) through (o) of this section from the following provisions of the Privacy Act for the reasons indicated.

(b) *Authority.* The rules in this section are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552a(j) and (k) and pursuant to the authority of § 1.23(c).

(c) *General exemptions under 5 U.S.C. 552a(j)(2).* (1) Under 5 U.S.C. 552a(j)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the agency or component thereof that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. Certain Treasury components have as their principal function activities pertaining to the enforcement of criminal laws. This paragraph (c) applies to the following systems of records maintained by Treasury:

(i) *Treasury-wide.*

TABLE 1 TO PARAGRAPH (c)(1)(i)

No.	Name of system
Treasury .013	Department of the Treasury Civil Rights Complaints and Compliance Review Files.

(ii) *Departmental Offices.*

TABLE 2 TO PARAGRAPH (c)(1)(ii)

No.	Name of system
DO .190	Office of Inspector General Investigations Management Information System (formerly: Investigation Data Management System).
DO .220	SIGTARP Hotline Database.
DO .221	SIGTARP Correspondence Database.
DO .222	SIGTARP Investigative MIS Database.
DO .223	SIGTARP Investigative Files Database.
DO .224	SIGTARP Audit Files Database.
DO .303	TIGTA General Correspondence.
DO .307	TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.
DO .308	TIGTA Data Extracts.
DO .309	TIGTA Chief Counsel Case Files.
DO .310	TIGTA Chief Counsel Disclosure Section Records.
DO .311	TIGTA Office of Investigations Files.

(iii) *Special Investigator for Pandemic Recovery (SIGPR).*

TABLE 3 TO PARAGRAPH (c)(1)(iii)

SIGPR .420	Audit and Evaluations Records.
SIGPR .421	Case Management System and Investigative Records.
SIGPR .423	Legal Records.

(iv) *Alcohol and Tobacco and Trade Bureau (TTB).*

TABLE 4 TO PARAGRAPH (c)(1)(iv)

No.	Name of system
TTB .003	Criminal Investigation Report System.

(v) *Office of the Comptroller of the Currency (OCC).*

TABLE 5 TO PARAGRAPH (c)(1)(v)

No.	Name of system
CC .110	Reports of Suspicious Activities.
CC .120	Bank Fraud Information System.
CC .220	Notices of Proposed Changes in Employees, Officers and Directors Tracking System.
CC .500	Chief Counsel's Management Information System.
CC .510	Litigation Information System.

(vi) *Internal Revenue Service.*

TABLE 6 TO PARAGRAPH (c)(1)(vi)

No.	Name of system
IRS 34.022	National Background Investigations Center Management Information System (NBICMIS).
IRS 46.002	Criminal Investigation Management Information System and Case Files.
IRS 46.003	Confidential Informants, Criminal Investigation Division.
IRS 46.005	Electronic Surveillance and Monitoring Records, Criminal Investigation Division.
IRS 46.009	Centralized Evaluation and Processing of Information Items (CEPIIs), Criminal Investigation Division.
IRS 46.015	Relocated Witnesses, Criminal Investigation Division.
IRS 46.016	Secret Service Details, Criminal Investigation Division.
IRS 46.022	Treasury Enforcement Communications System (TECS).
IRS 46.050	Automated Information Analysis System.
IRS 90.001	Chief Counsel Management Information System Records.
IRS 90.004	Chief Counsel Legal Processing Division Records.
IRS 90.005	Chief Counsel Library Records.

(vii) *Financial Crimes Enforcement Network.*

TABLE 7 TO PARAGRAPH (c)(1)(vii)

No.	Name of system
FinCEN .001	FinCEN Investigations and Examinations System.
FinCEN .002	Suspicious Activity Reporting System.
FinCEN .003	Bank Secrecy Act Reports System.

(2) The Department hereby exempts the systems of records listed in paragraphs (c)(1)(i) through (vii) of this section from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2): 5 U.S.C. 552a(c)(3) and (4), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), (2) and (3), 5 U.S.C. 552a(e)(4)(G), (H), and (I), 5 U.S.C. 552a(e)(5) and (8), 5 U.S.C. 552a(f), and 5 U.S.C. 552a(g).

(d) *Reasons for exemptions under 5 U.S.C. 552a(j)(2).* (1) 5 U.S.C. 552a(e)(4)(G) and (f)(l) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would give individuals an opportunity to learn whether they have been identified as suspects or subjects of investigation. As further described in the paragraphs (d)(2) through (12) of this section, access to such knowledge would impair the Department's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the Department's ability to provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of

any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their arrest;

(B) Enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest; and

(C) Using knowledge that criminal investigators had reason to believe that a crime was about to be committed, to delay the commission of the crime or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informants and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informants might refuse to provide criminal investigators with valuable information unless they believe that their identities will not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Department's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (d)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Department and thus would restrict the Department's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that the Department maintains in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual having access to his or her records, and since these rules exempt the systems of records from the provisions of the Privacy Act relating to access to records, for the reasons set out in paragraph (d)(2) of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of information provided by the Department. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Individuals possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Moreover, providing accountings to the subjects of investigations would alert them to the fact that the Department has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Department's information-gathering and analysis systems and permit individuals to take steps to avoid detection or apprehension.

(5) 5 U.S.C. 552(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules exempt the systems of records from the provisions of the Privacy Act relating to access to and amendment of records, for the reasons set out in paragraph (f)(3) of this section, this provision should not apply to the systems of records.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the Department's ability to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informants by the subjects of investigations; and

(iii) Cause informants to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive order. The term *maintain,* as defined in 5 U.S.C. 552a(a)(3), includes *collect* and *disseminate.* The application of this provision to the systems of records could impair the Department's ability to collect and disseminate valuable law enforcement information.

(i) In many cases, especially in the early stages of investigation, it may be impossible to immediately determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(ii) Not all violations of law discovered by the Department fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Department will have to disclose such violations to other law enforcement agencies, including State, local, and foreign agencies, that have jurisdiction over the offenses to which the

information relates. Otherwise, the Department might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Department's attention during the collation and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the systems of records would impair the Department's ability to collate, analyze, and disseminate investigative, intelligence, and enforcement information.

(i) Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities.

(ii) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(iii) In certain instances, the subject of a criminal investigation may assert his/her constitutional right to remain silent and refuse to supply information to criminal investigators upon request.

(iv) During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained from the subject of a criminal investigation or other sources.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, of the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The systems of records should be exempted from this provision to avoid impairing the Department's ability to collect and collate investigative, intelligence, and enforcement data.

(i) Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress.

(ii) If it became known that the undercover officer was assisting in a criminal investigation, that officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

(iii) Individuals often feel inhibited in talking to a person representing a criminal law enforcement agency but are willing to talk to a confidential source or undercover officer whom they believe are not involved in law enforcement activities.

(iv) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation.

(v) Individuals may be contacted during preliminary information gathering, surveys, or compliance projects concerning the administration of the internal revenue laws before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would impede or compromise subsequent investigations.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(i) Since 5 U.S.C. 552a(a)(3) defines *maintain* to include *collect* and *disseminate,* application of this provision to the systems of records would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the Department's ability to disseminate information pertaining to a possible violation of law-to-law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies, it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination because the Department may not have the expertise with which to make such determinations.

(ii) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The systems of records should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of the Privacy Act so as to adversely affect the individual. The systems of records should be exempted from this provision to the extent that the civil remedies may relate to provisions of the Privacy Act from which these rules exempt the systems of records, since there should be no civil remedies for failure to comply with provisions from which the Department is exempted. Exemption from this provision will also protect the Department from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative, intelligence, and law enforcement data.

(e) *Specific exemptions under 5 U.S.C. 552a(k)(1).* (1) Under 5 U.S.C. 552a(k)(1), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act to the extent that the system contains information subject to the provisions of 5 U.S.C. 552(b)(1). This paragraph (e) applies to the following systems of

records maintained by the Department of the Treasury:

(i) *Departmental Offices.*

TABLE 8 TO PARAGRAPH (e)(1)(i)

No.	Name of system
DO .120	Records Related to Office of Foreign Assets Control Economic Sanctions.
DO .227	Committee on Foreign Investment in the United States (CFIUS) Case Management System.
DO .411	Intelligence Enterprise Files.

(ii) [Reserved]

(2) The Department of the Treasury hereby exempts the systems of records listed in paragraph (e)(1) of this section from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(1): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(f) *Reasons for exemptions under 5 U.S.C. 552a(k)(1).* The reason for invoking the exemption is to protect material authorized to be kept secret in the interest of national defense or foreign policy pursuant to Executive Orders 12958, 13526, or successor or prior Executive orders.

(g) *Specific exemptions under 5 U.S.C. 552a(k)(2).* (1) Under 5 U.S.C. 552a(k)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the system is investigatory material compiled for law enforcement purposes and for the purposes of assuring the safety of individuals protected by the Department pursuant to the provisions of 18 U.S.C. 3056. This paragraph (g) applies to the following systems of records maintained by the Department of the Treasury:

(i) *Departmental Offices.*

TABLE 9 TO PARAGRAPH (g)(1)(i)

No.	Name of system
DO .120	Records Related to Office of Foreign Assets Control Economic Sanctions.
DO .144	General Counsel Litigation Referral and Reporting System.
DO .190	Office of Inspector General Investigations Management Information System (formerly: Investigation Data Management System).
DO .220	SIGTARP Hotline Database.
DO .221	SIGTARP Correspondence Database.
DO .222	SIGTARP Investigative MIS Database.
DO .223	SIGTARP Investigative Files Database.
DO .224	SIGTARP Audit Files Database.
DO .225	TARP Fraud Investigation Information System.
DO .227	Committee on Foreign Investment in the United States (CFIUS) Case Management System.
DO .303	TIGTA General Correspondence.
DO .307	TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.
DO .308	TIGTA Data Extracts.
DO .309	TIGTA Chief Counsel Case Files.
DO .310	TIGTA Chief Counsel Disclosure Section Records.
DO .311	TIGTA Office of Investigations Files.

(ii) *Special Investigator for Pandemic Recovery (SIGPR).*

TABLE 10 TO PARAGRAPH (g)(1)(ii)

SIGPR .420	Audit and Evaluations Records.
SIGPR .421	Case Management System and Investigative Records.
SIGPR .423	Legal Records.

(iii) *The Alcohol and Tobacco Tax and Trade Bureau (TTB).*

TABLE 11 TO PARAGRAPH (g)(1)(iii)

No.	Name of system
TTB .001	Regulatory Enforcement Record System.

(iv) *Comptroller of the Currency.*

TABLE 12 TO PARAGRAPH (g)(1)(iv)

No.	Name of system
CC .100	Enforcement Action Report System.
CC .110	Reports of Suspicious Activities.
CC .120	Bank Fraud Information System.
CC .220	Notices of Proposed Changes in Employees, Officers and Directors Tracking System.
CC .500	Chief Counsel's Management Information System.
CC .510	Litigation Information System.

(v) *Bureau of Engraving and Printing.*

TABLE 13 TO PARAGRAPH (g)(1)(v)

No.	Name of system
BEP .021	Investigative files.

(vi) *Internal Revenue Service.*

TABLE 14 TO PARAGRAPH (g)(1)(vi)

No.	Name of system
IRS 00.002	Correspondence File-Inquiries about Enforcement Activities.
IRS 00.007	Employee Complaint and Allegation Referral Records.
IRS 00.334	Third Party Contact Reprisal Records.
IRS 22.061	Wage and Information Returns Processing (IRP).
IRS 26.001	Acquired Property Records.
IRS 26.006	Form 2209, Courtesy Investigations.
IRS 26.008	IRS and Treasury Employee Delinquency.
IRS 26.011	Litigation Case Files.
IRS 26.012	Offer in Compromise (OIC) Files.
IRS 26.013	One-hundred Per Cent Penalty Cases.
IRS 26.016	Returns Compliance Programs (RCP).
IRS 26.019	TDA (Taxpayer Delinquent Accounts).
IRS 26.020	TDI (Taxpayer Delinquency Investigations) Files.
IRS 26.021	Transferee Files.
IRS 26.022	Delinquency Prevention Programs.
IRS 34.020	IRS Audit Trail Lead Analysis System.
IRS 34.037	IRS Audit Trail and Security Records System.
IRS 37.002	Applicant Appeal Files.
IRS 37.003	Closed Files Containing Derogatory Information about individuals' Practice before the IRS and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice.
IRS 37.004	Derogatory Information (No Action).
IRS 37.005	Present Suspensions and Disbarments Resulting from Administrative Proceeding.
IRS 37.007	Inventory.
IRS 37.009	Resigned Enrolled Agents (action pursuant to 31 CFR Section 10.55(b)).
IRS 37.011	Present Suspensions from Practice Before the Internal Revenue Service.
IRS 42.001	Examination Administrative File.
IRS 42.008	Audit Information Management System (AIMS).
IRS 42.012	Combined Case Control Files.
IRS 42.016	Classification and Examination Selection Files.
IRS 42.017	International Enforcement Program Files.
IRS 42.021	Compliance Programs and Projects Files.
IRS 42.029	Audit Underreporter Case Files.
IRS 42.030	Discriminant Function File (DIF) Appeals Case Files.
IRS 44.001	Appeals Case Files.
IRS 46.050	Automated Information Analysis System.
IRS 48.001	Disclosure Records.
IRS 49.001	Collateral and Information Requests System.
IRS 49.002	Component Authority and Index Card Microfilm Retrieval System.
IRS 49.007	Overseas Compliance Projects System.
IRS 60.000	Employee Protection System Records.
IRS 90.002	Chief Counsel Disclosure Litigation Division Case Files.
IRS 90.004	Chief Counsel General Legal Services Case Files.
IRS 90.005	Chief Counsel General Litigation Case Files.
IRS 90.009	Chief Counsel Field Case Service Files.
IRS 90.010	Digest Room Files Containing Briefs, Legal Opinions, Digests of Documents Generated Internally or by the Department of Justice Relating to the Administration of the Revenue Laws.
IRS 90.013	Legal case files of the Chief Counsel, Deputy Chief Counsel, Associate Chief Counsels (Enforcement Litigation) and (technical).

TABLE 14 TO PARAGRAPH (g)(1)(vi)—Continued

No.	Name of system
IRS 90.016	Counsel Automated Tracking System (CATS).

(vii) *U.S. Mint.*

TABLE 15 TO PARAGRAPH (g)(1)(vii)

No.	Name of system
Mint .008	Employee Background Investigations Files.

(viii) *Bureau of the Fiscal Service.*

TABLE 16 TO PARAGRAPH (g)(1)(viii)

No.	Name of system
FS .009	Delegations and Designations of Authority for Disbursing Functions.

(ix) *Financial Crimes Enforcement Network.*

TABLE 17 TO PARAGRAPH (g)(1)(ix)

No.	Name of system
FinCEN .001	FinCEN Database.
FinCEN .002	Suspicious Activity Reporting System.
FinCEN .003	Bank Secrecy Act Reports System.

(2) The Department hereby exempts the systems of records listed in paragraphs (g)(1)(i) through (ix) of this section from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(h) *Reasons for exemptions under 5 U.S.C. 552a(k)(2).* (1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of the Department of the Treasury and of law enforcement agencies outside the Department to make effective use of information maintained by the Department. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that an agency is conducting an investigation into their illegal activities and could reveal the geographic location of the investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Individuals possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their illegal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for detection or apprehension. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Providing accountings to the subjects of investigations would alert them to the fact that the Department has information regarding their illegal activities and could inform them of the general nature of that information.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3), and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the Department's ability to utilize and provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their detection or apprehension;

(B) Enabling them to destroy or alter evidence of illegal conduct that would form the basis for their detection or apprehension; and

(C) Using knowledge that investigators had reason to believe that a violation of law was about to be committed, to delay the commission of the violation or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning non-criminal acts to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informants and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible

reprisals for having provided the information. Confidential sources and informants might refuse to provide investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Department's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers or other persons who compiled information regarding the individual's illegal activities and thereby endanger the physical safety of those undercover officers, persons, or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (h)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Department and thus would restrict the Department's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that the Department may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual having access to his or her records, and since these rules exempt the systems of records from the provisions of the Privacy Act relating to access to records, these provisions should not apply to the systems of records for the reasons set out in paragraph (h)(2) of this section.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or Executive order. The term *maintain,* as defined in 5 U.S.C. 552a(a)(3), includes *collect* and *disseminate.* The application of this provision to the system of records could impair the Department's ability to collect, utilize and disseminate valuable law enforcement information.

(i) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(ii) Not all violations of law discovered by the Department analysts fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Department will have to disclose such violations to other law enforcement agencies, including State, local, and foreign agencies that have jurisdiction over the offenses to which the information relates. Otherwise, the Department might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Department's attention during the collation and analysis of information in its records.

(5) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in paragraphs (h)(5)(i) through (vi) of this section, access to such knowledge would impair the Department's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the Department's ability to complete or continue investigations or to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informants by the subjects of investigations; and

(iii) Cause informants to refuse to give full information to investigators for fear of having their identities as sources disclosed.

(i) *Specific exemptions under 5 U.S.C. 552a(k)(4).* (1) Under 5 U.S.C. 552a(k)(4), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the system is required by statute to be maintained and used solely as statistical records. This paragraph (i) applies to the following system of records maintained by the Department, for which exemption is claimed under 5 U.S.C. 552a(k)(4).

(i) *Internal Revenue Service.*

TABLE 18 TO PARAGRAPH (i)(1)(i)

No.	Name of system
IRS 70.001	Individual Income Tax Returns, Statistics of Income.

(ii) [Reserved]

(2) The Department hereby exempts the system of records listed in paragraph (i)(1) of this section from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(4): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(3) The system of records is maintained under 26 U.S.C. 6108, which requires that the Secretary or his delegate prepare and publish annually statistics reasonably available with respect to the operation of the income tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable.

(j) *Reasons for exemptions under 5 U.S.C. 552a(k)(4).* The reason for exempting the system of records is that disclosure of statistical records (including release of accounting for disclosures) would in most instances be of no benefit to a particular individual since the records do not have a direct effect on a given individual.

(k) *Specific exemptions under 5 U.S.C. 552a(k)(5).* (1) Under 5 U.S.C. 552a(k)(5), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the system is investigatory material compiled solely for the purpose of determining suitability, eligibility, and qualifications for Federal civilian employment or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Thus, to the extent that the records in this system can be disclosed without revealing the identity of a confidential source, they are not within the scope of this exemption and are subject to all the requirements of the Privacy Act. This paragraph (j) applies to the following systems of records maintained by the Department or one of its bureaus:

(i) *Departmental Offices.*

TABLE 19 TO PARAGRAPH (k)(1)(i)

No.	Name of system
DO .004	Personnel Security System.
DO .306	TIGTA Recruiting and Placement Records.

(ii) *Internal Revenue Service.*

TABLE 20 TO PARAGRAPH (k)(1)(ii)

No.	Name of system
IRS 34.021	Personnel Security Investigations.
IRS 34.022	Automated Background Investigations System (ABIS).
IRS 90.006	Chief Counsel Human Resources and Administrative Records.

(2) The Department hereby exempts the systems of records listed in paragraphs (k)(1)(i) and (ii) of this section from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(5): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(l) *Reasons for exemptions under 5 U.S.C. 552a(k)(5).* (1) The sections of 5 U.S.C. 552a from which the systems of records are exempt include in general those providing for individuals' access to or amendment of records. When such access or amendment would cause the identity of a confidential source to be revealed, it would impair the future ability of the Department to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. In addition, the systems shall be exempt from 5 U.S.C. 552a(e)(1) which requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The Department believes that to fulfill the requirements of 5 U.S.C. 552a(e)(1) would unduly restrict the agency in its information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

(2) If any investigatory material contained in the above-named systems becomes involved in criminal or civil matters, exemptions of such material under 5 U.S.C. 552a(j)(2) or (k)(2) is hereby claimed.

(m) *Exemption under 5 U.S.C. 552a(k)(6).* (1) Under 5 U.S.C. 552a(k)(6), the head of any agency may promulgate rules to exempt any system of records that is testing, or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process. This paragraph (m) applies to the following system of records maintained by the Department, for which exemption is claimed under 5 U.S.C. 552a(k)(6).

(i) *Departmental Offices.*

TABLE 21 TO PARAGRAPH (m)(1)(i)

No.	Name of system
DO .306	TIGTA Recruiting and Placement Records.

(ii) [Reserved]

(2) The Department hereby exempts the system of records listed in paragraph (m)(1) of this section from the following provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(6): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(n) *Reasons for exemptions under 5 U.S.C. 552a(k)(6).* The reason for exempting the system of records is that disclosure of the material in the system would compromise the objectivity or fairness of the examination process.

(o) *Exempt information included in another system.* Any information from a

system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

Appendix A to Subpart C of Part 1—Departmental Offices

1. *In general.* This appendix applies to the Departmental Offices as defined in this subpart, § 1.20. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officers designated to grant extensions of time on appeal, the officers with whom ''Statement of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances.''

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under § 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Departmental Offices, will be made by the head of the organizational unit having immediate custody of the records requested, or the delegate of such official. This information is contained in the appropriate system notice in the ''Privacy Act Issuances'', published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records should be addressed to:

Privacy Act Request, DO, Director, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Requests may also be submitted: on the Treasury/FOIA portal, which can be found at: *https://home.treasury.gov/footer/freedom-of-information-act/submit-a-request;* or by email at *FOIA@treasury.gov.*

3. *Requests for amendments of records.* Initial determinations under § 1.27(a) through (d) with respect to requests to amend records for records maintained by the Departmental Offices will be made by the head of the organization or unit having immediate custody of the records or the delegate of such official. Requests for amendment of records should be addressed as indicated in the appropriate system notice in ''Privacy Act Issuances'' published by the Office of the Federal Register. Requests for information and specific guidance on where to send these requests should be addressed to: Privacy Act Amendment Request, DO, Director, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under § 1.27(e) with respect to records of the Departmental Offices, including extensions of time on appeal, will be made by the Secretary, Deputy Secretary, Under Secretary, General Counsel, Special Inspector General for Troubled Assets Relief Program, or Assistant Secretary having jurisdiction over the organizational unit which has immediate custody of the records, or the delegate of such official, as limited by 5 U.S.C. 552a(d)(2) and (3). Appeals made by mail should be addressed as indicated in the letter of initial decision or to: Privacy Act Amendment Request, DO, Director, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

5. *Statements of disagreement.* ''Statements of Disagreement'' as described in § 1.27(e)(4) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the General Counsel of the Department of the Treasury or the delegate of such official and shall be delivered to the following location: General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records required to be published by the Office of the Federal Register in the publication entitled ''Privacy Act Issuances'', as specified in 5 U.S.C. 552a(f). Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 and section 8 of this appendix, and locations for access are indicated in the notice for the pertinent system.

8. *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, must satisfy one of the following identification requirements before action will be taken by the Departmental Offices on any such request:

(i) An individual seeking notification or access to records in person, or seeking to amend a record in person, may establish identity by the presentation of a single official document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card).

(ii) An individual seeking notification or access to records by mail, or seeking to amend a record by mail, may establish identity by a signature, address, and one other identifier such as a photocopy of a driver's license or other official document bearing the individual's signature.

(iii) Notwithstanding paragraphs 8(i) and (ii) of this appendix, an individual seeking notification or access to records by mail or in person, or seeking to amend a record by mail or in person, who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

(iv) Notwithstanding paragraph 8(i), (ii), or (iii) of this appendix, a designated official may require additional proof of an individual's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

Appendix B to Subpart C of Part 1—Internal Revenue Service

1. *Purpose.* The purpose of this section is to set forth the procedures that have been established by the Internal Revenue Service for individuals to exercise their rights under the Privacy Act (Pub. L. 93–579, 88 Stat. 1896) with respect to systems of records maintained by the Internal Revenue Service, including the Office of the Chief Counsel. The procedures contained in this section are to be promulgated under the authority of 5 U.S.C. 552a(f). The procedures contained in this section relate to the following:

(a) The procedures whereby an individual can be notified in response to a request if a system of records named by the individual contains a record pertaining to such individual (5 U.S.C. 552a(f)(1)).

(b) The procedures governing reasonable times, places, and requirements for identifying an individual who requests a record of information pertaining to such individual before the Internal Revenue Service will make the record or information available to the individual (5 U.S.C. 552a(f)(2)).

(c) The procedures for the disclosure to an individual upon a request of a record of information pertaining to such individual, including special procedures for the disclosure to an individual of medical records, including psychological records (5 U.S.C. 552a(f)(3)).

(d) The procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the Internal Revenue Service of an initial adverse agency determination, and for whatever additional means may be necessary for individuals to be able to exercise fully their right under the Privacy Act (5 U.S.C. 552a(f)(4)).

Any individual seeking to determine whether a system of records maintained by any office of the Internal Revenue Service contains a record or information pertaining to such individual, or seeking access to, or amendment of, such a record, must comply fully with the applicable procedure contained in section 3 or 4 of this appendix before the Internal Revenue Service will act

on the request. Neither the notification and access (or accounting of disclosures) procedures under section 3 of this appendix nor the amendment procedures under section 4 of this appendix are applicable to:

(i) Systems of records exempted pursuant to 5 U.S.C. 552a(j) and (k);

(ii) Information compiled in reasonable anticipation of a civil action or proceeding (see 5 U.S.C. 552a(d)(5)); or

(iii) Information pertaining to an individual which is contained in, and inseparable from, another individual's record.

2. *Access to and amendment of tax records.* The provisions of the Privacy Act may not be used by an individual to amend or correct any tax record. The determination of liability for taxes imposed by the Internal Revenue Service Code, the collection of such taxes, and the payment (including credits or refunds of overpayments) of such taxes are governed by the provisions of the Internal Revenue Service Code and by the procedural rules of the Internal Revenue Service. These provisions set forth the established procedures governing the determination of liability for tax, the collection of such taxes, and the payment (including credits or refunds of overpayments) of such taxes. In addition, these provisions set forth the procedures (including procedures for judicial review) for resolving disputes between taxpayers and the Internal Revenue Service involving the amount of tax owed, or the payment or collection of such tax. These procedures are the exclusive means available to an individual to contest the amount of any liability for tax or the payment or collection thereof. See, for example, 26 CFR 601.103 for summary of general tax procedures. Individuals are advised that Internal Revenue Service procedures permit the examination of tax records during the course of an investigation, audit, or collection activity. Accordingly, individuals should contact the Internal Revenue Service employee conducting an audit or effecting the collection of tax liabilities to gain access to such records, rather than seeking access under the provisions of the Privacy Act. Where, on the other hand, an individual desires information or records not in connection with an investigation, audit, or collection activity, the individual may follow these procedures.

3. *Procedures for access to records*—(a) *In general.* This paragraph sets forth the procedure whereby an individual can be notified in response to a request if a system of records named by the individual which is maintained by the Internal Revenue Service contains a record pertaining to such individual. In addition, this paragraph sets forth the procedure for the disclosure to an individual upon a request of a record or information pertaining to such individual, including the procedures for verifying the identity of the individual before the Internal Revenue Service will make a record available, and the procedure for requesting an accounting of disclosures of such records. An individual seeking to determine whether a particular system of records contains a record or records pertaining to such individual and seeking access to such records (or seeking an accounting of disclosures of such records) shall make a request for notification and access (or a request for an accounting of disclosures) in accordance with the rules provided in paragraph 3(b) of this appendix.

(b) *Form of request for notification and access or request for an accounting of disclosures.* (i) A request for notification and access (or request for an accounting of disclosures) shall be made in writing and shall be signed by the person making the request.

(ii) Such request shall be clearly marked, ''Request for notification and access,'' or ''Request for accounting of disclosures.''

(iii) Such a request shall contain a statement that it is being made under the provisions of the Privacy Act.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's social security number as an essential means of accessing the system, the request must include the individual's Social Security number. In the case of a record maintained in the name of two or more individuals (*e.g.,* husband and wife), the request shall contain the names, addresses, and Social Security numbers (if necessary) of both individuals.

(v) Such request shall specify the name and location of the particular system of records (as set forth in the Notice of Systems) for which the individual is seeking notification and access (or an accounting of disclosures), and the title and business address of the official designated in the access section for the particular system (as set forth in the Notice of Systems). In the case of two or more systems of records which are under the control of the same designated official at the same systems location, a single request may be made for such systems. In the case of two or more systems of records which are not in the control of the same designated official at the same systems location, a separate request must be made for each such system.

(vi) If an individual wishes to limit a request for notification and access to a particular record or records, the request should identify the particular record. In the absence of a statement to the contrary, a request for notification and access for a particular system of records shall be considered to be limited to records which are currently maintained by the designated official at the systems location specified in the request.

(vii) If such request is seeking notification and access to material maintained in a system of records which is exempt from disclosure and access under 5 U.S.C. 552a(k)(2), the individual making the request must establish that such individual has been denied a right, privilege, or benefit that such individual would otherwise be entitled to under Federal law as a result of the maintenance of such material.

(viii) Such request shall state whether the individual wishes to inspect the record in person, or desires to have a copy made and furnished without first inspecting it. If the individual desires to have a copy made, the request must include an agreement to pay the fee for duplication ultimately determined to be due. If the individual does not wish to inspect a record, but merely wishes to be notified whether a particular system or records contains a record pertaining to such individual, the request should so state.

(c) *Time and place for making a request.* A request for notification and access to records under the Privacy Act (or a request for accounting of disclosures) shall be addressed to or delivered in person to the office of the official designated in the access section for the particular system of records for which the individual is seeking notification and access (or an accounting of disclosures). The title and office address of such official is set forth for each system of records in the Notice of Systems of Records. A request delivered to an office in person must be delivered during the regular office hours of that office.

(d) *Sample request for notification and access to records.* The following are sample requests for notification and access to records which will satisfy the requirements of this paragraph:

Request for Notification and Access to Records by Mail

I, John Doe, of 100 Main Street, Boston, MA 02108 (soc. sec. num. 000–00–0000) request under the Privacy Act of 1974 that the following system of records be examined and that I be furnished with a copy of any record (or a specified record) contained therein pertaining to me. I agree that I will pay the fees ultimately determined to be due for duplication of such record. I have enclosed the necessary information.

System Name:
System Location:
Designated Official:
John Doe

Request for Notification and Access to Records in Person

I, John Doe, of 100 Main Street, Boston, MA 02108 (soc. sec. num. 000–00–0000) request under the provisions of the Privacy Act of 1974, that the following system of records be examined and that I be granted access in person to inspect any record (or a specified record) contained therein pertaining to me. I have enclosed the necessary identification.

System Name:
System Location:
Designated Official:
John Doe

(e) *Processing a request for notification and access to records or a request for an accounting of disclosures.* (i) If a request for notification and access (or request for an accounting of disclosures) omits any information which is essential to processing the request, the request will not be acted upon and the individual making the request will be promptly advised of the additional information which must be submitted before the request can be processed.

(ii) Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request for notification and access (or a request for an accounting of disclosures), to a particular system of records by the designated official for such system, a determination will be

made as to whether the particular system of records is exempt from the notification and access provisions of the Privacy Act, and if such system is not exempt, whether it does or does not contain a record pertaining to the individual making the request. If a determination cannot be made within 30 days, the individual will be notified of the delay, the reasons therefor, and the approximate time required to make a determination. If it is determined by the designated official that the particular system of records is exempt from the notification and access provisions of the Privacy Act, the individual making the request will be notified of the provisions of the Privacy Act under which the exemption is claimed. On the other hand, if it is determined by the designated official that the particular system of records is not exempted from the notification and access provisions of the Privacy Act and that such system contains a record pertaining to the individual making the request, the individual will be notified of the time and place where inspection may be made. If an individual has not requested that access be granted to inspect the record in person, but merely requests that a copy of the record be furnished, or if it is determined by the designated official that the granting of access to inspect a record in person is not feasible in a particular case, then the designated official will furnish a copy of the record with the notification, or if a copy cannot be furnished at such time, a statement indicating the approximate time such copy will be furnished. If the request is for an accounting of disclosures from a system of records which is not exempt from the accounting of disclosure provisions of the Privacy Act, the individual will be furnished with an accounting of such disclosures.

(f) *Granting of access.* Normally, an individual will be granted access to inspect a record in person within 30 days (excluding Saturdays, Sundays, and legal public holidays) after the receipt for a request for notification and access by the designated official. If access cannot be granted within 30 days, the notification will state the reasons for the delay and the approximate time such access will be granted. An individual wishing to inspect a record may be accompanied by another person of his choosing. Both the individual seeking access and the individual accompanying him may be required to sign a form supplied by the Internal Revenue Service (IRS) indicating that the Service is authorized to disclose or discuss the contents of the record in the presence of both individuals. See 26 CFR 601.502 for requirements to be met by taxpayer's representatives in order to discuss the contents of any tax records.

(g) *Medical records.* When access is requested to medical records (including psychological records), the designated official may determine that release of such records will be made only to a health care professional designated by the individual to have access to such records.

(h) *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, must satisfy one of the following identification requirements before action will be taken by the IRS on any such request:

(i) An individual seeking notification or access to records in person, or seeking to amend a record in person, may establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card).

(ii) An individual seeking notification or access to records by mail, or seeking to amend a record by mail, may establish identity by a signature, address, and one other identifier such as a photocopy of a driver's license or other document bearing the individual's signature.

(iii) Notwithstanding paragraphs 3(h)(i) and (ii) of this appendix, an individual seeking notification or access to records by mail or in person, or seeking to amend a record by mail or in person, who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

(iv) Notwithstanding paragraph 3(h)(i), (ii), or (iii) of this appendix, a designated official may require additional proof of an individual's identity before action will be taken on any request if such official determines that it is necessary to protect unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

(i) *Fees.* The fee for costs required of the IRS in copying records pursuant to this paragraph is $0.15 per page. However, no fee will be charged if the aggregate costs required of the IRS in copying records is less than $3.00. If an individual who has requested access to inspect a record in person is denied such access by the designated official because it would not be feasible in a particular case, copies of such record will be furnished to the individual without payment of the fees otherwise required under this paragraph. If the IRS estimates that the total fees for costs incurred in complying with a request for copies of records will amount to $50 or more, the individual making the request may be required to enter into a contract for the payment of the actual fees with respect to the request before the Service will furnish the copies requested. Payment of fees for copies of records should be made by check or money order payable to the Internal Revenue Service.

4. *Procedures for amendment of records*—(a) *In general.* This paragraph sets forth the procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to such individual, for making a determination on the request, for making an appeal within the IRS of an initial adverse determination, and for judicial review of a final determination.

(b) *Amendment of record.* Under 5 U.S.C. 552a(d)(2), an individual who has been granted access to a record pertaining to such individual may, after inspecting the record, request that the record be amended to make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete. An individual may seek to amend a record in accordance with the rules provided in paragraph (2) of this appendix.

(c) *Form of request for amendment of record.* (i) A request for amendment of a record shall be in writing and shall be signed by the individual making the request.

(ii) Such request shall be clearly marked ''Request for amendment of record.''

(iii) Such request shall contain a statement that it is being made under the provisions of the Privacy Act.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's social security number as an essential means of accessing the system, the request must include the individual's Social Security number. In the case of a record maintained in the name of two or more individuals (*e.g.,* husband and wife), the request shall contain the names, addresses, and Social Security numbers (if necessary) of both individuals.

(v) Such request shall specify the name and location of the system of records (as set forth in the Notice of Systems) in which such record is maintained, and the title and business address of the official designated in the access section for such system (as set forth in the Notice of Systems).

(vi) Such request shall specify the particular record in the system which the individual is seeking to amend.

(vii) Such request shall clearly state the specific changes which the individual wishes to make in the record and a concise explanation of the reasons for the changes. If the individual wishes to correct or add any information, the request shall contain specific language making the desired correction or addition.

(d) *Time and place for making request.* A request to amend a record under the Privacy Act shall be addressed to or delivered in person to the office of the official designated in the access section for the particular system of records. The title and office address of such official is set forth for each system of records in the Notice of Systems of Records. A request delivered to an office in person must be delivered during the regular office hours of that office.

(e) *Processing a request for amendment of a record.* (i) Within 10 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request to amend a record by the designated official, the individual will be sent a written acknowledgement that will state that the request has been received, that action is being taken thereon, and that the individual will be notified within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the requested amendments will or will not be made. If a request for amendment of a record omits any information which is essential to processing the request, the request will not be acted upon and the individual making the request will be

promptly advised on the additional information which must be submitted before the request can be processed.

(ii) Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request to amend a record by the designated official, a determination will be made as to whether to grant the request in whole or part. The individual will then be notified in writing of the determination. If a determination cannot be made within 30 days, the individual will be notified in writing within such time of the reasons for the delay and the approximate time required to make a determination. If it is determined by the designated official that the request will be granted, the requested changes will be made in the record and the individual will be notified of the changes. In addition, to the extent an accounting was maintained, all prior recipients of such record will be notified of the changes. Upon request, an individual will be furnished with a copy of the record, as amended, subject to the payment of the appropriate fees. On the other hand, if it is determined by the designated official that the request, or any portion thereof, will not be granted, the individual will be notified in writing of the adverse determination. The notification of an adverse determination will set forth the reasons for refusal to amend the record. In addition, the notification will contain a statement informing the individual of such individual's right to request an independent review of the adverse determination by a reviewing officer in the national office of the IRS and the procedures for requesting such a review.

(f) *Administrative review of adverse determination.* Under 5 U.S.C. 552a(d)(3), an individual who disagrees with the refusal of the agency to amend a record may, within 35 days of being notified of the adverse determination, request an independent review of such refusal by a reviewing officer in the national office of the IRS. The reviewing officer for the IRS is the Commission of Internal Revenue, the Deputy Commissioner, or an Assistant Commissioner. In the case of an adverse determination relating to a system of records maintained by the Office of General Counsel for the IRS, the reviewing officer is the Chief Counsel or his delegate. An individual seeking a review of an adverse determination shall make a request for review in accordance with the rules provided in paragraphs (g) and (h) of this appendix.

(g) *Form of request for review.* (i) A request for review of an adverse determination shall be in writing and shall be signed by the individual making the request.

(ii) Such request shall be clearly marked ''Request for review of adverse determination''.

(iii) Such request shall contain a statement that it is being made under the provisions of the Privacy Act.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's Social Security number as an essential means of accessing the system, the request must include the individual's Social Security number. In the case of a record maintained in the name of two or more individuals (*e.g.,* husband and wife), the request shall contain the names, addresses, and Social Security numbers (if necessary) of both individuals.

(v) Such request shall specify the particular record which the individual is seeking to amend, the name and location of the system of records (as set forth in the Notice of Systems) in which such record is maintained, and the title and business address of the designated official for such system (as set forth in the Notice of Systems).

(vi) Such request shall include the date of the initial request for amendment of the record, and the date of the letter notifying the individual of the initial adverse determination with respect to such request.

(vii) Such request shall clearly state the specific changes which the individual wishes to make in the record and a concise explanation of the reasons for the changes. If the individual wishes to correct or add any information, the request shall contain specific language making the desired correction or addition.

(h) *Time and place for making the request.* A request for review of an adverse determination under the Privacy Act shall be addressed to or delivered in person to the Director, Office of Disclosure, Attention: OP:EX:D Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224. A request for review of an adverse determination will be promptly referred by the Director, Office of Disclosure to the appropriate reviewing officer for his review and final determination.

(i) *Processing a request for review of adverse determination.* Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request for review of an adverse determination by the appropriate reviewing officer, the reviewing officer will review the initial adverse determination, make a final determination whether to grant the request to amend the record in whole or in part, and notify the individual in writing of the final determination. If a final determination cannot be made within 30 days, the Commissioner of Internal Revenue may extend such 30-day period. The individual will be notified in writing within the 30-day period of the cause for the delay and the approximate time required to make a final determination. If it is determined by the reviewing officer that the request to amend the record will be granted, the reviewing officer will cause the requested changes to be made and the individual will be so notified. Upon request, an individual will be furnished with a copy of the record as amended subject to the payment of appropriate fees. On the other hand, if it is determined by the reviewing officer that the request to amend the record, or any portion thereof, will not be granted, the individual will be notified in writing of the final adverse determination. The notification of a final adverse determination will set forth the reasons for the refusal of the reviewing officer to amend the record. The notification shall include a statement informing the individual of the right to submit a concise statement for insertion in the record setting forth the reasons for the disagreement with the refusal of the reviewing officer to amend the record. In addition, the notification will contain a statement informing the individual of the right to seek judicial review by a United States district court of a final adverse determination.

(j) *Statement of disagreement.* Under 5 U.S.C. 552a(d)(3), an individual who disagrees with a final adverse determination not to amend a record subject to amendment under the Privacy Act may submit a concise statement for insertion in the record setting forth the reasons for disagreement with the refusal of the reviewing officer to amend the record. A statement of disagreement should be addressed to or delivered in person to the Director, Office of Disclosure, Attention: OP:EX:D, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224. The Director, Office of Disclosure will forward the statement of disagreement to the appropriate designated official who will cause the statement to be inserted in the individual's record. Any such statement will be available to anyone to whom the record is subsequently disclosed, and the prior recipients of the record will be provided with a copy of the statement of disagreement, to the extent an accounting of disclosures was maintained.

(k) *Judicial review.* If, after a review and final determination on a request to amend a record by the appropriate reviewing officer, the individual is notified that the request will not be granted, or if, after the expiration of 30 days (not including Sundays, Saturdays, and legal public holidays) from the receipt of such request by the Director, Disclosure Operations Division, action is not taken thereon in accordance with the requirements of paragraph (i) of this section, an individual may commence an action within the time prescribed by law in a U.S. District Court pursuant to 5 U.S.C. 552a(g)(1). The statute authorizes an action only against the agency. With respect to records maintained by the IRS, the agency is the Internal Revenue Service, not an officer or employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Where provided in such Rules, delivery of process upon the IRS must be directed to the Commissioner of Internal Revenue, Attention: CC:GLS, 1111 Constitution Avenue NW, Washington, DC 20224. The district court will determine the matter de novo.

5. *Records transferred to Federal Records Centers.* Records transferred to the Administrator of General Services for storage in a Federal Records Center are not used by the Internal Revenue Service in making any determination about any individual while stored at such location and therefore are not subject to the provisions of 5 U.S.C. 552a(e)(5) during such time.

Appendix C to Subpart C of Part 1—Alcohol and Tobacco Tax and Trade Bureau

1. *In general.* This appendix applies to the Alcohol and Tobacco Tax and Trade Bureau. It sets forth specific notification and access

procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(3), (4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determination under § 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Alcohol and Tobacco Tax and Trade Bureau, will be made by the Director, Regulations and Rulings Division, or the delegate of such officer. Requests may be mailed or delivered in person to: Privacy Act Request, Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Requests may also be faxed to 202–453–2331.

3. *Requests for amendment of record.* Initial determinations under § 1.27(a) through (d) with respect to requests to amend records maintained by the Alcohol and Tobacco Tax and Trade Bureau will be made by the Director, Regulations and Rulings Division. Requests for amendment of records may be mailed or delivered in person to: Privacy Act Request, Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Requests may also be faxed to 202–453–2331. The Bureau will process a faxed request when the request meets the identity verification requirements outlined in paragraph 4(a) of this appendix.

4. *Verification of identity.* (a) In addition to the requirements specified in § 1.26(d), each request for notification, access or amendment of records made by mail or fax shall contain the requesting individual's date and place of birth and a statement signed by the requester asserting his or her identity and stipulating that the requester understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is a misdemeanor and punishable by a fine of up to $5,000 provided, that the Alcohol and Tobacco Tax and Trade Bureau may require a signed notarized statement verifying the identity of the requester.

(b) Individuals making requests in person will be required to exhibit at least two acceptable identifying documents such as employee identification cards, driver's license, medical cards, or other documents sufficient to verify the identity of the requester.

(c) The parent or guardian of a minor or a person judicially determined to be incompetent, shall in addition to establishing the identity of the minor or other person he represents as required in paragraphs 4(a) and (b) of this appendix, establish his own parentage or guardianship by furnishing a copy of a birth certificate showing parentage (or other satisfactory documentation) or a court order establishing the guardianship.

5. *Request for physical inspection of records.* Upon determining that a request for the physical inspection of records is to be granted, the requester shall be notified in writing of the determination, and when and where the records may be inspected. The inspection of records will be made at the Alcohol and Tobacco Tax and Trade Bureau Field Office or other facility located nearest to the residence of the individual making the request. Such inspection shall be conducted during the regular business hours of the field office or other facility where the disclosure is made. A person of the requester's own choosing may accompany the requester provided the requester furnishes a written statement authorizing the disclosure of the requester's record in the accompanying person's presence. The record inspection will be made in the presence of a representative of the Bureau. Following the inspection of the record, the individual will acknowledge in writing the fact that he or she had an opportunity to inspect the requested record.

6. *Requests for copies of records without prior physical inspection.* Upon determining that an individual's request for copies of his or her records without prior physical inspection is to be granted, the requester shall be notified in writing of the determination, and the location and time for his or her receipt of the requested copies. The copies will be made available at the Alcohol and Tobacco Tax and Trade Bureau field office or other facility located nearest to the residence of the individual making the request unless the individual requests that the documents be sent by mail. Copies shall be received by the requester during the regular business hours of the field office or other facility where the disclosure is made. Transfer of the copies to the individual shall be conditioned upon payment of copying costs and his presentation of at least two acceptable identifying documents such as employee identification cards, driver's license, medical cards, or other documents sufficient to verify the identity of the requester. Following the receipt of the copies in person, the individual will acknowledge receipt in writing.

7. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under § 1.27(e) with respect to records of the Alcohol and Tobacco Tax and Trade Bureau, including extensions of time on appeal, will be made by the Administrator or the delegate of such officer. Appeals should be addressed to, or delivered in person to: Privacy Act Amendment Appeal, Administrator, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

8. *Statements of disagreement.* ''Statements of Disagreement'' as described in § 1.27(e)(4) shall be filed with the official signing the notification within 35 days of the date of such notification and should be limited to one page.

9. *Service of process.* Service of process will be received by the Administrator of the Alcohol and Tobacco Tax and Trade Bureau or the delegate of such official and shall be delivered to the following location: Administrator, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005, Attention: Chief Counsel.

10. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 are indicated in the notice for each pertinent system.

Appendix D to Subpart C of Part 1—Bureau of Engraving and Printing

1. *In general.* This appendix applies to the Bureau of Engraving and Printing. It sets forth specific notification and access procedures with respect to particular systems of records including identification requirements, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances.''

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under § 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of Engraving and Printing, will be made by the head of the organizational unit having immediate custody of the records requested, or the delegate of such official. Requests for access to records contained within a particular system of records should be submitted to the address indicated for that system in the access section of the notices published by the Office of the Federal Register in ''Privacy Act Issuances.'' Requests for information and specific guidance should be addressed to: Privacy Act Request, Disclosure Officer (Executive Assistant to the Director), Room 104–18M, Bureau of Engraving and Printing, Washington, DC 20228.

3. *Requests for amendment of records.* Initial determination under § 1.27(a) through (d), whether to grant request to amend

records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed as indicated in the appropriate system notice in ''Privacy Act Issuances'' published by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for amendment should be addressed to: Privacy Act Amendment Request, Disclosure Officer (Executive Assistant to the Director), Bureau of Engraving and Printing, Room 104–18M, Washington, DC 20228.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under § 1.27(e) including extensions of time on appeal, with respect to records of the Bureau of Engraving and Printing will be made by the Director of the Bureau or the delegate of such officer. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal, Disclosure Officer (Executive Assistant to the Director), Room 104–18M, Bureau of Engraving and Printing, Washington, DC 20228.

5. *Statements of disagreement.* ''Statements of Disagreement'' under § 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Chief Counsel of the Bureau of Engraving and Printing and shall be delivered to the following location: Chief Counsel, Bureau of Engraving and Printing, Room 109–M, 14th and C Streets SW, Washington, DC 20228.

7. *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, or seeking an accounting of disclosures, must satisfy one of the following identification requirements before action will be taken by the Bureau of Engraving and Printing on any such request:

(i) An individual appearing in person may establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a credit card).

(ii) An individual may establish identity through the mail by a signature, address, and one other identifier such as a photocopy of a driver's license or other document bearing the individual's signature.

(iii) Notwithstanding paragraphs 7(i) and (ii) of this appendix, an individual who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

(iv) Notwithstanding paragraph 7(i), (ii), or (iii) of this appendix, the Executive Assistant or other designated official may require additional proof of an individual's identity before action will be taken on any request if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

8. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 522a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 are indicated in the notice for the pertinent system.

Appendix E to Subpart C of Part 1—Bureau of the Fiscal Service

1. *In general.* This appendix applies to the Bureau of the Fiscal Service. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under § 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of the Fiscal Service, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in ''Privacy Act Issuances'' published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records may be mailed to the system manager identified in the Bureau of the Fiscal Service system of records notice (SORN) which is published in the **Federal Register**. *See* the applicable Bureau of the Fiscal Service system of records notice (SORN) for details.

3. *Requests for amendment of records.* Initial determination under § 1.27(a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed as indicated in the appropriate system notice in ''Privacy Act Issuances'' published by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for amendment should be addressed to the system manager identified in the Bureau of the Fiscal Service SORN which is published in the **Federal Register**.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under § 1.27(e) including extensions of time on appeal, with respect to records of the Bureau of the Fiscal Service will be made by the Commissioner or the delegate of such official. Appeals made by mail should be addressed to the system manager identified in the Bureau of the Fiscal Service SORN which is published in the **Federal Register**. *See* the applicable Bureau of the Fiscal Service SORN for details.

5. *Statements of disagreement.* ''Statements of Disagreement'' under § 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Commissioner, Bureau of the Fiscal Service or the delegate of such official and shall be delivered to the following location: Office of the Chief Counsel, Bureau of the Fiscal Service Attn: Chief Counsel, 401 14th St. SW, Washington, DC 20227.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 are indicated in the notice for the pertinent system.

Appendix F to Subpart C of Part 1—United States Mint

1. *In general.* This appendix applies to the United States Mint. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published

annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under § 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the United States Mint will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in ''Privacy Act Issuances'' published annually by the Office of the Federal Register. Requests should be directed to the Superintendent or Officer in charge of the facility in which the records are located or to the Chief, Administrative Programs Division. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to: Privacy Act Request, Chief, Administrative Programs Division, United States Mint, Judiciary Square Building, 633 3rd Street NW, Washington, DC 20220.

3. *Requests for amendment of records.* Initial determination under § 1.27(a) through (d), whether to grant requests to amend records will be made by the head of the Mint installation having immediate custody of the records or the delegated official. Requests should be mailed or delivered personally to: Privacy Act Amendment Request, Freedom of Information and Privacy Acts Officer, United States Mint, Judiciary Square Building, 633 3rd Street, Washington, DC 20220.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under § 1.27 including extensions of time on appeal, with respect to records of the United States Mint will be made by the Director of the Mint or the delegate of the Director. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal, United States Mint, Judiciary Square Building, 633 3rd Street NW, Washington, DC 20220.

5. *Statements of disagreement.* ''Statements of Disagreement'' under § 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Director of the Mint and shall be delivered to the following location: Director of the Mint, Judiciary Square Building, 633 3rd Street NW, Washington, DC 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 are indicated in the notice for the pertinent system.

Appendix G to Subpart C of Part 1—Office of the Comptroller of the Currency

1. *In general.* This appendix applies to the Office of the Comptroller of the Currency. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under § 1.26 whether to grant requests for notification and access to records and accountings of disclosures for the Office of the Comptroller of the Currency will be made by the head of the organizational unit having immediate custody of the records requested or the delegate of that official. This is indicated in the appropriate system notice in ''Privacy Act Issuances'' published biennially by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

3. *Requests for amendment of records.* Initial determinations under § 1.27(a) through (d) whether to grant requests to amend records will be made by the Comptroller's delegate or the head of the organizational unit having immediate custody of the records or the delegate of that official. Requests for amendment shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under § 1.27(e) including extensions of time on appeal, with respect to records of the Office of the Comptroller of the Currency will be made by the Comptroller of the Currency or the Comptroller's delegate. Appeals shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

5. *Statements of disagreement.* ''Statements of Disagreement'' under § 1.27(e)(4)(i) shall be filed with the OCC's Director of Communications at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process shall be delivered to the Chief Counsel or the Chief Counsel's delegate at the following location: Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 are indicated in the notice for the pertinent system.

Appendix H to Subpart C of Part 1—Financial Crimes Enforcement Network

1. *In general.* This appendix applies to the Financial Crimes Enforcement Network (FinCEN). It sets forth specific notification and access procedures with respect to particular systems of records, and identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published biennially by the Office of the Federal Register in ''Privacy Act Issuances.''

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under § 1.26, whether to grant requests for notification and access to records and accountings of disclosures for FinCEN will be made by the Freedom of Information/Privacy Act Officer, FinCEN. Requests may be mailed to: Privacy Act Request, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

3. *Requests for amendments of records.* Initial determinations under § 1.27(a) through (d) whether to grant requests to amend records maintained by FinCEN will be made by the Freedom of Information/Privacy Act Officer, FinCEN. Requests may be mailed to: Privacy Act Request, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

4. *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, or seeking an accounting of disclosures, must satisfy one of the following identification requirements before action will be taken by FinCEN on any such request:

(i) An individual may establish identity through the mail by a signature, address, and one other identifier such as a photocopy of a driver's license or other official document bearing the individual's signature.

(ii) Notwithstanding paragraph 4(i) of this section, an individual may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

(iii) Notwithstanding paragraphs 4(i) and (ii) of this appendix, the Freedom of Information Act/Privacy Act Officer or other designated official may require additional proof of an individual's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

5. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under § 1.27(e) including extensions of time on appeal with respect to the records of FinCEN will be made by the Director of FinCEN or the delegate of the Director. Appeals should be addressed to: Privacy Act Amendment Appeal, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

6. *Statements of Disagreement.* ''Statements of Disagreement'' as described in § 1.27(e)(4) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

7. *Service of Process.* Service of process will be received by the Chief Counsel of FinCEN and shall be delivered to the following location: Office of Chief Counsel, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

8. *Biennial notice of systems of records.* The biennial notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances.'' Any specific requirements for access, including identification requirements, in addition to the requirements set forth in §§ 1.26 and 1.27 and section 4 of this appendix are indicated in the notice for the pertinent system.

Dated: October 14, 2022.

Ryan Law,

Deputy Assistant Secretary, Office of Privacy, Transparency, and Records.

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